

# **EXTENSION OF STATE AUTHORITY IN THE AREAS OF JUSTICE AND CORRECTIONS**

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**A LESSONS LEARNED STUDY ON THE WORK  
OF UNITED NATIONS PEACE OPERATIONS**

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# EXECUTIVE SUMMARY

The extension of effective and legitimate state authority through the delivery of rule of law services is an essential component for successful peacebuilding activities. The United Nations (UN) Security Council has mandated peace operations to provide such support in conflict-affected countries for nearly two decades. Building on previous studies on the extension of state authority (ESA), this is the first to focus specifically on the extension of rule of law services. As such, it is an important tool to help inform and guide UN support for extending and re-establishing state authority in conflict-affected settings.

The study was conducted by the Justice and Corrections Service (JCS) of the Office of Rule of Law and Security Institutions (OROLSI) in the Department of Peace Operations (DPO). Informed by ongoing efforts to ensure peacekeeping responds more effectively in complex and hostile environments, it provides guidance to define more realistic, focused and achievable rule of law interventions in support of ESA.

Based on field visits to Liberia, the Democratic Republic of the Congo (DRC) and Mali, this study examines, through the lens of justice and corrections support, how ESA mandates have been implemented. It highlights the important challenges and limitations that arise when implementing the rule of law aspects of such mandates, particularly in conflict-affected, complex and high-risk environments. These may arise in contexts where political processes have stalled, where the legitimacy and authority of the state is contested, and where state institutions are widely perceived as being corrupt and predatory.

The study does not purport to provide answers to all the dilemmas and risks inherent to ESA interventions, but rather to highlight the range of issues to consider when engaging in this work, providing a broad framework for effectively addressing those challenges and guidance to define more realistic, focused and achievable rule of law interventions.

Aligned with the commitments set forth in the Action for Peacekeeping Initiative<sup>i</sup> and the Secretary-General's vision for preventing violent conflict and sustaining peace, the study:

- **Reviews how mandates to support the extension of state authority have been conceptualized** to date and identifies common themes from previous studies on the topic, primarily the need to facilitate extension of the host state's physical presence, capacity and legitimacy;
- Examines and **maps the diverse range of initiatives undertaken by peace operations** in the justice and corrections areas **to support the extension of state authority** in the DRC, Liberia and Mali;
- **Highlights strategic lessons to enable more effective interventions** through analysis of the main strategic, political and operational constraints faced by peace operations when supporting the extension of state authority in relation to the rule of law;
- **Recommends good practices** that could be employed to design and implement successful extension of state authority initiatives relating to the rule of law.

The country profiles in Annex 1 provide a **detailed overview of the contexts, constraints and achievements** of efforts to support the extension of state authority **in the justice and corrections areas by peace operations in the DRC, Liberia and Mali.**

## **STRATEGIC LESSONS**

The study assesses past efforts to support the extension of state authority in relation to the rule of law to identify key lessons to aid strategic decision-making and the implementation of more focused and achievable interventions in the future.

### ***Lesson 1 : The centrality of the rule of law***

The rule of law is at the heart of state authority, legitimate governance and the contract between the state and its citizens. That contract is vulnerable or broken in contexts where peace operations are present. Efforts to support the extension of state authority in such settings should nurture a common and inclusive vision of governance based on the rule of law. This should reinforce the state's ability to govern, exert its territorial control, protect civilians, and strengthen security and stabilization.

### ***Lesson 2: Effective state authority must cultivate legitimacy***

Peace operations have generally focused their efforts to support the extension of state authority on the provision of technical and practical assistance relating to presence and capacity. They need to do more to build the legitimacy of the state and ensure initiatives aimed to improve its capacity are sustainable. This requires a strategic approach and more dedicated attention to building the legitimacy of the host state.

### ***Lesson 3: Rule of law interventions must be politically engaged***

The extension of state authority is inherently political. Peace operations should identify political obstacles to their objectives and use their unique position to proactively address sensitive areas that challenge the effective operation of the rule of law. By doing so, they can create conditions for the peaceful resolution of conflict.

### ***Lesson 4: The need for territorial balance and an inclusive approach***

Peace operations should balance efforts to address systemic issues at the central level with local initiatives throughout a host state's territory. To be successful, they should adopt inclusive, gender responsive, and people-centred approaches that empower civil society and affected communities to shape efforts to extend state authority and ensure accountability.

### ***Lesson 5: Accountability and anti-corruption measures are critical***

The negative effects of corruption are especially severe in settings where peace operations are present. Efforts to enhance a state's effectiveness and legitimacy must adopt a clearer anti-corruption lens to reinforce accountability and oversight measures.

### ***Lesson 6: The importance of engaging with informal justice mechanisms***

Informal justice mechanisms have legitimacy in many post-conflict settings. Peace operations should assess how they can contribute to the extension of state authority and create more linkages between formal and informal justice systems.

### ***Lesson 7: Efforts to extend state authority require a whole of mission strategy***

Efforts by peace operations to support the extension of state authority could better address conflict drivers and become more effective if strategically connected to broader efforts to advance mandated political objectives. A thorough conflict and context analysis should be undertaken to help determine the nature, sequencing and timing of a mission's rule of law interventions and activities in support of the extension of state authority.

### **GOOD PRACTICES**

The study identified some specific forms of good practice to be used by field components to develop effective rule of law initiatives that reflect the lessons above. These detail a range of frameworks, technical assessment tools, guidance and methodologies available to guide and enhance the work of peace operations and emphasize the importance of utilizing the expertise of core and specialist personnel to achieve mandated objectives. They highlight the value of sustainable and productive partnerships, strategic communication tools, and benchmarking and indicator development tools. Finally, they underline the need to thoroughly and consistently report the impact of efforts to support the extension of state authority and to take appropriate steps to mitigate potential reputational risks associated with that work.

### **CONCLUSION**

The lessons and recommendations contained within this study highlight the central role played by the effective operation of the rule of law in preventing relapse into conflict, protecting human rights and building sustainable peace. Indeed, from a peacekeeping perspective, there is an inextricable correlation between efforts to reinforce a state's ability to govern and those aimed at strengthening security and stabilization and the protection of civilians.

The study underscores both the political and technical nature of rule of law related ESA support and the need to cultivate a strategic and common vision of governance and state legitimacy, drawing on the convening authority, good offices and leadership of each UN mission. This, however, needs to be premised on and informed by a thorough analysis of the rule of law deficits, power dynamics and conflict drivers.

By building upon these lessons and recommendations, strengthening the focus on accountability and anti-corruption, and empowering civil society and communities affected by conflict through people-centred approaches, missions can better create the conditions for legitimate governance and sustainable peace in some of the world's most dangerous and challenging environments.

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# PART I:

## INTRODUCTION

This study was led by the Justice and Corrections Service (JCS) in the Office of Rule of Law and Security Institutions (OROLSI) in the Department of Peace Operations (DPO). It analyses the efforts of United Nations peace operations, together with partners, to support the extension of state authority (ESA), with a particular focus on the justice and corrections sectors. The study involved an assessment of the objectives, methodology, activities, achievements and impact of such assistance, including their contribution to the goal of achieving sustainable peace and stabilization, extracting lessons that could be relevant to both current and future peace operations planning for or implementing ESA mandates.

Building on previous ESA studies, this report is the first to specifically focus on the extension of rule of law services. Bearing in mind the evolving conceptual framework of ESA, the report provides an in-depth examination, through the lens of justice and corrections support, of the various approaches adopted to implement ESA mandates. Recognizing the challenges and limitations of such interventions, the study also explores inherent dilemmas and risks, while proposing concrete measures to mitigate or address them.

The delivery of effective justice and corrections services, together with law enforcement, is a prerequisite for the

sustainable extension of effective and legitimate state authority and sustaining peace. As recognized in Security Council mandates, UN peacekeeping support aimed at strengthening such functions is considered an essential peacebuilding activity. However, as with other sectors, the operationalization of justice and corrections related ESA mandates has experienced many challenges, especially in contexts where political processes have stalled, where the legitimacy and authority of the state is contested, and where state institutions are widely perceived as being corrupt and predatory. In such contexts, the extension of state authority and other state-building assistance efforts need to take into account the prevailing political dynamics.

**“There cannot be effective and legitimate authority without the rule of law.”**

“While an efficient state may, in theory, have the capacity to address some of the symptoms of conflict, it may not necessarily be able or willing to address conflict drivers such as inequality, marginalization, or discrimination.”<sup>ii</sup> This and other factors need to be adequately factored into ESA interventions as peace operations grapple with the complex expectations of their multifaceted engagements, which have critical implications for sustaining peace.



Photo: JCS/MONUSCO

## METHODOLOGY

With the generous contribution of France, the study focused on three peace operations - in the Democratic Republic of the Congo (MONUSCO), Liberia (UNMIL) and Mali (MINUSMA). These Missions were selected for the diversity of their mandates, operations and approaches to ESA, the political and security contexts in which they are or were deployed, and the different phases of their operations. Where relevant, the study also draws from ESA efforts in other peace operation settings.

The methodology used for this study consisted of a desk review of policy and Mission documents, academic articles, best practices and lessons learned for each of the selected countries. Field visits were undertaken to all three countries. The study also engaged in a range of consultations with national authorities, senior decision makers both in the field and at UN Headquarters, and with academics and rule of law practitioners.

The study is divided into three parts and an annex:

1/ The first part focuses on how ESA mandates have been conceptualized to date. It considers how other studies have characterized ESA efforts and identifies

emerging common themes on the topic, including those related to politics and leadership, and framework of operations. It further maps out the diverse range of initiatives and approaches to ESA in the areas of justice and corrections in the DRC, Liberia and Mali.

2/ The second part identifies lessons learned from these three peacekeeping operations, providing an analysis of the main commonalities, divergences and constraints in the context of implementing ESA mandates.

3/ The third part of the study sets out good practices and recommendations for wider application in other UN peace operations.

4/ Finally, the detailed country profiles and analysis in Annex 1 are integral to and form a key part of the basis for the study.

## MANDATE SCOPE AND EVOLUTION

Restoring and extending justice and corrections state functions, alongside that of police, is an essential component of the rule of law support efforts of United Nations peace operations to address those factors which can trigger relapse into conflict.

The United Nations Security Council has been mandating peace operations to provide such support in conflict-affected areas for nearly two decades. The first Security Council mandate authorizing UN peace operation engagement in such activities dates back to 2000 in relation to the United Nations Mission in Sierra Leone (UNAMSIL). Since then, numerous peace operations have been mandated to re-establish and extend state authority, including in Liberia, Mali and the DRC.

Specifically, five peace operations (MINUSCA, MINUSMA, MONUSCO, UNAMID and UNSOM) currently have explicit mandates to extend and restore rule of law institutions. Peace operations in Haiti, Liberia, Cote d'Ivoire and South Sudan also had strong mandates to extend the presence of the state in relation to justice and corrections.

While ESA efforts have been, and continue to be, a key component of the support provided by UN peace operations, they have been primarily context-driven and have not been guided by clearly delineated policies and approaches, nor informed by lessons learned and

best practice. The concept itself has not been clearly defined by the Security Council or the Secretariat. ESA is often subsumed under broader concepts such as peacebuilding and state-building. In many settings, ESA is also viewed as synonymous with stabilization mandates and an essential feature of the protection of civilians. Peace operations do not generally develop whole-of-mission ESA strategies encompassing the multi-sectoral work of their substantive components.

However, ESA efforts are well grounded and guided by the basic principles that underpin the engagement of UN peace operations, in particular that extending the authority of the state is fundamentally a sovereign national process which, to be legitimate and successful, must be context-specific, nationally-led, people-centred and in furtherance of the political and strategic objectives of the respective mission.

## UNMIL

**LIBERIA:** In 2003, UNMIL was authorized to assist the transitional Government in the “reestablishment of national authority throughout the country, including the establishment of a functioning administrative structure at both the national and local levels”. The ESA mandate of UNMIL became more explicit and prescriptive overtime. In 2012, in addition to “extend[ing] state authority and services throughout the country”, the mandate specifically called “for the timely completion of the justice and security hubs, with requisite full staffing to make these hubs fully operational, to contribute to improved access to justice and security services throughout Liberia”. In 2014, UNMIL was mandated to assist the Government in “extending national justice and security sector services throughout the country through capacity-building and training”.

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## MONUSCO

**DRC:** The ESA mandate of MONUSCO has been dynamic in response to the changing situation on the ground and the impact of its initiatives (or lack thereof). Initially MONUSCO was explicitly mandated to support the “consolidation of State authority by the Congolese Government throughout the territory, through the deployment of Congolese civil administration, in particular the police, territorial administration and rule of law institutions in areas freed from armed groups”. In its recent iterations, MONUSCO’s ESA mandate has been merged to the stabilization mandate.

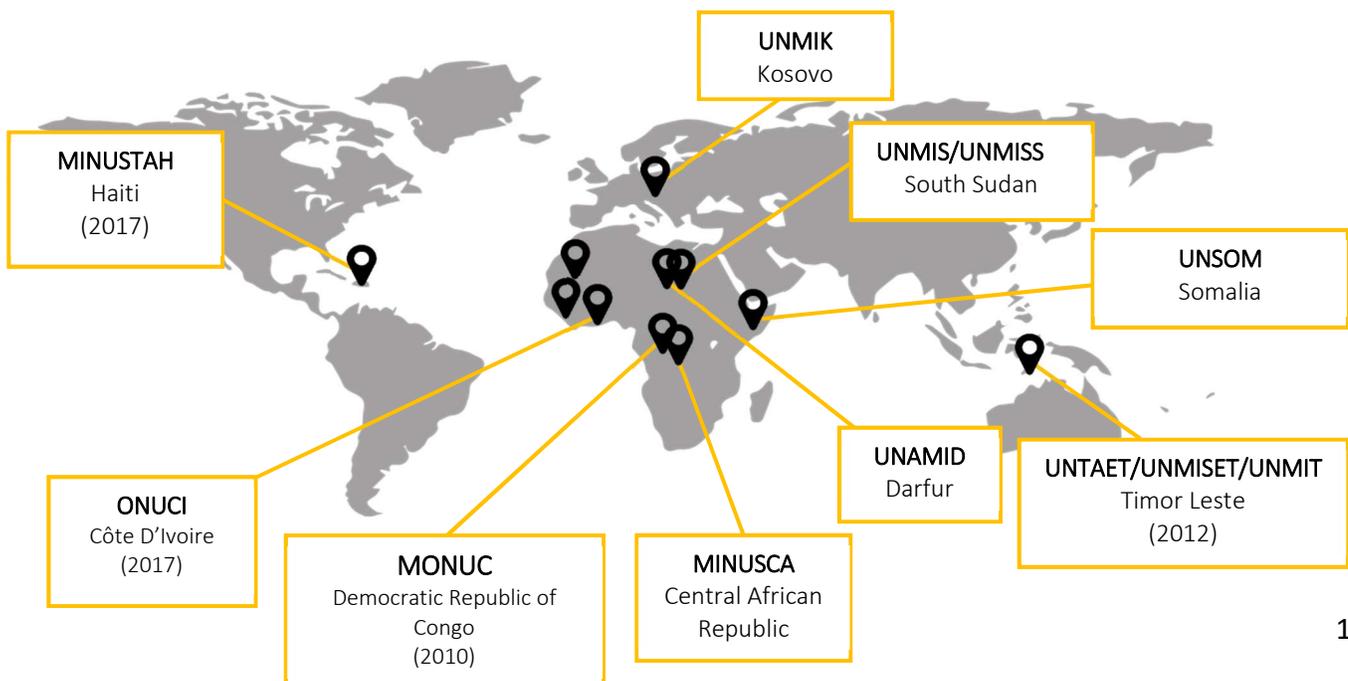
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## MINUSMA

**MALI:** The ESA mandate of MINUSMA also progressed to become more explicit about the need to extend rule of law services. In 2013, MINUSMA was mandated to generally strengthen rule of law which was interpreted to include ESA-related tasks, namely to “support the transitional authorities of Mali to extend and re-establish State administration throughout the country, especially in the North of Mali, and national and international efforts towards rebuilding the Malian [...] rule of law and justice sectors”. Currently, the mandate asks MINUSMA to “support the Government’s efforts for the effective restoration and extension of State authority and rule of law throughout the territory, including through supporting the effective functioning of interim administrations in the North under the conditions set out in the Agreement”

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## OTHER ONGOING & PAST OPERATIONS WITH ESA MANDATES





**BENTIU'S**  
**MOBILI**  
**COURT**



## CONCEPTUAL BASIS AND EMERGING THEMES

The United Nations and World Bank 'Pathways for Peace' report of 2018 identifies the "equitable delivery of services" and "responsive justice and security" as two of the four main arenas of contestation which underlie most violent conflicts. It argues that "security and justice institutions that operate fairly and in alignment with the rule of law are central to understanding and preventing violent conflict"<sup>iii</sup>. The report contends that, as part of efforts to sustain peace, nationally-led internationally supported actions are required in three main areas: shifting actors' incentives, reforming institutions, and addressing structural challenges. This equally applies to efforts to extend or restore state authority.

A number of studies and policy papers have sought to articulate a conceptual framework for ESA and how such interventions should be better operationalized by peace operations. Considering that peace operations often work in environments where the state is widely perceived as corrupt and predatory and where the population has deep misgivings about the prospect of its expansion, these studies have sought to address questions such as:

- What authority or authorities are peace operations expected to establish and/or extend and for what purpose?

- What does ESA entail - what is considered legitimate state authority and how can it be extended in conflict-affected areas?
- What are the inherent dilemmas facing ESA efforts in the field and what measures should be undertaken by peace operations to mitigate them?

The study published by Columbia University with the UN Peacebuilding Support Office on 'Extending Legitimate State Authority in Post-Conflict Countries'<sup>iv</sup> recognizes that there is no unequivocal guide for building a legitimate state. It defines ESA as a set of activities tailored to strengthen the authority of the government over the country's territory in a legitimate manner. The report highlights four dilemmas in extending state authority: balancing the relationship between the centre and the periphery, extending government or governance, balancing competition between formal and informal sources of authority, and distinguishing sources of internal versus external legitimacy.

Similar challenges also informed the study on 'Presence, Capacity, and Legitimacy: Implementing Extension of State Authority Mandates in Peacekeeping' conducted by the then Department of Peacekeeping Operations (DPKO) Division of Policy, Evaluation and Training which focused on how ESA has been understood and operationalized by peace operations despite the lack of conceptual clarity and guidance. It reviews key UN

policy and guidance documents that inform ESA and sets out a conceptual framework predicated on three components: presence, capacity and legitimacy. “In order for sustainable peace to endure and to avoid relapse into conflict, the presence of the state should be extended beyond the capital, the state’s capacity must be built in order for it to deliver quality goods and services and the state must be perceived as legitimate in the eyes of the population.”<sup>v</sup> Underscoring that these three components are mutually reinforcing, the study asserts that insufficient attention has been paid to legitimacy which, it argues, is an important factor in environments where the absence of legitimacy is a conflict driver.

### EMERGING THEMES

The review of the studies above was conducted with specific focus on the extension of rule of law services. Several common themes emerged, relating to the importance of politics and leadership, framework of operations, and approach. These helped frame the Strategic Lessons detailed in Part II.

ESA is inherently a political endeavour and not only a technical exercise. ESA efforts should aim to advance legitimate politics by contributing to political solutions that are shaped by the legitimate interests and grievances of all parties and society at large. The Security Council should set out realistic and adequately resourced mandates, while mission leadership has a key role to play in articulating a coherent political strategy (including key assumptions, risks, challenges and partnerships) to support effective ESA and identifying

where leverage lies to ensure that it proceeds effectively.

With regard to a framework of operations, facilitating presence, enabling capacity and cultivating legitimacy are necessary, interrelated and reinforcing elements of ESA. However, from a functional perspective it may be neither feasible nor constructive in separating or sequencing these three dimensions, although understanding how they influence one another is critical to mandate implementation.

In terms of approach, UN peace operations’ engagement on ESA should be context-driven and informed by thorough periodic analyses of the political, socio-economic and conflict dynamics. Based on such analyses, peace operations should develop whole-of-mission strategies and ensure that ESA is systematically integrated in mission planning and that such plans take into account factors that ensure sustainability. ESA efforts should be rooted in people-centred approaches, which implies that state institutions and mechanisms are participatory, that communities play an important role in decision-making and that impact is regularly assessed.

Building on these key themes, this study examines justice and corrections support efforts by UN peace operations in Liberia, the DRC and Mali. It views these through the prism of three broad and strategic objectives that guide ESA-related justice and corrections assistance. These suggest that, where feasible, the provision of support should: seek to advance political opportunities to reinforce the rule of law; address destabilizing factors and their root causes in conflict-

affected areas; and enable complementary rule of law engagement through strategic partnerships with other international and national partners.



Children's court in Goma, Democratic Republic of the Congo  
Photo: JCS/MONUSCO

## MAPPING OF ESA INITIATIVES UNDERTAKEN BY JUSTICE AND CORRECTIONS COMPONENTS

The study has recorded various types of initiatives undertaken by the justice and corrections components of peace operations under review that were either directly aimed at or substantially contributed to the extension of justice and corrections services. The initiatives listed below were most frequently cited by the interlocutors interviewed and in the documents reviewed during the research for this study. The main features of each initiative are explained below.

### Liberia, DRC, Mali – Ad hoc Mission support

- **Concept:** Ad hoc support to training, vetting, appointment, and deployment of national corrections, judicial and legal personnel.
- **Aim:** Quick impact and capacity building approach, including monitoring, mentoring, advising and training of national justice and prison personnel on the functioning of rule of law institutions; build and rehabilitate court and prison infrastructure; establish jury management, case management, and pre-trial case review mechanisms.
- **Implementation:** Quick Impact Projects and direct support in locations where Missions have a justice and corrections presence. In Liberia, 16 prisons, 20 circuit courts, 152 magistrate courts and 74 specialized courts were operational, totalling about 380 judges, in all fifteen counties by the time UNMIL closed. In the DRC, over 2,000 newly trained magistrates have been redeployed throughout the country and countless audiences foraines – mobile court hearings – were held throughout the country. Despite the deteriorating security situation in Mali, the number of functional and partly operational tribunals has increased in the regions of Timbuktu, Gao, Mopti, Kidal and Ménaka.

### Liberia – Regional Justice and Security Hubs (launched in 2014)

- **Concept:** A cluster of security, justice, corrections, and other civil and social services in a single location to improve coordinated access to services.
- **Aim:** To build and renovate infrastructure; increase staffing capacity; provide specialized services including psycho-social, medical referral, and legal support/advice to sexual and gender-based violence (SGBV) survivors through the SGBV Crimes Unit; monitor human rights compliance; establish public information and referral of citizen requests/complaints mechanism; provide community-based dispute resolution services.
- **Implementation:** 5 Hubs planned and 3 Hubs currently operational: Gbarnga Regional Hub, Zwedru Hub, and Harper Hub.

### DRC - International Security and Stabilization Support Strategy (ISSSS)

#### Phase 1 (2008-2012)

- **Concept:** A comprehensive security and stabilization strategy, including justice and corrections sectors.
- **Aim:** To build and rehabilitate court and prison infrastructure in targeted areas: support recruitment, vetting and deployment of magistrates and other legal personnel, support civilian and military mobile courts, build capacities of judicial actors through training and increasing support staff.
- **Implementation:** A network of 90 state infrastructures for administration, police, justice, prisons and mineral trade were constructed in strategic locations across the Kivus and Ituri, connected by some 630 kilometers of improved roads. The actual deployment of state officials was slow though, especially in the justice sector.

#### Phase 2 (since a strategic review in 2013)

- **Concept:** The ISSSS becomes the key instrument to harmonize and coordinate the stabilisation interventions of the international community and the Government of the DRC.
- **Aim:** Since 2016, the ISSSS approach has shifted to address regional and local conflict dynamics in eastern DRC relating to security, land and identity, the exploitation of natural resources, etc. This includes infrastructure, institution building, and service delivery based on priorities identified by communities.
- **Implementation:** Thirteen priority zones across five provinces in Eastern Congo, namely North Kivu, South Kivu, Ituri, Haut-Uele and Bas-Uele. Though justice is an agreed priority of this phase, justice and corrections support were not captured in the initiative.

#### DRC - Islands of Stability (2013-2015)

- **Concept:** Complementing joint military interventions with civilian interventions through the deployment of joint civilian-military teams to remote areas liberated from armed groups to support the state and build capacity in local administration and justice systems.
- **Aim:** To provide the Congolese Government with an intervention framework for ESA and establish critical services and infrastructure in priority areas in Eastern DRC, including building and rehabilitating court and prison infrastructure; deploying justice and corrections personnel; supporting and advising local authorities and civilian and military mobile courts.
- **Implementation:** MONUSCO provided support to around 10 liberated areas in the Goma, Beni, Bunia, Bukavu and Uvira sectors. For example, in Walikale, an area in the Goma sector, court hearings appear to be held on a regular basis and the registry is functioning well. Approximately 30 to 40 criminal cases are processed per year and the prison holds some 50 detainees.

#### Mali - *Cadres de Concertation de la Chaîne Pénale* (since 2015)

- **Concept:** Consultation framework composed of local rule of law actors which enables justice and corrections operations in the absence of a complete criminal justice chain.
- **Aim:** To restore core justice capacity and establish criminal justice chain consultations in key conflict-affected areas (Mopti, Gao, Timbuktu).
- **Implementation:** Supported by MINUSMA, in partnership with the International Development Law Organization and Netherlands, consultation committees on the criminal justice chain in Mopti, Gao and Timbuktu serve to evaluate needs, prioritize assistance and resolve violations of criminal procedure. In conjunction with efforts to redeploy justice actors in the north and centre of the country, despite security risks, this has reinforced the capacity of local actors and led to increased public attendance at court hearings in Gao, and increased productivity of the court registry in Timbuktu.

Although not directly designed to extend the authority of the state, the following initiatives contribute to and complement ESA objectives and are referenced throughout this report:

#### Prosecution Support Cells – DRC (since 2012)

- **Concept:** Specialized units established to support the investigation, prosecution and hearings of atrocity crimes by military justice authorities.
- **Aim:** To support investigations, prosecution and mobile hearings by military justice authorities, including victim and witness support and assistance, the provision of legal aid for the accused, training and building capacity of military authorities, and specialized support in the investigation and prosecution of conflict-related sexual violence.
- **Implementation:** Supported by MONUSCO, in partnership with the EU, UNDP and other partners. 5 PSCs in each of the Eastern Provinces and remote areas: North Kivu, South Kivu, Maniema, Katanga and Ituri.

#### *Pôle judiciaire spécialisé dans la lutte contre le terrorisme et la criminalité transnationale organisée* (PJS) – Mali (since 2017)

- **Concept:** Specialized unit of the national justice system with exclusive jurisdiction over terrorist and transnational organized crime cases.
- **Aim:** To support the establishment and operationalization of investigation and prosecution capacity, including judges, prosecutors, and judicial police, including regional cells to facilitate investigations.
- **Implementation:** Supported by MINUSMA in partnership with the European Union, 20 cases against 34 individuals charged for terrorism-related crimes had been brought to trial as of December 2018.

#### Prison security initiatives in DRC and Mali

- **Concept:** Reinforcing safe, secure and humane prison capacity as a way of building the authority of the host state in the area of corrections.
- **Aim:** To reinforce security measures in target prisons, by developing and implementing security contingency planning; establishing systems for safe and secure containment of high-risk prisoners; establishing procedures and good practices on archiving, pretrial detention and prisoner transfer to ensure adherence to international norms and standards for the treatment of prisoners set out in the “Mandela Rules”.
- **Implementation:** Basic security procedures regulating prisoner and staff search systems are established in 60% of prisons in the DRC. The construction of a new 2,500 capacity prison facility in Koulikoro is intended to address overcrowding in Bamako central prison, alongside other security reinforcements and improvements in the Central Prison.



Open-air mobile court supported by the MONUSCO Prosecution Support Cells in the DRC.  
Photo: MONUSCO

## **PART II:**

### **STRATEGIC LESSONS**

This section analyses the main strategic, political and operational constraints that peace operations face in their efforts to support the extension of state authority in areas related to the rule of law. It examines the lessons and practices that have emerged from such engagements in Liberia, the DRC and Mali. It seeks to provide a basis for the strategic decisions that need to be made towards defining more realistic, focused and achievable rule of law interventions in support of extending the authority of the state.

## LESSON 1: The centrality of the rule of law

### RULE OF LAW IS AT THE HEART OF STATE AUTHORITY AND LEGITIMATE GOVERNANCE

“The responsibility of a state, as defined in contemporary political theory, is to deliver a range of public goods and services to its citizens and create inclusive structures and processes that enable them to participate in public policy debates and fulfil their legitimate needs and aspirations without fear, with justice, and in security. Only then can the state secure compliance with legitimate political, legislative, administrative, and legal decisions enacted on citizens’ behalf. It is this quid pro quo that creates a trusting relationship between those who govern and those who are the governed”<sup>vi</sup>. Rule of law is at the heart of this contract.

#### **The nexus between legitimate state authority and the functioning of rule of law institutions is central to the ESA engagement of peace operations.**

However, in peace operation settings this contract is either broken or very fragile: governance models, often inherited from colonial authorities, are usually contested and a cause or driver of conflict; the state has lost authority over its territories and its institutions have limited ability to reach beyond the capital to provide security and services to the people; governments deploy centralized decision-making processes to advance priorities that reflect the interests of the elite; large segments of the population see the state as illegitimate, predatory and the cause of the conflict. The

rule of law and the judicial system are also often highly instrumentalized.

#### **A COMMON VISION AND MODEL OF GOVERNANCE**

In this context, a fundamental aspect of ESA support by peace operations is to help nurture a common and inclusive vision of governance based on the rule of law. This is especially acute in historically complex and rapidly evolving political and security contexts such as those in the DRC and northern and central Mali. Both countries are still immersed in old social conflicts, the root causes of which (poor governance, marginalization, weak rule of law, patronage and corruption) are not being addressed.

In both settings, the national authorities and the international community have struggled to coalesce around a common set of objectives and an agreed notion of governance that is best suited to establishing a more context-sensitive, effective, inclusive, transparent and non-predatory state.

#### **DRC**

The Mission’s ESA support efforts, including those relating to justice, have been negatively affected by severe governance deficits at the central level and by the lack of a shared vision and commitment amongst national and international actors on the minimum state infrastructure required.

In Liberia, the root causes of the conflict pertained to “the formation of a modern state that, at its start,

created an exclusionary society and a centralized state congregated around the capital Monrovia which ultimately led to renewed cycles of violence”<sup>vii</sup>. Yet, attempts to achieve national reconciliation and reform the 1984 Constitution, although deemed necessary to strengthen the social contract and ensure lasting peace, have garnered little political consensus or support.

Developing a common vision of governance is both necessary and challenging and there were strong calls in each of these settings for increased unity of purpose and efforts within the international community. Given the divergent interests at play, missions should take a more prominent and lead role in creating and maintaining the political space for developing a joint vision of governance. This should draw on their convening authority, good offices and leadership, bolstered by their substantive expertise on rule of law and governance issues.

#### **STRONG LINKAGES BETWEEN A STATE’S ABILITY TO GOVERN, SECURITY AND THE PROTECTION OF CIVILIANS**

To support a cohesive vision of governance and effective state-building, it was further observed that the rule of law is both the foundation, as well as a strong accelerator, towards more effective and legitimate state capacities. From a peacekeeping perspective, there is an inextricable correlation between efforts to reinforce a state’s ability to govern and those aimed at strengthening security and stabilization and the protection of civilians. These efforts have strong rule of law dimensions, are interrelated and must be pursued simultaneously.

#### **Advancing Security and Stabilization Objectives:**

Operating in and adapting to high-risk environments has led to increasingly security- focused ESA interventions in the rule of law areas. The study noted that efforts to restore and extend rule of law services have gradually been driven by security, law enforcement and stabilization strategies. The dual focus of MINUSMA in the justice area on the *Cadres de Concertation de la Chaîne Pénale* and the *Pôle judiciaire spécialisé*, for example, is directly tied to the security and law enforcement mandate of the Mission, which involves the apprehension and arrest of individuals in the course of Malian and G5 Sahel operations.

In some settings, ESA is congruent with and an important component of stabilization efforts. This was the case in the DRC, for example, where ESA efforts have been strongly embedded in broader stabilization strategies under both the International Security and Stabilization Support Strategy (ISSSS), and the Islands of Stability which adopted a “shape-clear-hold-build” approach to liberate, bring stability and restore state authority.<sup>viii</sup> Implanting rule of law institutions was a key pillar of restoring state authority under these strategies.

The current iteration of the ISSSS maintains a strong ESA pillar, with some justice and corrections elements. However, at the time of writing this report, there were no concrete links between ISSSS and other ESA MONUSCO efforts in the rule of law area. This siloed approach to ESA efforts has meant MONUSCO has been unable to adequately capitalize on these complementary streams of work.

**Efforts to effectively extend justice and corrections services have been inherently interlinked to efforts by the UN to establish effective and accountable police services to reinforce the host-country's criminal justice chain.**

It is widely recognized that, police services cannot be extended unless complemented by functioning courts and prisons: "Police reform efforts have to take place in concert with improvements in the broader criminal justice areas to ensure sustainability of international rule of law support. A responsive, representative and accountable police force contributes little if courts and prisons are dysfunctional. Any confidence in the rule of law will be quickly lost if perpetrators are not held accountable and suspects are detained for prolonged periods of time without trial and due process. [...] In general, greater police effectiveness will likely necessitate increased resourcing of 'downstream' activities in the justice system."<sup>ix</sup>

This study detected varying degrees of interplay between police, justice and corrections efforts, with the Liberia Hubs and the DRC Islands of Stability representing good practice in explicitly recognizing this link and placing emphasis on bringing together and improving coordination between police, justice and corrections institutions to enhance security and service delivery. (See pages 16 and 17 for more information on these initiatives).

**Advancing Protection Objectives:** Given the growing complexity and diversity of conflict scenarios, where there is often an absence of political solutions, mandates to protect civilians and contain violence have

increasingly become the primary functions of peacekeepers. ESA efforts have been affected by this posture.

In current operations with mandates to protect civilians (POC), ESA activities, including those related to the rule of law, are envisaged as one of the multidimensional approaches to POC, which include political engagement and dialogue, the provision of physical protection and the establishment of a protective environment, respectively tiers one, two and three in the recently update policy on Protection of Civilians in United Nations Peacekeeping.<sup>x</sup>

Many ESA related activities in the rule of law area contribute, directly or indirectly, to tiers one and three. However, the study found that POC-related efforts to reinforce national accountability for crimes that fuel conflict and support to prison security, in particular, have contributed positively to both POC and ESA objectives.

From a protection perspective, the arrest and prosecution of the perpetrators of serious crimes conveys a strong signal in relation to accountability and impunity. It helps to ensure that those responsible for committing crimes and those who pose a grave threat to the safety and security of the civilian population are held accountable and are no longer a protection threat.

From an ESA perspective, these initiatives directly contribute to building the authority of the state apparatus to deliver justice. In both the DRC and Mali, supporting national capacities in the prosecution of serious crimes has contributed to rebuilding confidence

in the justice system and improving trust in the state. Such support strengthens national ownership, has longer term capacity building benefits, and enables the local population to see justice being delivered.

As highlighted in this lesson, ESA undertakings are, to some degree, impacted by nearly all other mandated mission tasks or objectives. Irrespective of the approaches or frameworks adopted to advance ESA efforts, they must support a cohesive vision of governance and ensure that restoring state authority is not separated from building rule of law capacities. Interventions aimed at supporting the restoration of justice and corrections services are not only central to achieving the stabilization or security objectives of a mission, but also to contributing to the effectiveness and transformative results of a mission's overall goals of preventing relapse to conflict and sustaining peace.

## SPECIFIC INITIATIVES ADVANCING ESA AND POC

### MILITARY JUSTICE

The MONUSCO-supported **Prosecution Support Cells (PSC)**, is a good example of an initiative designed to support military justice authorities to investigate and prosecute atrocity crimes, while also expanding and reinforcing the authority of state presence in remote and insecure areas of Eastern DRC. Communities that experienced some of the worst atrocities in the DRC have paid considerable attention to hearings supported by the PSC. This has helped build the confidence of the local population in the ability of the national justice system to hold perpetrators of serious crimes accountable. In this context, the Mission's focus on military justice has proved to be justified. Across the board, interlocutors agreed that military justice can operate in insecure environments, is demonstrably less prone to corruption, has greater confidence among the local population than civilian courts, and is more effective and disciplined.

### COUNTER TERRORISM & ORGANIZED CRIME

In the context of the asymmetric conflict in Mali, the Mission is supporting the **"Pôle judiciaire spécialisé dans la lutte contre le terrorisme et la criminalité transnationale organisée"** (PJS) to enhance its investigative and prosecutorial capacity. This specialized unit of the national justice system has exclusive jurisdiction over terrorist and transnational organized criminal cases. In January 2018, the PJS issued its first conviction, demonstrating for the first time continuity from detention during military operations to prosecution and conviction. The case was processed within a year of the establishment of the unit, despite considerable political and capacity challenges. These results, articulated with other ESA efforts, help strengthen the authority and legitimacy of the Malian judiciary.

### PRISON SECURITY

A good practice undertaken by many peace operations has been to increasingly focus their support efforts on **reinforcing safe, secure and humane prison capacity to build the authority of the host-state in the area of corrections**. Reinforcing national capacity to secure prisons across the territory, manage high-risk prisoners and address violent extremism is essential to ensuring the protection of civilians. Adequate prison security reduces mass escapes of high-risk prisoners capable of engaging in destabilizing crimes that pose a threat to national security and stabilization. It also helps prevent the recruitment of escapees by armed group elements that furthers conflict and aids accountability for asymmetric attacks on United Nations personnel and the affiliated international community. This is a vital role that not only promotes confidence in the judicial system but also has a direct bearing on the political and peace processes necessary for overall stability and development.

## LESSON 2: Effective state authority must cultivate legitimacy

### EXTENDING RULE OF LAW SERVICES SHOULD ADDRESS THE THREE BASIC INGREDIENTS OF STATE AUTHORITY: EXTENDING THE STATE'S PHYSICAL PRESENCE, BUILDING ITS CAPACITY AND CULTIVATING ITS LEGITIMACY

In almost all instances, ESA assistance in the rule of law sphere aims to ensure the basic functioning of services by addressing systemic challenges to the administration of justice. As illustrated on pages 16 and 17, interventions to extend justice and corrections services generally include a combination of differing forms and levels of assistance: political and strategic, legal and human rights, capacity building and institutional development, financial, logistical and administrative assistance.

Overall, the study discerned an evolution in approaches to the rule of law in peace operations. This places greater emphasis on the need to address, in parallel, the three basic components of state authority: presence, capacity and legitimacy.

#### PRESENCE AND CAPACITY: EVOLVING AND CONTEXT-SPECIFIC ESA APPROACHES

Peacekeeping operations with broad multidimensional mandates, (such as UNMIL and MONUSCO in their early days) have consistently been assigned a large number of tasks related both to the reform of the justice sector and to the establishment of state authority. ESA-related interventions have formed just one part of broader rule of law reform efforts. As a result, these missions have typically engaged in a broad range of systemic issues

and institution-building measures. These have generally focused on the provision of technical support to extend the physical presence and capacity of the state, to deliver immediate peace dividends and to improve access to rule of law services.

Operationally, this “presence and capacity” approach to ESA has primarily involved assistance to build and rehabilitate infrastructure, redeploy and train personnel, support the organization of mobile courts, and enhance institutional capacity, often through quick impact projects or funding from other partners. With little national attention or resources, building infrastructure and capacity in the justice and corrections sectors is often seen as a critical area of support for the effective functioning of the criminal justice chain and a prerequisite for the redeployment of personnel. The approach, necessitated by Quick Impact Project (QIP) funding, is justified to the extent that it was deemed a necessary, tangible and visible step for the re-establishment of the institutions and had symbolic value for the population in terms of demonstrating stability dividends.

Liberia, for example, piloted the Hubs model which was aimed at the establishment of functional government administrative centres that cluster security, justice and

other civil and social services in geo-strategic locations. This was explicitly intended to strengthen the authority of the state throughout the country and enable more coherent, effective and efficient service delivery. UNMIL's support enabled the state's provision of basic services to its population and is thought to have had a positive impact in enabling the incremental extension of the state's presence throughout the country. However, such an approach on its own was insufficient to enable effective and legitimate state delivery of justice and corrections services.

As noted earlier, ESA efforts undertaken by MONUSCO in Eastern DRC were generally driven by Mission-wide stabilization initiatives intended to address conflict drivers in specific geographic areas. From an ESA

### **LIBERIA'S REGIONAL JUSTICE AND SECURITY HUBS**

The Regional Justice and Security Hubs were considered a pioneering initiative in seeking to establish functional government administrative centres in locations of geo-political significance and those areas most affected by the war. The initial concept was premised on the need to extend law enforcement services and was influenced by the Liberian National Police organizational structure. It was expanded over time to include all criminal justice institutions to help improve access to services and facilitate coordination.

From an ESA perspective, only three Hubs have achieved some level of service delivery. Overall, the Hubs have accomplished greater deconcentration of justice and security services from Monrovia, a stronger physical presence of the Liberian state in the counties and varying degrees of improvements in public service delivery. However, the initiative was overly focused on infrastructure and initially failed to place sufficient emphasis on needs-based local service delivery, reduction of corruption, and outreach to local communities. Infrastructure initiatives were not sufficiently in tandem with efforts to address the resource gaps, lack of capacity, bottlenecks and vulnerabilities to corruption in the formal justice and security systems. They also received an insufficient level of continued commitment by the Government to become sustainable.

perspective, these initiatives were technical and focused mostly on rebuilding infrastructure and capacity. They did not sufficiently consider the ability of national and local institutions to integrate with those efforts, nor did they engage meaningfully, either at national or local level, with the patrimonial nature of the DRC state, and they failed to effectively transform the interaction between the state and its citizens.

In peace operation settings, the study observed a relatively widespread recognition that enhancing presence and capacity by building courts, rehabilitating prisons, and deploying and training personnel can have an important symbolic, and to some extent, service delivery impact on the local population.

However, an overemphasis on infrastructure and capacity building may not sufficiently address the qualitative aspects of justice and corrections services. Issues of legitimacy and sustainable capacities are part of a broader set of factors that contribute to the sustainment of peace and security. The failure to focus more intently on the presence-capacity-legitimacy nexus and to ground ESA efforts more firmly within the political and security objectives of the mission has often led to the perception that limited measurable transformational impact is being achieved in terms of legitimacy.

## EASTERN DRC

The study found that MONUSCO-supported initiatives were widely perceived as having the highest sustained impact in bringing the level of service delivery by formal institutions to remote areas. With MONUSCO's support, over 3,000 newly trained magistrates have been redeployed throughout DRC and countless audiences foraines – mobile court hearings – were held throughout the country.

The study also recorded that, under the Islands of Stability strategy, MONUSCO provided support to around 10 liberated areas in the Goma, Beni, Bunia, Bukavu and Uvira sectors. Walikale, an area in the Goma sector, received wide-ranging support in re-establishing institutions and improving service delivery in areas including security, justice and corrections, administration and community development. During its visit to the area, the team found the institutions to be functioning in general. This included the police station, court, the prison, and administrative offices. Court hearings appear to be held on a regular basis and the registry is functioning well. Approximately 30 to 40 criminal cases are processed per year and the prison holds 57 detainees (including 2 women and 44 pretrial detainees). Prior to the construction of the courthouse the population resorted mainly to customary justice. Civil society expressed diverging views on whether the quality of justice has improved, but all agreed that it is more expensive, while some discretely alluded to systematic corruption practices. There is, nonetheless, a general perception among both civil society and authorities that efforts to strengthen governance and law has ostensibly contributed to diminishing tensions and decreasing criminality in this remote location.

## CULTIVATING LEGITIMACY

In the restrictive political space in which peace operations usually operate, supporting reform and institutional capacity strengthening is possible, but requires a carefully calibrated and systematic approach to building legitimacy. Such an approach must pay due regard to conflict sensitivity, do no harm, community engagement, accountability and transparency dimensions.

Legitimacy is the most challenging component of ESA as it concerns the fundamental relations between a state and its citizens. It is a complex, ongoing and multidirectional construction of the social compact 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.

Legitimacy is greatly influenced by perceptions of corruption or exclusionary politics. In particular, “corruption undermines both state effectiveness (the ability to govern) and state legitimacy (the recognition of the right to govern). While effectiveness may matter over time, legitimacy is essential for sustaining fragile states that are not yet effective.”<sup>xi</sup>

ESA interventions that only focus on physical presence and delivery of services and do not adequately address context-sensitive dynamics that threaten and challenge the internal legitimacy of the state could undermine the

impartial role of the United Nations in mediating grievances and enabling inclusive political processes, and therefore could be counterproductive.

In recent years, more innovative and targeted approaches have been developed to extend rule of law services. These initiatives have attempted to take into account constraints on the ability of peace operations to provide such support in complex security and political environments, such as the proliferation of armed groups and violent extremism, geographic coverage, and state-society dynamics. They have placed greater emphasis on the police-justice-corrections continuum and have fostered more accessible and user-friendly service delivery models. While more recent operations in Mali or the Central African Republic, for example, have continued to support the national state justice system to lead on ESA initiatives, they have also placed more focus on addressing regional and local level conflicts through civil society engagement and traditional justice mechanisms.

To date, however, modest success has been reported in enhancing the legitimacy of state rule of law institutions in a manner that is both meaningful and sustainable. More sustained and targeted attention on initiatives

that cultivate, promote and build the legitimacy of states and their rule of law institutions is needed.

The study found that MINUSMA, building on lessons learned from its prior initiatives as well as from other settings, is most concretely integrating legitimacy

**Statements made by national and international partners point to the perception that MONUSCO's support has conferred a certain level of authority and legitimacy to DRC justice and corrections institutions: "The population trusts justice institutions more when MONUSCO backs them".**

elements into its ESA approach in North and Central Mali. These combine measures aimed at reinforcing the legitimacy of local rule of law institutions with a security-focused approach. Closely linked to the priorities set out in the peace agreement, a strong emphasis has been placed on the complementarity of the Mission's political, convening and technical assistance roles. This is illustrated by efforts to create political space at the local level, address inter-communal violence and promote local conflict resolution.



Kakata Central Prison in Liberia.  
Photo: JCS/UNMIL

## LESSON 3: Rule of law interventions must be politically engaged

### EXTENDING RULE OF LAW SERVICES IS AN INHERENTLY POLITICAL ENDEAVOUR WHICH REQUIRES ROBUST GOOD OFFICES ENGAGEMENT

Missions are called upon to ensure that rule of law state-building efforts remain directly linked to and advance mission-specific political processes by leveraging and creating political space.

Despite growing recognition that rule of law support is a political endeavour and that political engagement is at the heart of successful ESA initiatives, this study found that ESA efforts in the rule of law areas continue to be viewed as mainly technical exercises. However, technical and supply-driven interventions alone will not yield the desired results where there is minimal political and national buy-in.

With the primacy of politics at the centre of the UN's approach to conflict resolution and prevention, peace operations should clearly identify political obstacles to ESA related rule of law goals and leverage their unique political capital to engage strategically and address sensitive rule of law questions.

Attempts to reinforce state authority should be informed by a thorough conflict and context analysis that identifies the nature of the assistance required. An understanding of the specific political context, rule of law deficits, power dynamics and conflict triggers is vital for the provision of effective ESA support. These considerations are explored further in Lesson 7.

#### EXAMPLES OF POLITICAL CHALLENGES TO RULE OF LAW

- Judicial independence and executive interference in the judiciary
- Reforms, constitutional or otherwise, that are likely to change the underlying distribution and balance of power between groups and communities
- Perceived tension between peace/stability and justice and resistance to transitional justice measures and accountability for serious crimes
- Recognition of rule of law and access to justice issues affecting vulnerable and marginalized communities, especially women and girls
- Resistance to accountability and anti-corruption efforts which are perceived as changing the benefits, opportunities and resource dynamics in a society

#### ADDRESSING POLITICALLY SENSITIVE RULE OF LAW ISSUES

Peace operations are often well positioned to address sensitive matters which relate to the balance of power and authority between the centre and the periphery, and other tensions that may arise between political and state-building agendas. The use of a mission's good offices can play a critical role in situations where rule of law institutions are exposed to political interference. In this regard, one of the most prominent and sensitive challenges in most peace operations is judicial independence.

Though often hesitant, missions are also well placed to ask the tough questions that may arise in relation to state-building or state-societal relations. These have direct implications on ESA interventions, including where the justice system is used to silence the opposition, in cases where there is a predatory relationship between central authorities and the periphery, or in the context of endemic corruption.

Where possible, justice and corrections components supporting ESA initiatives should adopt a proactive posture and be “out in front” on rule of law issues. This means leading the debate with mission leadership and international partners in their discussions with national counterparts, and playing a pivotal role tailoring operational interventions with political strategies. Making more strategic use of the convening authority of the SRSG and other mission leadership, they can inform political dialogue through analysis and data collected from technical projects or by monitoring judicial activities and aligning broader UN and bilateral rule of law initiatives in support of the UN’s overall political priorities in-country. This can be critical to ensuring donors and other rule of law partners provide support in a coherent manner that directly addresses conflict drivers and supports political processes.

### CREATING POLITICAL SPACE

Missions must be responsive to the concerns and interests of the host country, without replacing the state, when supporting efforts to extend state authority. It is crucial to have the full cooperation of the host state to ensure that rule of law assistance is meaningful, financially sustainable, and plays a role in legitimizing

host institutions. As one civilian peacekeeper stated, “extending a credible state must be aligned with government interests and it is our role to find that alignment”. Where they are deployed in the face of weak or stalled political processes or where the consent of the host-state is diminished, rule of law interventions can yield political opportunities and support negotiated political settlements.

Effective interventions can create conditions or leverage for broader political dialogue or reform. Where possible, the technical, advisory and capacity building role of a peace operation should seek to create political opportunities to overcome challenges to the effective operation of the rule of law and justice institutions. For example, supporting the capacity of a justice ministry or the judiciary to manage human or financial resources can inform higher level political dialogue on the status of judges and judicial independence. As appropriate, less contentious ESA support initiatives can serve as an entry-point for such discussions, despite potential deadlock in other thematic areas.

Rule of law support is also a critical tool of peace operations to create the conditions for the peaceful resolution of conflict. The study found that MINUSMA, MONUSCO and UNMIL have all engaged at the strategic level to create this form of political space by facilitating and enabling national dialogue and cooperation on the rule of law dimensions of ESA:

- With a primary focus on supporting the implementation of the peace agreement, MINUSMA has backed the Government’s

efforts and actively contributed to strengthening national strategies for justice and corrections reforms. It focused on urgent reforms and identifying avenues for harmonization between state and traditional justice.

- In the DRC, where the absence of a social contract is particularly acute, justice institutions have tended to be used for political ends. Prior to the elections, the Mission had the particularly complex task of supporting the Government to appreciate the advantages of extending its authority while also seeking to generate bottom-up demand for such extension. The international community as a whole struggled to come together to identify strands of influence. As a result, the intensity of international support in the rule of law areas diminished. In this context, MONUSCO played a contributory role in shaping a common approach to justice reform efforts by supporting national consultations on justice in 2015, culminating in May 2017 with the adoption of a national justice reform strategy. However, the study observed an underutilization of the Mission's political leverage and influence to address the rule of law dimensions of extending state authority. As an example, insufficient political engagement was dedicated to ensuring the financing and deployment of justice personnel, in part due to the location of key Mission rule of law leadership in Goma rather than in Kinshasa.

- Over the course of its 14-year lifespan, UNMIL helped national authorities create a space where political disagreements were increasingly addressed through non-violent means, demonstrated by the peaceful resolution of an electoral dispute by the Liberian Supreme Court in December 2017, and it supported several national dialogue processes in this regard. UNMIL increasingly employed its good offices capacity to engage national and local actors to address blockages to tangible reform and convene key actors to build political consensus on rule of law issues. The challenges faced by the Mission demonstrate the fundamentally political nature of these processes and the centrality of political engagement to overcome resistance and the status quo. Even in those instances where there was strong national leadership and ownership (such as the Hubs), financial sustainability required stronger political engagement to generate concrete commitments and ensure continued Government investment.

## LESSON 4: The need for territorial balance and an inclusive approach

### EFFORTS TO EXTEND STATE AUTHORITY NEED TO TAKE AN INCLUSIVE AND PEOPLE-CENTRED APPROACH THAT STRIKES A BALANCE BETWEEN ENGAGEMENT AT THE CENTRAL LEVEL AND THE REST OF THE TERRITORY

By definition, unitary states have centralized judicial systems in which all courts function under a single national hierarchy of tribunals. Efforts to support the extension of justice institutions or bring about change through adjustments to the judicial organization of a state are usually led by central government institutions. The process of extending justice and corrections services outside the capital must be aligned to broader efforts by the host government to address systemic rule of law issues at the national level. The positive impact of ESA initiatives will be limited unless systemic problems and blockages in the administration of justice are adequately addressed at the central level.

In most peace operation contexts, ESA efforts must overcome the challenges of working with and supporting a central government that is unable to exert control over the entirety of its territory or has a historically predatory relationship with its periphery. Finding the ‘right amount’ of centralized authority that local populations are willing to accept is one of the key dilemmas that peace operations face. As discussed in Lesson 2, strengthening a government’s control over its territory through greater presence and the delivery of basic security and justice services will not be sufficient alone to enhance the government’s legitimacy in the eyes of the population. Attention must be paid to how governance is administered and efforts must be

embedded in confidence and trust-building measures between communities and the state. This requires that peace operations address the centre/periphery relationship while engaging at both levels.

#### NATIONAL RULE OF LAW AUTHORITIES

Particularly in the context of a highly centralized state, missions supporting efforts to expand or restore justice and prison services in conflict-affected zones should be vigilant about engaging effectively at both central and local levels. Localized initiatives to build institutions, redeploy justice or corrections personnel and build local buy-in must be undertaken in parallel to addressing common systemic challenges.

#### SYSTEMIC CHALLENGES IN THE JUSTICE SYSTEM

- The non-payment of salaries of justice officials
- The reluctance of court officials to physically deploy and remain in their jurisdictions
- The lack of adequate budgetary allocation to maintain justice and corrections services in the periphery
- The absence of court administration capacities
- The lack of effective oversight

This has been approached in different ways by different missions. This study found that efforts to redeploy justice and corrections services to provinces of the DRC, for example, were largely supply driven and suffered from weak national plans and non-implemented legislation. They were only minimally linked to or

leveraged to advancing broader national legal frameworks or priorities (e.g. the 2013 Law on the Reorganization of the Judiciary). The understanding of this context was relatively limited amongst interlocutors in Eastern DRC.

The move of much of the Mission's substantive capacity to Goma seems to have tilted the balance in favor of localized responses while limiting much needed dialogue with central authorities. On the one hand, the process of reestablishing the rule of law is perceived by many to be overly top-down, designed and implemented without conducting sufficiently in-depth diagnostics of local needs or inclusive consultations with the local communities affected by the conflict. On the other, there is a general consensus that interventions in the justice and corrections areas, if too localized, will struggle to succeed or be sustained unless broader systemic and political blockages are addressed at the national level.

The *Etats Generaux de la Justice* held in 2015 provided an opportunity to shift to a more balanced approach. This conference was the result of a common approach by MONUSCO and the international community, whereby the Mission performed its good offices role to create the space for and engage key stakeholders in a national dialogue on the justice model for the DRC. This led to the adoption of the National Strategy on Justice Reform for 2018-2028, which should serve as a solid framework to inform future ESA efforts in the DRC.

Initiatives in the area of corrections similarly require a balanced approach between ESA interventions made at both central and local levels. Peace operations

personnel are often faced with the challenging situation of prison facilities that are either outside government control or managed by military, police or other security forces without adequate oversight or professional training. In Mali, for example, 11 prisons have been made operational covering the broader regions of Mopti, Gao, and Timbuktu with some 140 prison officers currently deployed with the support of MINUSMA. Other prison facilities in the centre and the north of the country are being run by armed groups and remain under their control. In the Central African Republic, the Mission has focused in parallel on demilitarizing prison services and extending their presence, thus increasing the number of operational prisons under government authority. As a result, the number of prisons has tripled from 3 in 2014 to 9 in 2019 and the number of security incidents resulting in prison escapes is declining.

Addressing systemic issues in conjunction with extending rule of law services is often best achieved through an overarching strategic framework which sets out inclusive and people-centred, nationally-identified state-building priorities and objectives. ESA efforts should align with, contribute to and reinforce these strategies and their implementation. To achieve this, sustained engagement with national authorities at the central level will always be necessary.

### NEEDS AND ASPIRATIONS OF LOCAL POPULATIONS

Striking the right balance between the centre and the periphery requires a deep understanding of the concerns, needs and aspirations of the people. Taking these into account is not only essential for the political process, but also for fulfilling the primary responsibility

of the state to serve and protect its civilians from violence. While expanding the availability of rule of law services can be instrumental for enhancing citizens' positive perceptions of justice, it is not sufficient on its own for long-term political inclusion, which requires a conducive civic space and a high degree of public awareness and engagement for comprehensive reform to occur. Moreover, recognizing women's meaningful representation helps to measurably strengthen ESA processes and accelerate the process of legitimization. As such, peace operations should continue to incorporate people-centred and gender responsive approaches in many of the state-building and ESA initiatives pertaining to the rule of law areas.

Peace operations should provide the tools, space and access to information for civil society and affected communities to participate in and shape every stage of ESA efforts (from strategy and design to implementation) and mobilize greater demand for justice and accountability. This should include efforts to facilitate and enhance local dialogue and consultations, create linkages between formal and informal systems, empower civil society to ensure the necessary checks and balances, support paralegals, legal aid and reinforce public awareness.

While both Mali and Liberia have made concerted efforts in applying more people-centred approaches, this study found that peace operations should further enhance their support for state-society, confidence-building measures relating to the rule of law. ESA initiatives should proactively facilitate and support the establishment of constructive relations and mutual trust

between state actors and different segments of society. This should also include the more effective use of strategic communications and outreach. In addition, periodic perception surveys should be employed to track progress in building awareness and trust in the justice system but also to craft impactful ESA initiatives in the rule of law areas.

This further requires that ESA efforts be aimed at establishing gender responsive judicial institutions, advancing the fair administration of formal justice, including through the implementation of specific steps to promote women judges and women's participation in ESA processes, particularly where women continue to be underrepresented in the judiciary and corrections sectors. As referred to in Lesson 5 below, civil society, including women's groups and NGOs providing legal aid, has an important role to play in promoting awareness, understanding and trust in the formal system of justice in local communities and also by providing external checks and balances.

### Examples of people-centred approaches to build public confidence

**MALI:** MINUSMA has concentrated its efforts on creating "a politically neutral and secure space to also engage directly at the community level on rule of law issues and build public confidence", through the cadres de concertation and the expansion of paralegal programmes in the north.

**LIBERIA:** The Hub concept was designed with a view to promoting public trust and confidence in the justice system. A Public Services Office performed a referral capacity role, as well as a public information role, undertaking public outreach campaigns to develop community understanding of the justice and security sectors. In parallel, there could have been a stronger focus on empowering the Independent National Human Rights Commission to accept and investigate complaints in the rule of law sector.

## LESSON 5: Accountability and anti-corruption measures are critical

### REINFORCING ACCOUNTABILITY AND OVERSIGHT MEASURES AND EXPLORING ANTI-CORRUPTION ELEMENTS ARE CRITICAL TO ENHANCING THE EFFECTIVENESS AND LEGITIMACY OF THE STATE

According to the High-level Independent Panel on United Nations Peace Operations “local people often have deep misgivings about the prospect of the expansion [of state institutions], particularly if the State is perceived as tainted by corruption or exclusionary politics. Supporting programmes and public institutions that have legitimacy in the eyes of communities is critical for sustaining peace”. Corruption undermines both state effectiveness and state legitimacy and can shape whether the state is viewed as the solution or part of the problem in the eyes of much of society.

#### Corruption is a serious impediment to the rule of law, state authority and sustained peace and security

All the contexts where UN peace operations have been deployed demonstrate how corrupt governance and rule of law structures foster deep discontent within local communities. Corruption deprives citizens of their human rights, exacerbates hunger and poverty and breeds disillusion with government and governance.

While corruption is a global phenomenon, its impact is particularly severe in conflict and post-conflict settings where the high incidence of corruption inhibits and complicates broader political efforts and peacebuilding initiatives. People’s experience of corrupt security and justice institutions undermines the legitimacy of the

state and can be an influential driver towards further conflict and extremism.

In September 2018, the Security Council held its first-ever meeting on the links between corruption and conflict and considered ways to disrupt the illicit siphoning of money, which makes countries more susceptible to conflict. The Secretary-General remarked that “in peace operations, our engagement should be designed and implemented with a clearer anti-corruption lens to reinforce a culture of accountability and respect for the rule of law”.

It is increasingly acknowledged that peace operations have an instrumental role to play in developing ways to counteract corruption, through good offices and ongoing rule of law support which aim to promote integrity, accountability and other anti-corruption safeguards. However, while peace operations have engaged on supporting accountability, transparency and oversight measures within the judiciary, they have generally underestimated or been reluctant to give sufficient attention to the role played by corruption in undermining the legitimacy of the state and its negative impact on efforts to extend state authority.

In peace operation settings, there is often a perceived tension between focusing on more tangible short-term immediate objectives, such as the physical

rehabilitation of rule of law infrastructure, versus longer term governance and institution building objectives. However, corruption risks are rarely prioritized or addressed as a strategic issue in peace operations. Addressing corruption is often relegated behind what are considered more pressing and easily solvable issues. This can contribute to the institutionalization of corruption and the undermining of nascent state legitimacy and public confidence in those institutions. This was demonstrated in all three country studies.

### A CLEARER ANTI-CORRUPTION LENS TO REINFORCE A CULTURE OF ACCOUNTABILITY

Corruption in the DRC was described during the study as systemic, informal, institutionalized and resilient. The form of corruption which was most frequently cited as impacting access to state delivered justice services was bribery to get access to justice and corrections services: to have access to a judge, ensure a case is processed, visit a detainee or for a prisoner to be allocated a cell. Formal justice actors are often also seen as being involved in criminal networks, while prosecutors have reported being afraid to proceed against persons with deep pockets. These dysfunctions of the criminal justice system are embedded within the structures and the people servicing them. Codes of conduct and ethics are rarely applied, while the salaries of justice and corrections officials often go unpaid or are too low compared to the costs of living. Positions within the public services are often seen as a platform to gain additional income rather than serve the public good. However, it was noted by several interlocutors that less endemic corruption was observed in the military justice

### THE AFGHAN EXAMPLE

The failure to address systemic corruption is regarded as one of main drivers of the deteriorating security situation, in which the Government is losing its authority over large parts of the country. Combatting corruption has now become a key component of the Government's policy agenda and among UNAMA's key priorities. Intensified anti-corruption efforts have led to the adoption of the national Anti-Corruption Strategy. With UNAMA support, President Ghani established the Anti-Corruption Justice Centre - a specialized court and dedicated team of prosecutors operating within the existing judicial structure focusing on the investigation and prosecution of corruption cases - as well as an Office of Asset Recovery under the authority of the Attorney General's Office. Legislative reform efforts have consolidated these efforts with a new Penal Code, the High Office of Oversight Law, the Anti-Money Laundering Law, Access to Information Law, and the National Law on Procurement. To date UNAMA has supported the preparation and publication of three annual reports on anti-corruption efforts and challenges in Afghanistan.

system, due to a number of factors, including its hierarchical structure; greater transparency as a result of the development of a prosecution strategy; and the oversight by the international community and civil society due to the emblematic and high profile nature of many of the cases.

The study found that MONUSCO had made few systemic efforts aimed specifically at addressing the risks and vulnerabilities to corruption, given that corruption is both politically sensitive and requires longer term engagement. Although it is seen as a root cause of the non-functioning of the justice system, it is not spoken of, has never been part of the theory of change and, as a consequence, there is a lack of sufficient political dialogue or strategic engagement by the Mission. Where provided, corruption-focused support remains at the technical level and international projects have sometimes further fueled corruption, especially patronage and clientelism.

The study found that in Liberia, DRC and Mali too little was done too late to address corruption in the rule of law sector in parallel with other efforts to extend state authority. In Liberia, progress made through some of the ESA initiatives was undermined because management and accountability mechanisms to address endemic corruption were not given corresponding attention from the outset. UNMIL's engagement to extend justice and corrections services should have been designed and implemented with a clearer anti-corruption focus in a way that reinforced changes in values and promoted incentives, instilling a culture of accountability and respect for the rule of law.

#### INTERNAL AND EXTERNAL ACCOUNTABILITY MEASURES TO REDUCE RISKS OF EXTENDING CORRUPT INSTITUTIONS

Peace operations often play an instrumental role in efforts aimed at increasing accountability, transparency and oversight. Such interventions should also be a critical component of ESA efforts in the rule of law areas. In the early phases, when capacity is the most limited and corruption the most widespread, vigorous international monitoring and mentoring can provide an incentive to rule of law institutions to improve their performance while diagnosing key problems and providing essential feedback to the government, the public and aid providers. Country and institution-specific corruption risk assessments (drawing, where possible on the UN Convention Against Corruption implementation review mechanism process) should help inform the design and implementation of UN support and national anti-corruption strategies.

Additional assistance aimed at reducing risks of corruption might include: advocacy for the removal from office or prosecution of high profile corrupt officials; introduction of case management processes, both in the courts and prisons; establishment of merit-based appointment processes coupled with judicial and prison inspection panels and the introduction of credible processes for registering and investigating complaints against judges; implementation of asset declaration requirements for justice and law enforcement officials; the publication of reasoned judicial decisions; the expansion of legal aid and development of clearer laws and sentencing guidelines.

Experience has shown, however, that systemic corruption cannot be fought successfully through ad hoc initiatives such as increasing salaries, enacting new laws, delivering judicial training, or establishing new prosecutorial or anti-corruption units or commissions. These may even be counter-productive when used on their own. Developing codes of ethics, for example, will be ineffective unless complemented by the

#### REINFORCING INSTITUTIONAL ACCOUNTABILITY AND OVERSIGHT

**LIBERIA:** UNMIL engagement in this area became more robust after 2010. UNMIL commissioned an assessment of management and accountability mechanisms, which led to the explicit integration of management and accountability reforms in the UNMIL mandate. This was followed by the completion, in 2013, of a review of management and accountability systems in the Liberian National Police, judiciary and prosecution service.

**DRC:** MONUSCO has supported the adoption by the *Conseil Supérieur de la Magistrature* (CSM) of various measures on judicial oversight, accountability and transparency, which has improved oversight over the judiciary with 252 judicial disciplinary cases reviewed, resulting in 75 removals and 11 suspensions in 2015. The CSM has now also identified ethics and the fight against corruption amongst its current priorities.

strengthening of the institutional mechanisms and resources required to enforce them. Likewise, an over reliance on specialized anti-corruption commissions does not have a proven track record of success. Such commissions are usually under-resourced and vulnerable to political manipulation.

A lesson from Liberia which applies to other mission settings is that ESA undertakings need to focus more explicitly on the objectives of integrity, transparency and accountability, ensuring that approaches are strategically designed to minimize risks to systemic corruption in the justice system. Anti-corruption goals should be placed at the core of national justice strategies and both local and national UN-supported rule of law initiatives. This may require dedicated efforts to strengthen the implementation of national laws and policies at the institutional level and to coordinate efforts with relevant corruption prevention bodies. This assistance has a dual purpose: to strengthen the integrity and accountability of different justice actors and institutions, but also build their capacities to detect, investigate, prosecute and adjudicate corruption.

One of the other lessons learned from Liberia was the focus on state-level and internal accountability mechanisms (i.e. judges overseeing judges and police overseeing police) with relatively modest efforts at strengthening external accountability. Civil society can often be the only avenue to expose corruption and related misconduct, which would otherwise not come into the public domain. Likewise, the provision of legal aid by NGOs can be critical to ensure representation for individuals interacting with corrupt local officials.

However, in Liberia, limited progress was made in strengthening the capacity of civil society, including women's groups, to demand accountability at the community-level for the performance and conduct of rule of law institutions. There should also have been a stronger focus on empowering the Independent National Human Rights Commission to accept and investigate complaints in the rule of law sector. In addition, while UNMIL actively engaged with the legislature in its law-making functions, relatively little was done to ensure that the legislature was more active and effective in its oversight role.

Where effective accountability cannot be achieved, preventative measures should be built into ESA approaches. A reasonable goal is to make headway in a few priority areas through approaches that are practical, realistic and balanced, such as incentives to address corruption risks specific to ESA (for example abandonment of duty station for extended periods) and increased transparency through the publication of cases and respective fees.

Although combatting corruption in the rule of law sector is a long-term process, experience demonstrates the critical importance of the state being seen to be making credible efforts to address some corruption issues from the outset. Peace operations should not underestimate the significance of securing early and visible successes to address corruption in the justice sector. These can help gain citizens' support for the extension of rule of law institutions and broader processes of reform, reinforce the legitimacy of the state and send a strong signal of change and a break from the past.

## LESSON 6: The importance of engaging with informal justice mechanisms

### ESA RULE OF LAW SUPPORT SHOULD TAKE INTO ACCOUNT THE ROLE PLAYED BY INFORMAL MECHANISMS

Informal or traditional justice has emerged as an important factor in many settings in which missions support ESA activities in the rule of law areas.

In many such contexts, the popularity of the informal justice system results from its perceived legitimacy, accessibility and congruence with locally accepted customs, norms and traditions. This legitimacy is also often based on the community's perception that a local traditional or religious leader has the authority to adjudicate, decide or mediate a case, while an externally imposed judge does not. The authority and trust placed in the informal justice system contrasts with the local community's negative experiences of the formal justice system, which is usually inaccessible, expensive and susceptible to delays.

In many settings, while criminal matters remain the domain of the formal system, there are functional linkages between state justice providers and informal justice providers. State law may define such linkages and provide for official forms of collaboration (including appeal procedures, referrals, division of labour, advice, assistance). Even where this is not the case, there are often various forms of unofficial collaboration.

In the settings examined by this study, customary justice mechanisms often remain the preferred choice for resolving land disputes and family or community

conflicts of a non-criminal nature. There are multiple traditional authority providers (e.g. tribal chiefs, religious leaders, community leaders) and layers of dispute resolution mechanisms; different forms of disputes are resolved by different mechanisms at family, inter-family and communal levels. Mediation and other formalized informal processes include those undertaken by religious institutions, police, diaspora, and magistrates. While generally these are paid services, they cost less than the formal system. The design and implementation of assistance programmes on informal justice and their harmonization with the formal system is still relatively untested and evaluated. Indeed, attempts to formalize, modernize or incorporate the informal justice system into the formal system in many settings have shown minimal success.

For certain crimes, informal justice will not be the appropriate forum. In Liberia significant efforts were made to ensure that cases involving SGBV, especially cases of rape, were not dealt with in the customary justice system but were referred to the formal system.

## FINDINGS on the approach to informal justice

**MALI:** MINUSMA has actively supported the Government's efforts to identify avenues for the harmonization between state and traditional justice, and to conduct of nation-wide discussions on the jurisdictional competences of traditional authorities and their linkages to the state justice system. This was done through regional and national workshops conducted in 2017 and 2018 bringing together traditional authorities, magistrates and civil society from the regions of Kidal, Tessalit, Aguelhok, Timbuktu, Gao, and Mopti. It involved the reinforcement of local formal and traditional justice mechanisms in Koro Cercle (Mopti region) through a project on justice and reconciliation piloted in 2018 aimed at reducing intercommunal conflict and the elaboration of a legislative framework that defines the competences and roles of traditional authorities and regulates their relationship with the formal justice system.

**DRC:** Progress in extending justice services has to some extent been affected by the widespread perception that customary justice is less corrupt, more accessible, and less expensive than the state justice system. Moreover, from a conflict resolution perspective, customary law places emphasis on social harmony, community cohesion, reconciliation, and restoration, and is preferred over the custodial sanctions that tend to dominate many formal criminal justice systems. Despite the issues around compatibility between formal law and traditional mechanisms, there is some appreciation that formal and informal systems may coexist, and that traditional justice providers have a role to play in non-criminal matters particularly since the formal system is not sufficient. While criminal matters remain the domain of the formal system, there is an openness to reflect on the informal justice mechanism, and several studies on informal mechanisms have been conducted, namely in Katanga and in South Kivu.

**LIBERIA:** The role of traditional justice and security providers, namely Chiefs, is formally recognized by the Constitution and they are functionally integrated into the structures of the Ministry of Internal Affairs. Despite their importance for a large part of the population, especially in remote areas of the country, traditional mechanisms received limited support from international partners. While traditional mechanisms continued to play an influential role in access to justice, the engagement of UNMIL with such mechanisms was largely limited to ad hoc consultations, studies or work on human rights sensitization. One of the limiting factors of the Mission's engagement was the lack of clarity and strategic guidance on how and whether engagement with traditional mechanisms should be pursued. Another factor was the limited expertise within UNMIL on traditional justice mechanisms.

Although this was well intentioned, the formal system could not deal with the level of serious criminal cases coming before it, resulting in a backlog and lengthy pre-trial detention rates. Moreover, cases were frequently compromised by actors in the formal justice system, possibly resulting in greater perceived impunity. While these cases should be dealt with by the formal criminal justice system, more should have been done to ensure that it had the capacity to do so. In Liberia, the special court established for that purpose had the positive result of more cases being reported to formal authorities than to informal mechanisms. However, this was not matched by an increase of capacity to process such cases to their conclusion.

This study suggests that, as part of their strategic approaches to ESA in the justice areas, peace operations

should carefully examine how alternative modes of justice can contribute to ESA efforts. First, missions should place greater emphasis on the role of informal justice systems as part of a broader analysis of conflict and power dynamics to better inform ESA justice and corrections strategies. Second, informal justice can serve as an entry point to create space or convene and facilitate dialogue on formal justice needs and issues. Third, considering that informal mechanisms often represent the preferred or only choice for resolving land, family and inter-communal disputes, such mechanisms could help take the burden off an already stretched and under-resourced formal system. Fourth, addressing harmonization of formal and informal justice could help manage unrealistic expectations that are often attached to peace operation interventions in

establishing effective, accountable and transparent institutions.

To the extent that customary authorities can act as a credible alternative for dispute resolution, they can be an important vehicle to transform the dynamics of interaction between the state and its citizens, and to strengthen social cohesion. This role may be positive if it complements efforts to strengthen criminal

accountability for the most serious crimes. Yet, it is important to recognize that peace operations may not be best placed to address these issues directly. However, to the extent that informal systems can contribute to conflict resolution and prevention, peace operations should use their convening and coordination role to facilitate more integrated and coherent international support to informal systems of justice.

### Linking the formal and informal systems RURAL COURTS IN DARFUR

Rural courts serve as an entry point to the judicial system in Sudan for most communities in Darfur. In many localities, they are the only court available. Although with origins in the customary justice system, they were integrated into the formal judicial structure in 2004 through the Town and Rural Courts Act. They have jurisdiction mainly over the resolution of civil disputes, including those arising from land boundaries, water and cultivation of land as captured under Article 52 of the Doha Document for Peace in Darfur (DDPD). Rural courts are extremely relevant across Darfur because the population invests a greater level of trust in traditional justice systems than formal justice mechanisms. Rural courts are mainly composed of respected community leaders who are not formally trained in law. UNAMID provides critical support to rural courts by enhancing their capacity and presence in areas with a high prevalence of inter-communal conflict, thereby contributing to resolving, mitigating and mediating land disputes and other conflict drivers.



Mopti, Mali  
Photo: MINUSMA

## LESSON 7: Efforts to extend state authority require a whole of mission strategy

### **EFFORTS TO REINFORCE STATE AUTHORITY SHOULD BE BASED ON A STRATEGY, SHARED ANALYSIS, AND A PRAGMATIC APPROACH TO SEQUENCING AND PRIORITIZATION THAT SEEKS TO ADDRESS THE CAUSES AND DRIVERS OF CONFLICT**

Effective engagement in state-building requires strong strategic direction to ensure an integrated and well aligned approach to various ESA-related efforts across all sectors of government. Yet, this study found that ESA efforts undertaken by peace operations have rarely been sufficiently aligned to ensure coherence, effectiveness and positive reception by local communities.

ESA engagements in UN peace operations continue to be fragmented and not sufficiently coherent to maximize impact across the different sectors of intervention. Such support could more adequately advance mission objectives and address drivers of conflict, and generally become more effective, if based on a whole-of-mission, ESA specific strategic approach. This should be grounded on a common context analysis and vision of governance and should adopt a pragmatic and flexible approach to sequencing and prioritization.

#### **A WHOLE-OF-MISSION MULTI-SECTORIAL EXTENSION OF STATE AUTHORITY STRATEGY**

This study suggests that it is not sufficient to place the ESA efforts of a peace operation under a “stabilization” framework or a “protection of civilian” strategy alone. Each mission should develop a broader whole-of-mission ESA strategy encompassing the rule of law

elements as well as the other necessary ESA sectors. Ad hoc and localized initiatives by different components of peace operations to rehabilitate administrative offices, police stations, courts, and prison infrastructure may represent quick wins. However, to be effective in reinforcing state authority in a sustainable manner, they need to be coordinated with and connected to broader efforts to advance legitimate political solutions at both the national and local levels.

**In the three missions under review, there was a noticeable absence of strategic frameworks to advance ESA efforts generally and in the rule of law areas specifically.**

The recent review of UNMIL’s rule of law engagement highlighted the underutilization of strategic planning in this regard, which may have resulted in a lack of focus and shortcomings in mandate implementation in the rule of law area, including on ESA. Efforts to extend justice and correction services were not necessarily aligned with broader efforts to extend or deconcentrate state authority, nor were they necessarily planned and implemented with an ESA perspective.

In addition, peace operations should also serve as a vehicle to promote and align UN system support

initiatives in a way that advances national strategies aimed at extending rule of law services. In the absence of a clear national framework, they should engage politically and seek to generate dialogue for a national redeployment plan or a rule of law reform strategy. This should be an integral part of the whole-of-mission strategy.

### A THOROUGH ANALYSIS OF THE COUNTRY'S RULE OF LAW DEFICITS AND CONFLICT TRIGGERS

A thorough conflict and context analysis should be conducted as a prerequisite for defining contextually tailored ESA assistance. While recognizing the pressures placed on peace operations to demonstrate immediate results, across the different missions, this study found that more robust conflict analyses is required to inform ESA efforts in justice, corrections and other areas in a way that appropriately addresses the drivers of conflict.

For example, in the DRC, interlocutors noted that the country is still “immersed into an old social conflict that existed before the Congo wars and the roots of which are not being addressed”<sup>xii</sup>. Poor governance, weak rule of law, patronage and corruption are regarded as major causes of the conflict and instability. The Mission’s area-based approach to ESA, driven largely by the needs for protection and armed group neutralization, was not seen as being sufficiently grounded in a thorough understanding of the conflict dynamics. The Mission helped extend services and structures without sufficiently engaging with or questioning the nature of the patrimonial state. As such, it has had marginal results, and in some cases unintended consequences,

including in the areas of justice and corrections, and limited impact on the drivers of conflict.

The study observed that state-building activities to extend rule of law services should be premised on and informed by thorough, updated political analysis of the rule of law deficits, power dynamics and conflict triggers, to complement the more technical assessments of the justice and corrections sectors. Reinforcing such analysis will not only help make planning assumptions but also inform political engagement for ESA support. Missions should ensure that any conflict analysis they conduct fully takes into account rule of law and justice and corrections dimensions relating to extending state authority. Such analysis should feed into a broader political-economy and conflict analysis, as well as an analysis of the drivers of conflict at the local level (e.g. conflict analysis for stabilization plans, peacebuilding initiatives).

### RELEVANT ISSUES FOR A THOROUGH ANALYSIS TO INFORM ESA SUPPORT IN THE RULE OF LAW AREAS

- Assessment of the judiciary, corrections sector, central and local institutions
- Conflict dynamics and triggers
- Governance structures and reform plans
- Political and power dynamics in the rule of law sector, at both central and local levels
- Public expenditure patterns
- Vulnerability to corruption
- Role and influence of informal justice mechanisms
- Regional dynamics

In addition, analysis should be accompanied by a thorough mapping of actors, including potential champions and spoilers, and an understanding of the wider regional dynamics. Regional and sub-regional

organizations will play an increasingly political role in contexts where peace operations are deployed, requiring partnerships with these organizations both at the technical and political level.

### A PHASED APPROACH TO RULE OF LAW INTERVENTIONS

The sequencing of ESA support activities is another essential element of success. ESA engagement by peace operations would benefit from applying the recommendations of the Report of the High-Level Independent Panel on Peace Operations (“the HIPPO Report”) towards more strategic sequencing of efforts or establishing phases for mandate implementation and transition in the rule of law area. The ability of a mission to remain flexible and adaptable to evolving situations is also essential.

Targeted ESA initiatives must be conducted across the relevant sectors (i.e. security forces, administrative authorities, gender, justice, corrections etc.) to be effective, transformative and sustainable. Prioritizing one sector over another, and sequencing efforts on that basis, produces less successful results.

Timing can often be a crucial factor. A key lesson from Liberia in terms of sequencing shows that, when a peace operation is given a broad justice reform mandate, it is important to establish clear prioritization and sequencing of support through effective medium-term planning. This also links to geographic sequencing, which is especially relevant for ESA interventions and should be considered carefully from the onset of engagement. The scope of a mission’s engagement in specific areas will most often be determined by the

location of conflict and the mission’s regional presence. However, it is important to reach consensus with national authorities and other partners on the geographic coverage and extension of justice and corrections services when pursuing a comprehensive approach to institution building. The regional Hub of Gbarnga in Liberia became operational in 2014 and was selected for its geo-political significance. Relevant to that decision was its population concentration, that it incorporated counties with international borders, and that communities in those counties were significantly affected by war and security challenges. It was anticipated that roving mobile clinics/prosecutors would be utilized with mobile courts deployed to smaller towns.

Another important consideration which is specific to the justice area is the sequencing of support to the different levels of jurisdiction. Observed practices across peace operations have been relatively diverse in terms of the redeployment of justice authorities and have not allowed for concrete lessons to be drawn as to whether to prioritize support to justices of the peace, first instance or appeals courts. From a peacekeeping perspective focused primarily on reestablishing law and order, support and advocacy efforts may target first instance courts or other jurisdictions that are key to ensuring the functioning of the criminal justice chain. Combined with support to mobile hearings, support to first instance courts may contribute most effectively to extending the authority of the state in a way that provides essential criminal justice services and is sustainable and transformative.

Similarly, when the minimal security conditions are not in place to engage in the redeployment of justice and corrections officials, the focus of the peace operation may be sequenced differently and initially be placed on other rule of law interventions directed at supporting security objectives and protection objectives, to include: supporting the investigation and prosecution of atrocity crimes and those against peacekeepers, safe and secure detention of individuals apprehended in the course of military or police operations or high-risk spoilers, and mobile investigations and hearings; addressing broader political issues that may arise in the electoral period; supporting the authorities to address

systemic issues to ensure the continued functioning or enhance accountability of basic rule of law services (e.g. protection of evidence or prison security).

In circumstances where state structures may not be sufficiently strong at the central level to extend its authority to the periphery, there may be a need to focus predominantly on reinforcing central institutions and generating consensus and dialogue on justice and rule of law.



Courthouse in Mali  
Photo: JCS



## **PART III:**

# **OPERATIONAL GOOD PRACTICES**

In the current context of increased scrutiny of peace operations, field components should adopt and diversify their approaches, maximize the use of available tools and expertise, and focus on demonstrating impact and crafting strategic narratives.

Based on the findings and lessons presented in Part II, the following good practices and recommendations can help to successfully support efforts to design and implement ESA initiatives in the rule of law areas.



Strategic and Technical

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Expertise and Personnel

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Partnerships and  
Resource Mobilization

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Strategic  
Communications

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Measuring Impact

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Reporting

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Managing Reputational Risk

**“Legitimate state authority is a dynamic concept, and extending it requires well-informed and well-planned policies and activities that both find their substance in the functional and contextual perspectives and actively work to mitigate common contradictory dilemmas”**

### STRATEGIC AND TECHNICAL TOOLS

Peace operations could make better use of the wide array of strategic frameworks, technical assessment tools, guidance and methodologies (both internal and external to the UN system) that are available to inform, guide and enhance the design and implementation of their ESA interventions in the rule of law areas. In addition to the DPO and DPPA guidance framework, some of the most relevant tools and good practices for peace operations identified by this study include:

- The Action for Peacekeeping initiative and its core commitments;
- Perception surveys conducted by specialized entities such as the Harvard Humanitarian Initiative;
- Public Expenditure Reviews, which is a tool developed jointly between the World Bank and DPO;

- Conflict Analysis methodology proposed by the UN practice note on conflict analysis;
- The United Nations Sustainable Development Cooperation Framework (formerly known as UNDAF) or other strategic frameworks such as Integrated Strategic Frameworks (ISF);
- UN system-wide guidance on engaging with informal justice mechanisms.

### EXPERTISE AND PERSONNEL

With increasing financial constraints and scrutiny being placed on peace operations, it is important for field components to adopt and diversify their approaches to achieve mandated objectives with reduced levels of core professional personnel. Many advisory support needs in the host-countries of peace operations are time-limited and require a high degree of specialization, including those related to ESA efforts in the justice and corrections areas. Substantive mission components cannot be experts in all areas where specialized advice is requested by national counterparts. To effectively implement their mandates, justice and corrections components need to be proactive and nimble. They must respond to emerging priorities in a way that is effective, transformative and sustainable.

As such, greater consideration should be given to:

- Employing civilian specialists to complement core staff. This can be done by drawing from UN in-house capacities (other peace operations, UN entities and HQ entities) to provide specialized analysis on ESA issues to strengthen analytical capacity. Where necessary, this should include

outsourcing expertise which is not available in-house or in the UN Country Team (UNCT), e.g. legal anthropologists or national lawyers and other country experts required to tackle the deep and specific problems of building the rule of law in a particular context.

- Rotating and or reassigning core justice and corrections personnel to meet priority objectives of the component instead of maintaining geographic presence in all regional offices. In terms of ESA engagement, there is a recognized need for core staff at the central level to engage with national authorities. At the field-office level, where the geographic sequencing of ESA interventions may call for a surge of core personnel in a given geographic location, more flexibility will be required for a period of time to maximize chances of success in ESA efforts.
- Reprofiled Judicial Affairs Officers functions to reemphasize their role in supporting state-societal dialogue, reinforcing centre-periphery dynamics, and supporting outreach activities to inform local officials and communities about central level initiatives
- Utilizing the specialised expertise made available by the Justice and Corrections Standing Capacity (JCSC) to fully implement mandates related to the rule of law throughout the life of a peace operation and to support planning, implementation and lessons learned with respect to ESA initiatives. For example, the lessons identification study on rule of law support conducted by UNMIL and the

International Security Sector Advisory Team at the closing of the mission.

### **PARTNERSHIPS AND RESOURCE MOBILIZATION**

A key issue for justice and corrections components is to determine which partnerships will be the most sustainable and productive. They should consider which will have the highest impact on the ground or the greatest potential to influence policy direction. Having a true partnership approach takes time and is an activity in itself (i.e. it involves coordination meetings, joint programming, coordinated reporting). However, the focus should be on partnerships that yield practical results and are consistent with agreed approaches.

The Global Focal Point arrangement for Rule of Law (GFP) is the most appropriate platform for the coordinated, coherent and joint delivery of UN rule of law assistance in conflict and post-conflict settings. It draws on the unique and distinct strength of its members, combining operational and political analysis, and cross-pillar interventions. The GFP platform is well-positioned to respond to requests for support in

designing and implementing joint UN system interventions on ESA in the police, justice, corrections and security sector areas.

The United Nations Sustainable Development Cooperation Framework remains the most important instrument for the planning and implementation of UN development activities at the country level in support of the 2030 Agenda. It is through this framework that the UN articulates the highest priorities and most sustainable choices for a country. Collectively-owned ESA efforts undertaken by peace operations to implement their mandates should ideally become an integral part of this framework in order to ensure sustainability beyond the lifespan of a mission.

Since the financial year 2016/17, seven peace operations (MINUSCA, MINUSMA, UNAMID, MINUSTAH/MINUJUSTH, UNMIK, MONUSCO, UNMIL) have received programmatic funding in the areas of justice and corrections. Programmatic funding has provided an additional tool for peace operations to more effectively advance overall mission objectives and mandate delivery in the rule of law areas. Where

### **THE USE OF PROGRAMMATIC FUNDING**

Programmatic funds contributed to implementing the mandate of MONUSCO as reflected in UNSCR 2277. This included programmatic activities to reduce prison overcrowding, support mobile courts and legal aid clinics, and support field inspections of courts and prisons.

To advance national efforts to redeploy state authority in priority areas of the CAR territory, MINUSCA programmatic funding is supporting the rehabilitation, construction and equipping of courts, tribunals and prisons and other initiatives which contribute to the demilitarization of the CAR prison system for improved prison security and public safety.

In Darfur, programmatic funding has played a catalytic role in advancing the Mission's transition priorities in rule of law, human rights, livelihoods and immediate service delivery, and mobilizing additional resources for peacebuilding initiatives following UNAMID's anticipated closure in June 2020. Such funding has also supported strategic priorities, namely the strengthening of rural courts and the re-establishment of the criminal justice chain in priority areas for returnees and IDPs.

available, this source of funding may be more appropriate than Quick Impact Projects (QIPs) to support efforts focused on the extension of state authority in the rule of law areas, as it enables missions to reach out to United Nations Country Team partners for the implementation of specific tasks when such an arrangement represents an advantage for mandate delivery. Given their breadth in scope, ESA initiatives in the rule of law areas, are often probably best pursued as part of joint UN programmes supported by multiple funding sources.

The availability of funds from the Secretary-General's Peacebuilding Fund or joint projects with the World Bank should also be explored to support ESA efforts in the rule of law areas, especially in transition contexts. QIPs and other outreach funds may continue to serve an important role in winning the hearts and minds of the populations. They can also be a complementary tool to support community-based projects that help build trust and create the space for the reestablishment of justice and corrections institutions.

### STRATEGIC COMMUNICATIONS

The 2015 HIPPO Report acknowledged that "UN peace operations often struggle to communicate their messages to the local population and the broader global community". The report also highlighted that mission strategic communications strategies "should maximize relevant communication tools for particular audiences". This forms the core of the 2017 DPKO Strategic Communications Strategy and also applies to missions' communication and public outreach strategies, of which rule of law initiatives in the field should be an integral

part. Strategic communications are of crucial importance, though often neglected, in efforts to support the extension of a state's authority.

It is essential for rule of law components to reinforce the use of strategic communications tools. They should reach out to their Public Information section, mission leadership, other components, and most importantly, local actors in order to produce public information tailored to target audiences and to strategically present the objectives and expected results of ESA work undertaken by the mission and its partners in the rule of law areas.

### MEASURING IMPACT

Measuring and evaluating the impact of rule of law activities poses particular challenges. It often takes years to see real change in the rule of law; reforms do not occur in a linear fashion and data collection systems are often limited or ineffective. In circumstances where progress is possible, attributing progress to a particular entity's assistance can also be challenging.

In this context, it is important that ESA initiatives contribute to a peace operation's overall impact, while ensuring that they do not overreach and create unrealistic expectations. This "contributing" approach is also consistent with a peace operation's time bound presence and the limited scope of operations in a particular setting. This study proposes that the rule of law initiatives of peace operations should demonstrate their contribution to ESA at three distinct levels: impact on the sustained delivery of justice and corrections

services; impact on the authority and legitimacy of the host-state; and impact on sustaining peace and security.

Against this relatively broad and flexible framework, clear time-bound and benchmarked deliverables for justice and corrections work can be developed to showcase the impact and necessity of rule of law work to extend state authority. Missions will nevertheless need to continue in their efforts to develop and track context-specific benchmarks, monitoring and evaluation frameworks or performance indicators. These should aim to strengthen performance and enhance accountability, create a framework for data collection, engage and communicate with national authorities and communities, and help inform ESA-related transition strategies. In this regard, this study identified various benchmarking and indicator development tools which are available to peace operations:

- **SDG 16 targets and indicators:** promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.
- **Security Council Benchmarking:** e.g. MINUJUSTH Benchmarks: Mandate Implementation Dashboard.
- **Comprehensive Performance Assessment System (CPAS)** for peacekeeping operations.
- **United Nations Rule of Law Indicators:** implementation Guide and Project Tools.
- **Corruption vulnerability assessments:** UNODC toolkit.

Some of the key features to be addressed in the development of specific indicators related to ESA in the rule of law areas may relate to the measures in place to guarantee judicial independence; the allocation of national resources (including budgets); the inclusiveness and transparency of recruitment processes; and external and internal accountability mechanisms.

An outline of targeted objectives for ESA efforts undertaken by justice and corrections components is proposed below:

**TARGETED OBJECTIVE 1: THE COVERAGE OF JUSTICE AND CORRECTIONS SERVICES IS GRADUALLY EXPANDED THROUGHOUT THE NATIONAL TERRITORY:**

- Formal justice and corrections services are available to a growing portion of the host-state population.
- The ability of the host-government to sustain the provision of justice and corrections services is increasing.

**TARGETED OBJECTIVE 2: THE AUTHORITY AND LEGITIMACY OF THE HOST-STATE IS REINFORCED THROUGH ESA JUSTICE AND CORRECTIONS INITIATIVES:**

- The ability of host-state justice and corrections institutions to uphold the rule of law has increased through improvements in the quality of the services delivered and compliance with international standards.
- The perception of the legitimacy and accountability of host-state institutions to deliver justice has improved.
- Confidence of the host-state population in the formal justice system is growing, as indicated by an increase in the number of criminal cases being heard by criminal courts.

**TARGETED OBJECTIVE 3: EFFORTS TO EXTEND JUSTICE AND CORRECTIONS SERVICES TO CONFLICT-AFFECTED AREAS CONTRIBUTE TO REINFORCING AND SUSTAINING PEACE AND SECURITY IN THE HOST COUNTRY:**

- A shared vision of governance extends to national, regional and international partners and political space is increasingly available to advance national rule of law objectives.
- The availability of justice and corrections services in conflict-affected areas is contributing to efforts to address destabilizing factors and root causes of conflict.
- Host-state justice and corrections services play an increasingly important role in protecting civilians at the local level.

## REPORTING

Linked to visibility and impact measurement, reporting more thoroughly and consistently on the impact of ESA efforts is equally necessary to generate support for this work among Member States, Regional Organizations, UN leadership, Integrated Operational Teams (IOTs) and DPO and DPPA regional structures, the peace and security and rule of law community of practice. Reporting can also help broaden the pool of candidates for justice and corrections vacancies and attract qualified personnel with a wider range of skillsets and backgrounds.

Member States are increasingly demanding comprehensive reporting on the performance and impact of civilian peace operation components, ideally through narrowly defined and consistent indicators of progress, which show effect, impact and performance. This study highlights the importance of more analytical reports on ESA initiatives in the rule of law areas. These would help to demonstrate progress and impact and allow for efforts to appear more prominently in reports of the Secretary-General.

## MITIGATING REPUTATIONAL RISKS

This study noted several ESA-related dilemmas that may expose the UN to reputational risks, and which should be mapped and adequately considered in the analysis, planning and implementation of ESA initiatives.

For example, a mission may be perceived as being complicit in supporting a 'predatory' state. In such circumstances, efforts to bolster the reach of central authority may be tarnished by association with the state. A peace operation which is viewed as biased can become the target of attacks. Rule of law assistance may result in reforms which alienate significant segments of the population while creating further destabilization and the breeding grounds for extremist forces. In contexts such as Mali, the DRC, or the Central African Republic, where the support provided to national authorities has cast doubts on their impartial role, peace operations have increasingly become the target of attacks from armed militia, extremist groups or other spoilers. This exposes civilian communities in the vicinity to the threat of armed violence and has prompted serious discussions about UN peace operations' respect for the 'do no harm' principle.

Another risk revolves around a mission losing its credibility by supporting corrupt institutions or those responsible for human rights violations. For this reason, peace operations should make sure that interventions in support of domestic rule of law institutions are aligned with UN human rights policies and standards, including the Human Rights Due Diligence Policy. Experience on the ground shows how supporting institutions that are responsible for serious human rights violations has serious repercussions for the credibility and legitimacy of peace operations.

# ANNEX 1: COUNTRY PROFILES



# LIBERIA

## HISTORICAL & POLITICAL LANDSCAPE

Liberia was founded as a unitary state, governed almost exclusively by and for the benefit of Americo-Liberians with a central government in Monrovia functioning as the sole distributor of power throughout the country. Its over-centralized governance structures failed to provide equitable distribution of power and sufficient resources countrywide. This hampered the establishment and delivery of basic public services, marginalized a large percentage of the population, and was a key driver of cycles of political instability and economic stagnation, which led to a devastating 14-year civil war and, ultimately, to the collapse of the state itself.

Prior to the war, rule of law institutions, as with many other public services, barely functioned in the capital and were almost non-existent in the rural areas beyond Monrovia. The system was perennially weak, suffering from widespread patronage, corruption and an almost total absence of capacity, infrastructure and resources. Even though the Liberian people already had low levels of confidence in the state institutions meant to defend and uphold their rights, the war all but destroyed the little remaining confidence there was.

When the conflict ended in 2003, courthouses across the country had been looted and destroyed. Only two courts were operational, both in Monrovia, with only a few remaining judicial and legal personnel, mostly working as volunteers. Warring factions overran, looted, and released prisoners from the correctional facilities that had existed prior to the war, including from the Monrovia Central Prison.

Given the scale of the destruction at the end of the conflict, the Government of Liberia required significant support to help strengthen the country's rule of law sector. It was in this context that UNMIL was mandated in 2003 by Security Council resolution 1509 "to assist the transitional Government [...] in the reestablishment of national authority throughout the country, including the establishment of a functioning administrative structure at both the national and local levels" and "in developing a strategy to consolidate governmental institutions, including [...] judicial and correctional institutions."

UNMIL maintained a strong ESA mandate throughout the lifetime of the Mission.

# CHRONOLOGY OF UNMIL ESA EFFORTS IN JUSTICE AND CORRECTIONS

Through political and technical engagement and in partnership with other stakeholders, UNMIL played a central role in the efforts to extend the authority of the Liberian state, including in deconcentrating and providing better access to justice and corrections services throughout Liberia.

### 2003 – 2008

- While early efforts at re-establishing rule of law services focused predominantly on Monrovia, there were a number of ad-hoc initiatives to expand services beyond Monrovia, with the emphasis on infrastructure, training and the deployment of personnel.
- UNMIL Quick Impact Projects supported the rehabilitation and construction of prisons, courts and other offices in some of Liberia's most neglected areas.
- The Mission supported the training, vetting, appointment and deployment of hundreds of corrections, judicial and legal personnel throughout the country.
- Engagement beyond Monrovia also included initiatives supporting traditional justice mechanisms (traditional courts, tribal chiefs and elders) and supporting caseload management committees in all counties to address the extremely high rates of pre-trial detention.
- UNMIL committed significant resources to monitoring the performance of the national rule of law institutions.

### 2008 – 2013

- The Mission shifted towards focusing on more systemic issues, including enhancing the responsiveness, coherence, and accountability of the principal security, justice and corrections institutions and key legal frameworks, including in the counties.
- UNMIL played a crucial role in facilitating dialogue when relations between the Ministry of Justice and the judiciary were strained.
- A national rule of law retreat in 2008 led to the participation of the judiciary in the Agenda for Transformation, helping to bring about greater collaboration between the executive and the judiciary.
- This led to the development of various institutional strategic plans (Judiciary, Ministry of Justice, Law Reform Commission), as well as a National Access to Justice Conference in 2010, the Rule of Law Retreat of 2011 and a national conference on criminal justice in 2013, which brought together key stakeholders from across the sector to map out priority reform areas.
- Liberia was included in the agenda of the Peacebuilding Commission (PBC) in 2010. The joint commitment between the Government, the PBC and UNMIL, as defined by the Statement of Mutual Commitments of 2010, provided an important programming and political framework for more cohesive and coordinated efforts on ESA.
- The Government, UNMIL and other key stakeholders shared a strategy of constructing and operationalizing five regional justice and security Hubs. Gbarnga in Bong County, covering the counties of Bong, Lofa and Nimba, was selected as the pilot Hub for its geo-political significance. It was anticipated that roving mobile clinics would be utilized, with mobile courts deployed to smaller towns on a regular basis.
- Despite delays and other setbacks, the Gbarnga Hub became fully operational in April 2014.

### 2014 – 2017

- The transition phase and relocation of UNMIL personnel from the counties to Monrovia spearheaded a more strategic approach to ESA in Liberia, with the Mission paying greater attention to accountability and service delivery, at both the political and programming levels.
- Lessons learned from the Gbarnga Hub led to a shift in focus for the roll out of the other 4 Hubs from infrastructure development to the prioritization of service delivery. The projects for the second and third justice and security Hubs, to be based in Maryland and Grand Gedeh Counties, included deploying justice and security personnel (prosecutors, defence counsel, police, border patrol unit), developing civil society capacity to provide advisory services to communities, public outreach, establishing a SGBV Crimes Unit, human rights monitoring, and improving coordination between traditional leaders and justice sector actors.

## LIBERIA

# IMPACT OF UNMIL'S EFFORTS TO EXTEND THE AUTHORITY OF THE STATE IN JUSTICE AND CORRECTIONS AREAS

With support from UNMIL and the international community, Liberia has made noteworthy progress in consolidating peace and stability across the country over the last 16 years. This has included the incremental establishment and extension of basic justice and corrections services, alongside those of the national police, and fostering a stronger rule of law culture.

## THE COVERAGE OF JUSTICE AND CORRECTIONS SERVICES HAS GRADUALLY BEEN EXPANDED THROUGHOUT THE TERRITORY

# 20

circuit courts, 152 magistrate courts, and 74 specialized courts operational in all fifteen counties in Liberia as of 2017.

# 3

locations outside Monrovia have specialized support services for victims and survivors of SGBV. A SGBV investigation and prosecution capacity has been established and expanded to the counties, resulting in indictments, trials, and convictions.

# 375

judges across the country, along with 75 prosecutors and 35 public defenders.

# 500

The Bureau of Corrections and Rehabilitation employs

serving corrections personnel to run corrections facilities, holding about 2,400 inmates. All corrections facilities have established separate sections for women and juvenile inmates; 6 facilities have in-house health clinics; 10 are equipped with solar power for added security.

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## THE AUTHORITY AND LEGITIMACY OF THE LIBERIAN STATE IS REINFORCED THROUGH THE IMPROVED CAPACITY, QUALITY, TRANSPARENCY AND ACCOUNTABILITY OF JUSTICE AND CORRECTIONS SERVICES

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The delivery of justice services has improved through measures such as the nationwide introduction of case management systems to improve the speed at which cases are dealt with; the establishment of jury management offices in eight counties to ensure the availability of jurors for trials; the establishment of pre-trial case review mechanisms leading to the fast-tracking of close to 8,000 cases. This helped to reduce pre-trial detention levels, from 90% in 2007 down to 67% nationwide by the end of 2017.



The consolidation of justice institutions across the country is strongly anchored in Liberia's policy frameworks and documents, including its Poverty Reduction Strategy, Development Strategy, and Liberia's Peacebuilding Plan 2017-2020. Critical legislative, policy and regulatory reforms have been initiated and institutional and human capacities have been strengthened across the criminal justice chain.



Incremental progress was made in enhancing nationwide oversight and accountability mechanisms and internal management through improved data collection, transparency and a Court Inspectorate Unit, established in 2014. The oversight of circuit courts by Associated Justices has also been strengthened. Grievance and Ethics Committees for judges and lawyers, and a Judicial Inquiry Commission were reestablished with civil society participation and started processing complaints in 2016, with 25 to 30 cases being processed per year.



To increase the capacity and number of judges and lawyers across the country, a vetting process for the recruitment of judges has been implemented, the Judicial Training Institute has been established, the law school is producing qualified graduates each year, and the Liberian Bar Association has been re-established.



While public trust in the justice system has gradually improved, public understanding of the justice system remains poor. This has repercussions on the progression of cases and continues to exacerbate historical divisions where formal justice is reserved for the urban and elite and is not easily accessible by the poor and those living in rural areas.



The lack of availability of legal aid or assistance has remained a critical gap in efforts to improve access to justice country-wide and enhance public trust in the formal justice system. Albeit late in the lifespan of the Mission, efforts to develop a National Legal Aid Policy progressed following a three-day Legal Aid Policy Stakeholders Consultative Workshop in 2016. It was organized by the Ministry of Justice, supported by UNMIL and the Carter Centre.



The Bureau of Corrections and Rehabilitation (BCR) has made progress in reforming internal management systems and establishing basic internal accountability mechanisms. BCR operates a national prisoner database covering all prisons and has been referred to as a "gold standard" in such database systems, allowing for the sharing of accurate data across the criminal justice chain.

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## ESA INITIATIVES IN THE JUSTICE AND CORRECTIONS AREAS HAVE CONTRIBUTED TO REINFORCING SECURITY AND SUSTAINING PEACE

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The political space has gradually become more open to advancing an agenda of national rule of law reform, promoting discussions about expanding accountability, civic awareness, and generally enhancing the level of popular discourse on justice issues.



Rule of law has become a conduit to meaningfully take forward key governance issues that are at the root of the Liberian conflict, such as constitutional issues, national reconciliation, and corruption, thereby enhancing the broader expansion of state services.



Regional justice and security Hubs provide better access to security, justice and corrections services to the most populous and conflict-prone areas. Liberians feel considerably more safe and secure.



# DEMOCRATIC REPUBLIC OF THE CONGO

## HISTORICAL & POLITICAL LANDSCAPE

The Congolese Government is a highly centralized bureaucracy with most decision-making powers concentrated in the offices of the President and the Prime Minister. This has allowed the elite class to curtail the state's capacity to provide basic services, resulting in endemic corruption in state apparatuses. The Congolese justice system's severe lack of independence is evident in the Constitution and the Law on the Status of Magistrates, which vest the power to appoint, promote, and sanction magistrates with the President.

The size of the country and the limited resources available to the Government also severely impede the ability of the state to control its territory and provide services in provinces with poor access and infrastructure. The state has yet to meet its constitutional obligations to organize local elections, which has further impacted its trust and legitimacy in affected regions. Political and social discrimination and the mistreatment of certain ethnic groups have led to violent conflict. In 1996, a violent conflict marked by serious human rights violations erupted in and around the Kasai provinces, adding to an already volatile situation in the east of the country.

As with other government sectors, the Congolese justice system faces significant challenges. The 2017 justice budget only amounted to 2.5% of the national budget, less than half of which was effectively disbursed. While the Constitution assigns national and provincial government institutions joint responsibility for the administration of justice and prisons, the latter claim not to have the necessary resources to support the sector.

The establishment of the *Conseil Supérieur de la Magistrature* (CSM) in 2008 has neither significantly improved judicial independence nor has it led to successful management of judges, discipline of magistrates or reduction in corruption. The decision to divide the Supreme Court into three entities (*Cour Constitutionnelle*, *Cour de Cassation*, *Conseil d'Etat*), to establish a separate jurisdictional order of administrative courts, and to suppress the jurisdictional powers of customary authorities is largely perceived as being unrealistic, failing to take into account the social and economic context of the country.

As a consequence, justice services are largely "privatized" and politicized, discriminating between those who hold power or wealth, and those who do not. This fuels the perception that the justice system is part of a predatory state apparatus.

The prison sector also faces significant challenges for many of the same underlying reasons. As a result, the prison system continues to be characterized by mass disturbances and escapes, overcrowding, and inhumane conditions. With severe overcrowding and limited professional staff, prisoners are often used to supervise other prisoners (capita system), in contravention of international standards. The prison system suffers from endemic corruption while prison security remains inadequate to manage high-risk inmates, including persons with military backgrounds and affiliations to armed groups.

It was in this context that MONUSCO, the successor Mission to MONUC, was mandated in 2010 to assist the "consolidation of State authority by the Congolese Government throughout the territory, through the deployment of Congolese civil administration, in particular the police, territorial administration and rule of law institutions in areas freed from armed groups". This was expanded in 2013 to progress "Stabilization through the establishment of functional state security institutions in conflict-affected areas" and since 2015 to "establish functional, professional, and accountable state institutions, including security and judicial institutions."

# CHRONOLOGY OF MONUSCO ESA EFFORTS IN THE JUSTICE AND CORRECTIONS AREAS

## 2010 – 2012

MONUSCO's approach to extending justice and corrections services was aligned with the Mission's overall objective of extending state authority in conflict-affected areas in Eastern DRC where the state had a limited presence and significant challenges to its territorial integrity. Support to the extension of justice and corrections services, alongside that of the police, was integrated in the overall strategy of the Mission, including within the first phase I4S (from 2008 to 2012):

- Building and rehabilitating court and prison infrastructure;
- Supporting the recruitment, vetting and deployment of 2,000 magistrates throughout DRC, including in the eastern provinces;
- Supporting civilian and military justice mobile courts; Establishing Prosecution Support Cells (PSCs) to support investigations, prosecutions and mobile hearings (*audiences foraines*) by military justice authorities in the Kivus and Ituri;
- Building the capacity of judicial actors - training of magistrates and support staff for courts and prosecutors' offices;
- Strengthening the national strategic and legislative framework for justice and corrections at the institutional level, although such efforts were not necessarily aligned with ESA objectives developed for Eastern DRC.

## 2013 – 2015

The Mission's justice and corrections support was an integral part of the "Islands of Stability" strategy. Based on a "clear, hold, build" approach, the "Islands of Stability" was described as essentially the continuation of phase one of I4S, focusing on priority areas in the east. Three key locations were identified - Walikale, Beni and Rutshuru – as benefitting from that support:

- Building and rehabilitating court and prison infrastructure;
- Deploying justice and corrections personnel;
- Strengthening the capacities of deployed justice personnel;
- Supporting national efforts to combat impunity through the PSCs and military court hearings;
- Supporting the development of a judicial map;
- Engaging with national institutions to support national justice and corrections reform processes, albeit not necessarily aligned with broader ESA objectives developed for Eastern DRC;
- Organization of the *Etats Generaux de la Justice* (National Justice Conference) in 2015.

## Since 2016

The Mission's support to justice and corrections institutions has focused on providing support to:

- The implementation of the recommendations of the *Etats Generaux de la Justice* (2015) and the development of the National Strategy on Justice Reform (2018-2028), as well as its 5-year action plan;
- The continued operation and expansion of the PSC programme to cover the Kasai province following the outbreak of violence in 2017 through the provision of technical and logistical assistance;
- The strengthening of prison security;
- The organization of mobile court hearings.

# IMPACT OF MONUSCO'S EFFORTS TO EXTEND THE AUTHORITY OF THE STATE IN THE JUSTICE AND CORRECTIONS AREAS

With dedicated support from MONUSCO and the international community, the DRC has made relative progress in consolidating peace and stability across the country over the last decade. This includes the incremental establishment and extension of basic justice and corrections services, alongside that of the national police, to stabilize the east of the country and the Kasais, reinforce civilian and military criminal accountability, and protect civilians.

## THE COVERAGE OF JUSTICE AND CORRECTIONS SERVICES HAS GRADUALLY BEEN EXPANDED THROUGHOUT THE TERRITORY

30

courts and prosecutors' offices opened in Eastern DRC, with 20 buildings constructed/refurbished and another 29 equipped

Over

2,000

newly trained magistrates deployed and the number of judges in services has increased by 60% since 2010

22

prison facilities opened for a total of 74 operational prisons in Eastern DRC and 629 additional prison staff deployed as of 2016

The capacity of

1,242

registrars and clerks have been reinforced on the management of court registries' reconstitution of judicial files, record keeping and the preservation of evidence

1

case of genocide processed by a national civilian jurisdiction (Court of Appeal in Lubumbashi) in 2016

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## THE AUTHORITY AND LEGITIMACY OF THE CONGOLESE STATE IS REINFORCED THROUGH THE IMPROVED CAPACITY, QUALITY, TRANSPARENCY AND ACCOUNTABILITY OF MILITARY JUSTICE AND CORRECTIONS SERVICES

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The promulgation of key legislation between 2013 and 2015 on the Constitutional Court, the Court of Cassation, and the overall organization of the judiciary and laws on the implementation of the Rome Statute of the International Criminal Court.



The shaping of a common approach to justice reform efforts, namely through the Joint Justice Support Programme (2014) and the *États Généraux de la Justice* in 2015, which culminated in the Government adopting a national justice reform strategy in May 2017.



The adoption by the Superior Council of the Judiciary of measures on judicial policy, oversight, accountability and transparency. Improved oversight resulted in the review of 252 judicial disciplinary cases, resulting in 75 removals and 11 suspensions in 2015.



Reinforcing accountability for international crimes at the national level in the DRC through the strengthened capacity of the military justice system to investigate, prosecute and adjudicate international and serious crimes.



The public confidence in the military justice system is increasing as the trials supported by the PSC programme demonstrate that national authorities are able and willing to arrest and prosecute suspected perpetrators of atrocity crimes, often in remote areas, and to improve access to justice by bringing the victims and communities in close proximity to the proceedings.

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## ESA INITIATIVES IN THE JUSTICE AND CORRECTIONS AREAS HAVE CONTRIBUTED TO REINFORCING SECURITY AND SUSTAINING PEACE

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Prison Security is reinforced with 60% of prisons now operationalized with basic security procedures regulating prisoner and staff search systems, security contingency planning and guidelines on the management of high-risk and high-profile prisoners in place. Between 2013 and 2016, the number of prison escapes was reduced by 67% and recorded deaths decreased by 85%.



Over 1000 perpetrators of atrocity crimes committed on a large scale by personnel of the Forces Armées de la République Démocratique du Congo (FADRC) have been sentenced, while various armed groups active during violent armed conflict in the Eastern DRC have been brought to justice through the PSC programme, reinforcing the POC mandate of the Mission.



There has been ostensible reduction of tensions and a decrease in criminality in “Islands of Stability” locations of the Kivu provinces where MONUSCO intervened to liberate, secure and restore the authority of the state.



# MALI

## HISTORICAL & POLITICAL LANDSCAPE

The recurrent armed conflicts in Mali have their origin in the longstanding struggle for control of the country's northern regions between armed groups and the central Government in Bamako, which has attempted to repress successive rebellions through co-optation, negotiation and force. Several peace plans have foundered due to a lack of follow-up or commitment by both sides. Four years after the 2015 Agreement on Peace and Reconciliation was signed, implementation remains slow and unpredictable, with some observing that it may be in danger of collapse.

As the conflict has evolved over the past seven years, the withdrawal of the state, the ensuing security vacuum, the perception of impunity, the widespread availability of firearms, and competing social and customary models have all been factors contributing to the violent escalation of conflict. Clashes between warring rebel groups and the Government have continued while criminal networks involving drug smuggling, human trafficking, and widespread banditry have increased. In the north, where the state is mainly absent, groups with radical ideologies have successfully filled the institutional vacuum by providing basic services, including justice, further eroding confidence in formal judicial processes and exacerbating long-standing popular feelings of marginalization and abandonment.

The Malian justice system remains largely a “blueprint” of the French legal system, introduced under French colonial rule. Although some efforts have been made to adapt the French model to one that better fits the realities of Malian life, with about 630 judges and 335 lawyers for a population of 15 million, the justice system has historically lacked a strong presence outside urban centres. In 2011, the Government launched a major restructuring of the judicial map with the aim of reforming the organization of the courts and improving access to justice. Stalled by the crisis, the plan encountered difficulties from the start due to the extremely modest budget allocated to the justice sector (0.7% of the national budget, estimated to cover only about 25% of the resources required to operate a fully functioning system).

Similar to other Malian institutions, the justice system is perceived as highly corrupt and one that serves the interests of the political elite. The independence of judges and their impunity remains a serious concern, given the broad powers of the executive branch over judicial appointments and the organization of the judiciary. Efforts to reform the justice system have been met with entrenched resistance among Mali's political and judicial elites. With little faith in the state's ability to uphold the rule of law, most Malians turn to customary justice actors to resolve both civil and criminal disputes, especially in the north of the country.

The corrections system is characterized by inadequate prison infrastructure, overcrowding and inhumane conditions. With most prisoners detained in the south of the country, 13 prisons are located in the north and central regions of Mali. These were all destroyed or looted during the crisis. The Bamako central prison, where high risk prisoners are detained, holds over 2,000 prisoners in a facility built for 500. Although the corrections service has access to a sufficient number of prison staff, they are not adequately trained to effectively manage the prison.

Any genuine attempt to transform the complex and multi-faceted conflict must recognize the need for the state to regain its presence across Mali and govern through the rule of law in order for its legitimacy to be restored. It is in this context that MINUSMA was mandated, from its inception in 2013, to support the Malian authorities to extend and re-establish state administration throughout the country and rebuild the rule of law and justice sectors. In support of the implementation of the Peace Agreement, which envisages countrywide political and institutional reforms of the justice sector, assistance to the Government's efforts for the effective extension of state authority and the rule of law throughout the country has been further intensified.

## MALI

# CHRONOLOGY OF MINUSMA ESA EFFORTS IN THE JUSTICE AND CORRECTIONS AREAS

MINUSMA's approach to extending justice and corrections services has evolved in view of the Mission-wide framework and objectives, and has been conditioned both by the political process and the security environment on the ground

### 2013 – 2015

In support of the Government's reform plans and roadmap for the justice sector, the key goal at the start of the Mission was to establish a functioning penal chain in key parts of the north, to bring some state presence and enable the building of state-society relations. Through political and technical engagement, and in partnership with other stakeholders, MINUSMA focused on assisting the Malian authorities and communities through:

- Immediate rehabilitation of infrastructure and deployment of personnel, enhancing of security measures for justice and corrections institutions, establishing trust between communities and rule of law institutions, operationalizing accountability mechanisms, and mentoring, advising and training justice and prison personnel;
- Assistance to the Government at the national level with the development of its emergency programme on justice reform;
- Despite the increasingly volatile and insecure environment, modest progress was achieved in addressing the rule of law vacuum through early efforts to strengthen national strategies to extend services to the north.

### Since 2016

Following the signing of the Peace Agreement, the Mission's ESA mandate was strongly anchored to the overall objectives of the Mission, which included the establishment of conditions for legitimate and functioning state authorities to provide basic security and services to the population. Focusing on five key geographical areas in north and central Mali, Mission efforts needed to be both multi-dimensional and synchronized, informed by dynamic analyses of the changing drivers of conflict and supported by strong leadership. This was considered essential given that MINUSMA faced an asymmetric warfare environment that challenged many aspects of United Nations peacekeeping policy, practice, and support concepts:

- MINUSMA focuses on combating destabilizing crimes that contribute to and constrain the implementation of the Peace Agreement. Lack of accountability for these crimes perpetuate the culture of injustice, insecurity and impunity in Mali, 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, is supporting the "*Pôle judiciaire spécialisé dans la lutte contre le terrorisme et la criminalité transnationale organisée*" (PJS), which is a specialized unit within the national justice system with exclusive jurisdiction over terrorist and transnational organized criminal cases, to enhance investigative and prosecutorial capacity;
- The Mission has adopted a focused approach on establishing core criminal justice capacity and delivery through infrastructure rehabilitation, training and the deployment of personnel, as this is considered vital for the Malian defence and security forces to operate effectively;
- A strong emphasis has been placed on supporting the establishment of the criminal justice chain consultations forums (*cadres de concertation de la chaîne pénale*) in key conflict-affected areas. The *cadres* seek to resolve systemic problems by facilitating national and community ownership over the identification of needs and priorities in the criminal justice system. They enable greater institutional cooperation on justice and corrections issues at the local level and create space for broader community engagement with an aim to promoting greater transparency, inclusiveness and accountability;
- Recognizing the strong role of traditional authorities and leaders in Malian society, MINUSMA supported a series of national meetings in 2017 on the state of *traditional justice mechanisms*. This brought together *cadis* (judges of a Shari'a court), prosecutors and judges from the regions of Kidal, Timbuktu, Gao, Niono and Nara, as a first step in the Government's efforts to inform national discussions on the jurisdictional powers of the *cadis* and their linkages to the formal justice system, as foreseen by the Peace Agreement;
- **Maintaining safe and secure prisons, especially in relation to high-security detainees**, has been essential to efforts to fight organized crime and terrorism and prevent violent extremism in prisons. In Bamako Central Prison where individuals suspected of terrorism are detained, two high security wings have been rehabilitated and security cameras have been installed, while a security plan was developed in 2018 and tested through an innovative field simulation exercise for 550 Malian Security and Defence Forces personnel.

MALI

## IMPACT OF MINUSMA'S EFFORTS TO EXTEND THE AUTHORITY OF THE STATE IN THE JUSTICE AND CORRECTIONS AREAS

Despite significant challenges and an increasingly volatile and insecure environment, MINUSMA has been playing an essential role in supporting the gradual restoration or extension of state authority in conflict-affected areas, including establishing core criminal justice capacity in Timbuktu, Gao and Mopti and enhancing the capacity of the state to investigate and prosecute crimes that pose a serious threat to the peace process.

### THE COVERAGE OF JUSTICE AND CORRECTIONS SERVICES HAS GRADUALLY BEEN EXPANDED THROUGHOUT THE TERRITORY

122

justice and corrections personnel redeployed, representing about 50% of official personnel figures.

10

justices of the peace appointed or reassigned to northern and central regions in April 2017.

7

courts reopened in the northern regions and Mopti

7

out of 12 prisons reopened in the northern regions and Mopti

10

out of 14 tribunals functional and partly operational in the regions of Timbuktu, Gao, and Mopti, Kidal and Menaka, including 3 first instance courts and 7 justices of the peace and the Court of Appeal of Mopti.

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## THE AUTHORITY AND LEGITIMACY OF THE MALIAN STATE IS REINFORCED THROUGH THE IMPROVED CAPACITY, QUALITY, TRANSPARENCY AND ACCOUNTABILITY OF JUSTICE AND CORRECTIONS SERVICES

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The first legal aid office opened in 2015, and the network of paralegals has been reinforced through civil society.



Organizing a series of national meetings in 2017 on the state of traditional justice mechanisms bringing together cadis, prosecutors and judges from the regions of Kidal, Timbuktu, Gao, Niono and Nara. This was a first step in the Government's efforts to inform national discussions on the jurisdictional powers of the cadis and their linkages to the formal justice system, as foreseen by the Peace Agreement.



With a primary focus on supporting the implementation of the peace agreement, MINUSMA actively contributed to the elaboration and operationalization of the Government's emergency programme on justice reform, adopted in November 2015 and subsequently extended to cover the period of 2017-2018.



*Cadres de concertation de la chaîne pénale* are operational in Mopti, Gao and Timbuktu. This has reinforced the capacity of local actors to jointly manage projects and led to increased public attendance in court hearings in Gao and increased productivity of the court registry in Timbuktu.

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## ESA INITIATIVES IN THE JUSTICE AND CORRECTIONS AREAS HAVE CONTRIBUTED TO REINFORCING SECURITY AND SUSTAINING PEACE

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Significant security reinforcements and improvements have been made in Bamako Central prison.



Reinforcing national accountability for crimes that pose a threat to the peace process: In January 2018, the *Pôle judiciaire spécialisé* issued its first conviction, demonstrating the importance, from both a security and justice perspective, of strengthening the criminal justice chain from initial detention, during military operations, and to the investigation, trial and sentencing of the perpetrators.





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