

Beyond the Pandemic

# The Justice Emergency



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# Introduction

**“There is no guarantee that the world will alter its course and evolve towards less violence and less injustice, but positive changes will not occur without considered thought and political action.”<sup>1</sup>**

**We are facing a justice crisis.** The COVID pandemic has exposed and worsened the inequalities and injustices experienced by billions of people around the world.<sup>2</sup> Governments responses to the pandemic, the climate emergency, protracted conflicts, rising authoritarianism and other global challenges, are calling into question our conceptions and perceptions of justice, fairness and accountability. In this complex environment, what can and should justice and development practitioners do to address this justice crisis?

This background paper reflects on some emerging trends, opportunities and challenges for responding to and overcoming today’s pandemic of injustice. Its primary aim is to stimulate and facilitate strategic conversations about UNDP’s current and future work to promote justice and the rule of law. The paper is not a comprehensive review of justice in development. It also does not address in-depth the inter-connected

issues of human security, rule of law and human rights, although their relevance and importance in this discussion is unquestionable. It does, however, raise issues and ideas that are highly pertinent for development practitioners working across the fields of democratic governance, conflict prevention, security and human rights and others. As such the paper seeks to raise questions and present ideas that can encourage reflection, spur debate and inform positive collective action towards a more just and peaceful future.

Part one of this paper opens with a reflection on how justice is conceptualized and by whom, and what it means to apply a justice perspective to development. It suggests that adopting **a narrow conception of justice can limit its transformative potential** for addressing people’s immediate justice needs and the deep-rooted inequalities and injustices that drive conflict. Part two starts with a consideration of several global threats to justice and reflects on the responsibility and accountability of powerful stakeholders, including transnational corporations and foreign donors, for ensuring and promoting justice. The following sections examine general trends in justice and rule of law promotion, including people-centred justice, and specific thematic areas of conflict, environmental justice and gender. The paper highlights **the potential of a systems approach** for addressing the inherently political nature of justice and for enabling a multi-pronged and multi-disciplinary response to injustice. Part three challenges us to imagine a more just future and explores some of the innovative tools, technologies and process approaches that could help achieve that vision. The paper concludes with a final reflection on the role of justice and accountability as enablers of systemic transformation towards more just and peaceful societies.

# What is justice?

## Section 1: The justice demand



The pandemic has done little to slow the global upward trend of social mobilization against injustice.<sup>3</sup> According to Carnegie's Global Protest Tracker, new anti-government protests emerged at a rate of approximately one every

five days in 2021. While this figure is slightly down from 2020, it is still significantly higher than pre-pandemic rates.<sup>4</sup> The pandemic itself created new protest triggers, including public health measures (such as lockdowns, mask mandates and vaccination requirements), economic insecurity, and government mismanagement of the crisis.<sup>5</sup> The geographical spread of protests, the specific purpose or cause, and the profiles of protesters is diverse, but there are commonalities in their demands: for greater respect for and protection of their rights, more equality, inclusion and accountability, and an end to impunity.

Protests are visible statements of peoples' outrage, their discontent and a general lack of trust that political systems and those in power are really working for them. They are demands for change. Faced with growing social unrest, many governments have responded by using laws, measures and physical force to quash unwelcomed public dissent. In the absence of effective remedies, these responses will likely only fuel grievances, compound experiences and perceptions of injustice, and provoke more unrest. As the pandemic persists, as authoritarianism continues to rise, and as structural inequalities and inequities remain unchecked, the relationship between the governing and the governed is only becoming increasingly strained.

A common thread across the majority of social protests today is a broad demand for justice—from more fair and just legal systems, services and institutions, to greater social, economic, racial, gender and environmental justice.<sup>6</sup> These wide-ranging demands are challenging liberal ideological and political positions on justice and accountability that have prioritized civil and political

rights (rights to life, liberty, freedom from torture, or cruel, inhuman and degrading treatment etc) over economic, social and collective rights. These demands are not just those of specific interest groups. They are global demands for the **deep transformation of entire legal, political, economic and social structures and institutions that have long been indifferent to social and economic inequalities and the injustices they seed.** Today's 'justice demand' is therefore not only a call for the punishment of those who commit 'wrongs', but also for the making of 'rights.' It is an urgent call for both the accountability and *responsibility* of all persons (the governed and the governing) within a society to actively eradicate persisting structures of inequality, and ensure an enabling environment where societal systems and institutions not only respect the rights of all people, but are responsible for actively ensuring their protection and promotion today and in the future.<sup>7</sup> Put simply, it is about placing the needs and expectations of everyday people at the centre of decision-making. It underscores the nature of **justice as a fundamental principle organizing society that must be at the heart of the new social contract.**<sup>8</sup>

What implications does this complex justice demand have for our work in promoting justice and sustainable development today and in the future? Are our current tools and approaches adequate for understanding and meaningfully responding to people's justice needs and expectations? If not, what needs to be done? The following questions intend to help kick-start this thought process:



**What does it mean to place justice at the heart of efforts to promote peace, development and prosperity?**

Justice is not only a set of institutions or a desired end state. It is a set of principles and approaches that can address both people's immediate justice needs and also the drivers of injustice. The justice remit does not lie with judges and lawyers alone. Applying a justice

lens to development helps to facilitate synergies across multiple sectors and disciplines. It enables a more integrated approach to ensuring that development interventions address the symptoms of inequalities and injustice and also advance efforts towards systemic and structural change. The 2030 Agenda and its 17 Sustainable Development Goals (SDGs) is one framework for furthering these multi-disciplinary efforts. Initiatives such as the SDG16+ Forum and framework and the new people-centred indicator (SDG 16.3.3) highlight a growing consensus that sustainable development cannot be achieved by limiting justice to the realm of courts and legal professionals.



### **Do our efforts to promote justice contribute to strengthening the social contract?**

Access to secure employment and a decent income, education, adequate housing, and opportunities for social mobility, are all essential to human dignity. Most people's daily 'justice' problems relate to economic and social disputes, such as over land use and ownership, debt, family relationships, employment or access to basic services.<sup>9</sup> Yet, international development assistance tends to prioritize support to addressing criminal injustices. Inadequate attention has been given to addressing economic and social injustices and the structural inequalities that perpetuate them. When left unresolved, these daily injustices diminish people's dignity, fuel frustrations and undermine their confidence in government. A fair, legitimate and trustworthy justice system that puts people, their rights and the outcomes they need, at the centre, is vital for enabling people to live with dignity and for creating incentives for them to trust and invest in the economy and society.



### **What are the implications of a broad conceptualization of justice for understanding violence?**

Conceptions of justice that primarily focus on accountability for direct or physical violence over other forms of structural violence, will be inadequate for addressing the inequalities and injustices that contribute to societal unrest, instability and violent conflict. The role of justice in addressing all forms of structural violence, which can include violations of economic and social rights, political exclusion, and exploitation of natural resources, is an important component for the prevention and resolution of violent conflict. Beyond prosecuting perpetrators of violence and reforming judicial institutions, justice is also critical for reducing marginalization, addressing the horizontal inequalities between groups that can provoke violence, promoting socioeconomic inclusion, strengthening the social contract and building hope in the future. Justice, defined broadly, is an integral part of understanding

and addressing discrimination and marginalization, preventing and responding to crisis and conflict, and promoting good governance.



### **Is our current justice programming 'politically smart' enough?**

Justice is not only a legal question. It is also a political question that asks, how can we reach a political settlement that offers a pathway to change?<sup>10</sup> Justice interventions that seek to challenge and transform systems and structures of inequality, exclusion and discrimination must acknowledge and understand power—who has power, how is power exercised and how is it constrained? Transformation requires changing mindsets, attitudes, behaviours and relationships across individuals and institutions. But addressing power imbalances is not easy. Asymmetrical power structures are difficult to break down and power holders will seek to protect their vested interests. Power relations are often deeply embedded in institutional structures. Identifying challenges and opportunities for transformative change requires understanding the political economy, and the interests, incentives and motivations of all stakeholders. Programming needs flexibility to test innovative approaches to change and to adapt based on evidence and learning.

# A landscape of injustice

## Section 2: Global threats to justice



The need for international coordination and cooperation to address today's global threats, from the COVID-19 virus to the climate emergency, has never been greater or more urgent. The pandemic uniquely highlighted the extent to

which the world is interconnected and interdependent while simultaneously shining a spotlight on the reality of multilateralism in decline. Rising nationalist populism, heightened political polarization and tense geopolitics were shaking alliances and relations between governments, and between governments and their own people before the pandemic. The arrival of the virus only reinforced these global and domestic divides. The extraordinary speed with which COVID-19 vaccines were produced demonstrated the great potential of international cooperation. Yet the nationalistic responses of many wealthy governments resulted in vaccine hoarding, severe inequity in global vaccine distribution, and a new international 'vaccine diplomacy' effort by non-democratic countries keen to capitalize on the gap left by Western democracies distracted by domestic concerns.<sup>11</sup> In the competition between globalist and nationalist worldviews, the latter appears to have the upper hand.

**DEMOCRATIC GOVERNANCE AND RULE OF LAW IN DECLINE.** Global trends in the quality of democracy, rule of law, and the protection of rights and freedoms are in decline.<sup>12</sup> Government responses to the pandemic only emphasized these trends—'autocratization' (the inverse of democratization) in many non-democratic countries deepened, and the fragility of several new or transitioning democracies was revealed.<sup>13</sup> A significant number of countries, including some established democracies, implemented measures that limited rights in a way that was disproportionate, illegal, indefinite or unnecessary. Some governments seized the opportunity to silence critics, weaken rule of law institutions, or undermine other accountability systems. Democratic countries appeared faster at recalibrating and redressing

actual or potential rights violations, for example, as legislatures and courts resumed their functions and civil society mobilized to challenge executive overreach attempts.<sup>14</sup> At the same time, other governments sought to consolidate their hold on power by furthering a narrative, explicitly or implicitly, that a strong non-democratic regime is more efficient at addressing crises. What does a global decline in democracy and respect for democratic principles mean for justice? How can we meaningfully reassert justice as a global priority? Merely maintaining the liberal democratic narrative is not adequate. There is a need for serious discussion around how to reform and re-invigorate the concepts of democratic governance and rule of law, in the face of their shortcomings in addressing the inequalities and injustice experienced by so many.<sup>15</sup> Today's justice demand suggests an urgent need for innovative thinking around the government-society relationship. New inclusive spaces are needed that meaningfully give voice to the needs and expectations of youth, minorities, women and other silenced groups, ensuring they are not only heard but their needs are responded to. Civil society, scholars and practitioners all need to be mobilized and actively supported in the effort to reassert the global 'goods' of justice, rule of law and equality.

**THE GLOBAL STANDARD OF JUSTICE UNDER PRESSURE.** The securitization effect of 9/11 and the war on terror that placed a premium on security (over justice), the experiences of Iraq and Afghanistan, impunity for serious crimes under international law, and other factors, have negatively impacted global justice efforts in recent years. The entire pursuit of justice as a standard to which all are held equally has been put into question. There have been slow but steady advancements in international criminal justice efforts. The extension of the International Criminal Court's (ICC) investigative focus beyond Africa, and the expansion of its substantive remit to crimes of cultural destruction, environmental crimes and forced evictions are notable. The January 2020 decision of the International Court of Justice in the genocide case

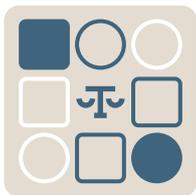
taken by The Gambia against the Myanmar government shows the possibilities for smaller nations to promote international justice where the traditional enforcers of international norms are unable or unwilling to do so.<sup>16</sup> At the same time, lessons from transnational courts and hybrid tribunals designed to deliver justice for war crimes, crimes against humanity and genocide, highlight the complex political landscape of justice, and the challenges in delivering fair, efficient and effective justice for all. These lessons, when not well understood and learned, undercut the global legitimacy of justice.

**NATIONALIST INTERESTS FUEL INJUSTICES AND INEQUALITIES.** Peace is not achieved merely by the absence of armed conflict. Justice cannot be attained solely through external military interventions and international courts. Achieving and maintaining peace and justice requires a global commitment to addressing the grievances, inequalities and structural violence that fuel instability and conflict within and across states. It requires all states to have the capacities to be effective ‘peace players’ within the international community. Today the traditional North-South relationship, and its inherent economic and power inequalities, are being challenged.<sup>17</sup> For example, while billions of aid dollars flow to the Global South each year, trillions of dollars flow in the opposite direction, including billions in illicit financial flows that end up in banks in developed countries and tax havens. Such figures underscore the significant maldistribution of resources around the world.<sup>18</sup> There are rising demands for a level playing field for trade, financial dealings, intellectual property transactions and other aspects of international relations that will enable equality of opportunities for all countries. The downward trend in ‘principled’ overseas development

aid is undermining the global goods of peace and justice and creating space for non-democratic governments to advance their own agendas.<sup>19</sup>

**RESPONSIBILITY AND ACCOUNTABILITY OF NON-STATE AND PRIVATE ACTORS.** Non-state actors can have significant roles to play in the pursuit of justice or the perpetuation of injustices. Transnational corporations, for example, wield enormous power and influence with governments. In some cases, governments that are aligned with powerful companies have enabled unregulated corporate activity, environmental harms and violations of human rights. In other situations, governments are outsourcing public functions (such as education or health) to private companies without adequate accountability safeguards. Advancements in areas such as Business and Human Rights and environmental justice are positive recent trends for advancing the responsibility and accountability of the private sector for human rights and justice. Facebook’s release in March 2021 of a corporate human rights policy, for example, was a public articulation of its commitment to upholding human rights. How this commitment will be realized and enforced remains a serious question. Global civil society has a critical role in promoting and ensuring justice. Authoritarian leaders are obvious perpetrators of a shrinking civic space, but they are not the only ones. Policies and interests promoted by international financial institutions, foreign donors and other global actors, can also significantly constrain the space for independent civic life. Better understanding these dynamics is critical for identifying leverage points for the protection and enhancement of the transformative potential of civil society organizing.

## Section 3: The justice ecosystem



For years, formal justice systems have been underfunded and under-resourced leaving billions of people lacking access to justice.<sup>20</sup> Only around 1.5 percent of development aid from the world’s main donors is allocated to justice. Even within

their own countries, these donors spend, on average, only four percent of their budgets on justice.<sup>21</sup> The COVID-19 pandemic only intensified pressure on access to justice and the effective functioning of justice systems around the world. Lockdown measures closed or severely restricted the functioning of courts. Non-court dispute resolution mechanisms, including

mediation and arbitration services and community-based mechanisms, slowed or ceased their work. Prolonged judicial and administrative proceedings and increased case backlogs are just some of the COVID-19 legacies that justice systems will face for a long time to come. Some governments exploited the pandemic to undermine the independence of the judiciary, reinforcing a global downward trend in the ability of judiciaries to act as constraints on executive power.<sup>22</sup> Elsewhere, however, courts effectively held governments to account for executive over-reach, and sometimes under-reach, in responding to the pandemic.<sup>23</sup> Online offences rose significantly,<sup>24</sup> as did reports of violence against women and girls.<sup>25</sup> As the

economic and social ramifications of the pandemic continue to unfold, the number of ‘everyday’ justice problems—employment disputes, debt, evictions, land disputes, family disputes and disputes between businesses and consumers—are likely to rise, and with it the demand for more fair and effective justice services.

For decades, supporting the strengthening of formal (or state-run) justice systems has been a core element of international rule of law promotion, based on the belief that the rule of law ‘problem’ lies within the justice system. Strongly critiqued for being too state institutions-focused, being overly reliant on lawyers transplanting Western justice models and goals with little regard for the local context, and for assuming a linear (and rapid) trajectory on change, these efforts were seen to have largely failed to deliver the expected rule of law and economic development benefits.<sup>26</sup> Emerging from these critiques was an evidence-based, problem-solving approach that emphasizes the needs of the justice user over those of institutions, and which is widely referred to today as “**people-centred justice**.” Yet despite much positive progress in the past few years, gaps remain in understanding the full potential of people-centred approaches for addressing the imbalances of power and resource allocation that create and perpetuate systemic injustices and inequalities.

**People-centred justice** focuses on better understanding people’s ‘everyday’ justice problems, when and where they turn for assistance to solve these problems, and how to improve the quality of the justice-seeking experience. It recognizes that the vast majority of justice problems will be resolved outside of the formal judicial system. People-centred justice builds upon global legal empowerment efforts and embraces a human rights-based approach. It clearly links human development and social justice, and is mirrored in the new SDG indicator 16.3.3.

Approaches to justice sector reform have evolved in a number of other important ways. Today there is a clear acknowledgement of the inherently political nature of change efforts, and the importance of an in-depth contextual analysis, rather than assuming that ‘one size fits all’. Increasingly, justice projects are seeking to work in more politically informed ways and are adopting adaptive management approaches. Greater attention is being paid to the desired function of the system (such as the fair and efficient adjudication of disputes) without being wedded to particular institutions or institutional forms. Yet the shift in language appears to have occurred faster than the shift in behaviour.

Despite the dramatic increase in use of political economy analysis, many justice programs still appear to revert to a state of “functional denial.”<sup>27</sup> The political complexity of the situation is identified but then knowingly denied, as practitioners reach for the familiar (and predominantly formal or state-focused) tools such as law reform, judicial education, building and digitizing courts, strengthening bar associations, and providing legal aid.

**There is an urgent need to rethink our approaches to promoting justice.** Today’s communities are demanding justice not only for wrongs committed in the present day, but for the wrongs of the past (legacies of slavery and colonialism, for example) and potential injustices in the future (such as those stemming from continued environmental degradation and climate change). To understand how to better respond to these demands, we must move beyond a predominantly linear, technical approach to justice reform. Adjusting our understanding of justice systems and how they function, adopting new thinking and approaches, and engaging a multiplicity of cross-disciplinary actors in strategic conversations, are just some actions that could support the transformative potential of justice reform.

First, **the complexity of the justice system needs to be acknowledged.** The justice system is often approached as if it is a complicated system (like a car) that just needs technical expertise and a strategic plan to get it back up and running.<sup>28</sup> But this approach does not work for a complex social system like a justice system, which is made up of a huge array of state and non-state institutions, organizations and individuals that are involved in the various functions of a justice system including justice delivery, policymaking, management and oversight. For example, the delivery of criminal justice services may involve the police, judges, and legal aid providers, as well as militia groups, religious leaders or community safety groups. Management functions can involve a range of ministries (justice, interior, defence, finance, women, human rights etc), the judiciary and bar associations. Oversight and accountability functions may involve parliament, ombudspersons, internal audit units, national human rights institutions, human rights defenders, civil society and the media.<sup>29</sup>

Second, in order to be understood and transformed, the justice system needs to be viewed not as a series of discreet parts (the judiciary, the prisons, the police etc) but as a system of relationships. This ‘systems’ approach focuses attention on the interactions and dynamics of the system as a whole, rather than on its individual parts.<sup>30</sup> It encourages a multi-disciplinary and multi-pronged approach to problem-solving. It provides a collaborative space for justice, security, human rights, development, conflict prevention and governance

### Four Characteristics of Complex Systems

- **The whole is greater than the sum of the parts:** To understand the system we must look at the whole. Together the parts of a system do something that they cannot do alone.
- **Complex systems are nonlinear.** Big solutions don't necessarily fix big problems. Problems arise from multiple parts of the system and how they interact with each other. There is usually more than one cause for one effect. Small changes can have major, and unexpected, consequences.
- **Complex systems “self-organize” in response to changes in their parts or environment.** Complex systems are constantly adapting as different parts of a system respond to changing circumstances on the ground. These changes can be unpredictable and irreversible. Complex systems cannot be controlled or managed.
- **There is no objective reality of a system.** Complex systems are difficult to understand. There are many different user perspectives on how the system works and how it can be fixed.

actors to come together to better understand the system and to align on a shared strategy for change. A systems approach brings together a range of people, perspectives and expertise to look for the entry or 'leverage' points where there is the greatest potential for strategic impact. It helps expand our scope of

thinking, encouraging new and innovative approaches beyond the traditional toolbox. For example, diplomacy and good offices could be mobilized to affect identified power and political dynamics that are barriers to change.<sup>31</sup> **This approach does not negate the need for technical interventions, but it places that expertise within a larger whole, enabling the technical 'tools' to be used strategically to advance larger transformative goals within integrated programmes.** The recent trend in development work to embrace systems thinking as an approach and a tool for addressing complex social problems has barely registered within the international rule of law and justice promotion field. This is despite the potential benefits systems thinking offers for both strengthening the analysis and understanding of problems of justice, and for better enabling that analysis to translate into concrete action.

Finally, change within the justice system interferes with the foundations of power and challenges the interests of established social and political groupings within the government and across society. Greater understanding is needed of the trajectories of institutional and political change that result in accepted constraints on the exercise of power by governing elites and other powerful actors.<sup>32</sup> We need to better understand how to nurture positive change, how to support people as agents of change, and how to address the inevitable resistance to change. The field of change management (that also encompasses psychology and behavioural science) complements that of systems thinking.

**Together, they offer practitioners tools and people-centred approaches that are adaptive, responsive to the complexity of their work, and that embrace the nonlinear and long-term nature of change.**<sup>33</sup>

## Section 4: Inequality, injustice as drivers of crisis and conflict



While violent conflict is a major source of injustice, injustice also increases the risk of conflict. The past decade has seen a steady rise in political violence in developing and developed states. Some governments and non-state armed

groups took advantage of the pandemic to further their respective political and economic agendas through the use of force.<sup>34</sup> In 2021, few conflicts ended and many intensified. Fatalities due to political violence increased and civilians were more frequently targeted.<sup>35</sup>

Drivers of violent conflict are varied, complex and highly contextual, and the long-term effects of the pandemic are likely to further contribute to negative conflict trends.<sup>36</sup> The pandemic is exacerbating social and economic inequalities that, when perceived to be unfair and unjust, can be powerful sources of social tensions and violence. Such inequalities can threaten the social contract by weakening social cohesion and people's trust in government, its institutions, and in each other.

The importance of justice in addressing inequalities to both prevent and resolve violent conflict has been

gaining recognition in recent years.<sup>37</sup> Conventional approaches to inequality typically focus on reducing inequality of income among individuals and households (called ‘vertical inequality’). However, the evidence of the relationship between high levels of income inequality and violent conflict is inconclusive. In contrast, there is a growing body of evidence which suggests that more important determinants of the risk of violent conflict are ‘horizontal inequalities’, that is inequalities amongst social groups based on race, gender, ethnicity, religion, or citizenship, for example. These horizontal inequalities include a broad range of political, economic and social variables, including access to land and natural resources, employment, access to services and the distribution of political participation and control.<sup>38</sup> Where a group feels threatened or harmed by another, sparked by an actual or perceived inequality, then conflict is more likely.

Addressing horizontal inequalities from a justice perspective expands the focus of justice programmes from responding to individual legal needs or acts of violence, to also considering how to address the justice needs of populations or groups. This adjustment requires a people-centred approach to understanding perceptions of injustice and the unresolved grievances that matter most to people, coupled with an understanding of the socioeconomic, legal, political, cultural and institutional dynamics that sustain inequality. Injustices that fuel fragility can manifest around issues such as land use, water, extractives, infrastructure and public services. **Justice practitioners cannot resolve these larger structural issues alone.** They need to work with other sectors and stakeholders to identify and mobilize the ‘leverage points’ that allow the root causes of injustice to be addressed. Where technical approaches have fallen short, fields such as behavioural neuroscience offer insights and knowledge around not only what drives individuals and societies to use violence to resolve their disputes but also what encourages people to turn from violence to peacemaking and reconciliation.<sup>39</sup> Justice-focused prevention and conflict resolution requires an integrated, multi-disciplinary approach.

At the same time, greater consideration and support could be given to how justice practitioners can strategically link demand-driven justice interventions (such as community legal empowerment approaches), with supply-side efforts (such as support to law reform and judicial institution strengthening) and other social and political strategies (for example, lobbying of parliamentarians, and efforts to change social attitudes and behaviour). This holistic approach, using grass-roots evidence of how policies and laws are impacting vulnerable and marginalized communities in practice

to inform strategic litigation, legislative reform and other institutional programming interventions, can help address the structural changes needed to remedy inequalities and unjust power relations in ways that an individual intervention would not be able to do.<sup>40</sup>

In situations of conflict that have been driven by severe horizontal inequalities, the question of how to engender reconciliation and coexistence amongst groups is key. The literature on transitional justice has certainly evolved, moving from a retribution-centred approach towards a more restorative one focused on healing, and most recently towards a social justice approach that looks at how to address structural economic, social and political injustices. Lessons from countries such as South Africa, Sierra Leone and Rwanda suggest that access to socio-economic, legal and political justice must also be prioritized, alongside the delivery of justice for mass atrocities, if a society is to truly transform.<sup>41</sup> However, these conceptual developments are yet to be fully realized in practice. Learning lessons, embracing a multi-disciplinary approach, and adopting innovative methods and tools for understanding how justice (understood broadly) can better foster reconciliation, peace and development is urgently needed.

Within this context, the justice-inequality-social cohesion relationship is also under-developed and appears ripe for deeper conversations and research. For example, the potential scope of legal empowerment approaches for addressing horizontal inequalities and promoting social cohesion after conflict is one area that has not been fully explored. Emerging work around the role of a ‘trauma-informed’ approach to justice and reconciliation efforts expands understandings and responses to trauma beyond the provision of individual psycho-social support to victims of violence, to facilitating greater understanding of how social contexts and structural injustices impact people, their cognitive processes, decision-making, behaviour and, therefore, their needs. This analysis has real potential for informing programming decisions. Finally, there is a need to better understand the potential synergies between coexistence and justice interventions in post-conflict settings, to help restore trust, transform perceptions and rebuild relationships in divided societies. Concrete tools such as the Justice and Security Dialogue (JSD) approach pioneered by the United States Institute of Peace (USIP) is one example where a facilitated process has brought conflict-affected communities and police together around common issues that helped to build trust, mutual respect and social cohesion, while also tangibly reducing crime, and advancing access to justice and the rule of law.<sup>42</sup>

## Section 5: Justice and the environment



The planet and human society are facing multiple, potentially devastating, environmental threats. Climate change is a global emergency requiring an urgent and comprehensive response.<sup>43</sup>

Unconstrained by national borders, it represents an existential threat to current and future generations and will not be solved by the actions of individual states alone. People around the world want more action and ambition from policy makers to protect the planet. Youth are at the forefront of accountability demands for climate and environmental injustices. Responding to these demands requires inter-generational thinking and attention to what justice means for current and future generations. Today's environmental crisis is intertwined with the crisis of inequality and is inextricably linked to the protection and fulfilment of human rights and sustainable development. Addressing issues such as climate change sits uncomfortably alongside economic growth priorities that have contributed to extensive environmental degradation, loss of non-human species, and damage to the health and well-being of marginalized peoples. Progress towards meeting climate change targets has been slow, and profit (the unchecked extraction and exploitation of mineral wealth, and the burning of fossil fuels) continues to be prioritized at the expense of people and the planet.

**“A sustainable society which is unjust can hardly be worth sustaining. A just society that is unsustainable is self-defeating”<sup>44</sup>**

Environmental harms, environmental degradation and pollution disproportionately affect marginalized populations, including indigenous and minority communities, the poor and women. From its inception, the environmental justice field reframed environmental issues as issues of racial and systemic injustices. Movements such as climate justice, energy justice and indigenous justice draw from and contribute to environmental justice and its topical, geographical and disciplinary evolution. Today, the field is moving

towards greater recognition of the **power dynamics and structural conditions that lead to injustices (including legacies of colonialism), the complex intersectionality of injustices, and the need for a range of mechanisms to address justice needs** from the perspective of those who experience injustice, including future generations and the natural environment itself. In a landmark climate change case in Colombia, for example, the Supreme Court held that deforestation of the Amazon threatened the constitutional rights of future generations to a healthy environment. It declared the Amazon to have legal personhood and ordered the government to design inclusive, intergenerational policies and programs to protect it.<sup>45</sup>

The Paris Agreement was a high point for multilateralism, which then stalled (2020 was the second warmest year on record after 2019). Absent any enforcement capability, and with multilateralism under strain, more is required to hold states accountable for their commitments. Protests have been one accountability tool for maintaining domestic and international pressure.<sup>46</sup> Protests were seen to be effective in Chile, for example, where a new constitution is now being drafted in which the climate will be a central focus. Indeed, constitutions can play a vital role in guaranteeing procedural environmental rights, shaping political behaviour, and bridging the protection of the environment with the rights of future generations. The constitutions of more than three-quarters of all countries contain explicit reference to environmental rights or responsibilities. In recent years, a growing number of national courts have held that these provisions require governments to act on climate change. Internationally, calls are also increasing for a new international crime of “ecocide” to be recognized at the ICC, although the prospect of such a law being ratified is remote. In October 2021, the UN Human Rights Council adopted a resolution recognizing the right to a clean, healthy and sustainable environment as a human right. Although not legally binding, its near-unanimous adoption shows consensus on the formulation, content and importance of this human right.

At a regional level, the entry into force in April 2021 of the *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean* (the Escazú Agreement) is a significant step forward for climate action in the region. The rights-based multilateral agreement is the world's first treaty to include provisions on human rights defenders in environmental matters. This is particularly significant given that in 2020, Latin America accounted for more

than three-quarters of all the murders of human rights defenders, the majority of whom were working on environmental, land or indigenous peoples' rights.<sup>47</sup> In the Pacific region, the fracturing of the Pacific Islands Forum in early 2021 risks weakening the ability of the region to collectively respond to the existential threat posed by climate change.

Against this backdrop, international law principles are increasingly converging with domestic laws (as in the 2018 Amazon case, above). Strategic climate change litigation, primarily against governments, is on the rise.<sup>48</sup> According to United Nations Environment Program (UNEP), as of 1 July 2020, 1550 climate change cases had been filed in 38 countries—almost double the number of cases in 2017.<sup>49</sup> Climate campaigners and rights-based non-governmental organizations are filing legal complaints against governments for failing to reduce emissions. Judiciaries are reviewing climate policies and holding governments accountable for climate targets, for example, in The Netherlands and France. Human rights have been important in a number of new cases. This trend and the recently recognized human right to a clean, healthy and sustainable environment, suggests an important role for national human rights institutions in reporting on climate issues. **Cross-discipline exchanges with human rights practitioners** who have long experience in using litigation for policy change could be valuable.<sup>50</sup>

However, the effectiveness of climate litigation as a check on decision-making and its ability to affect systemic change is still to be determined. In January 2021, a Dutch court ordered Shell's Nigerian subsidiary to compensate farmers for damage to their land caused by oil leaks and declared that Royal Dutch Shell had violated its duty of care. The case is the first time a Western court has ordered a multinational company to pay damages for environmental harm caused in a non-Western country. The case suggests a potential role for litigation in addressing deep-rooted structural inequalities and injustices and asymmetries of power. **It also draws attention to the responsibilities of transnational companies**, and the important role for the Business and Human Rights field in climate issues. Community-level legal empowerment initiatives

have achieved concrete remedies in hundreds of environmental justice struggles for indigenous and marginalized communities. **There appears to be significant space to explore how these community-level efforts can be strategically combined with other legal, political and social efforts to affect systemic change.** Namati, a leading legal empowerment organization, is one actor advancing this more holistic approach. The Escazú Agreement recognizes the critical role of engaging communities in environmental decision-making and provides a concrete framework within which to bring people together for strategic conversations around the climate crisis. As UNEP highlighted in its first global report on environmental rule of law, change cannot happen through punishment of violations alone, but requires a shared vision and commitment to sustainability, and changes in behaviour.<sup>51</sup>

The relationship between climate change and violent conflict is becoming increasingly important, although the link between the two is indirect, multi-dimensional and context-specific. Climate change does not cause violent conflict in and of itself, however it has been seen to multiply the risks known to contribute to insecurity and fuel violence.<sup>52</sup> Notions of justice and equity are increasingly recognized as important elements in natural resource distribution. Demands for these resources increase due to population growth and economic developments and can be sources of inter- and intra-communal conflict. Climate change and resource scarcity are impacting migration trends. Hundreds of millions of people are expected to be forcefully displaced by climate change by 2050.<sup>53</sup> A recent decision by the UN Human Rights Committee opened the possibility for future refugee claims based on the threat to life posed by the climate crisis.<sup>54</sup> Some efforts are underway to better understand the social and political characteristics of the effects of climate change, such as the UNDP-DPPA-UNEP Climate Security Mechanism. However, greater recognition is needed for the importance of applying a justice perspective to climate and security issues and ensuring that climate responses include addressing the legal, social, and economic realities of migration and displacement.<sup>55</sup>

## Section 6: Justice and gender



The COVID-19 crisis exposed, reinforced and aggravated **gender inequalities and injustices. Rooted in discriminatory social norms and power imbalances, these persistent structural inequalities are perpetuated and**

**passed on from one generation to another**, often in the guise of ‘untouchable’ social norms. UNDP’s 2020 Gender Social Norms Index revealed that 91 percent of men and 86 percent of women showed some form of clear bias against gender equality in the areas of politics, economics, education and physical integrity. This bias was greatest in the areas of life that fundamentally challenge power relations, such as the economy, politics and business.<sup>56</sup>

Women have, without doubt, been disproportionately affected by the COVID-19 pandemic across areas of formal and informal employment and unpaid care work, education, access to health services, migration and more. The ‘shadow pandemic’ of violence against women and girls has received significant attention as the numbers of reported cases have risen dramatically around the world. Femicide rates have soared. Yet as women’s justice needs continue to increase, their ability to access meaningful and fair justice services has only declined. While some innovative practices to support women’s access to legal justice mechanisms were adopted by governments, often in cooperation with civil society and the private sector, overall justice responses have been inadequate and massive justice gaps remain. Women who are already more vulnerable and subject to several forms of discrimination, such as LGBTIQ+ women and refugee women, face additional risks and further obstacles in accessing justice. Information regarding the experience of women seeking justice outside of formal court systems is limited.

The spotlight on the ‘shadow pandemic’ has provided an opportunity to advance legislative reforms that expand the protection of women and girls from violence, including in under-prioritized and under-legislated areas such as sextortion, a pervasive yet often hidden form of corruption that overwhelmingly targets women and girls.<sup>57</sup> Legislative reforms are also urgently required to address other long-standing economic and social injustices.<sup>58</sup> Policy reform to increase the participation of women in the labour market, for example, requires not only an analysis of women’s labour patterns and participation rates but also a rights-based, intersectional examination of the legal frameworks that directly and indirectly encourage or deter women from entering the

workforce. Reforming legislation and introducing legally enforceable incentives, such as parental leave or employer guaranteed child-care, are important steps but will be inadequate on their own. Law reform must also be backed by adequate budgets and political will for implementation. Identifying and addressing the informal and often implicit rules and social norms that prevent women’s full participation is also critical.<sup>59</sup>

At the onset of the pandemic only seven percent of global political leaders were women and women remained significantly underrepresented in COVID-19 planning and decision-making, according to the UNDP-UN Women COVID-19 Global Gender Response Tracker. When Dr. Ngozi Okonjo-Iweala assumed the role of director general of the World Trade Organization (WTO) in late 2020, she stated, “I hope it is a sign ... to women and girls worldwide, that the world is ready and women can do it!” (She also noted ruefully that, “women face a glass cliff: they are given leadership roles only when things are going really badly.”)<sup>60</sup> While women have been driving and leading many recent political and social movements, they remain seriously underrepresented in government decision-making processes and roles, including within the justice sector. Significant efforts are needed to enable more meaningful participation of women within political, justice and security institutions. However, gender inequality cannot be remedied purely through quotas. Interventions need to simultaneously adopt a range of other approaches to address both structural and attitudinal barriers within the institutions to create an enabling environment for gender equality.

**Gender inequalities are a key manifestation of horizontal inequalities that can heighten grievances, destabilize societies, and contribute to conflict and violence.** Conflict has a disproportionate impact on women and girls. In countries emerging from conflict, there can be opportunities to promote women’s leadership, enable access to justice and build momentum for fundamental women’s rights reform – as was seen in the early phase of the Sudanese Revolution in 2019. However, women are still largely excluded from post-conflict decision-making processes, including peace agreement negotiations. This is despite recognition within the UN’s Women, Peace and Security agenda of their crucial roles in transforming conflict.<sup>61</sup> The recognition of the importance of accountability for sexual and gender-based violence committed during conflict, and the establishment of special courts to deal with these cases, among other actions, is a positive evolution for justice for women. However, women should not be seen only as ‘victims’

of one type of physical harm. There is also a need to acknowledge and address their experiences of other forms of structural violence and inequality. Gender injustices should also not be separated from, or treated as less urgent, than wider human rights issues. Where justice interventions in post-conflict settings fail to address the economic, social and political injustices experienced by women there is a risk of perpetuating and reinforcing the very power imbalances and inequalities that may have contributed to the conflict in the first place. Ensuring women are actively engaged in the process of identifying their most pressing justice needs (for example property rights or legal identity) and in designing the solutions, such as structurally transformative reparations, is critical for advancing people-centred justice.

Increased analysis of gender perspectives, experiences of injustice, and the justice demand following conflict are important for informing people-centred approaches to justice programming around gender. At the same time, this raises critical questions around how people,

including youth, conceptualize notions of gender and power and gender roles within a community, and whether and how to transform social norms. There is wide recognition that gender equality cannot be achieved without engaging men and boys as allies in the process of addressing underlying sociocultural attitudes, as well as the systems and institutions that bolster gender inequalities. This positive trend continues to offer **an opportunity to rethink and strategically integrate issues of male involvement and responsibility into the justice agenda**. There has been an exponential growth in scholarly publications, research, and to a lesser extent the number of organizations recently looking at the justice needs and available protections for LGBTQI+ and gender non-conforming people, or for men and boys, especially in relation to domestic and other forms of sexual violence (including in conflict and non-conflict settings). However, these perspectives are far from mainstream, reflecting the extremely slow progress being made towards more nuanced discussions about gender, justice and vulnerability.

# Building just foundations for sustainable development and the 2030 Agenda

## Section 7: Harnessing the power of digital justice



Digitalization impacts all aspects of our lives. Technology is transforming how people interact with governments, with the media, with business and with each other. Indeed, advancements in digital technology are accelerating in

ways in which most people are unaware or cannot fully understand. The information (and misinformation) space is growing faster than governance systems can be developed. The growth of big tech companies and decreased pluralization of global platforms means a few companies have gained outsized influence and power over how people produce, share and access information. The spread of the online economy has fed the exponential growth in wealth accumulation and the level of its disparities. Technology can be an effective tool for enabling access to justice, increasing the transparency and accountability of justice systems, defending human rights and countering impunity. But it can also be used in ways that exacerbate injustices, violate rights and freedoms, fuel violence, and enable criminality. Identifying and understanding the potential and the risks is critical for fully realising the role of technology in advancing justice, human rights and the rule of law.

The pandemic accelerated the process of digitalization of justice systems around the world. From electronic case management systems and online dispute resolution to electronic document filing and virtual hearings, developing and developed countries alike quickly embraced, or scaled up, digital tools to enable

the delivery of justice. Many of these tools are here to stay, applauded for their ability to enhance access to justice and improve justice sector efficiency, transparency and accessibility. Technology has provided opportunities to overcome many systemic and individual barriers to justice. Automated processes can reduce discrimination against women or racial minorities. Digital tools can support victims of violence or abuse record evidence, report to police and access their rights. Technology assisted services can overcome linguistic, geographical or financial barriers to accessing justice for people in remote or rural areas. At the same time, the pandemic forced justice systems to review and update their contingency planning and consider the role of technology in maintaining access to justice even in periods of instability and crisis. Despite these and other opportunities, the use of technology and digital tools also has risks that need to be recognised and well understood within efforts to mobilise technology and digital justice for advancing meaningful system change.<sup>62</sup>

Digital justice cannot work for everyone when billions of people lack access to an internet connection.<sup>63</sup> Large parts of the world lack the basic infrastructure (including reliable electricity sources), equipment, and digital literacy to access the internet safely (for example, understanding how to protect personal information, virus protection, or avoiding online extortion). The economic fallout of the pandemic will most likely only exacerbate these deficiencies, while simultaneously increasing the demand for legal assistance for issues such as debt, employment disputes and eviction.

Digital responses can provide practical solutions for addressing individual and systemic exclusions and enabling greater access to justice. However, consideration must also be given to the potential risks and the differential impact of such solutions including how they may help or hurt the already vulnerable and marginalized.<sup>64</sup> Virtual hearings, for example, can enable speedier and less costly justice delivery, and increase rights protection, but they can also compound exclusion, perpetuate inequalities and deny the fair trial rights they are meant to protect.<sup>65</sup>

Digital and e-justice initiatives should ensure that digitalization is not seen as the end goal itself, but rather as one tool for achieving greater access to justice for all. Consideration must be given to whether new technologies are fit for purpose in responding to the actual problems within a justice system. In other words, are we framing the problems in a legal system to fit the available technology solutions, or vice versa? What are the potential risks and consequences for a tech solution-driven, rather than problem-driven approach? Small technological inputs can have large impacts, especially in systems with limited capacities and resources. However, the value of technology for advancing justice will be most greatly felt when it is employed not only as a solution to an immediate problem, but when it is used within a broader strategic approach to transform unjust processes and systems. The availability of **technology should not drive reform efforts, but instead be strategically used as an enabler of transformation.**

Surveillance and tracking capacities, from facial recognition to drone technologies, have expanded exponentially in recent years. These tools offer benefits for law enforcement but can impact on freedom of information, privacy, data protection and other rights.<sup>66</sup> An adequate regulatory framework is needed to safeguard these rights and freedoms and strengthen the legitimacy of the justice system (and the state). The pandemic placed a spotlight on this 'rights versus surveillance' debate as a number of democratic governments sought to use digital surveillance 'track and trace' technologies to trace individuals' movements and contacts to contain the spread of the coronavirus. These tools risk being exploited or misused by governments, law enforcement and other security agencies, as is already seen in many non-democratic countries where technology is being used to silence dissenters, shore up power and advance autocratic agendas. **There is a critical need for more**

### **analysis and open debate around the effects and implications of the use of these technologies for security, justice and rights.**

The rights vs surveillance debate is also not limited to the actions of governments. Today a small number of global tech companies dominate the way millions of people communicate. These companies are determining how freedom of expression is realized and what information is available, for who, and for how long. Personal data is now a commodity to be mined and exploited by governments and businesses for financial and other purposes. Efforts to hold these companies to account for how they control personal data are gaining momentum, through legislation, regulation and litigation, for example. Far more is needed to protect the rights of the generations of today and the future. Artificial intelligence poses a threat to fundamental freedoms, including equality and non-discrimination. Algorithmic discrimination risks are pervasive and multi-faceted. Where legal frameworks are inadequate to respond to these risks, algorithms can reproduce structural inequalities. Efforts to reduce the digital divide therefore cannot focus on access alone. **Risks that new technologies reinforce inequalities must be mitigated**, and measures should be taken to ensure the privacy and digital security of users and their data, which are essential for the exercise of their rights and freedoms.

As the world becomes more digitally dependent, the use of digital technology in conflict has also grown.<sup>67</sup> Social media platforms and communication apps have been used by parties to conflict to mobilize support, amplify their stories, gauge or manipulate public opinion, monitor individuals, or spread hate speech and disinformation. Considerably **more research is required into the disruptive role of digital technology in conflict, and its potential for peace.** Technology is also being used to seek justice for human rights atrocities beyond just its use to document human rights abuses. Significant efforts are underway to develop tools and methods that can strengthen the use of video and other digital information as evidence in international criminal and human rights investigations. The Berkeley Protocol on Digital Open Source Investigations and other developments in machine-learning for filtering open source evidence for use in court cases, for example, are positive trends in new tools and methods for advancing justice and accountability worldwide.<sup>68</sup>

## Section 8: Innovating for change



### Justice today is under pressure.

The scope and complexity of injustices is immense, challenging our conceptions of justice and the ability of justice systems to adequately respond. There is a need for a transformative approach

that addresses both the immediate justice needs and the structural inequalities and drivers of injustice. Innovation offers the key. Innovation has the potential to increase access to justice, enable more effective delivery of quality justice services, and support the transformation of justice systems to better deliver on the promise of equal justice for all. A process of developing solutions that value-add for people affected by a problem, innovation is about creating and testing new technologies, new processes and new approaches. The scope for innovation to advance people-centred justice exists at multiple levels—from the design and implementation of interventions, through to strengthening their transformative effect.

### INNOVATION IN PROGRAMME DESIGN:

Innovation is not only the creation of new technologies, but also the adoption of new ways of thinking. Viewing justice challenges through a systems-thinking lens offers an innovative way of unpacking the complexity of justice problems, articulating them in new and different ways, and expanding the range of potential solutions available to practitioners. Innovation is driven by adaptive principles—the notion of testing, learning, reflecting and adapting. The language of ‘adaptive management’ is becoming more common within justice programming, reflecting a desire by many international organizations and donors to find new approaches for affecting positive change within complex justice systems. Yet in practice, ‘adaptation’ appears to often be equated with ‘flexibility’ to shift project resources around when a new problem arises, rather than being understood as a systematic process of learning and adapting. Adaptive programming, systems thinking, behavioural insights, change management, and more, offer tools and approaches for (re)conceptualizing justice programming, rethinking interventions and creating new strategies for enabling change. Despite the vast amounts of research, experience and tools available across these disciplines, their still limited and *ad hoc* application in relation to rule of law and justice promotion means there are very few bespoke knowledge products, including trainings and practitioner guides, available to support justice practitioners in these endeavours. Investment in the development and roll-out of such materials will enable these potentially transformative approaches to be

applied, tested and lessons gathered that can inform current and future justice interventions.

### INNOVATION IN PROGRAMME

**IMPLEMENTATION:** At any one time, 1.5 billion people cannot resolve their justice problems.<sup>69</sup> Legal technology—from apps and chatbots, to artificial learning and predictive algorithms, to online dispute resolution and online courts—can be a powerful tool for enabling greater access to justice. Technology also offers opportunities for new digital processes and approaches, such as the linking and sharing of justice data across multiple government institutions, or linking a citizen’s advice website to other specialist sites (such as housing, legal assistance and social welfare sites) creating a one-stop online ‘shop’. Safeguards need to be in place to fully deliver on the promise of improved accessibility, efficiency, effectiveness and transparency of justice delivery, to protect people’s data, and to build trust and confidence in the system. Innovative programming requires understanding the political economy of the system and the actual or potential barriers—legal, institutional, behavioural and cultural—to the realisation of new ways of thinking and working. Innovation may require, for example, a supportive regulatory framework that enables new ways of working or recognises the role of non-traditional justice actors in the delivery of justice services, such as community paralegals, civil society organizations and private companies. Participatory design processes can help to ensure innovations are responding to actual justice needs and are appropriate for the people they are intended to help. Innovative tools and processes cannot, on their own, resolve the political and power conflicts and structural challenges that perpetuate inequalities and deny people access to justice, however, when used strategically they can support broader efforts towards transformative change.

### INNOVATION FOR TRANSFORMATIONAL

**CHANGE:** Innovation has a large transformative potential for justice institutions. Innovative digital tools and approaches can support collaboration and coherence across the justice system for improved data collection and analysis. This information is crucial for better understanding systemic problems and public legal needs, and devising strategic responses.<sup>70</sup> In Indonesia, an algorithm was developed to analyse hundreds of thousands of electronic court cases. The evidence produced about the types of legal problems, user experiences and justice outcomes directly informed people-centred policy decisions.<sup>71</sup> Other tools, such as legal needs surveys, have shed light on the types of ‘everyday’ justice problems people experience,

suggesting that people are around nine times more likely to have a civil or administrative justice problem than to need help from the criminal justice system. Such findings do not diminish the need for investment in the criminal justice system. However, they highlight the multidimensional nature of injustice and the need for serious investments in civil and administrative law systems too.<sup>72</sup> The new SDG indicator 16.3.3 is significant for enabling a broader measurement of justice, beyond the narrow scope of criminal justice and state institutions. Programmatic learning about 'what works', will be enhanced by indicators and measurements that focus not only on results, but on the things that we think promote actual change, such as capacities, relationships and processes. This requires greater investment in building practitioner capacity and exploring innovative approaches for data collection

and analysis. The COVID-19 pandemic sparked the development of an array of innovative data collection tools that could provide new opportunities for gathering real-time justice data. Innovation also allows for new ways to hold justice institutions accountable and to promote transparency and civic participation, such as the Open Justice trend.<sup>73</sup> The civil society-led, *India Justice Report 2020*, for example, tracks and compares the structural and financial capacity of each Indian state to deliver justice across four institutions (the police, judiciary, legal aid and prisons). By ranking the 25 states in terms of budget, human resources, infrastructure, workload and diversity, the report fosters inter-state competition and concretely informs policymaking.<sup>74</sup>

## Section 9: The accountability response



Inequalities and injustices pervade our societies on a massive scale. If left unaddressed, these challenges threaten to further destabilize communities and undermine development gains, provoke unrest and violence, perpetuate a decline

in the respect for human rights and the rule of law, and cement impunity. Today's justice demand is a call not only for the punishment of wrongs, but for the transformation of structures and institutions that enable and perpetuate injustices and inequalities. This broader understanding of justice requires a conceptualization of accountability that is more reflective of peoples' lived experiences of injustice, and their specific justice priorities. Classic forms of legal accountability are one important avenue for delivering justice. But justice is also about the ability of individuals to realize their potential in society, to be treated with dignity, and to be heard. Responding to these broader justice needs requires a more expansive approach to accountability that is open to new issues, new actors and new approaches for addressing injustice.

At the global level, protracted crises pose an acute challenge to international commitments to justice and accountability. However, even as geopolitics incapacitate the international community's ability to hold those responsible of gross human rights violations to account, other actors have found innovative ways to advance justice and accountability. Technological advancements have supported a growing global documentation movement to better capture, preserve

and prepare evidence of atrocities for future legal proceedings. Domestic courts are also being used to partially fill the accountability gap. Universal jurisdiction cases are being taken against high-level government officials accused of serious crimes under international law through domestic European courts, with some early success. Acceptance of universal jurisdiction as a concept and valid way of prosecuting human rights violations has relevance for other current and future conflicts. The establishment of UN-mandated investigative mechanisms in recent years are examples of innovative international approaches towards advancing transnational justice and accountability.<sup>75</sup>

The COVID-19 pandemic has also highlighted the importance of social accountability (actions by people and civil society organizations aimed at holding the State to account) as a complement to horizontal accountability (for example the separation of powers or human rights commissions) and vertical accountability (such as elections). From successful legal challenges to the excessive use of police force in Kenya, to forcing the revocation of decrees restricting freedom of expression in Bolivia, civil society organizations have played key roles in checking the abuse of state power. However, social accountability also requires positive actions and support by actors beyond civil society groups in order to fundamentally alter the power imbalances that enable inequalities and injustices. Those who benefit the most from unequal and unjust systems and institutions are not only political leaders. They are within powerful corporations, they are sitting inside the institutions themselves, they are within communities. Understanding

these power dynamics and the motivations and incentives for change, and acting to redistribute power and resources requires support and involvement from communities, all levels of government, the media, the

private sector, international organizations, donors and more. Broad and inclusive alliances are needed that draw on the full range of available legal and non-legal accountability mechanisms to effect change.

## Conclusion

Effectively tackling today's justice emergency requires acknowledging that many of the efforts undertaken by development actors in recent decades have been inadequate for addressing deep-rooted, systemic injustices and inequalities around the world. The COVID-19 pandemic painfully revealed this reality while simultaneously generating a new momentum for positive change. It is imperative that we harness this momentum, reflect and take lessons from our past efforts, and enable innovations in our thinking and

practice moving forward. It is critical that we better understand and are guided by the nature of injustice and impunity from the perspective of the people who suffer their consequences. We must acknowledge and better understand the complexities of the systems and institutions that sustain inequality and injustice. We need to design novel, integrated and more strategic responses that embrace justice and accountability as critical tools for shifting power relations, addressing inequalities, and building a new social contract.

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