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## Embracing the Transformative Potential of Justice for Peace and Development

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We are facing a pandemic of injustice. In recent times, millions of people have been taking to the streets around the world demanding an end to injustice, inequality and impunity. This demand is for the transformation of entire legal, political, economic and social structures and institutions that have long been indifferent to the social and economic inequalities and the injustices they seed. Responding to the justice demands and realizing the transformative potential of justice for sustained peace and development requires policy makers and practitioners to rethink traditional conceptions and approaches to justice, to embrace complexity and to have the courage to think and act differently in today's uncertain world. This brief explores three trends in justice and development and their collective potential to enable better analysis, understanding and ultimately transformation of unjust and unequal systems.

We are facing a justice crisis. Global trends in the quality of democracy, rule of law and the protection of rights and freedoms are in decline as autocratization deepens.<sup>2</sup> In 2021, in every region of the world, a majority of countries slipped backward or remained unchanged in their overall rule of law performance.<sup>3</sup> At the same time, the world has seen a dramatic surge in social mobilization in recent years, including some of the largest protests in world history.<sup>4</sup>

Across all continents, ordinary people are taking to the streets by the millions to demand justice, accountability, and social and economic development. In the face of extreme wealth, gender and racial inequality and poverty and injustice, people are expressing their frustration

and disillusionment with government processes and political actors that they do not believe are truly working for them.<sup>5</sup> The protests are a demand not only to have their needs heard, but for those in power to concretely respond. Yet the persistent upward trend of protests and numbers of protesters suggest that governments are failing in this response. Faced with growing social unrest, many governments have reacted by using laws, measures and physical force to quash unwelcomed public dissent. One study found that since 2006, over 60 percent of social protests have been met with repressive actions by the state, including surveillance, arrests, injuries and deaths.<sup>6</sup> In the absence of effective remedies, these responses will likely only fuel grievances, compound experiences and perceptions of injustice, and provoke more unrest.

While the protestors and their requests are diverse and lack homogeneity, there is a common thread: a demand for justice. From more fair and just legal systems, services and institutions, an end to corruption and impunity, to social, economic, racial, gender and environmental justice, people are demanding that their needs, expectations and interests, not those of the elite, are at the centre of policy and decision-making. The majority of protestors' demands also in accord with human rights and UN development goals, reinforcing a core message in the Agenda 2030 of the central position of justice for the achievement of peace, development and prosperity.<sup>7</sup> Fundamentally, justice demands call for a 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.

What implications does this complex and wide-ranging justice demand have for international development assistance now and in the future? Are our current approaches fit for purpose to achieve the transformation of unjust and unequal systems that is needed?

To realize the transformative potential of justice for enabling and sustaining peace and development, policy makers and practitioners need to rethink traditional conceptions and approaches to justice, to embrace the complexity of justice systems, and to have the courage to think and act differently in today's uncertain world.

A narrow understanding and approach to justice that restricts it to the realms of laws and legal institutions and the remit of judges and lawyers, may be adequate for addressing some symptoms of today's inequalities and injustice, but it will be ineffective in advancing efforts towards the systemic

and structural change that is being called for.<sup>8</sup> Past approaches to international rule of law and justice promotion have proven inadequate for enabling this transformative ambition.<sup>9</sup> Criticized for being overly state-centric and institutions-focused, and dominated by legal professionals working in siloes, these interventions have tended to approach change as a linear process, emphasizing short-term "quick wins" and reforms that tweak existing unjust systems in the absence of a strategy for fundamentally transforming them. While technical interventions guided by legal professionals certainly have a role to play in change efforts, by themselves they are inadequate for systemic transformation.

What is required is an approach that understands justice from the perspective of those who suffer injustice, that places justice at the heart of development, and that mobilizes a wider range of tools and approaches to enable justice and development practitioners to better analyse, understand and ultimately transform unjust and unequal systems. Several recent trends have significant potential to advance this transformative approach to justice: the emergence of the people-centred justice paradigm; the emphasis on the role of justice for conflict prevention; and the mobilization of complex and systems thinking approaches within development to enable more integrated, strategic and holistic responses to injustice and inequality.

This brief explores some of the challenges and opportunities emerging from these three trends, and considers their collective potential to accelerate the evolution of a more transformative approach to justice. The brief concludes with concrete recommendations for action by organizations, practitioners and overseas development aid (ODA) providers seeking to advance justice around the world.

## Trend 1: People-centred justice

An evidence-based, problem-solving approach that emphasizes the needs of the justice user over those of institutions has emerged from critiques of past approaches to international rule of law promotion. This is widely referred to today as "people-centred justice."<sup>10</sup> This approach advocates placing people and the outcomes they need at the centre of efforts to transform justice systems. It is a data-driven approach, based on understanding and responding to people's actual (not assumed) justice problems, and their experiences of seeking justice (often referred to as their "justice journey"). Studies reveal, for example, that the majority of people's

justice problems are civil or administrative, rather than criminal in nature and are related to economic and social disputes, such as debt, family, land and employment as well as access to public services.<sup>11</sup>

Data also show that people rarely resort to courts or government bodies to resolve their problems.<sup>12</sup> In other words, justice is not sought only through the formal court systems, but across a much wider array of actors and institutions. This includes community-level justice services, for example traditional and non-formal dispute mechanisms and community-oriented police, and non-legal professionals such as

public service providers, doctors and social workers. The approval of the sustainable development goal (SDG) indicator 16.3.3 in October 2019 represented a global endorsement of this people-centred approach and the need to respond to the totality of justiciable problems and justice journeys experienced by people, especially the most marginalized, vulnerable and those at risk of being left behind.<sup>13</sup> The indicator's focus on civil justice issues and both formal and informal dispute resolution mechanisms contrast and complement the original two SDG16 indicators that focus exclusively on the relationship of the state and the individual in criminal matters.

Understanding justice needs from the perspective of those who are affected by injustice is the first step in adopting a people-centred approach. Legal needs surveys have become a well-developed and recognized data collection tool for providing insights into people's "everyday" justice problems and their experiences of navigating justice systems.<sup>14</sup> These surveys are one important tool in the process of identifying and designing interventions that can enable more responsive and people-centred justice services, institutions and systems. However, by themselves, legal needs surveys cannot tell the full story of injustice or the needed "justice" response. They must be supplemented with other information and analysis to meaningfully inform the design of change initiatives.<sup>15</sup>

In order to understand people's justice problems and their justice seeking behaviour, it is vital to not only ask, "What are your legal and/or justice needs?" but also to unpack how people understand the concept of justice itself.<sup>16</sup> This conceptual understanding underpins, and is therefore crucial for understanding, how people perceive their justice or legal needs, and why, when and where they go to seek solutions.<sup>17</sup> This understanding requires us to look beyond the justice and legal sphere and to consider history, customs and tradition and religion, as well as politics, power and conflict dynamics.<sup>18</sup> Service provider administrative data, legal needs surveys and other studies (for example studies focused on specific target groups) must, therefore, be complemented by social and political analysis.

The changes desired from improved access to justice for all is not politically neutral. They affect power relations and vested interests, and therefore, "cannot be understood in isolation from the wider socio-political and cultural environment."<sup>19</sup> People-centred approaches to justice must be grounded in sound political economy, power and conflict analysis, and understandings of how transformative change actually happens. This broad analysis is key to understanding and realizing the full potential of

people-centred justice for addressing the imbalances of power and resource allocation that create and perpetuate systemic injustice and inequality.

Notably, the value of information generated through legal needs surveys and other people-centred data collection methodologies is not confined solely to the justice realm. This data can also inform, "understanding how peoples' justice issues arise, are experienced and affect a broad range of development priorities."<sup>20</sup> Legal needs surveys focus on identifying people's everyday justice problems. This focus on "everyday" justice underlines the reality that law is present in nearly every aspect of people's lives, including health, employment, land and housing, education and business. At the same time, by mapping people's justice journeys, it is clear that what amounts to a "fair" resolution of a dispute may not always be directly linked to the law, or even require a legal professional. As such, the present momentum around people-centred justice provides support to a broad approach that views justice not only as a set of institutions or a desired end state, but also as a set of principles and approaches for addressing people's immediate justice needs and the drivers of injustice in order to achieve socio-economic inclusion and advance individual and community well-being.<sup>21</sup>

The importance of the relationship between justice and sustainable development is emphasized in Agenda 2030 and initiatives such as the SDG16+ Forum and framework, which highlight the relationship between SDG16 and the other SDG goals. The idea that justice is fundamental to addressing development challenges the assumption that the responsibility for "justice" lies only with legal professionals or that justice promotion interventions rest solely within the realm of justice sector projects and programming. Indeed, it is not that people need justice services. They need the ends that justice services can bring about - a sense of fairness and dignity, the peaceful resolution of a dispute, the opportunity to earn a livelihood or to register their child in school.<sup>22</sup> In other words, justice requires the delivery of more effective, non-discriminatory and inclusive public policies, not only in the area of justice, but also in sectors such as health, housing, employment and education in order to tackle the challenges of poverty, injustice and exclusion. Yet traditionally international support to justice promotion has remained within rule of law and justice teams and has largely been separated from other sectors.<sup>23</sup>

A broad, people-centred approach to justice emphasizes the urgent need to overcome these siloes, not only to better deliver on people's immediate justice needs, but to engage a wider

array of cross-disciplinary perspectives, experiences and expertise in strategic conversation to better understand the drivers of injustice and innovate solutions towards systemic and structural change. It also requires practitioners to embrace new ways of thinking. As one early advocate for people-centred approaches to justice stated, “The upshot for [rule of law] development practitioners is that they need to think less like lawyers and more like agents of social

change. Conversely, development practitioners in other fields could benefit from thinking a bit more like lawyers and human rights advocates.”<sup>24</sup> This approach does not reduce the importance of the role of the law and justice professionals. Rather, it acknowledges that law and institutional reform cannot solve injustice alone. Injustice cuts across society; therefore, the pursuit of justice must be a whole-of-society endeavour.

## Trend 2: Justice and prevention

Injustices and inequalities are a direct assault on human dignity and, when unresolved, can cause harm to individuals, communities and societies. Oxfam has starkly reported that inequality in relation to access to quality health care, gender-based violence, the climate crisis and poverty, “contributes to the deaths of at least 21,300 people each day—or one person every four seconds.”<sup>25</sup> Injustice can lead to deteriorating social cohesion and erosion of the social contract, and can fuel violent conflict.<sup>26</sup> Conflicts are closely linked to horizontal inequalities, the concentration of political and economic power among a few and the (systematic political, economic, social) exclusion or discrimination of many. For example, notions of justice and equity are increasingly recognized as important elements in natural resource distribution.<sup>27</sup> Population growth, economic development and climate-change stressors can all exacerbate competition over scarce resources. When coupled with horizontal inequalities and perceptions or experiences of injustice, they can be sources of inter- and intra-communal conflict. Political leaders and narratives can foment animosity that can trigger violence.<sup>28</sup>

The role of justice in addressing inequalities and exclusion both to prevent and resolve violent conflict has gained recognition in the global policy sphere in recent years.<sup>29</sup> Justice and rule of law support is now commonplace in programming in fragile, conflict-affected and transitioning contexts, for example as a component of peace operations, stabilization interventions, the triple nexus (humanitarian-development-peace) approach and One UN integration initiatives.<sup>30</sup> However, justice interventions in conflict-affected settings still predominantly focus on top-down efforts at strengthening formal criminal justice institutions.<sup>31</sup> Still too little attention is given to other important conflict prevention areas, such as land rights, or to strengthening local level mechanisms for resolving people’s “everyday” disputes before they turn violent.<sup>32</sup> For example, where justice interventions in conflict-affected 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 co-designing the solutions, such as structurally transformative reparations, is critical for advancing justice in a way that also enables structural socio-economic change.<sup>33</sup>

Lessons from countries, such as Rwanda, Sierra Leone and South Africa suggest that providing access to socio-economic, legal and political justice, and including institutional reform that enables equitable and inclusive distribution of justice and development opportunities and addresses drivers of conflict, must be prioritized, alongside the delivery of justice for mass atrocities, if a society is to truly transform.<sup>34</sup> These lessons have supported an evolution in thinking and approach to transitional justice 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.<sup>35</sup>

The relationship between justice and horizontal inequalities as determinants of risk of violent conflict challenges a narrow conception of justice. Instead, it expands the justice focus from individual legal needs or acts of violence to also include the needs of groups or communities. Injustices that enable fragility and insecurity manifest around issues, such as land use, access to water, extractives, infrastructure and public services. These structural issues affect entire communities, and justice practitioners cannot resolve them alone. They need to build stronger linkages with the array of other development sectors and actors (e.g. livelihoods, education and public health) to jointly identify and mobilize the “leverage points” that address the causes of systemic injustice and to enable people to live safe and prosperous

lives. Legal empowerment is a people-centred approach that has yielded a lot of positive work in supporting vulnerable and marginalized communities to challenge structural injustices (for example in matters of the environment, health and citizenship). However, there is often a disconnect between these locally specific interventions and national-level efforts to reform laws, systems, institutions. For example, regulatory reform processes are carried out in isolation or siloed from community-based interventions focused on access to justice or issue-based disputes such as land usage.<sup>36</sup> However, there is a clear growing movement within the legal empowerment field towards exploring how to link those “grassroots” efforts more strategically with other legal, political, social efforts to effect systemic change.<sup>37</sup>

Overall greater consideration and support should 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 for 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 grassroots evidence of how policies and laws impact 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>38</sup>

### Trend 3: Transforming complex systems

The “transformative” ambition of Agenda 2030 is currently being widely echoed across justice and development discourse. Transformative change is about changing systems and involves multiple actors at multiple levels across society. It is a strategic process that requires taking the entire systemic context into consideration when tackling the causes of injustices and inequalities, not merely their symptoms. Transformative change is more than making adjustments that allow the usual state of affairs to continue (for example activities that raise people’s awareness of their rights). It goes beyond reform, which is a process of addressing a problem and creating a new way of working that does not fundamentally change the system, such as the introduction of digital technologies to improve court system efficiency. Transformative change fundamentally disrupts the status quo, builds new attitudes and values, and allows more just systems to emerge.

Transforming systems that enable and perpetuate injustice and inequality require a broad understanding of justice and the mobilization of a range of actors, tools and approaches to enable change. Transformation requires us to place justice interventions clearly within a broader, multi-disciplinary and strategic process for complex systems transformation. One approach that has potential for facilitating this process is systems thinking. Systems thinking is both a lens and a set of tools that can support effective problem solving in a complex system.<sup>39</sup> It is not a panacea, but it does represent one more tool for understanding complex systems, co-designing solutions, and monitoring, reflecting, learning and adapting. It encourages a

multi-disciplinary and multi-pronged approach to problem-solving. enabling justice, security, human rights, development and other stakeholders to come together to better understand an issue and to align a shared strategy for change. A systems thinking 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.<sup>40</sup>

Systems thinking has been increasingly applied within the development field, yet its use by justice practitioners and within the context of justice system transformation is still underdeveloped.<sup>41</sup> Justice systems are complex social systems comprised of multiple components all interacting in ways that cannot be predicted or controlled. Justice systems are often characterized by legal pluralism, and involve an array of state and non-state institutions, organizations and individuals carrying out the various functions of a justice system, including justice delivery, policy making, management, and oversight.<sup>42</sup>

Defining a justice system as a complex social system has a number of consequences for efforts to transform it. First, complex social systems eschew the linear, technical, cause-and-effect approaches that typify the traditional approaches to international justice and rule of law promotion. It is for this reason that many efforts to reform formal justice systems in the past have failed to deliver the sustained change desired and sometimes interventions have done more harm than good.<sup>43</sup>

Second, the system needs to be viewed not as a series of discreet parts operating in isolation (the judiciary, the prisons, the police, etc.) but as a system of relationships. A systems thinking approach focuses attention on the interactions and dynamics of the system as a whole, rather than on its individual parts.<sup>44</sup> This encourages a multi-disciplinary and multi-pronged approach to problem-solving that does not negate the need for technical interventions, but which places that expertise within a larger whole, enabling the technical “tools” to be used strategically to advance larger transformative goals within integrated programmes.

Third, today there is a clear acknowledgement of the inherently political nature of justice.<sup>45</sup> Interventions that seek to challenge and transform systems and structures of inequality, exclusion and discrimination interfere with the foundations of power and challenge the interests of established social and political groupings within the government and across society. These power relations are often deeply embedded in institutional structures. Understanding the trajectories of institutional and political change that result in accepted constraints on the exercise of power by governing elites and other powerful actors is critical for undertaking transformative change.<sup>46</sup>

A systems thinking approach has clear overlaps and linkages with other approaches that may be somewhat more familiar to justice practitioners today. Recognition of the complex and political nature of justice has led to justice programming increasingly working in more politically-informed and adaptive ways, for example, through approaches such as Problem Driven Iterative Adaption (PDIA), Thinking and Working Politically (TWP) or Doing Development Differently (DDD).<sup>47</sup> 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 discourse still appears to have occurred faster than the shift in behaviour.

Despite the dramatic increase in the use of political economy analysis, many justice programmes still seem to revert to a state of “functional denial.”<sup>48</sup> The political complexity of the situation is well-identified, and yet despite this, programming falls back on (predominantly state-focused) conventional justice strategies and tools, such as law reform, judicial education, building and digitizing courts, strengthening bar associations, and providing legal aid. Adaptive approaches are not yet mainstreamed and evidence of what works in adaptive programming is still ad hoc and scattered.<sup>49</sup> Despite stated commitments to learning, many organizations lack a culture that endorses failure as a legitimate and critical part of the learning process. There is a lack of expertise across practitioners on how to do adaptive work and how to problem-solve with complex systems. Funding and reporting requirements rarely enable meaningful adaptive and iterative approaches, as organizations feel pressure to deliver “quick wins” and report successes against unrealistic goals.

The broad justice demand requires harnessing the full array of tools and approaches available to justice and development practitioners in order to better understand and engage the complex social systems that enable injustice and inequality. Justice practitioners and projects cannot enable transformation in isolation. The transformative potential of justice can only be realized through engagement with a multiplicity of cross-disciplinary actors in strategic collaboration in order to identify, design and implement interventions collectively aimed at transformative change.

## Recommendations

Today’s justice demand requires an urgent response. Conventional approaches to justice and rule of law promotion have fallen short in addressing past, present and future injustices. There is a need to rethink justice and to embrace new ways of understanding and addressing injustice in a way that can enable transformative change. In practice there are a number of concrete steps that national and international organizations, practitioners and ODA providers can take to accelerate the evolution of this more transformative approach to justice.

### Leveraging data and analysis

- Organizations need to invest in building the capacities and capabilities of practitioners (not only monitoring and evaluation personnel) for undertaking data collection and analysis that can inform real-time strategic programming decisions.
- Organizations and ODA providers should support the design of monitoring, evaluation and learning (MEL) systems and frameworks that focus not only on the achievement of (realistic)

results, but on measuring the things that we believe sustain change, such as capacities, relationships and processes.

- Practitioners should harness tools and approaches that enable continued political analysis in the design stage and throughout implementation to enable rapid politically-informed programming decisions.<sup>50</sup>

### Strategic integration and collaboration

- Organizations need to enable staff to work in integrated, multidisciplinary teams that bring together thematic expertise with strategic management, critical thinking and other necessary skills for successful project design and implementation.
- Organizations and practitioners should adopt programme implementation modalities, such as portfolio-based approaches, that enable a range of practitioners across disciplines to strategically collaborate in response to a complex challenge.<sup>51</sup>
- Organizations and practitioners should adopt tools and approaches such as systems thinking that facilitate a range of (internal and external) stakeholders to come together around a shared problem and co-create responses.

### Enabling innovative and adaptive approaches

- ODA providers and organizations need to enable adaptive management approaches by co-designing adaptive logframes and contracts that include flexible funding modalities, adequately resourcing MEL systems and context analysis during the programme design stage, building in learning events throughout programme implementation, and ensuring regular communication and reporting on learning from both failures and successes.
- Organizations should provide coaching and training to managers and team leaders to help embed an organizational learning culture where failure is a recognized and necessary part of the learning process for accountable programme adjustments.
- Organizations should support the development of bespoke trainings and practical guides to enable justice and development practitioners to better understand and systematically apply learning and adaptive management approaches, to facilitate effective change processes, and to utilize systems thinking tools and approaches in programme design and implementation.

## Endnotes

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