

# RULE OF LAW

## Support to Conflict Prevention and Sustaining Peace in Afghanistan

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# I. Introduction

*This case study was completed in March 2021. There have been substantial changes to the rule of law landscape of Afghanistan since that time. The following reflects analysis of the timeframe under review and the UN's during that period.*

After four decades of protracted conflicts and extensive military interventions involving the US and others, Afghanistan remains one of the most conflict-stricken and fragile settings in the world. Large parts of the country remain under Taliban control, many others are contested, and dozens of violent extremist groups, including the Islamic State, are operating in the country.<sup>1</sup> Terrorist attacks are an almost daily reality, poverty is widespread, governance is weak and corruption endemic. Massive underdevelopment and continuously high levels of violence have left the country extremely dependent on foreign aid, with an estimated 80 per cent of the national budget coming from donors.<sup>2</sup> While the nature of international involvement in Afghanistan has been dominated by securitized responses of the US and NATO partners, the international community, including the UN, has underlined that the root causes of the conflict also need to be addressed via strong rule of law support. Strengthening national capacities to

build effective, accessible, and fair justice and law enforcement systems is key for a more stable Afghan future, especially in light of the troop withdrawal as part of the recent US-Taliban agreement.

This case study explores the UN's rule of law work and impact in Afghanistan, examining the activities of the special political mission the UN Assistance Mission in Afghanistan (UNAMA), UNDP, UN Office on Drugs and Crime (UNODC), UN Women, and others. Focusing on the period between 2017 and early 2021, the study asks: *How has the UN's rule of law support contributed to lowering the risks of violent conflict in Afghanistan?* The goal is to examine current rule of law approaches and identify specific evidence of impact, i.e. how these approaches have contributed to conflict prevention or a reduction in risks.

The paper is based on an extensive literature review and 17 expert interviews with researchers and UN officials both in New York and

Afghanistan. It is structured in five parts: (1) a background on the conflict and the challenges of the rule of law system in Afghanistan; (2) an overview of the UN's rule of law mandate and

actors in Afghanistan; (3) an analysis of specific approaches and evidence of impact; (4) mediating factors that either enable or inhibit impact; and (5) lessons and recommendations.

## A note on scope and methodology

Rule of law is defined by the UN as a “principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.”<sup>3</sup> Traditionally, this has resulted in a focus on police, justice, and corrections as the primary vehicles for the UN's rule of law engagement. However, we recognize that other areas of the UN's work may also contribute to the core goals of the UN's rule of law work, including efforts to combat impunity, build accountability, advance transitional justice, limit corruption, and address conflict-related sexual violence, amongst others. This project does not adopt a strict definition of rule of law but is instead largely guided by interviews with experts in a range of field settings, asking them what they consider to be the key rule of law interventions by the UN and its partners.

In terms of the scope of these studies, it is important to highlight that this is not a comprehensive assessment of the UN's work in a given setting. It does not try to capture every rule of law programme, but instead reflects the views of experts about the most impactful, relevant,

and effective rule of law interventions in the given timeframe. This expert-driven approach to cases studies is to ensure that they feed meaningful cross-cutting policy recommendations, which is the core purpose of this project.

In terms of methodology, we note that the UN's rule of law work takes place alongside the interventions of a range of actors, including national leaders, bilateral donors, international non-governmental organization (INGOs), and local organizations. While it is our goal to identify evidence of the UN's impact, often the UN is a small player amongst these, supporting and coordinating rather than leading on programming. Given these limited supporting roles and the large number of other intervening factors, it can be difficult to isolate the UN's impact via its rule of law interventions. Rather than speak in direct causal terms about impact, we contextualize the UN's *contribution*, alongside the interventions of others, to the broader goals of risk reduction.<sup>4</sup> Where the precise impact is impossible to ascertain, or where the UN has not generated evidence that directly supports causal findings about impact, we rely on a broad set of expert consultations to help us identify good practice and lessons that could be applied beyond a single country context.<sup>5</sup>

## 2. The Afghan context

Since the Soviet-Afghan War in 1979, Afghanistan has not achieved sustained peace. Periods of civil war between armed groups and the Government, backed by different constellations of foreign powers, eventually led to the Taliban seizing power in 1996. They were expelled from power five years later, when the US invaded the country after 9/11 and at the time largely defeated the Taliban and their Al-Qaeda allies. Authorized by the UN Security Council, the International Security Assistance Force (ISAF), a coalition of 40 States under NATO leadership, was deployed to help extend the authority of the Afghan State. By 2004, however, the Taliban had again launched an insurgency, waging asymmetric warfare in the following years (including increasing violence against civilians) and regaining a foothold in many rural areas across the country.<sup>6</sup> ISAF responded with increased troop numbers and counter-insurgency operations, and began to gradually draw down its forces after the US killed Osama bin Laden in 2011. In 2015, ISAF was succeeded by the NATO-led Resolute Support Mission.

In February 2020, the US signed an Agreement for Bringing Peace to Afghanistan with the Taliban and a joint declaration with the Islamic Republic of Afghanistan. The documents specify interconnected, conditional steps for counter-terrorism guarantees, foreign troops withdrawal, intra-Afghan negotiations, and a ceasefire. The envisaged actions are to result in a “sovereign Afghanistan at peace with itself and neighbours” under an “Afghan Islamic government.” After delays resulting from a contentious

prisoner swap between the Taliban and the Afghan Government, the intra-Afghan peace negotiations started in September 2020 in Doha.<sup>7</sup>

Despite the start of the peace negotiations, violence levels in Afghanistan remain extraordinarily high to the day of writing, including not only violent attacks by the Taliban and other conflict parties, but also high numbers of suicide bombings by various armed groups. The Islamic State Khorasan (IS-K) has a presence in some districts in the East, while Al-Qaeda and around 20 foreign militant groups are also active in the country, some with ties to the Taliban.<sup>8</sup>

On the local level, a key driver of instability has been the issue of land rights. Competition over land has increased since the early 2000s, when conflict-driven displacement as well as population growth and urbanization caused massive shifts in settlement patterns. Land ownership is barely formalized in Afghanistan, and traditional conflict resolution mechanisms have been weakened in the decades of conflict, leading to increasing resort to violence to settle disputes.<sup>9</sup>

Decades of violent conflict on various levels and the discontinuity of regimes have left the country in dire humanitarian conditions and extreme underdevelopment. Since 2009 alone, over 100,000 civilians have been killed or injured and millions have been displaced.<sup>10</sup> The conflict, as well as natural disasters and the COVID-19 pandemic, have left over 18.4 million people in need of humanitarian assistance in 2021. As an extremely fragile State,

Afghanistan ranks near the bottom of established governance and development indicators, suffering from massive levels of poverty and unemployment.<sup>11</sup> Of a population of 38 million, more than half live below the poverty line (with numbers expected to deteriorate due to COVID-19), and just as many are illiterate.<sup>12</sup> Given Afghanistan's extremely high gender inequality, women and girls are particularly affected by the realities and socioeconomic consequences of the conflict, falling victim to high rates of sexual and gender-based violence and having very limited access to education and economic opportunities.<sup>13</sup>

Amidst the past and ongoing conflicts, Afghanistan's economy has been shaped by a massive narcotics trade and other illicit activities such as mineral and gemstone trafficking.<sup>14</sup> According to estimates, the opium-driven drug trade is equivalent to over ten per cent of Afghanistan's official GDP.<sup>15</sup> The country's illicit economy is a major driver of instability, financing the operations of the Taliban and other groups and contributing to the country's massive corruption problem (Afghanistan ranks 165th of 180 countries on Transparency International's *Corruption Perceptions Index 2020*).<sup>16</sup> Despite this bleak picture, the international community, including the UN, has achieved notable progress in many areas (e.g. literacy rates and anti-corruption), some of which will be explored in detail in section 4.

Still, deep-seated corruption represents one of the biggest challenges for a functioning State, in particular for the rule of law, as it has eroded the population's trust in the national Government and the justice system.<sup>17</sup> According to a recent survey of the World Justice Project, more than half of the population distrust the criminal courts, with experts citing high levels of corruption, a lack of judicial independence, and overall weak institutional capacities as the main challenges.<sup>18</sup> Further, the Taliban are competing against the State with their own justice delivery mechanisms, discrediting the national judiciary and further undermining public trust in the Government. The State's rule of law capacities have been eroded in the decades of violent conflict, and the discontinuity of political regimes led to a "patchwork of differing and

overlapping laws."<sup>19</sup> While the legal framework has significantly improved in recent years (see section 4), implementation of reforms is still lagging. Broadly, Afghanistan is influenced by different legal systems: the formal justice system, local customary practices, and Sharia law (in Taliban-controlled areas, but also more broadly as referenced in the Constitution).<sup>20</sup> As the formal justice institutions are mostly inaccessible for large segments of society (especially in rural areas, and especially for women in Afghanistan's highly patriarchal society), traditional dispute resolution mechanisms play an important role in the country and are used by almost half of the population.<sup>21</sup> This comes with challenges for women and other vulnerable populations, whose needs are significantly undermined as parts of the informal systems and Islamic law clash with international human rights standards.<sup>22</sup>

A strong culture of impunity for (war) criminals plays a particularly important role in the country's susceptibility to conflict. A majority of perpetrators of human rights violations from all conflict parties have never been held accountable for their actions, eroding the population's trust in their State, emboldening perpetrators, protracting the conflict and undermining efforts to strengthen the rule of law.<sup>23</sup> Second, the justice system has so far failed to comprehensively address the conflict-ridden issue of land rights, especially given the limited reach, capacity, and reputation issues of formal institutions and because informal systems which historically used to mediate have not been systematically utilized.<sup>24</sup> Third, in recent years there has been a rise in violent attacks against public officials by the Taliban and Islamic State, such as the one early 2021 in Kabul during which two women judges assigned as researchers at the Supreme Court were assassinated on their way to work.<sup>25</sup> The targeting of rule of law actors, compounded by the failure to ensure a secure environment for justice personnel, has severely undermined the capacity of the system to act independently, impartially and effectively resulting in fear, demoralization and the disruption and destruction of files. Despite the huge challenges, there has been some progress over the past decade in terms of building the capacity of the justice sector, which will be discussed in section 4.



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Apart from the problems in the national judiciary, the police and corrections systems suffer from chronic shortfalls in capacity as well. The conflict led to a total collapse of public order, eroding the capacities of already weak national institutions. Police stations across the country are severely under-equipped, while in some areas there is no police presence at all.<sup>26</sup> The Afghan National Police (ANP) tends to be actively engaged in combat rather than law enforcement functions; its heavy militarization has so far hindered efforts

towards a comprehensive community policing approach.<sup>27</sup> In addition, the Ministry of Interior Affairs suffers from internal power struggles and a high turnover of staff. Lastly, prisons in Afghanistan are dramatically overcrowded and mismanaged with occupancy rates over three times higher than actual capacity, and notoriously inhumane conditions for inmates and pre-trial detainees, including torture and other human rights abuses.<sup>28</sup>

# 3. The UN's rule of law mandate and actors in Afghanistan

Drawing on the above context, this section lays out the structure of the UN's rule of law involvement and mandates. With regard to rule of law support, the UN is a relatively small player in Afghanistan due to the heavily donor-driven nature of rule of law and other recovery work, as well as the large presence of foreign troops in-country. Responsibilities in this area have come to lie predominantly

with bilateral donors who used to serve as lead nations for certain sectors.<sup>29</sup> Despite comparatively limited international presence on the ground, the UN is providing multifaceted rule of law support to Afghanistan, including via its special political mission, the United Nations Assistance Mission in Afghanistan (UNAMA).

## UNAMA

Established in 2002 by the Security Council to fulfil the UN's tasks in the Bonn Agreement (which details the arrangements to rebuild Afghanistan), UNAMA is a political mission mandated to: (a) lead and coordinate the international civilian efforts, in cooperation with the Government of Afghanistan; (b) provide outreach and good offices in support of an Afghan-led and owned peace process; (c) support Afghan authorities in their

efforts to organize elections and strengthen the electoral system; (d) support regional cooperation; and (e) monitor and assist in the implementation of human rights. Headquartered in Kabul, the Mission's presence includes seven regional offices, eleven field offices, and two liaison offices in Pakistan and Iran. It employs over 1,200 staff, most of which are Afghan nationals.<sup>30</sup>

## Rule of Law Team

The window of inquiry of this case study starts in 2017 – with the caveat that, in that year, the UNAMA's rule of law capacity was significantly curtailed after a strategic review led to the prioritization of support for the peace process.<sup>31</sup> UNAMA's Police Advisory Unit was phased out, and the Rule of Law Unit was downsized from 27 to

six staff, its presence retracted from the field offices to Kabul only, and was henceforth tasked with providing normative advice on rule of law, e.g. through advising the Government on draft laws and strategies and working on codifying the relationship between the formal and the informal justice system.<sup>32</sup>

Having identified anti-corruption as one of the rule of law focus areas, UNAMA's Rule of Law Team, with support of the Government, has published annual reports since 2017, seeking to support Afghanistan in its fight against corruption by raising awareness of areas of progress and providing recommendations for the Government and the international community. The team also supported the establishment of the Anti-Corruption Justice Centre (ACJC) – a specialized court and dedicated team of prosecutors focusing on the most serious cases of corruption and the newly established Anti-Corruption Commission (see section 4 for a detailed analysis of this work and its impact).

The Rule of Law Team has for many years played a key coordination, convening and analysis role in the rule of law sector. In line with UNAMA's mandate to coordinate international support, the Rule of Law Team has worked closely with other international actors, in particular as chair of the Board of Donors, and regularly convenes stakeholder meetings.<sup>33</sup> The team has also been a key source of information, analysis and policy coherence in the justice sector on issues such as corruption, criminal justice, law reform, and land issues. On land issues, for example, through its series of reports, the Rule of Law Team highlighted the endemic nature of "land grabbing" as a driver of instability, advocating for the commitment of the authorities to criminalize land grabbing and illegal land distribution.

## Human Rights Unit

A main pillar of UNAMA's work, and one that is relevant to the broader rule of law agenda, is the work on human rights. As an integrated mission, UNAMA's Human Rights Unit consists of OHCHR staff, with personnel working on five priority areas: protection of civilians in armed conflict; children and armed conflict; women's rights and the elimination of violence against women (EVAW); treatment of detainees; and support for transitional justice.<sup>34</sup> Similar to the

Rule of Law Team, the Human Rights Unit has a strong advocacy and reporting mandate, most notably via its quarterly reports on civilian casualties, where UNAMA/OHCHR is investigating human rights violations by all conflict parties and recommending corrective action. Further, UNAMA has been providing mentoring and technical advice for the Afghanistan Independent Human Rights Commission (AIHRC), the main lead on transitional justice.<sup>35</sup>

## UNDP

UNDP's country office in Afghanistan is currently undergoing a significant restructuring, including the downsizing of its rule of law portfolio, following a strategic review and the current transition to a new country programme.<sup>36</sup> In this transitional period, the capacity dedicated to rule of law issues has been cut from over 20 to a very limited number of staff at the time of writing. Amidst these changes, UNDP's support to the police sector remains a core rule of law function, provided via a number of initiatives: the management of the police payroll as an element of the multi-partner trust fund LOTFA

(Law and Order Trust Fund for Afghanistan);<sup>37</sup> support for the Ministry of Interior in its COVID-19 response to protect police personnel;<sup>38</sup> and efforts to enhance community policing.<sup>39</sup> In the justice sector, UNDP has been working towards improving citizens' access to justice and legal aid services, as well as building the capacity of special anti-corruption institutions (see section 4). As the process of turning LOTFA into a multi-partner trust fund has not materialized, as of the time of writing, UNDP is without justice capacity and funding.<sup>40</sup>

## UN Women

UN Women's work in Afghanistan is structured under various thematic pillars, one of which directly relates to rule of law support and risk reduction: the elimination of violence against women (EVAW).<sup>41</sup> Under this rubric, UN Women has been providing shelter and various services

to survivors of sexual violence, including help with legal aid and referring cases to the courts. UN Women is also setting up programming on the prevention of violence against women via community-based approaches (see section 4).<sup>42</sup>

## UNODC

Since 2015, UNODC has had a relatively small presence in Afghanistan and is mostly focused on counter-narcotics and anti-money laundering work. Entirely dependent on donors and their priorities, it has struggled to maintain robust funding for important rule of law work,

most notably on the criminal justice and anti-corruption front, where engagement is currently limited to one international mentor supporting Afghanistan's Anti-Corruption Justice Centre (ACJC).<sup>43</sup>



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## 4. Rule of law impact

This section explores the guiding question of this case study: How is the UN's rule of law work contributing to conflict prevention? While assessing impact towards conflict prevention is a challenging endeavour in and of itself, the Afghanistan case comes with a particular set of caveats that is important to note at the outset. First, given the ongoing conflict and the continuously alarming violence levels in Afghanistan, the term 'conflict prevention' needs to be relativized. Instead, this assessment will focus more broadly on the UN's contribution to reducing risks where feasible in this challenging environment. Second, the window of inquiry of this case study starts in 2017, the same year that UNAMA's rule of law mandate in Afghanistan was significantly curtailed and reduced to providing normative advice. While some regard this shift as having empowered the remaining rule of law team and left the unit with a fairly high standing vis-à-vis

the Government,<sup>44</sup> the limitations in capacity and work scope do affect the UN's impact considerably, leaving it a relatively small player in Afghanistan when considering human and financial resources. In line with the previous note about assessing *contribution* rather than causal impact, the UN is working alongside other, more influential players (e.g. the US through INL and USAID, the EU through EUPOL, or Germany through GIZ). Thirdly, the timing of the assessment is complicated by the recent peace process still in its infancy at the time of writing, with many aspects of future rule of law arrangements still unclear (e.g. to what extent will elements of the informal justice system be incorporated into the formal one?). To some degree, UN support and impact hinges on these outcomes, so that the following assessment provides a snapshot of rule of law impact under these 'interim' conditions.

### Strengthening legal frameworks

Afghanistan's strong culture of impunity for human rights abusers counts as a main driver of the conflict and one of the biggest hindrances of progress in the rule of law area.<sup>45</sup> Together with rampant corruption levels, it continues to undermine Afghans' trust in their Government and stability for the country more broadly. As a basis for strengthened accountability, it is necessary to bolster legal and strategic frameworks in Afghanistan and ensure compliance with international standards, which the UN has been working towards for many years.

A milestone in the UN's support to the formal justice system was the adoption of a new penal code in 2017, marking the first time that Afghanistan has a comprehensive criminal code. UNAMA, together with other agencies and international partners, helped draft the code, and since it came into force in 2018 has been training Afghan justice actors on its provisions.<sup>46</sup> The new code complies with international criminal justice and human rights standards, including the UN Convention against Corruption and the International Criminal Court (ICC)'s Rome Statute that covers war crimes, genocide, and crimes against humanity. For the first

time, war crimes are codified in Afghanistan, which provides a crucial legal basis for trying perpetrators from all sides of the conflict.<sup>47</sup> The code also addresses other key conflict drivers, in particular the issue of land rights by criminalizing land grabs.<sup>48</sup> Other key human rights violations were criminalized as well, including *Bacha Bazi* (a practice involving child sexual abuse) and torture.<sup>49</sup>

While the new framework and the codification of conflict-related crimes constitutes a major step towards fighting impunity, major challenges around human rights and accountability issues persist. The code, for instance, still includes the death penalty,<sup>50</sup> and is only applicable for crimes since 2018, neglecting decades of gross human rights violations by all conflict parties.<sup>51</sup> It does, therefore, not seem to lever out the deep-rooted culture of impunity that was solidified in 2008 with the passage of a near-blanket amnesty law. Also given that, so far, no war crime case has been prosecuted under the new criminal code, its actual accountability impact is not yet tangible.<sup>52</sup>

The UN has also advised the Afghan Government on other key legislation over the years, some of which will be discussed in later sections.<sup>53</sup> Before 2017, and therefore beyond the scope of this study, UNAMA's Rule of Law Team produced reports on different rule of law issues (including criminal justice, land reform, and water rights) to contribute to broader justice reform. According to experts interviewed for this study, a comprehensive justice sector reform strategy was never reached, and given the current peace negotiations, will now also depend on those outcomes.<sup>54</sup>

The biggest question concerning the current and future legal architecture revolves around the inclusion of the informal sector given its prevalence in Afghanistan (and the prevalence of distrust in the formal sector), and around the question of whether the Taliban will accept the current legal framework. In its advisory capacity, UNAMA helped draft legislation detailing how traditional dispute resolution mechanisms can be weaved into the formal justice system; at the time of this writing, the draft is pending in the legislative department of the Ministry of Justice.<sup>55</sup> Stakeholders working on these issues are faced with difficult questions on how to unify the formal and informal system in a way that maximizes peoples' trust and minimizes conflict risks, and how to ensure that the judiciary still reflects human rights standards (including women's rights), which can conflict with some customary practices and especially Sharia law in Taliban-administered areas.<sup>56</sup>

Amidst the peace process and the developments it may bring to the rule of law area in the future, the UN's support to the date of writing has contributed to a significant improvement and harmonization of the legislative framework. In its advisory function, the UN has helped set a crucial legal basis for the fight against impunity as a key conflict driver, first and foremost through the first ever codification of war crimes under the new penal code. Still, the implementation of reforms is lagging and the culture of impunity for human rights abusers in Afghanistan is strong and may get reinforced as reconciliation measures between the Taliban and the Government come with prisoner releases and amnesties.<sup>57</sup> The next sections explore further ways in which the UN seeks to strengthen the justice system to enhance the accountability of perpetrators.

## Bolstering justice services and access to justice

Afghanistan's judiciary was dismantled during the decades-long conflict, leading to a severe shortfall in capacity that – together with endemic corruption – has undermined public trust in the system. Across all interviews conducted for this study, this lack of trust was cited as the number one problem of Afghanistan's rule of law and a major driver of instability, as the Taliban instrumentalize this weakness to increase their own appeal. And indeed, in some areas the

Taliban's justice system has a better reputation, being seen as less corrupt and more effective in processing cases.<sup>58</sup> Broadly, the deficiencies of the formal system make many Afghans turn to more affordable, more accessible customary practices, which carries its own risk given the often poor human rights protections in these systems – especially for women, who continue to suffer from high levels of violence and abuse.

The UN is trying to mitigate these risks by strengthening citizens' access to justice, both by helping extend justice services and by bolstering legal aid provision in Afghanistan. Throughout UNAMA's lifespan, the Mission has contributed to extending the reach of the judiciary (figures as of early 2021):<sup>59</sup>

- Since 2004, more than 250 provincial courts were operationalized, increasing the total number of operational courts to 384 (94 of which are operating remotely because of the conflict).
- Since 2004, the number of judges increased by over 1,000 to a total of 2,200, while the number of female judges has been raised to over 250.
- The Attorney-General's Office has a presence in 297 out of 387 districts, employing over 3,500 prosecutors, 15 per cent of which are women.
- Since 2019, UNAMA has helped strengthen the capacity of the International Crimes Prosecution Directorate within the Attorney-General's Office, which led to various cases being investigated. Half of the 20 specialized prosecutors are women.
- Since 2016, a special judicial infrastructure has been established to help eliminate violence against women (see next section).
- A number of lawyer organizations became operational, such as the Afghan Independent Bar Association or the Afghanistan Lawyers Union. There has also been a significant increase in the number of NGOs providing legal aid services, resulting in improved adherence to fair trial standards.

In terms of legal aid provision, with UN support the Legal Aid Department within the Ministry of Justice established offices in all provinces, staffed by 151 permanent legal aid officers.<sup>60</sup> Another key UN contribution, especially with regard to service provision for vulnerable populations, is its support for the Legal Aid Grant Facility, which UNDP helped establish in 2013. Each year and across eight of the 34 provinces, over 1,000 detainees, women, and children receive legal aid services through this facility, which covers cases that the lawyers from the national Legal Aid Department cannot take up.<sup>61</sup> In addition, UNDP has helped Afghan justice actors improve their monitoring and evaluation systems and case allocation mechanisms, and it produced mappings of access to justice and legal aid services.<sup>62</sup>

While blanket coverage is currently beyond reach given the security situation and the amount of territory under Taliban control, the UN contributed to a visible extension of formal justice services and legal aid, including in some remote areas. Even though a risk reduction impact is hard to identify with precision, these improvements facilitate an increased caseload and initiate a more systematic fight against impunity. In some of the UN's target areas (i.e. those accessible), a small but very important effect of the legal aid support has been a slight observed decrease in SGBV, as a former UN official in Afghanistan reported. 20 to 30 per cent of the annual legal aid cases have involved women and girls suffering from violence and abuse. Even though the number of reported and prosecuted cases are, of course, dwarfed by the number of actual incidents, the fact that SGBV went down slightly in some areas can count as a first success story.<sup>63</sup> The next section explores additional ways in which the UN is implementing its mandate on the elimination of violence against women.

## Eliminating violence against women (EVAW)

Next to extending access to justice and raising legal awareness, part of the UN's approach to help eliminate violence against women has involved engagement with traditional leaders. In some eastern border regions of Afghanistan, for instance, UNDP has done advocacy work to curb harmful customary practices against women,

involving village elders and traditional justice leaders. According to an expert interviewed, these efforts have helped limit the custom of paying bride money, a practice considered highly influential in facilitating gender-based violence. "Our work really helped improve women's lives in some of these areas," the expert explained.<sup>64</sup>

The rampant levels of violence, including conflict-related violence, against women and girls prompted the UN and national authorities to establish specialized institutions on the investigation and adjudication of SGBV cases: EAW courts. The UN helped draft the Standard Operating Procedures and other manuals for the courts and has since 2016 supported their operationalization.<sup>65</sup> After a first pilot project in Kabul, EAW courts are now present in 28 provinces (and specialized prosecution units in all provinces). While SGBV in Afghanistan remains severely underreported, interviewees assessed the creation of the EAW infrastructure – including the EAW law from 2009, specialized prosecutors, courts, and police response units – as an impressive step in the fight against impunity of sex offenders. “Such a structure was unheard of just a few years ago,” a UN official explained, “the basis for tackling this issue more systematically is there.”<sup>66</sup> Through its reporting mandate, UNAMA’s human rights unit is indirectly working towards increasing the caseload: eight field teams are monitoring cases of violence against

women and girls and tracking their status in the justice system (roughly half of reported cases end up in court).<sup>67</sup> With its findings on incidents and case referrals, the unit is approaching local police stations and formal justice actors, advocating for increased case uptake and referral.<sup>68</sup>

Victims of SGBV are further supported by UN Women, which is providing a range of services to survivors by supporting CSO-run Family Guidance Centres and Women Protection Shelters.<sup>69</sup> At these institutions, victims receive medical, psychosocial, education, and legal services, including help with case referral to the EAW courts.<sup>70</sup> Currently in development – and therefore precluding an impact assessment – is UN Women’s programming on the *prevention* of violence against women. Through community-based approaches and involvement of various types of stakeholders as well as religious and political leaders, this programming aims at sustainable social norm change and will provide an important complement to previous work.<sup>71</sup>

## Fighting corruption

In Afghanistan and other fragile settings, systemic corruption counts as a main driver of conflict. It exacerbates horizontal inequalities, deepens wealth gaps and social divisions, erodes people’s trust in their State, and empowers armed groups who instrumentalize the public’s estrangement from the Government to gain traction. At the same time, the nexus between corruption and organized crime means that groups like the Taliban, who fund their operations almost entirely via drug trafficking, profit from high corruption levels and complicit public officials. In short, corruption breeds public discontent, provides a hotbed for illicit activities and strengthens anti-government forces. Its destabilizing influence thus undermines recovery work and efforts to build sustainable peace – including in the rule of law area. Expanding justice and security institutions will be of little avail (or even counterproductive) when said institutions are still grappling with corruption. The UN’s anti-corruption work in Afghanistan is therefore

crucial to mitigate the risks that the systematic corruption poses for lasting stability.<sup>72</sup>

The UN supports the Afghan Government in its efforts to combat corruption from various angles, ranging from normative and legislative advice to building the capacity of relevant institutions and providing mentoring and technical assistance. UNAMA’s Rule of Law Team has played a critical role in coordinating and convening international stakeholders, which has shaped policy and legislative coherence on both the anti-corruption and the broader justice file. UNAMA and other UN partners contributed to various developments on the anti-corruption front in Afghanistan, including:<sup>73</sup>

- The establishment of the Anti-Corruption Justice Centre (ACJC), a court dedicated to tackling high-profile corruption cases.
- The 2018 operationalization of the Deputy Attorney General’s office for anti-corruption, which oversees the

prosecution of corruption cases by the Attorney General's Office across the country, and an Independent Ombudsman office (for administrative complaints).

- The adoption of relevant strategies and documents such as the national anti-corruption strategy of 2017,<sup>74</sup> as well as the mentioned revised Penal Code of 2017, which ensures compliance with international anti-corruption standards.
- The 2019 adoption of the law on access to information and the 2020 launch of an anti-corruption monitoring and evaluation database.
- The establishment, in 2020, of Afghanistan's independent Anti-Corruption Commission, which subsumed other corruption-related entities for a more streamlined anti-corruption architecture.

A new mandate raised UNAMA's anti-corruption profile in 2016, centring on reporting and advocacy work.<sup>75</sup> According to experts interviewed for this study, the Mission's annual anti-corruption reports have been instrumental in shaping a generally accepted narrative on the state of play of anti-corruption reforms and the way forward, and they have shaped the anti-corruption benchmarks of the international community (e.g. at the 2020 donor conference in Geneva). In collaboration with other international partners, the UN has also been supporting the specialized anti-corruption institutions with capacity-building and mentoring. UNDP, for instance, has been providing logistical support and trainings (on investigation techniques, monitoring and evaluation, gender issues, etc.) for the Anti-Corruption Justice Centre, and is planning to extend this support to the Attorney General's Office and the new Anti-Corruption Commission soon.<sup>76</sup> The ACJC is also supported by a mentor from UNODC.<sup>77</sup> UNAMA conducts a structured trial monitoring programme of all ACJC trials and shares analyses with stakeholders and international partners.

Across the interviews, the establishment of the ACJC in particular was seen as a crucial step in the fight against corruption in Afghanistan. According

to internal assessment documents, the UN contributed to visible improvements in the courts' technical and operational capacities.<sup>78</sup> Since its operationalization in 2016, the court has tried 94 cases and convicted 294 defendants, including high-ranking Government officials, Generals, and deputy ministers. It also completed 78 appeals and recently convicted ten former election commissioners of election fraud, setting an important precedent for criminal accountability for corruption in the election processes.<sup>79</sup> Experts interviewed for this study see these developments as introducing a more systematic fight against corruption, convicting culprits and potentially disincentivizing others from similar crimes. Relatedly, UNODC-supported agencies such as the National Directorate of Security (NDS) have gained competence and expertise in their fight against money laundering, which has resulted in more and more cash and gold seizures in recent years, increasing investigations of financial crimes and convictions of culprits – developments that, according to a UN expert, were unheard of just two or three years ago.<sup>80</sup> UN training has also helped increase the intelligence capacities of the NDS, which was able to prevent a number of terrorist attacks, even though the preventive impact is hard to quantify: "We do have an impact, but we don't have enough quantitative indicators for it," the expert said.

Afghanistan's advancements on the anti-corruption front are important first steps to hamper funding opportunities for armed groups and increase the public's trust in their Government (something UNDP is also fostering through public awareness campaigns and other grassroots work).<sup>81</sup> Better institutional frameworks and capacities have improved the accountability of judges for corruption-related offenses, while Afghanistan's ranking on Transparency International's *Corruption Perceptions Index* has improved considerably: from 176<sup>th</sup> out of 180 countries in 2010, to 173<sup>rd</sup> in 2019, and then to 165<sup>th</sup> in 2020. Especially considering the small size of UNAMA's Rule of Law Team, these developments constitute notable improvements in mitigating the corruption problem in Afghanistan. The Rule of Law Team's focus on corruption has supported UNAMA's mandate implementation in the three focus areas: internal stability, peace and self-reliance.

The appreciation of UNAMA's rule of law work by national and international partners is mainly due to its successful anti-corruption work. It was viewed by many experts as exemplary of how a rule of law component can strongly contribute to mandate implementation in a political mission.

## Strengthening the police

Similar to the justice sector, the police sector in Afghanistan is suffering from significant shortfalls in capacity as well as problems with corruption (almost 40 per cent of Afghans think that most or all police officers are corrupt).<sup>82</sup> The police is heavily militarized and an active party to the conflict instead of a civilian force. UN internal infrastructure surveys further show that police stations are severely underequipped, while many areas have no police presence at all.<sup>83</sup> Interviewees suggested that the police has very limited capacity to investigate criminal cases, and is also struggling to keep up with currently over 3,000 outstanding arrest warrants.<sup>84</sup> The consequences for the rule of law and broader risk reduction are dire. If the police are unable to apprehend offenders and enforce formal justice decisions, efforts to fight impunity and stabilize the country are severely undermined. A functioning executive branch is integral for a functioning rule of law.

As UNAMA's Police Advisory Unit was phased out in 2018, UNDP is currently the primary UN actor supporting the Afghan police. A substantial part of this support has involved the management of the police payroll as one part of the LOTFA fund mentioned earlier.<sup>85</sup> At an annual budget of approximately USD 350 million, the payroll management represents a sizable responsibility and does not come without challenges, given the deep-rooted corruption within the police force.<sup>86</sup> Yet, UNDP helped roll out an electronic payroll system so that salaries are paid on time in all 34 provinces, and has built technical and human resource capacity at the Ministry of Interior Affairs (MOIA) to prepare for a future handover of the payroll management function.<sup>87</sup> Together with other international partners, UNDP has also helped recruit and train new police

Nevertheless, the UN's mandate and resources do not match up to the dimension of the corruption problem in Afghanistan and its strong conflict-driving influence. More capacities are needed for a tangible conflict risk reduction impact.

officers (150,000 in the last 15 years), including professionalization campaigns and vetting in line with the UN Human Rights Due Diligence Policy (HRDDP).<sup>88</sup> Further, there have been efforts to increase gender equality in the police force (UNDP helped train 3,000 new female officers),<sup>89</sup> but female enrolment remains limited. Under LOTFA, comprehensive police reforms have so far been lagging. To turn the police from a counter-insurgency force into a civilian one, UNDP introduced a project in early 2020 to bolster community policing approaches in Kabul and provincial headquarters.<sup>90</sup>

It is too early in the lifespan of the community-policing project to make definite claims about its risk reduction impact, but interviewees attested a high potential, as it aims to shift police priorities from paramilitary operations to providing security services for communities and rebuilding trust in the population. "It's the security institutions themselves that have generated much of the conflict," one expert said, "so it's crucial to refocus them to their actual purpose: serving the people."<sup>91</sup> Equally challenging to assess is the impact of UNDP's payroll and police professionalization work. Human rights trainings and vetting helped increase, to some extent, the accountability of the security sector (even though HRDDP compliance needs to be improved), while the salary management ensures a minimal functioning of the police – where it is present and operational. These are certainly first steps in strengthening the security sector, but the continuously high violence levels across Afghanistan show that there is still a long way to go.

## Promoting human rights and transitional justice

Typically, UN support to corrections systems is as crucial for strengthening the rule of law as support to the justice and police sectors. Given UNAMA's mandate restrictions after 2017, the Mission's prison-related work now primarily focuses on human rights monitoring: via bi-annual reports, UNAMA/OHCHR document cases of detainee mistreatment and torture and advocate for improved detention conditions that comply with human rights norms – also intending to minimize cases of arbitrary detention, which is seen as partly fuelling the conflict.<sup>92</sup> Further, overcrowded prisons are seen as hotbeds for radicalization, a risk that the Government and UN partners tried to mitigate through the new penal code mentioned earlier, which introduced alternatives to prison sentences for smaller crimes, attempting to reduce prison populations (certain types of prisoners were also released as a COVID-19 response measure).<sup>93</sup>

Broadly, UNAMA's human rights monitoring work feeds into the larger rule of law agenda, as it aims to hold conflict parties accountable to their international humanitarian/human rights law obligations and lay the groundwork for the fight against impunity. UNAMA's civilian casualties reporting is a good example: In quarterly reports, the Mission publishes data on civilians killed or hurt in the conflict, differentiating between conflict parties responsible and by types of attacks. The Mission then used its findings for advocacy work with the Government, the Taliban, and international military, including tailored messaging on the local and national level to get conflict parties to refrain from certain tactics or weapons that are frequent causes of civilian harm, e.g. mortars. While effects of risk reduction or conflict prevention depend on many other factors (e.g. developments in the peace process), experts credited the Mission with important influence on parties to seize certain practices. For instance, after tailored advocacy efforts to limit parties' use of pressure plate improvised

explosive devices (PPIEDs), in 2016-18, the Mission observed a decrease of attacks involving these landmines – an important contribution to the protection of civilians.<sup>94</sup>

UNAMA's civilian casualties reporting counts as the most systematic and credible source on civilian casualties in Afghanistan – and could potentially become important documentation for future transitional justice efforts.<sup>95</sup> UNAMA is mandated to support transitional justice in Afghanistan, including through mentoring and building capacity of the AIHRC, the main lead on human rights and transitional justice issues in the country. In this area, UN impact towards risk reduction is the hardest to assess, also because progress on transitional justice has faced a number of hurdles. First, an amnesty law in 2008 reinforced the climate of impunity for war criminals and silenced the discourse on transitional justice in Afghanistan for a number of years.<sup>96</sup> Second, the recent peace progress brought the issue back to the agenda, but at the same time is undermining it. Government concessions to the Taliban as reconciliation measures (e.g. releasing prisoners and granting immunity for human rights abusers) hamper accountability efforts and the fight against impunity.<sup>97</sup> And third, there are credible reports that all parties to the conflict – from non-State armed groups, to the Government, to international forces – have been involved or complicit in violations of international humanitarian and human rights law, which erases political will to meaningfully promote accountability.<sup>98</sup> An expert interviewed for this study found clear words for this dilemma: "When the people in power are amongst the most threatened by transitional justice measures, transitional justice is not going to happen."<sup>99</sup> The future impact of UN support will depend on whether these hurdles can be overcome and on the transitional justice-related outcomes of the peace process.

# 5. Enabling and inhibiting factors

The previous section analysed a number of rule of law programmes and approaches of the UN over the past years, focusing on their risk reduction impact. This section explores what factors might have

enabled, impeded, or otherwise influenced such impact, ranging from the contextual conditions in Afghanistan to factors more in the UN's control.

## Insecurity and access

Across all interviews, the ongoing conflict and extremely volatile security situation were cited as the number one factor impeding the UN's work and impact. According to reports at the time of writing, the Taliban control a fifth of Afghanistan's territory – more than at any time since their 2001 fall from power – and half of the country is fiercely contested.<sup>100</sup> This means that over two-thirds of Afghanistan are not accessible for UN rule of law support, so very large segments of the population are cut off from such services, especially in rural areas.<sup>101</sup> UNDP and others have tried to mitigate this challenge by working more closely with community-based NGOs or local volunteer groups, but this has not solved the core problem:

Afghanistan's security situation severely restricts the UN's reach and the capacity of the rule of law system at large, given the increasing number of attacks on rule of law officials. This significantly impedes sustained and nationwide progress to strengthen Afghan justice, security, and corrections systems. UNAMA's influence in terms of security provision is limited, so to a large extent its work hinges on factors outside of its control. More broadly, the dire security situation has led to mandating structures that prioritize UN support to the peace process as opposed to a longer-term rule of law agenda.

## Political will

Another factor that makes or breaks progress of rule of law efforts is the willingness of domestic actors. In Afghanistan, experts suggested that this willingness is generally given depending on the issue area. On the anti-corruption front, for example, the Government is said to be quite open for cooperation (also incentivized by the recent donor conference in Geneva in 2020, where partners made parts of future funding conditional on anti-corruption progress). UNAMA's annual corruption reports are well received by Government actors, and recommendations

have been taken up in the reform process. In the human rights area, both the Taliban and the Government tend to show themselves cooperative, even if at times reluctantly, in the UN's efforts to elucidate cases of civilian casualties, trying to avoid reputational costs. On other issues such as transitional justice, however, a lack of political will has so far precluded meaningful action, which reinforces the culture of impunity that pervades Afghanistan's conflict history.<sup>102</sup>

## UN mandates and resources

A main conclusion of this study is that the UN's mandates and available resources to strengthen the rule of law in Afghanistan do not match up with the scale of the problem – the decades of conflict and extreme shortfalls in rule of law capacities. Many experts attested that UNAMA's rule of law unit is delivering impressive work considering its small size and scope. But the dimensions of the impunity problem and the deficiencies across the justice, security, and corrections sectors necessitate a bigger response. A concrete criticism by some experts interviewed was that the 2017 strategic review

that led to cuts in UNAMA's rule of law mandate and unit did not account for the lack of capacity of the broader Country Team to take over some of those responsibilities, nor the politically sensitive nature of much of UNAMA's rule of law work that would not readily be assumed by the UN Country Team. A big part of the rule of law portfolio, therefore, was simply 'lost'.<sup>103</sup> Further, budget cuts across the UN have meant that agencies like UNODC, which is entirely dependent on donors, struggle to maintain funding for important projects.

## National ownership

While the UN and other international players have tried to put more emphasis on national ownership of rule of law processes in recent years, it remains questionable whether Afghan capacities will be able to fully absorb and sustain certain initiatives as foreign aid decreases. Afghanistan is 80 per cent reliant on donors

and there are substantive concerns that the exit of international partners will cause shocks across all rule of law sectors as funding and support phases out.<sup>104</sup> If national institutions are not capable of withstanding such shocks, this could deal a near-fatal blow to past and present progress on risk reduction efforts.

## UN reputation and Government relations

On local levels and at various levels of government, experts suggested that the UN as an institution generally has a good reputation in Afghanistan.<sup>105</sup> "People are willing to listen to the UN," one interviewee reported, "there really is potential to leverage that influence."

Closely related to the remarks on political will, the impact of rule of law support hinges on good and open relations with domestic actors, which the UN can rely on in certain issue areas (e.g. in its work on eliminating violence against women and promoting gender equality, which is

met with broad goodwill in relevant ministries). However, in higher levels of government, the stance towards the UN is not always favourable, and a high staff turnover in ministries makes it hard for the UN to sustain momentum on certain rule of law initiatives.<sup>106</sup>

Given the limited capacities of UNAMA's rule of law unit, in particular, it is important to note that the Mission's ability to generate impact derives, to a large extent, from its coordination,

convening and analysis role in the rule of law sector, and from steering the dialogue of donors with the Afghan Government. This role is based not only on an appreciation of UNAMA's legitimacy and credibility with the Afghan authorities and its character as an "impartial" non-implementing actor but also as a result of the unit's good access and relations with key Afghan counterparts.

## Joint work

When asked about levels of cooperation within the UN, interviewees generally highlighted room for improvement. UNAMA is mandated to coordinate international support on the ground and in certain issue areas such as the fight against corruption, the Mission, UNDP, and UNODC are seen as 'delivering as one', also because the Government pushed for a more coherent approach. In addition, in 2021, UNAMA and UNDP agreed to implement a joint project

with Afghanistan's Supreme Court, under the umbrella of the Global Focal Point for the Rule of Law, to promote safer justice delivery and access through the use of technology – remote court hearings – to prevent and respond to threats to security and safety in Afghanistan. While these are important developments, experts generally described the UN's rule of law engagement as 'piecemeal' and lacking a more comprehensive and joint perspective.

## COVID-19

As in many other settings, the coronavirus pandemic is significantly impeding the implementation of various projects in the rule of law area and beyond. The UN has reacted with several initiatives to mitigate the risks the virus poses, including UNAMA advice on the use of remote courts, UNDP support to the Ministry of Interior Affairs to contain and respond to COVID-19 in the police force as well

as training civil society organizations to monitor and enforce a fair and transparent delivery of medical equipment to 1,500 health centres across the country, to counteract COVID-related corruption and embezzlement.<sup>107</sup> However, the pandemic continues to decelerate and impede UN support, including in the rule of law area, especially as many staff currently have to work from outside of Afghanistan.

# 6. Lessons and recommendations

This study has shown that the UN has contributed to progress on the rule of law across various areas, even though the scale of the problem in Afghanistan significantly exceeds UN capacities and resources and the ongoing conflict at the time of writing makes it difficult to identify a palpable risk reduction impact with precision. Progress can be recorded in the areas of legislative reform, criminal justice, the establishment of an independent bar, the expansion of legal aid and the development of professional training for judicial officials and the combating of corruption. Access by women and disadvantaged members of society to formal justice has increased, as has geographic access. The physical infrastructure has been significantly built up while the number of practising defence lawyers has also increased substantially. The Supreme Court has increased internal oversight and accountability through the removal of some corrupt judges. Deriving from this analysis and the expert interviews conducted, the following lessons can inform UN actors and other stakeholders in similar settings who seek to improve their rule of law interventions.

- **Ramp up anti-corruption work.** Corruption is a key driver of fragility and conflict in Afghanistan and beyond. It undermines public trust in the Government and emboldens insurgents who thrive on the illicit economy and the populations' discontentment with their State. Given this big influence, experts criticized that the fight against corruption is still not sufficiently

mainstreamed into the UN's peacebuilding work.<sup>108</sup> If corruption is not addressed via stronger mandates and better resources, this can risk undermining the UN's whole rule of law agenda. Strengthening justice and security institutions will be of little avail (or even counterproductive) when said institutions are still grappling with corruption. Rule of law programming needs to explicitly tackle corruption issues and enhance transparency and accountability of the institutions it seeks to strengthen.<sup>109</sup>

- **Bolster legal aid.** The Afghanistan case has shown how a number of donor-funded legal aid initiatives have contributed to the development and the expansion of legal aid provision and how a culture of criminal defence advocacy has gradually been instilled into the legal community throughout the country.<sup>110</sup> For other settings, too, legal aid is an essential element of a functioning justice system that ensures fundamental fairness and public trust in the justice process. The most effective means of reducing pre-trial detention, ensuring adequate redress for abuses committed by the security forces and avoiding miscarriages of justice is to provide persons with access to competent lawyers at the earliest possible stage of the criminal justice process.

- Review the UN's rule of law capacity.** As mentioned, the 2017 strategic review curtailed UNAMA's rule of law mandate and led to a significant downsizing of its Rule of Law Unit and the closure of the police unit. According to experts, this significantly affected the UN capacity to deliver rule of law support crucial to the long-term stabilization of the country. In addition, the lack of capacity in the UN Country Team and the subsequent restructuring and downsizing of UNDP's rule of law team, has made it difficult to fill the void left by the cuts to UNAMA. This points to the need to review what core rule of law capacity might be required across the UN in-country, to help address the more politically sensitive rule of law issues. Such a review will also need to address how rule of law capacities might need to be shifted across UNAMA and the UN Country Team as the UN's presence in Afghanistan might be reconfigured in coming years.
- Involve the informal justice sector.** In Afghanistan and other settings, vast parts of the population rely on the informal justice sector for settling disputes. In Afghanistan, the UN has begun to think about ways to align the informal and formal systems, while seeking to uphold international human rights standards. Given the importance of customary practices in numerous other settings, the UN should expand its approaches to work with informal systems, also in the spirit of better adaptation of rule of law programming to local realities and needs.
- Ramp up the work on land rights.** Land disputes are a major driver of instability not only in Afghanistan but in other settings as well. However, this issue is often not adequately reflected in the mandates and programmes of UN or other international actors in such settings, despite the potential for conflict prevention impact.
- Strengthen coordination within the UN and beyond.** UNAMA's successful role in convening, coordinating and analysing international rule of law assistance was emphasized as crucial throughout all interviews, as it significantly contributed to steering the dialogue between the Government of Afghanistan and international stakeholders. In other settings, too, the UN should invest in coordination or cooperation with other partners, and also expand joint approaches of different UN entities, for example via the Global Focal Point for the Rule of Law. In addition, experts highlighted the need to re-emphasize and reinforce the overall coordination role in the area of rule of law vested in the Special Representative of the Secretary-General/Resident Coordinator.<sup>111</sup>
- Measure progress and impact – systematically and regularly.** In 2015, UNAMA's Rule of Law team, together with UNDP, facilitated the (nationally-led) Rule of Law Indicators Study (RoLIS) to monitor progress on the rule of law over time and inform future policymaking in the sector.<sup>112</sup> As of this writing, no follow-up study has been undertaken (RoLIS was discontinued and replaced by citizen surveys), even though experts pointed to the need for periodical assessments of this kind to evaluate progress over time and identify areas that need further national and international commitment. For other settings, as well, this points to the need to systematically and regularly measure impact of UN interventions, especially in a way that focuses on impact and not solely on outputs.

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52. Interview, 25 November 2020.
53. Legislation related to "counter-narcotics (2007), terrorism (2008), elimination of violence against women (2009), criminal procedure (2014), torture (2016), asset registration and verification (2017), anti-corruption (2017, 2018), access to information (2018, 2019), audits, and prisons affairs management (2020)." Internal document [on file with author].
54. Interview, 25, 27 and 29 November 2020.
55. Interview, 11 January 2021.
56. Interview, 25, 27 and 29 November 2020.
57. Including the contentious prisoner swap at the start of the intra-Afghan peace negotiations as a confidence-building measure between the parties. It included the release of militants who were involved in high-profile attacks and human rights violations. Interview, 30 November 2020; What's In Blue, "UN Assistance Mission in Afghanistan (UNAMA) Mandate Renewal," Security Council Report, 14 September 2020, <https://www.whatsinblue.org/2020/09/un-assistance-mission-in-afghanistan-unama-mandate-renewal-2.php>.
58. Interview, 26 November 2020.
59. Internal document [on file with author].
60. Internal document [on file with author].
61. Interview, 1 December 2020; UNDP Afghanistan, "Rule of Law. In depth," last accessed 6 August 2021, <https://www.af.undp.org/content/afghanistan/en/home/Rule-of-Law/in-depth.html>.
62. Interview, 1 December 2020 and 11 January 2021; UNDP Afghanistan, "Rule of Law. In depth," last accessed 6 August 2021, <https://www.af.undp.org/content/afghanistan/en/home/Rule-of-Law/in-depth.html>.
63. Interview, 11 January 2021.
64. Interview, 11 January 2021.
65. Internal document on file with author; Interview, 1 December 2020.
66. Interview, 17 December 2020.
67. Interview, 17 December 2020.
68. Interview, 17 December 2020.
69. There are currently 23 Women Protection Shelters in Afghanistan, half of which are supported by UN Women. Interview, 6 January 2021.
70. Interview, 6 January 2021.
71. Interview, 6 January 2021.
72. See, United Nations, *The UN Common Position to Address Global Corruption: Towards UNGASS 2021* (United Nations: New York, 2020); UN DPPA and DPO, *Ways to Promote Anti-corruption Elements in Peacekeeping and Special Political Missions* (New York: United Nations, 2020).

73. Internal document [on file with author] (figures as of early 2020); UN DPPA and DPO, *Ways to Promote Anti-corruption Elements in Peacekeeping and Special Political Missions* (New York: United Nations, 2020); Interview, 19 January 2021.
74. The 2017 anti-corruption strategy expired in December 2019 without a successor. Its benchmarks were extended until the (pending) finalization impact assessment of the 2017 strategy and the development of a new one. As of this writing, an interim strategy for 2021 is under discussion as a stop-gap measure. Interview, 1 March 2021.
75. UN Security Council Resolution 2274 introduced the fight against corruption as an area of focus for UNAMA's rule of law unit. United Nations Security Council, "Resolution 2274, adopted by the Security Council at its 7645th meeting," United Nations, 15 March 2016, *S/RES/2274*.
76. Via its 5.7 million USD Afghanistan Anti-Corruption, Transparency, Integrity and Openness (ACTION) Project funded by Denmark and additional UNDP funds. Interview, 19 January 2021.
77. Interview, 7 January 2021.
78. Internal document [on file with author].
79. Internal document [on file with author] (figures as of early 2020).
80. Interview, 16 December 2020.
81. Such as training CSOs on investigative journalism techniques or educating public information officers on the regulations of the Access to Information Law to enhance transparency on corruption-related issues. Interview, 19 January 2021.
82. World Justice Project, *The Rule of Law in Afghanistan. Key Findings from 2019* (Washington DC: World Justice Project, 2019).
83. Interview, 1 December 2020; Internal document [on file with author].
84. Interview, 25 November 2020.
85. UNDP Afghanistan, "Support to Payroll Management (SPM)," last accessed 6 August 2021, <https://www.af.undp.org/content/afghanistan/en/home/projects/SPM.html>.
86. Interviews, 25 and 27 November 2020.
87. Donors have so far been reluctant to initiate a handover of responsibilities, given concerns about continuously high corruption levels in the Government. Interviews, 27 November and 15 December 2020.
88. Interview, 1 December 2020; UNDP Afghanistan, "Rule of Law. Overview, last accessed 6 August 2021. <https://www.af.undp.org/content/afghanistan/en/home/Rule-of-Law.html>.
89. UNDP Afghanistan, "Rule of Law. In depth," last accessed 6 August 2021, <https://www.af.undp.org/content/afghanistan/en/home/Rule-of-Law/in-depth.html>.
90. Interviews, 25 and 27 November 2020 and 6 January 2021.
91. Interview, 17 November 2020.
92. UNAMA, "Treatment of Conflict-Related Detainees in Afghan Custody," last accessed 6 August 2021, <https://unama.unmissions.org/treatment-conflict-related-detainees-afghan-custody>.
93. UNAMA, "UNAMA Welcomes Afghanistan's New Penal Code - Calls for Robust Framework to Protect Women Against Violence." 22 February 2018, <https://unama.unmissions.org/unama-welcomes-afghanistan%E2%80%99s-new-penal-code-calls-robust-framework-protect-women-against-violence>; Internal document [on file with author].
94. Before publication, data is shared with the Government and the Taliban to elicit their views on these incidents and give them a chance to provide input or information. Interview, 6 January 2021.
95. Cale Salih, "The UN Security Council and Transitional Justice: Afghanistan," *The UN Security Council and Transitional Justice* ed. Dr Rebecca Brubaker (New York: United Nations University, 2021), [https://i.unu.edu/media/cpr.unu.edu/attachment/4841/UNU\\_TJ\\_Afghanistan.pdf](https://i.unu.edu/media/cpr.unu.edu/attachment/4841/UNU_TJ_Afghanistan.pdf).
96. Interview, 30 November 2020.
97. Interview, 30 November 2020; Cale Salih, "The UN Security Council and Transitional Justice: Afghanistan," *The UN Security Council and Transitional Justice* ed. Dr Rebecca Brubaker (New York: United Nations University, 2021), [https://i.unu.edu/media/cpr.unu.edu/attachment/4841/UNU\\_TJ\\_Afghanistan.pdf](https://i.unu.edu/media/cpr.unu.edu/attachment/4841/UNU_TJ_Afghanistan.pdf).
98. Ibid.

- <sup>99.</sup> Interview, 15 December 2020.
- <sup>100.</sup> Frud Bezhan, "The Taliban, The Government, And Islamic State: Who Controls What In Afghanistan?," *Radio Free Europe/Radio Liberty*, 31 May 2020, <https://www.rferl.org/a/taliban-government-islamic-state-who-controls-what-in-afghanistan-/30644646.html>.
- <sup>101.</sup> Interview, 7 January 2021.
- <sup>102.</sup> Cale Salih, "The UN Security Council and Transitional Justice: Afghanistan," *The UN Security Council and Transitional Justice* ed. Dr Rebecca Brubaker (New York: United Nations University, 2021), [https://i.unu.edu/media/cpr.unu.edu/attachment/4841/UNU\\_TJ\\_Afghanistan.pdf](https://i.unu.edu/media/cpr.unu.edu/attachment/4841/UNU_TJ_Afghanistan.pdf).
- <sup>103.</sup> Interview, 25 November 2020.
- <sup>104.</sup> United Nations, *United Nations Development Assistance Framework for Afghanistan 2015 -2019* (New York: United Nations, 2015).
- <sup>105.</sup> Interview, 25 November 2020 and 11 January 2021.
- <sup>106.</sup> Interview, 1 December 2020.
- <sup>107.</sup> Interview, 19 January 2021.
- <sup>108.</sup> Interview, 6 January 2021.
- <sup>109.</sup> UN DPPA and DPO, *Ways to Promote Anti-corruption Elements in Peacekeeping and Special Political Missions* (New York: United Nations, 2020).
- <sup>110.</sup> UN OROLSI and DPO, *The Work of UNAMA in the Areas of Justice, Police and Corrections* (New York: United Nations, 2015).
- <sup>111.</sup> By the Decision of the Secretary-General No. 2012/13, pursuant to which "[t]he senior United Nations official in-country - Special Representatives or Executive Representatives of the Secretary-General or, in non-mission settings, Resident Coordinators - should be responsible and accountable for guiding and overseeing United Nations rule of law strategies, for resolving political obstacles and for coordinating United Nations country support on the rule of law, without prejudice to the specialized roles and specific mandates of United Nations entities in-country." United Nations, "Decision of the Secretary-General - 11 September meeting of the Policy Committee," United Nations, 11 September 2012.
- <sup>112.</sup> Based on discussion groups, expert surveys, and administrative data review, the final report measured the performance of the judiciary, prosecutors, police, prisons and defence lawyers against more than 100 baseline indicators to respond to the need of national and international stakeholders to evaluate the performance of the rule of law sector in Afghanistan. The assessment was based on the United Nations Rule of Law Indicators Guidelines, as endorsed by the United Nations system in 2011 and launched under the joint leadership of DPKO and OHCHR Headquarters. See, UN OROLSI and DPO, *The Work of UNAMA in the Areas of Justice, Police and Corrections* (New York: United Nations, 2015).



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