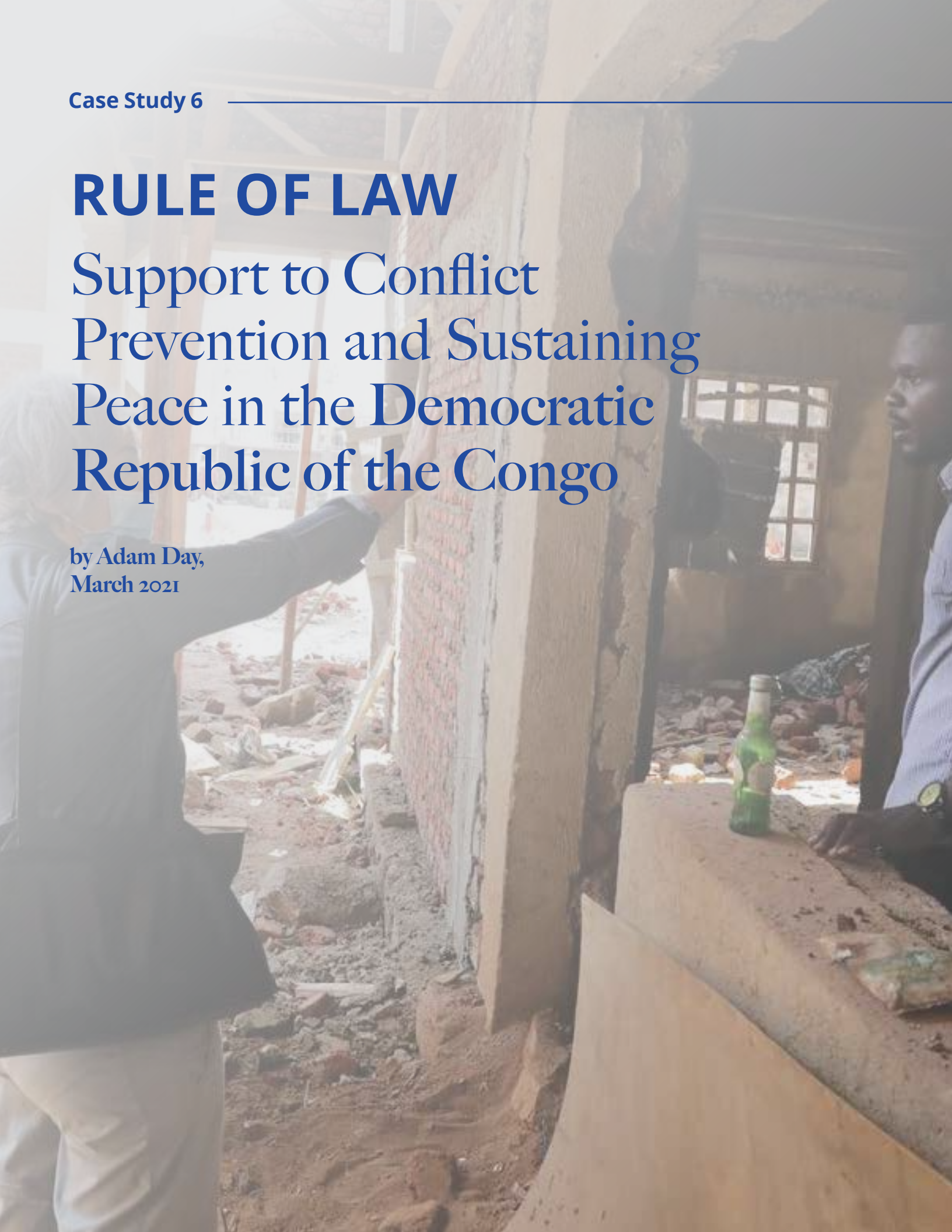


# RULE OF LAW

## Support to Conflict Prevention and Sustaining Peace in the Democratic Republic of the Congo

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# I. Introduction

The Democratic Republic of the Congo (DRC) presents one of the most complex and challenging settings in the world, in large part due to its extremely poor governance and recurrent cycles of violent conflict. Following two brutal civil wars, the country emerged in 2003 with extraordinarily weak institutional capacities ravaged by 40 years of corrupt and autocratic rule, widespread poverty and humanitarian suffering, and an extremely volatile security situation stretching well beyond its national boundaries. Over the past 20 years in the DRC, the UN peace operation, UN agencies, and their partners on the ground have increasingly recognized that these deeply rooted conflict drivers cannot be addressed via a securitized response alone but must be met with strong rule of law engagement, strengthening the institutional capacity of the Congolese system to provide public order, justice, and transparent modes of governance for all its citizens.

This case study explores the UN's rule of law work from 2010 to 2019, focusing on how the UN Stabilization Operation in the DRC (MONUSCO), UNDP, and other UN actors implemented a range of activities designed to improve the Congolese

capacities to deliver security, justice, and protections to its citizens. It takes a relatively broad approach to rule of law, including how human rights, transitional justice, national reforms, and other activities contribute to the Mission's rule of law objectives. Across these areas, the study asks: *How have the UN's rule of law interventions contributed to conflict prevention, to a reduction in risks of widespread violence in the DRC?* As such, it aims to provide an assessment of the impact of the UN, identifying good practices, inhibiting and enabling factors, and lessons for the broader UN system. It is based on a range of interviews with UN and NGO experts, largely in the field but also in Headquarters.

The study has five sections: (1) a background description of the risk landscape and the endemic shortfalls in State rule of law capacities; (2) an overview of the UN's rule of law mandate from 2010 to present; (3) an assessment of areas where there is evidence of the UN's impact in terms of conflict prevention; (4) an examination of the enabling and inhibiting factors for the UN's impact; and (5) lessons and recommendations for the broader UN system.

## 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>1</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, the authors 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 engagements 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, 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>2</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>3</sup>

## 2. The conflict landscape of the DRC

While the DRC emerged from its civil wars nearly 20 years ago, the country has remained mired in recurrent cycles of violent conflict and some of the worst governance indicators in the world.<sup>4</sup> Decades of economic mismanagement, patrimonial rule, corruption, and regional tensions have kept DRC's economy near-total collapse, inhibiting the growth of effective State institutions and contributing to conflict dynamics across the country. One of the poorest nations in the world (in some places, extreme poverty rates are upward of 70 per cent of the population), DRC's economy is largely "informalized," managed through a range of non-State entities rather than via government institutions.<sup>5</sup> The result is that rule of law institutions – courts, police, prisons – have suffered from chronic underfunding, lack of political support from the political centre, and little progress towards professionalization and improved capacity over the past 20 years.

The lack of funding for State institutions has a direct impact on rule of law in the DRC. This may also be indicative of a lack of political commitment and prioritization of the rule of law. Underpaid police have been consistently encouraged to fend for themselves, feeding off the local population in order to support a patrimonial hierarchical system. Popular confidence in the police is extremely low: one survey in North Kivu indicated that only eight per cent of respondents answered "the police" when asked "Who protects you?"<sup>6</sup> The formal justice system

remains essentially unknown beyond the major cities of eastern DRC, with fewer than 50 courts ostensibly servicing a rural population of 42 million people. Even where State courts are in place, polling indicates extraordinarily low public confidence in these institutions.<sup>7</sup> Other forms of community research have found the Congolese overwhelmingly prefer to resolve their conflicts through unofficial, non-State channels, due to "the propensity of [State security officials] to extort money and goods."<sup>8</sup>

Taking advantage of limited presence and weak State capacities, armed groups have proliferated in eastern DRC, growing from roughly 20 major groups in 2002 to nearly 100 groups in 2021.<sup>9</sup> Armed groups not only threaten the lives and livelihoods of hundreds of thousands of Congolese citizens, they also operate to strip the State of crucial revenues from enormous natural resources. Controlling most of the artisanal mining sites in the eastern provinces, militias exploit valuable minerals and export them across DRC's borders with Uganda and Rwanda, providing themselves with a constant flow of resources and allowing them to persist despite military pressure from the Congolese army and the UN. Limiting the impact of armed groups activity – through political means, military operations, protection of civilians activities, and via the justice and correction system – is a major priority for the Congolese Government and the UN.

The Congolese security services themselves also constitute a significant risk to many segments of the population and are regularly cited as the most significant human rights violator in the country.<sup>10</sup> Following the end of the Second Congo War in 2003, the formation of the Congolese army (FARDC) from amongst the belligerent parties meant that bitter rivals were brought together and had to vie for position based on their clout with the presidency rather than military competency. Since then, as armed groups have been defeated, some of their elements have been integrated into the FARDC, often in a wholesale manner that undermines the overall chain of command and contributes to splintering within the army.<sup>11</sup> As a result, far from being loyal to the State, large portions of the FARDC appear more willing to respond to the needs of their respective communities and/or quietly align themselves with the leadership of their former militias. Combating impunity for those in the FARDC who perpetrate serious human rights violations is a major area of work for MONUSCO.

Sexual violence in eastern Congo has consistently been ranked one of the worst in the world.<sup>12</sup> While much of the sexual violence in the DRC is conflict related (i.e. takes place

during hostilities involving armed groups), it has also been reported as widespread outside of conflict settings.<sup>13</sup> Over the past 20 years, the Congolese State has struggled to put in place viable, effective judicial mechanisms to hold perpetrators of sexual violence accountable, despite repeated international efforts to improve State capacities.<sup>14</sup>

In this context, the risks of violent conflict arise from the interaction of multiple causes, including: (1) longstanding intercommunal disputes over land and resources; (2) the presence of militias across much of eastern Congo; (3) weak and/or predatory State security services resulting from decades of corruption and underfunding; (4) absent State institutions in the areas of rule of law and governance; (5) the willingness of the political class of DRC to resort to violence to gain leverage in a highly fractured, deeply unequal society; and (6) a continuing legacy of regional interference in the domestic stability of the DRC. The underlying theory of the rule of law work of the UN in the DRC has been that bolstering the police, justice, and corrections capacities of the State, while working to fight impunity and hold serious human rights perpetrators accountable acts to reduce the risks of violent conflict and sexual violence in particular.

# 3. Evolution of the UN's rule of law mandate from 2010

This section traces the evolution of the UN's rule of law mandate from 2010 to 2019, through which the major rule of law actors in the DRC are also identified.

In 2010, the UN peacekeeping mission in the DRC transitioned into a stabilization operation, its mandate shifting to place greater emphasis on support to State institutions, helping to extend State authority, and national-level reforms.<sup>15</sup> Within the stabilization mandate, MONUSCO was provided a rule of law mandate which included support to: (1) the national reform of security and judicial institutions; (2) military justice institutions and processes; (3) police reform and professionalization; and (4) developing and building the capacity of rule of law institutions.<sup>16</sup> Importantly, the Mission was tasked to help the Government arrest and bring to justice those responsible for war crimes and crimes against humanity, including through the ICC framework.<sup>17</sup>

This transition to stabilization was important politically, as it was designed to contribute to improved relations with the Congolese Government at a time when President Kabila favoured MONUSCO's drawdown. It was also part of a broader trend of multidimensional peacekeeping missions towards stabilization, based on a theory of change in which State authority

would gradually be extended across previously ungoverned areas of fragile States.<sup>18</sup>

In 2010, OHCHR issued a major report, mapping and detailing serious human rights violations that took place during Congo's Second Civil War.<sup>19</sup> A key message in this report was that more should be done in the fight against impunity for these and subsequent international crimes in the DRC. The 2010 establishment of a Prosecution Support Cell programme by MONUSCO was directly tied to the fight against impunity for war crimes and crimes against humanity and charged with providing technical and advisory support to the Congolese justice system. This work has cut across several MONUSCO sections, including the Joint Human Rights Office (JHRO), which has provided support to magistrates for witness and victim protection. From 2011 onwards, MONUSCO focused significantly on support to military tribunals with the aim of fighting impunity for serious crimes (military tribunals have jurisdiction over almost all cases involving serious international crimes). From 2014, a multi-year joint justice support programme – developed by MONUSCO, UNDP, and UNODC – was taken forward with the Congolese ministries of justice and human rights. Over time, MONUSCO has increased its focus on prison administration, including

good prison management/security, capacity-building, and structural reforms designed to reduce overcrowding, improve the conditions of prisons, and reduce the risks of mass breakouts. Training of judicial police and prison authorities was also increased during this period.

While these activities continued throughout the lifespan of MONUSCO, the 2012 takeover of the eastern capital of Goma by the rebel group M23 had a significant impact on how and where rule of law work was focused. In 2013, the Security Council authorized the deployment of a Force Intervention Brigade to neutralize the M23 and re-emphasized the Mission's focus on defeating armed groups in the DRC. This, in turn, also meant that the MONUSCO's rule of law activities were channelled towards eastern provinces and (from 2017) the Kasais, areas where armed group activity was most prevalent. According to several UN interlocutors, this focus on the east also resulted in less of an emphasis on the more national level reforms, which require constant engagement in Kinshasa.<sup>20</sup> The emphasis on military neutralization also meant MONUSCO was engaged in more joint operations with the

Congolese army (FARDC) and had to undertake more procedures to mitigate the risk of supporting officials that had perpetrated serious human rights violations, via the Human Rights Due Diligence Policy.

The constitutional crisis in 2016 was precipitated by President Kabila's unwillingness to accept an electoral timeline for the presidency, leading to large-scale opposition rallies and a spike in violence in both urban areas and in areas of armed group presence. Heavy-handed responses by State security actors led to hundreds of deaths, a greater focus on combating impunity for State actors, and a decision by the UN to also focus on crowd control as part of its broader rule of law focus on expanding civic space conducive to national elections. The resolution of the crisis and 2018 ascension to the Presidency by Felix Tshisekedi has opened a potential door to more national-level reforms though, as of the writing of this study, it is too soon to know whether significant progress will be made.

## 4. Rule of law impact

Assessing the impact of UN interventions is a complex process where definitive answers are difficult to reach. This is particularly the case when the question is whether and how a UN activity may have reduced the risk of violent conflict, given the many interrelated factors that drive conflict in any given setting and the

frequent absence of underlying data.<sup>21</sup> Taking into account these challenges, this section will examine the most important of the UN's rule of law interventions and programmes in the DRC and attempt to identify the extent to which they may have had an impact on the risks of violent conflict.

### The fight against impunity

The term “fight against impunity” for serious crimes captures a range of work by MONUSCO, UNDP and other partners, and was flagged by UN leadership in-country as one of the most important aspects of its rule of law work. This is because for many years eastern DRC witnessed large-scale atrocities by the national security services and armed groups with very little State capacity to investigate or prosecute perpetrators. Started in 2011, a flagship MONUSCO-led initiative was taken forward to establish Prosecution Support Cells (PSC) to provide technical advice to (mainly military) justice authorities on international crimes.

A Memorandum of Understanding (MoU) signed in December 2011 between the Congolese Government and MONUSCO laid down the framework of cooperation for the programme “to support the investigation and prosecution of serious crimes,” namely those crimes listed in the Rome Statute. The MoU stipulated that the PSCs would “not initiate, conduct or lead any criminal investigation or prosecution of such crimes.” Their function is to support

and facilitate the work of the FARDC military justice authorities through the provision of the technical advice and logistical support needed to conduct criminal investigations and prosecutions. Under the MoU, PSC officers were given authority to take the necessary steps to secure the crime scene and any other location where evidence of such crimes could be found if Congolese military justice officials were not present. Also under the MoU, the PSCs are granted access to investigation and prosecution files.

Working in close collaboration with the Congolese military justice authorities, the programme effectively combines the political leverage and technical and logistical support of MONUSCO, with the programmatic support of UNDP, while also strengthening coordination and partnerships between a variety of UN and non-UN actors. The programme, taken together with the efforts of partners, incorporates technical and logistical support for investigations, mobile trials (audiences foraines), victim and witness support and assistance, the provision of legal aid for the accused and capacity-building.



One of the functions that has emerged as central to the work of the PSCs is their role in coordinating the *cadres de concertation* that brings together military justice authorities, and partners, both within and external to MONUSCO, who provide support to investigations and trials of international crimes. The PSCs and the military justice authorities co-chair these meetings, which are usually held once a month or more often if necessary in the context of preparations for particular cases. Typically, the *cadre de concertation* will include representatives of various sections within MONUSCO (the Joint Human Rights Office, Child Protection and UNPOL and the Force as necessary), UNDP, and NGO partners (depending on the location, TRIAL, Avocats sans Frontieres (ASF), American Bar Association (ABA), Panzi Foundation and others). At times, the partners will hold preparatory meetings in the absence of the military justice authorities. In 2015 a list of priority cases was developed by UNDP, MONUSCO, the United Nations Team of Experts on the Rule of Law and Sexual Violence in Conflict,<sup>22</sup> ICTJ and national authorities, particularly in North Kivu, South Kivu and Ituri. To account for progress with the priority cases, another prioritization process was completed in 2019.<sup>23</sup>

During the nearly ten years of this programme, the PSCs, led by the Justice Support Section, have worked alongside the JHRO, UNDP and other actors including bar associations and international legal organizations to achieve significant results:

- With PSC support, more than 1,600 accused persons have been processed via the military justice system with a 77 per cent conviction rate, over 50 per cent of which were members of State security forces. It is worth noting that MONUSCO's role in coordinating the *cadres de concertation* has played a key role in moving these cases forward.
- High-profile convictions of senior FARDC officials for war crimes – rape, sexual slavery, and recruitment of children – have demonstrated command responsibility for serious crimes within the State security services. At least 26 FARDC and

Congolese National Police officers have been convicted and sentenced in cases involving sexual violence between 2015 and today.<sup>24</sup>

- Dozens of militia members – including in the Kasais, Ituri (including Djugu territory), North and South Kivu – have similarly been convicted of crimes against humanity.
- Observers suggested that the military justice system has improved its overall ability to investigate, prosecute and adjudicate serious crimes, as evidenced in part by the rarity of decisions overturned on appeal.<sup>25</sup>

The underlying theory of change of these activities is that more robust prosecution of serious crimes will have a deterrent effect and reduce the risk of more widespread human rights violations in the future. Not only do investigations and prosecutions deter<sup>26</sup> future atrocities by demonstrating to perpetrators that such actions will be subject to prosecution and result in long-term imprisonment, they also more broadly strengthen adherence to the rule of law, reinforce the unacceptability of the crimes committed, and demonstrate that impunity will not be tolerated. While prosecutions help remove perpetrators from the field of conflict, they also help to restore the dignity of victims and their families by providing public acknowledgement of the gravity of wrongs done. They reduce violent acts of revenge, include intercommunal violence, by redressing victims' and communities' grievances through non-violent means.

While it is difficult to accurately assess the impact of these programmes. One senior UN official stated that, in interviews with at least 20 armed group leaders over the past six years, nearly all indicated that fear of prosecution played a role in their calculations, suggesting that they may have limited recourse of violence as a result.<sup>27</sup> A report by OHCHR similarly recognized the effect of such prosecutions in reducing future harm, but indicated that the relatively small number of convictions versus the overall rate of human rights violations by national security agents in particular may point to limited impact.<sup>28</sup>

A recent UNDP assessment of its own support to prosecutions of serious crimes found that the quality of judgments had improved and the caseload had increased over time, but that the decisions were largely “symbolic” as they were not accompanied by reparations for victims.<sup>29</sup> In contrast, other experts have pointed to relatively long prison sentences as serving more than a symbolic function. Anecdotal feedback received from NGOs in the DRC indicates that the work of the PSC, JHRO, UNDP and its partners has enabled investigations that otherwise would not have taken place, and has helped to strengthen the perception of the Congolese justice system amongst the population.<sup>30</sup> Indeed, several NGOs reported a significant increase in the number of victims coming forward, indicating increased confidence in the judicial process.<sup>31</sup>

In sum, the most persuasive argument for direct impact is the fact that the UN’s support to prosecutions has taken thousands of violent actors off the streets and put them through a viable judicial process. There is evidence that these actors would have perpetrated further violence, given their frequent association with armed groups that continue to carry out serious crimes, and the reports that atrocities declined significantly after the arrest of high-level perpetrators.<sup>32</sup> The removal of high-ranking and influential State actors is also an especially important step that likely would not have occurred without the UN’s support. The fact that at least 20 armed group leaders have indicated an awareness of prosecutions for serious crimes is some evidence that the anti-impunity work has had an impact more broadly as well. Of course, impunity remains a major issue in DRC – and indeed there has been near-total impunity for crimes committed before 2002, demonstrating a major failing of the Specialized Mixed Chambers – but the UN’s accomplishments above do point to some impact.

## What are the Prosecution Support Cells?

- Established in 2010 within the Justice Support Section of MONUSCO.
- There are 6 PSCs in four provinces of eastern DRC and the Kasais.
- Staffed with 20 Government-provided personnel, who are international justice and prosecutorial experts, and an advisor from the United Nations Team of Experts on the Rule of Law and Sexual Violence in Conflict (In the past some PSCs included a UNDP consultant).
- Managed by the Justice Support Section of MONUSCO, with previous financial support from the EU, Canada and other bilateral donors.
- MONUSCO has a MoU with the Congolese Government to support military justice authorities in the investigation and prosecution of serious crimes.
- Has supported some of the highest-profile international criminal cases in DRC’s history (in coordination with other actors including JHRO).

## Building civilian justice capacities

In 2010, civilian justice services were practically non-existent for most of the population, with military justice the only option for serious crimes (raising serious concerns by human rights advocates that remain to this day).<sup>33</sup> Less than one-third of the planned 165 peace tribunals were operational across the country, and access to justice was at some of the lowest levels in the world. MONUSCO's work over the subsequent ten years has contributed directly to improved civilian justice capacities, including:

- 31 civilian courts were reopened, 24 buildings were constructed/refurbished for prosecutors' offices, and 30 prosecution offices were equipped in eastern DRC;
- 15 courts of appeal were established and provided with basic equipment;
- 1,300 registrars and clerks were trained on basic judicial competencies;
- Four cases of genocide and crimes against humanity were concluded before civilian courts (in Lubumbashi and Ituri in 2016 and 2019);<sup>34</sup>
- 97 land disputes were mediated amongst families composed of more than 2,000 people, the results of which were endorsed by the peace tribunal in North Kivu.<sup>35</sup>

The gradual increases in capacities of the civilian courts, while important, fall far short of what is needed for a fully functioning judiciary. UN officials expressed continuing concern that trials for serious crimes continue to be conducted by the military courts, which have fewer procedural safeguards than civilian ones, in particular regarding their independence from military authorities and their capacity to prosecute top-ranking officers. Indeed, a 2014 population survey found extremely low levels of confidence in the Government's ability to address risks of violence and impunity via civilian institutions, with large percentages of the Congolese population viewing it as corrupt, biased and enabling impunity.<sup>36</sup> MONUSCO officials similarly suggested that the overall capacities and caseload of the civilian courts had not grown substantially over the past ten years.<sup>37</sup>

However, the resolution of land disputes may point to a more direct impact on the risks of conflict. A range of scholarship has demonstrated the immediate link between contestation over land ownership and violent conflict in eastern DRC, with many of the most serious episodes of violence in the past ten years, related at least in part to land.<sup>38</sup> A key factor in land conflicts escalating into violence is the lack of forums for resolving disputes, and the low confidence in State-run institutions amongst the population.<sup>39</sup> By helping to resolve land disputes involving at least 2,000 people in the North Kivu province, there is a case that the risks of violent conflict were at least somewhat reduced in that area.

## Mobile courts

One of the most important and impactful areas where both MONUSCO and UNDP have jointly advanced civilian and military rule of law capacities has been via their support of pre-trial investigation and mobile courts in eastern DRC.<sup>40</sup> While mobile courts have been in the Congolese legal system since 1969, the UN's support to them ramped up in 2010, with significant programming from both UNDP and MONUSCO. Funding joint investigation teams and mobile court sessions has proven an effective way to

dramatically increase the number of trials for violent crimes, and to ensure that SGBV-and conflict-related sexual violence (CRSV) cases are prioritized (UNDP's programmes, for example, require a minimum number of CRSV cases in order for funding to be released).<sup>41</sup> For a cost of USD 20-25,000, a 15-day session can hear up to eight criminal cases involving 16 accused and 60 victims. Over the course of the 2010-2019 period, the UN supported more than 15 sessions annually, processing more than 200 cases per

year, 60 per cent of which related to SGBV.<sup>42</sup> In terms of conflict prevention, the mobile courts have the advantage of being deployed in some of the most conflict-prone areas of eastern DRC, acting to reduce tensions and address impunity where it is most needed. A 2015 survey found that the Congolese population felt relatively confident in the work of the mobile courts, ranking them consistently higher than both civil and military courts (an interesting finding considering that the mobile courts are in fact an extension of those forums).<sup>43</sup> The high ratio of SGBV-CRSV cases also provided protections to hundreds of victims that would not otherwise have existed, though one assessment suggested there was limited evidence that the trials had had a deterrent effect on SGBV-CRSV rates overall.<sup>44</sup> Several interviewees from UN offices in the DRC pointed to reduced rates of serious violence in areas where mobile courts had been deployed, though this case study was unable to identify sustained declines in sexual violence to support such a finding. One such example of potential impact was the 2016 mobile court trial of 14 FARDC elements involved in human rights violations during the 2013-14 military operations against the *Forces de résistance patriotique de l'Ituri* (FRPI). According to some experts in DRC, these trials helped to boost confidence in a 2016 political process between the Government and the FRPI that resulted in the signing of a peace agreement on 28 February 2020, contributing to a reduction in attacks by the group on civilian populations in the area at the time.<sup>45</sup>

## Prison conditions and security

Prison overcrowding, prolonged or unlawful detention, and poor prison security are chronic challenges in the DRC. These can combine to create significant risks of violence, limiting the ability of judicial authorities to safely house serious criminals and opening opportunities for regular large-scale prison breaks. In May 2017, for example, 4,200 prison inmates broke out of the Makala prison in Kinshasa, including hundreds of members of rebel groups operating violently around the country and at least one person serving for a conviction at the ICC.<sup>46</sup> In the same period, 900 prisoners escaped from

## Combating Sexual Violence in DRC

Historically, the DRC has had some of the worst rates of sexual violence in the world and at one point was given the title “Rape Capital of the World.” Around 2010, enormous amounts of donor resources targeted SGBV programming, including large UN-led programmes on access to justice, awareness-raising, institutional strengthening, and witness protection. This led to a joint UN/Government communiqué in 2013 committing to concrete steps against to address CRSV and revised in 2019 (the [Joint Communiqué](#) and [Addendum](#) are on CRSV and not SGBV).

There was also advocacy at high levels for accountability for the “FARDC-5” – five high-level FARDC alleged to have committed sexual violence that led to several high-profile trials, including that of “Colonel 106.”

Starting in 2010, the UN began building specialized police units for women and children to file complaints, eventually building seven across eastern DRC. The UN has also conditioned its broader support to the justice institutions of DRC on their readiness to prioritize CRSV cases, resulting in a significant increase over the past ten years.

However, rates of sexual violence remain extraordinarily high in DRC, indicating limited impact more broadly. Ensuring adequate support to SGBV-related justice processes will be a major priority for the coming period.

a prison in Beni, including dozens of members of the Allied Democratic Forces (ADF), which is widely considered the most dangerous armed group in the DRC.<sup>47</sup> The ability of these groups to resupply their forces via prison breaks constitutes a clear risk of further violence.

The UN has provided significant support to improving prison conditions, with a growing emphasis on prison security. This work includes the provision of security installations (cameras, physical protective equipment), advisory support, and physical rehabilitation of some prisons by both MONUSCO and UNDP. It also includes the identification and classification of high-risk prisoners. Importantly (and due largely to staffing cuts), MONUSCO has over time reduced the number of prison locations it supports, focusing and amplifying its work on areas that have been identified as specific protection risks, either because of the presence of armed groups or high levels of violence.<sup>48</sup> Facilitating the transfer of prisoners to prisons outside of their home areas is another activity that MONUSCO sees as reducing the risk of prison breaks.

According to UN experts in the DRC, it is highly likely that this support has prevented and/or limited prison breaks over the past several years. The large-scale release of prisoners who had been irregularly or unlawfully detained has somewhat improved conditions and security in many of the largest prisons in the country: between 2015 and 2020, more than 4,300 such detainees were set free, while the ratio of pre-trial detainees to convicted prisoners fell below 40 per cent in some areas for the first time in history.<sup>49</sup> Limiting overcrowding and ensuring sufficient space for those individuals convicted of serious crimes contributes to a reduction of risks. Here, the mobile courts have also played a role in ensuring that violent actors are removed from the general population: in Kananga, for example, 175 irregular detention cases were regularized through mobile court hearings at the prison itself.<sup>50</sup> Serious challenges remain regarding prison security and management however, as evidenced in October 2020 when roughly 1,300 prisoners escaped from a prison in Beni following an attack on the prison by an armed group, including dozens of ADF members set of face trial in the subsequent months.

## Strengthening the legislative framework on rule of law

The criminal justice system in the DRC remains deeply underdeveloped as a result of decades of conflict, corruption, and lack of interest by the political elites of the country. In 2010, the UN was faced with a serious shortfall of civilian justice institutions by the State and no government plan for justice reform. This meant that the Congolese civilian justice system was nearly paralysed, unable to process caseloads, leading to massive overcrowding in prisons, failures to bring violent groups to account, and a tendency of groups to practice vigilante justice. While the past ten years have not witnessed significant reform of the legislative framework, MONUSCO and UNDP's support has helped towards some accomplishments including:

- A set of national consultations on justice in 2015, resulting in the Government's adoption of a national justice reform strategy and action plan for 2018-2022.

- The promulgation of legislation allowing for the full implementation of the Rome Statute of the ICC into the Congolese court system.<sup>51</sup>
- The adoption of measures on judicial policy, accountability and oversight resulted in the review of 252 judicial disciplinary cases and the eventual removal of roughly 250 magistrates whose appointments had been irregular.

Interviewees for this study, however, were sceptical about the impact of these reforms, and indeed pointed to a broader lack of meaningful progress on national reforms across the board (including especially security sector reform, but also reforms on reparations and witness/victim protection). While the inclusion of some legislation such as the ICC statute may gradually allow the Congolese justice system to respond

better to international crimes, there is little evidence that the UN's national reform support over the past ten years has generated substantial impact. Indeed, in some areas where the UN has worked to build and reform institutions, the levels of violence have remained unchanged

over time. This view was strongly articulated by several Congolese politicians during in-person interviews in Kinshasa in 2018, and is evidenced by the continued prevalence of human rights violations and poor performance by the Congolese security and judicial services.<sup>52</sup>

## Crowd control

The UN has consistently reported that the greatest human rights violator in the DRC is the State security service itself, which regularly accounts for more violations than several of the largest armed groups combined.<sup>53</sup> While the above sections have described efforts to end impunity and improve the behaviour of the FARDC in particular, it is worth highlighting a specific area of work that MONUSCO has taken forward with the Congolese National Police: reducing the risks of violence during crowd control. This issue came to the fore during the constitutional crisis from 2015-2018, during which opposition groups held large-scale rallies in many of DRC's largest cities and faced a heavy-handed response from the police force. On a regular basis, rallies would end with 40-50 civilians killed by Congolese police, who often

used live rounds of bullets even in relatively peaceful settings.

The MONUSCO police were able to change this practice in a relatively short period of time. The Mission documented police behaviour during rallies, creating a record that included the names and ranks of officers involved in violence. The Mission then advocated for strong penalties – up to 30 years in prison – for those involved in killing civilians, while also offering training and a range of non-lethal equipment to the national police (e.g. rubber bullets). Small but visible steps, such as asking police to sign cards committing them to zero dead during a rally, also helped to change behaviour, and within a year the death rates during rallies had dropped close to zero. Today, frontline police in DRC's major cities rarely carry lethal weaponry during rallies.

## Transitional justice

As part of the peace agreement that ended the Second Congolese War, a Truth and Reconciliation Commission ran from 2003 to 2007. While this process did help to identify some of the perpetrators of serious crimes during the war, it concluded with very limited impact in terms of broader reconciliation or national-level healing, and subsequent proposals for transitional justice mechanisms have largely faltered at the national level.<sup>54</sup> Various efforts to push the transitional justice agenda over the past years have stalled, due in large part to a lack of enthusiasm by the Congolese Government. Even the 2010 OHCHR mapping report – which generated a lot of momentum for justice and accountability in the face of widespread human rights abuses – has not resulted in much further progress on transitional justice to date.

Launched in 2019, a new MONUSCO-led initiative on transitional justice in the Kasais region was established with Peacebuilding Fund support. The “Peace, Justice, Reconciliation and Reconstruction in Central Kasai” (PAJURR) project followed from a decision of the High Commissioner for Human Rights to send a team of experts to investigate reports of serious and widespread human rights abuses, including the use of child soldiers, during the 2016 conflict there. The project also attempts to take advantage of the spontaneous surrenders by many of the Kamuina Nsapu group by building a sense of community reconciliation and anti-impunity.

The PAJURR is an innovative project that aims at pacifying relations between communities torn apart by years of conflict through the restoration of the rule of law, the development of structures for conflict prevention, mediation and transformation, and the revival of the local economy. This project is therefore holistic and multidimensional since it intervenes at the institutional as well as grassroots level, i.e. the community and individual levels. It has allowed, for the first time in the DRC, UN-supported consultations that enabled many marginalized people to express their views on truth, reconciliation, reparations, and the

prevention of future conflicts. The report of the popular consultations, which was handed over to the provincial authorities on 4 February, contains concrete recommendations to promote transitional justice mechanisms in Kasai Central, including the establishment of a truth and reconciliation commission at the provincial level. JHRO is advocating and supporting for this commission to be set up. A provincial edict is being drafted, with inputs from the JHRO. A second project, Spontaneous Surrender in Kasai Central, Kasai and Tanganyika (SSKAT), is still in early stages and it is too early to assess its impact.

## Conclusion

The UN's rule of law work in the DRC spans a wide range of activities and areas. From the above, and based on interviews with UN officials in-country, there is some evidence that the UN's anti-impunity has played a role in reducing risks of violence from where they might have been otherwise, particularly by removing perpetrators from society and sending signals to potential violent actors about the possibility of prosecution. The mobile courts especially have dramatically increased the number of trials of atrocity crimes before military jurisdictions and have been able to target conflict-prone areas. Improved security in DRC's largest prisons may

well have prevented large-scale prison breaks in areas where armed groups pose a direct threat to the civilian population, though such breaks are far from fully eradicated. And the efforts to reduce violence by police during large rallies have certainly resulted in a dramatic drop in casualties to nearly zero today. There are, of course, many shortcomings and the rule of law capacities of the Congolese State remain some of the lowest in the world, but there is some clear evidence of impact across the UN's work. The following section explores what factors either enable or inhibit the UN from making a greater impact.

# 5. Enabling and inhibiting factors

The previous section analysed the impact of a range of rule of law programmes and approaches by the UN over the past ten years. This section explores the factors that may

have enabled or inhibited impact, including contextual factors in the DRC also factors that were in the Mission's control.

## The scale of the problem

Interviewees consistently pointed to the massive scale of human rights violations and extraordinarily weak institutional capacities as an almost insurmountable challenge in the DRC. "How can you assess the impact of our anti-impunity work when impunity has been the norm in Congo for forty years?", one interviewee asked. The sheer size, population, and levels of violence make DRC a difficult setting to evaluate, even

given relatively large programming. Some UN staff suggested that the recurrent cycles of violence had "demoralized" the UN, making many in the system sceptical that any change was possible. Especially in the areas of anti-impunity, the extraordinary number of human rights violations across the country means that the relatively low number of concluded cases seems to pale in comparison.

## Lack of national budgets and over-reliance on the UN

In almost every area described above, UN and international donor programming constituted nearly the entirety of the investment, with Congolese Government spending at most nominal and always temporary. The lack of multi-year budgets for core rule of law areas (justice, prisons, police) and chronic failure to pay even the most basic salaries by national authorities mean that UN programmes last until the money stops. "Our projects may build a small amount of technical capacity amongst the Congolese, but that dissipates as soon as we wrap up a project," a senior UN official noted. The negative effects are most keenly

felt in terms of the UN's reform agenda: no amount of legislative reform or commitments to improving the rule of law institutions of DRC will result in changes unless they are backed by sustained national funding.

Indeed, several interviewees suggested that the fairly constant readiness of the international community to fund rule of law projects has created a dependency of the Congolese system on international support. "The Government has come to expect us [donors] to pay for everything, so they have not gotten into the practice of budgeting for their basic services,"



a donor pointed out.<sup>55</sup> For example, in the case of UN-supported mobile courts, each process is a single expenditure, without any prospect that the Government will fund its own follow-up. This means that even fairly modest costs – e.g. USD 25,000 for a 15-day session of the mobile courts

– are not contributing to sustained local capacity. “Our support dies off as soon as we stop funding something, because the Government has no follow through or budget,” a senior UN official noted.

## Lack of visibility/awareness

Much of the UN’s rule of law work in the DRC takes place below the radar, and in areas of witness protection and quiet support to delicate processes, a discreet approach may well be best. However, in the areas of anti-impunity in particular, sending a clear and widely received message is crucial, and often a challenge for the UN. “It isn’t clear that the militias are getting the message,” one UN official remarked, noting that human rights violations remained widespread amongst some of the most prominent armed

groups. However, another senior UN official who had met with at least 20 armed group leaders noted that nearly all had expressed familiarity with the international criminal work of the Congolese Government and the UN, indicating that there might well be a deterrent effect.<sup>56</sup> Trials of State actors – including high-ranking FARDC commanders – also received significant coverage in the press. More efforts and resources on public awareness was frequently cited as a way to improve impact.

## A two-tier system

Military courts are clearly the most used option when it comes to trying international crimes in the DRC, despite shortcomings regarding the independence of military courts and the lack of internationally recognized procedures in military trials (e.g. lack of *habeus corpus*, death penalty sentences, and in some cases a lack of ability to appeal).<sup>57</sup> While the UN has made some efforts to bolster civilian courts and increase their capacity to try international crimes, as of the date of writing, the bulk of trials continue

to take place via military tribunals. This is due almost entirely to the fact that civil courts do not have jurisdiction over most of the most serious crimes in the DRC. The result is that civil judicial capacities have advanced far less than military ones (despite major efforts by the UN, ICTJ and others), which may negatively impact on the ability of the Congolese system to effectively and sustainably address widespread human rights violations in the future.

## Lack of international experience

While international support to joint pre-trial investigations, mobile courts and the Congolese judiciary more generally has been provided by experienced lawyers, very few have direct experience in trying international crimes (i.e. war crimes, crimes against humanity). This is because Member States have thus far provided a pool of lawyers with primarily domestic criminal experience, rather than the kind of experience that might push forward higher-profile crimes that might do more to combat impunity. However, it does appear that the willingness of the national judicial actors to take on serious

crimes has increased over time, meaning that the caseload of international crimes has increased as well.<sup>58</sup> One issue here may be the high threshold for trying international crimes: where there is insufficient evidence to support a prosecution for international crime, it may be downgraded to a domestic one (e.g. murder) where less evidence may be required to prove a charge, but the broader impact of trying the case in a manner that properly reflects the gravity and scale of the offending and resulting publicity will necessarily be less as well.

## Staffing/funding shortfalls

In both the Justice Support and the Corrections sections of MONUSCO in particular, there appear to be significant shortfalls in the number of staff needed to achieve their respective mandates, as well as reductions in the geographic scope of the UN's rule of law work. The trend appears to be toward a continuation of cuts to staffing. For example, in 2013, there were 80 UN personnel allocated to the Justice Support Section, while that number has currently dropped to 35 without a significant change in the Mission's justice mandate.<sup>59</sup> Reductions in staffing and funding, however, have required a reduction in the ability of the Mission to deliver on core mandated tasks in this area and maximize impact and have required prioritization: the Corrections Section of MONUSCO has gradually reduced the number of prisons it supports, focusing on areas affected by armed conflict. "The reduction has meant we now have a clearer sense of what

we are doing, we are working to prevent violent groups from getting involved in the prisons," a UN official noted. Reducing the resources to deliver on corrections has, however, had adverse consequences on peace and security, as demonstrated by the October 2020 attack and mass escape at the Beni prison where MONUSCO only had two Government-provided corrections personnel assigned to support a large and strategically important prison.

Donor support to rule of law also dipped during the constitutional crisis from 2016-2018, as bilateral donors were apparently reluctant to support the Kabila Government. This meant that some proposed programmes have not received adequate funding in recent years. Several interviewees pointed to funding shortfalls as the cause of discontinued or curtailed rule of law programming.

## Good coordination

In supporting the pre-trial investigation and mobile courts in particular, strong coordination amongst MONUSCO, UNDP, various bar associations and INGOs,<sup>60</sup> and the Government appears to have resulted in effective and relevant support to criminal trials for serious crimes. Similarly, the Prosecution Support Cells were cited as an example of good MONUSCO/

UNDP collaboration by several interlocutors, in particular the collocation of UNDP experts within some MONUSCO-led cells. The use of the *cadres de concertation*, bringing together all of the major rule of law actors into a single programme, was also cited as good practice that increased effectiveness.

## A broad approach to rule of law

In discussions with the UN leadership in MONUSCO and UNDP, it was clear they took a broad view of what activities might support their rule of law mandates in DRC, looking at improving the penal chain as a whole. For example, MONUSCO's Joint Human Rights Office noted that the application of the Human Rights Due Diligence Policy (used to vet Congolese officials and put in place mitigating measures for working with them, as well as to promote advocacy for investigations/trials or replacement

of commanders alleged to have been involved in grave human rights violations) was part of the Mission's rule of law approach, helping to combat impunity and hold State actors accountable. Similarly, interviews with the police and force components of the Mission indicated that they saw even their protection of civilians activities as linked to rule of law in that they would gradually improve the relationship between State security actors and the population.

# 6. Lessons and recommendations

The UN's rule of law work in the DRC has spanned multiple decades and very different eras of Congo's post-war existence. While the Congolese experience is a unique one, this section draws more general lessons that could help UN actors in other settings improve their rule of law interventions.

- **Be mobile.** One of the biggest success stories is the UN's support to mobile courts in eastern DRC, and a significant part of the impact appears to be their ability to shift locations. Especially in a large terrain where armed group activity and other forms of insecurity may shift dramatically over short periods of time, mobility is not just a prerequisite for armed peacekeepers, but also for rule of law actors. This will become even more important as MONUSCO continues to reduce its static footprint in the coming period, raising the question of what UN entity might be well-placed to continue this work.
- **Set realistic expectations and focus on what can be done.** A consistent complaint by UN staff and Congolese interlocutors was that MONUSCO in particular had a "Christmas tree" mandate, a 16-page laundry list of tasks, many of which were extremely unlikely to be achieved within the coming decade. National level reforms to the security sector and broad institutional transformations of the judiciary and police simply have not occurred over the past ten years, demonstrating the strong resilience of existing systems of governance and the many challenges facing the UN's reform agenda. In contrast, more achievable tasks, such as increasing the output of the military courts, improving prison security, or supplying mobile trial capacities, have had a demonstrable impact much more in line with realistic expectations. Innovative witness and victim protection mechanisms also have proven effective in the DRC. Even with existing mandates, efforts to streamline and focus on the most conflict-prone areas (as was done by the Corrections, Justice Support, and JHRO sections) may have boosted effectiveness even while reducing the scope of activity.
- **Stay focused on serious crimes.** A shortcoming of some of the UN's work in the DRC has been the tendency to get pulled into lower-level criminal caseloads, whereas the most effective work against impunity remains the higher-profile cases holding the most serious offenders to account. One way to maintain this focus on serious international crimes could be to employ more UN officials with a specific background in international

criminal litigation, potentially from the various UN-led international tribunals and/or hybrid courts. And tasking the PSC to focus more on high-profile cases could also increase the impact.

- **Condition UN support to ensure SGBV, and specifically CRSV, cases are addressed.** In many instances, the UN has conditioned its support to the Congolese courts, requiring them to maintain a high percentage of cases involving SGBV. This has resulted in a nearly 60 per cent SGBV caseload in recent years. Combined with witness protection and victim assistance measures, this can dramatically improve the UN's and the host government's response to SGBV.
- **Look to change police behaviour.** One of the most successful activities MONUSCO has undertaken in recent years has been to monitor police crowd control behaviour and offer specific incentives to reduce the use of deadly force. Focusing on a specific set of behaviours and targeting support (e.g. rubber bullets) to achieve a short-term objective has made a significant difference in a short period of time. It also has the added benefit of improving State-society relations during fraught periods. The use of the Human Rights Due Diligence Policy to mitigate risks of working with the police has also had a positive impact on behaviour.
- **Put more resources into awareness-raising.** The fight against impunity relies upon a high degree of awareness amongst the public of the repercussions of serious criminal/violent behaviour. The most impactful work described above was typically linked to effective communications, either by virtue of it being a very high-profile case, or via specific outreach. Organizations like TRIAL, which have very good outreach campaigns for the trials they support, could serve as models for the UN. Similarly, the work of human rights investigations into serious and widespread crimes, even if it does not immediately result in criminal prosecutions, can lay an important foundation for the UN's broader anti-impunity work.
- **Build an integrated/joint rule of law strategy.** There has been a tendency historically to view rule of law as a discrete set of activities focused on the police, justice and corrections. While this may be the core of the UN's rule of law work, in settings like the DRC, there are opportunities to strengthen rule of law capacities in a wider variety of ways, including through human rights due diligence, protection of civilians, stabilization, and other activities.<sup>61</sup> By building a holistic strategy that understands how all mission components (and UN agencies) might contribute to rule of law, and indeed how rule of law can contribute to addressing underlying drivers of conflict (e.g. land, natural resources, inclusivity) the UN can maximize its impact. The joint justice programme currently underway between UNDP and MONUSCO offers a good example of this.
- **Coordinate towards an exit strategy.** The coordination between MONUSCO and UNDP around justice support and mobile courts appears to be quite strong and has been acknowledged in a range of previous assessments. Interviewees for this study also pointed to the need for coordination to be geared towards the eventual handover of programming once MONUSCO phases out of the country, including those rule of law activities that will continue by other UN country presences. "We need to have a better joint understanding of how rule of law priorities will be met through the Mission's transition out of Congo," one UN official noted.<sup>62</sup>

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