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**Building institutions to promote peaceful and inclusive societies for sustainable development and provide access to justice for all**

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#### **Note by the Secretariat**

The Secretariat has the honour to transmit to the Committee of Experts on Public Administration the paper prepared by Committee member Paul Jackson, in collaboration with Linda Bilmes, Lamia Moubayed Bissat, Katarina Ott and Moni Pizani.

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## **Building institutions to promote peaceful and inclusive societies for sustainable development and provide access to justice for all**

### *Summary*

In the present paper the underlying issues in promoting access to security and justice for all are considered, including in relation to peacebuilding. The paper offers an analysis of the successes and shortcomings of past security sector reform programmes and includes a set of recommendations on ways to support Sustainable Development Goal 16 as it relates to building effective, accountable and inclusive institutions, peaceful and inclusive societies and access to justice for all.

Goal 16 is aimed at preventing violent conflict, fostering inclusive governance and providing access to justice grounded in a broad view of development. The Goal is based on a long-term and holistic approach and provides an alternative to the top-down, short-term and crisis-driven approaches based on the short-term and linear responses to violence, terrorism, crime and conflict that have often characterized security sector reform.

In order to support peacebuilding, as opposed to imposing “hard” security, fostering partnerships with civil society is a key activity. Processes are needed to encourage bottom-up approaches that go beyond State institutions, which may, in some cases, be dysfunctional, illegitimate or unrepresentative. Such an approach underscores the political aspects of peace and security and recognizes that peacebuilding efforts may call for explicitly challenging existing power structures that perpetuate ineffective governance and unresponsive or exclusive institutions, where they exist.

Justice reforms have also historically been State-led, top-down and technocratic. Yet, most people in post-conflict and weak States experience localized justice provision. Formal legal or court systems often do not reach rural or remote areas in post-conflict or weak States and, where they do, lack of representation, as well as impunity for some groups and corruption can pose challenges. Moreover, customary authorities may not always share concerns related to human rights such as accountability, equality before the law, access to justice for specific groups or non-discrimination in employment; however, they may be the only legal authorities available. Success in enhancing the inclusiveness of justice systems in such cases is often limited.

Definitions of access to justice are closely linked to debates about the legal empowerment of the poor, generally understood as the approach or process through which the poor become protected rather than oppressed by the law and are able to use the law to advance their rights and interests with the State and in the market. Such an approach is reflected in debates on access to justice for all and in the Sustainable Development Goals. It also encompasses the rights of minority and other groups to legal protection. Goal 16 reflects the approach as a human rights-based strategy to promote safety, security and access to justice through initiatives that aim to improve the ability of local populations to control their own lives.

Goal 16 highlights human security and focuses attention on everyday security in neighbourhoods and on whether justice is inclusive. It also recognizes that violent conflict is prevented through peacebuilding, inclusion and effective governance, which are key to the achievement of the Goals.

## I. Developmental approaches to inclusive justice

1. International support for State-building and peacekeeping has evolved into support for peacebuilding more generally, with security assistance and promotion of the rule of law included in comprehensive programmes promoting security sector reform. Such programmes, as well as peacebuilding, are now focused on the reconstruction and institution-building efforts necessary for recovery from conflict and support the development of integrated strategies in order to lay the foundation for sustainable development. The international community's concern with the State's monopoly over the use of force is reinforced by defining this monopoly as an integral feature of the rule of law and as a shared international aspiration. The rule of law itself, having grown from being a largely national matter to a global concern, is now seen as fundamental to the exercise of State authority, or even as a form of "mobile sovereignty", whereby external experts are able to introduce security sector reform initiatives on the basis of international norms. This creates some tension between national sovereignty and international approaches that are mediated by international entities, such as the United Nations, which are expected to be impartial and respect the principle of sovereign equality.

2. Goal 16 cannot be considered in an isolated context. It touches on cross-cutting issues that require peace and peacebuilding to be considered in connection with the other Goals in order for progress to be made. The call for an integrated approach to all the Goals reflects the need to connect Goal 16 with the other Goals through the recognition that, for example, tackling poverty, inequality or injustice is essential to addressing the underlying causes of violence. Societies that provide access to employment, sustainable livelihoods, justice, basic security and basic services and that have some form of political inclusion are far more likely to be peaceful.

3. An integral element of a rule of law approach is the strengthening of justice systems that seek to make the Universal Declaration of Human Rights empirically universal. Justice reforms have become an integral part of security sector reform that has moved towards a more comprehensive approach focused on legitimacy, democratic control, democratic oversight, effective governance and the rule of law. A focus on access to justice within those reform initiatives is part of international efforts to build effective security arrangements that are multidimensional, cutting across security agencies, intelligence-sharing, policing and the provision of justice, as well as incorporating non-State actors in security and justice provision. Such comprehensive approaches have been adopted partly in response to less successful technocratic approaches to institution-building that have characterized traditional security assistance.

4. The role of women in gender-responsive justice institutions is particularly important to developing inclusive approaches. In its resolution [1325 \(2000\)](#), the Security Council affirmed the importance of the participation of women and the inclusion of gender perspectives in peace negotiations, humanitarian planning, peacekeeping operations and post-conflict peacebuilding and governance.

5. Progress has been made in non-discriminatory legal and policy reforms, but in order to make tangible changes and build peaceful and inclusive societies, the participation of women in the justice sector as prosecutors, judges, practitioners and law enforcers, as well as in other professional contexts, needs to be expanded. Women frequently play prominent roles in peacebuilding and their involvement has contributed to the long-term success of many peacebuilding programmes. Women remain unequally represented, however, in professional roles in transitional justice and rule of law institutions. They need to be seen as both beneficiaries and decision-makers. The report entitled *Preventing Conflict, Transforming Justice, Securing the*

*Peace: Global Study on the Implementation of United Nations Security Council resolution 1325* contains new evidence and a set of recommendations for action in this respect.

### **Access to justice and the legal empowerment of the poor**

6. Access to justice for all can be understood in three different ways: as a right recognized within the international human rights framework; as a comprehensive human rights-based development approach or process; or as an approach to public sector service provision and institutional reform. The debate about these three different approaches incorporates ideas of inclusiveness, beyond questions of judicial resolution to adverse or exclusionary institutional structures, alternative mechanisms to conflict resolution and the rule of law in general.

7. Access to justice and a fair trial are recognized under international law, including in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child. The need to build just and inclusive societies that provide equal access to justice and that are based on respect for human rights is also recognized in the 2030 Agenda for Sustainable Development and in the (non-binding) declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels, adopted on 24 September 2012.

8. The Universal Declaration of Human Rights states that everyone is equal before the law and has the right to effective remedy against violations of fundamental rights. Access to justice is therefore a fundamental right that should ensure that every person has access to an independent and impartial process, the opportunity to receive a fair and just trial when that individual's liberty or property is at stake and access to recourse when the system fails to provide such opportunity.

9. It is important to note that access to justice does not always involve judicial recourse, but the availability of accessible, affordable, timely and effective means of redress or remedies in some form. These may include a wide range of alternative dispute resolution mechanisms, traditional or customary authorities, religious courts or other non-State remedies at various levels of government. In many rural areas, for example, the population may not have access to law enforcement services or judicial process at all.

10. Broader definitions of access to justice are closely linked to debates about the legal empowerment of the poor, generally understood as the approach or process through which the poor become protected rather than oppressed by the law and are able to use the law to advance their rights and interests with the State and in the market. This approach is reflected in debates on access to justice for all and in the Goals. It also encompasses the rights of minorities and other groups to legal protection. Goal 16 reflects the approach as a human rights-based strategy to promote safety, security and access to justice through development activities to improve the ability of local populations to control their own lives.

11. In practice, the approach expands the rule of law, linking access to justice with the provision of legal services, education and development. This is achieved through legal reform to empower local populations, by giving them a voice and defensible rights during the legal process; enhancing the knowledge available to those who are disadvantaged, including by ensuring that they understand their rights, as well as the processes available to them to protect those rights; ensuring that barriers to accessing justice, like cost or language, do not act as impediments to enabling justice; and making sure that impunity ends for some groups and that the mechanisms for the legal protection of others are enhanced.

12. The broadening of approaches to accessing justice has implications for the range of measures that are implemented at the national and subnational levels. A narrower definition of access to judicial services would mean broadening legal aid approaches, whereas the broader definitions adopted by most of the international community under the rule of law, would mean the deployment of a wide range of actors, a more hybrid approach encompassing State and non-State actors, as well as structural changes implemented through institutional reforms in the justice sector. In terms of international reform programmes, a wide range of activities have been incorporated, such as court reforms, legal aid, information dissemination and education, alternative dispute resolution, public sector accountability and research.

### **Security sector reform, the rule of law and the enforcement problem**

13. The objective of providing access to justice for all exists within a broader set of approaches known as security sector reform. While approaches to accessing justice, per se, do not necessarily have to be included within security sector reform programmes, the security sector reform approach as developed by the Organization for Economic Cooperation and Development, among others, deliberately takes a systems approach to security and justice, as well as linking State and non-State actors in the provision of justice. Security sector reform is also a common way of taking a developmental approach to security issues. As such, there are close links between security sector reform, the rule of law and access to justice for all as envisaged in Goal 16.

14. There have been inconsistencies in State-building, security and development. Specifically, there is an assumption that human security can be best served by creating a functioning State that will provide security as a public good and that development will provide benefits to the general population. However, basic security and freedom from fear remain elusive for many people. Thus, the State's responsibility to protect citizens remains unrealized, not least when the State's authority is used for personal financial benefit and there is systemic corruption, as is the case in some post-conflict environments. These shortcomings, in turn, can lead to claims of legitimacy of international intervention in vulnerable States in order to restore the rule of law.

## **II. Contemporary approaches to security and justice**

15. Contemporary approaches to security and justice are predominantly linear in terms of interventionist logic. International security sector and justice reform programmes make a number of assumptions about direction, approaches and outcomes that are the result of following accepted forms of these programmes. In particular, such a linear or conventional approach is also affected by tensions arising from State-centrism, techno-centrism and the nature of ownership.

### **State-centrism**

16. While most analysts accept that there are problems with the nation State in many of the contexts in which States are failing, there is still a tendency to accept the technocratic parameters of State-building. Casting the nation State as the norm ignores the broadening and deepening of the definition of what constitutes security at all levels, the intra-State nature of many conflicts, international conflict actors and the role of the State itself as a participant. A prescriptive assumption remains that the right mixture of policies can create a healthy nation State.

17. In inclusive justice, there is a wide-ranging variety of service providers, however most poor people do not receive State services, despite international support for human rights. Inclusive justice implies a shift in focus from just the formal judicial

system towards a more nuanced view of different providers and ways of accessing different forms of justice. Inclusive justice may also incorporate different conceptions of justice into a hybrid system, or at least find a way of balancing issues that are more likely to be attained by formal justice mechanisms or external intervention (such as sexual violence or gender) and those that may be better settled at the local level (some forms of theft).

18. State-centrism itself changes local power structures among those who benefit from training, equipment and resources. States rely on legitimacy and compliance; in a liberal State this is commonly expressed through participation in the political processes, such as periodic democratic elections. However, formal legitimacy may not be achievable or even desirable for citizens. A technocratic approach may create an institutional superstructure of a State without political legitimacy.

19. State-building is also very uneven; for example, even States that have had a functioning core before, during or even after conflict, may only rarely, or partially, have had a presence in rural areas. Many people in post-conflict settings simply have never received services directly from the Government. On the one hand, this can produce a political hybrid, a context in which local populations have both a say and a choice in terms of accessing services, including security, and in which a variety of plural providers exists. On the other hand, there is a risk that such a hybrid situation reinforces the position of local elites and neo-patrimonial rule.

#### **Techno-centrism**

20. Security sector reform and rule of law approaches tend to focus on measurable outputs such as training and infrastructure models, whereas State-building tends to focus on what is being constructed. Interventions of security sector and rule of law reforms are frequently carried out by international bureaucrats, police or military personnel whose mandates may be more technical than political.

21. Historically, technical security sector and rule of law reforms have led to a concentration of efforts on the formal State justice system, particularly the renovation and reform of courts, training of clerks and judges and the drafting of legal instruments. However, some parts of the formal sector have remained neglected, including prisons. Only recently has there been an upsurge in efforts to support and work with non-State actors, such as customary courts, in maintaining justice. The upsurge has been in part because of the lack of certainty over international legal norms. There is a recognition that customary systems are not about to just disappear and that there is a need to develop working partnerships with them. International actors have been reluctant to do so because these are long-term, messy and expensive courses of action.

22. The issue of gender is of particular importance in the sense that women are underrepresented in most customary law systems. It is easier to make a change in this regard in a formal system, but in a less formal setting, in which local courts are entwined with local power and social hierarchies, changing the gender balance or even improving access to legal approaches may be difficult for women who may traditionally have fewer rights than men.

23. Techno-centric approaches assume that there is an agreed underlying set of norms and that all interventions in support of the norms will receive the support of actors engaged in peacebuilding, including justice. These approaches create standards, benchmarks and frameworks for peacebuilding that constitute a specific type of knowledge that can be transferred to conflict zones as international norms; in turn, this knowledge is accompanied by a set of practices designated by technical terminology as tools, indicators, templates or instruments that can be considered

apolitical and as objective ways to represent reality. Nonetheless, these approaches, are inherently political in their own right.

### **Local ownership**

24. Despite the common use of the term local ownership, there is no consensus on what it means or how it can be enacted. Local ownership is frequently either romanticized or seen as a problem to be overcome, which reflects wariness regarding local actors. While local actors may not be representative or inclusive and may constitute a ruling elite, they may also be unwilling to relinquish control. International involvement in strengthening security and justice institutions may cement the positions of such groups, and it may be naive to assume that local actors would accept programmes designed to change or dilute their own power.

25. Local ownership may be contested. The use of customary power structures facilitates the exercise of hidden power that traps the dominant, as well as the weak, in a web of socialized roles and behaviours. Justice and the dispensing of justice in local village structures, for example, can be a part of the exercise of power in those localities. Local actors who see their power enhanced by their ability to dispense justice are unlikely to give up their power in order to conform to a set of international standards.

26. If justice is to become more inclusive, then more knowledge is needed on how approaches to reform are affected by local politics. The overwhelming reaction to failures and shortcomings in justice interventions specifically, and security sector reform intervention more generally, has been to develop new versions of existing technocratic solutions, increase funding or improve communication, despite evidence of limited impact. The practical approaches and categories deployed by the international community to achieve security sector reform need to be coupled with a measure of humility in terms of the ambitious aims of some international reform programmes coupled with a lack of knowledge about exactly how international interventions will affect existing systems and how their implementation is likely to coexist with those systems.

## **III. New approaches to inclusive justice**

27. Practitioners have recognized a central challenge in how to deal with the perceived failures of linear approaches to State-building. Often the debate is presented in terms of assimilating non-State actors, but the debate is also linked to the development of hybrid approaches to institution-building. This has led to discussion and advocacy for moving beyond linear approaches to State-building and towards the recognition of the links between external and domestic actors. With concepts such as everyday, hybrid and post-liberal forms of peace, the debate presents potential ways forward for inclusive justice, not least in recognizing the multiplicity of options that may be available to most seekers of justice.

28. Liberal State-building envisages States being constructed in which institutions support the establishment of societal frameworks wherein “liberal individuals” can flourish. However, non-linear approaches to State-building seek to work at the societal level, understanding the local politics of resistance and adaptation that have been neglected. Inclusivity within justice systems requires understanding this bottom-up mechanism, particularly in contexts where legislation and formal approaches have had limited effect.

29. This does not necessarily mean that citizens have no access to justice in contexts where legislation and formal approaches to inclusive justice reform have had limited

effects. Rather, the relevant justice systems may not live up to the standards of international law, meaning that either international law should be revisited as an alternative or there should be better support for seekers of justice to exercise their rights under traditional law. There should, in particular, be clarity over jurisdiction. It may be argued that some crimes should be dealt with exclusively in State courts, for example cases involving sexual violence, violence against women, murder and other serious offences against the person where local courts may have a vested interest in maintaining a particular social hierarchy or set of power relationships.

30. The shift towards more subtle, non-linear approaches to justice is far more process-oriented, meaning that the role of external actors is not to impose institution-building, but rather to assist in establishing a framework in which local societies can follow their own rules. This approach emphasizes the idea that the system is more important than the individual elements. Understanding local politics not only incorporates institutions, leaders and political parties, but also societal spaces, practices and processes. Understanding the underlying politics of justice systems and the context within which the rule of law operates is critical to the success of any justice reform.

31. There are three broad approaches to inclusive justice: institutions and institutional power; developing processes rather than structures; and engagement with hidden politics.

#### **Importance of institutions**

32. States require institutional structures to function. Security and justice institutions are critical because they protect citizens and sanction them in the event of legal transgressions. Without professionalism and clear guidelines, such institutions can become oppressive, primarily posing a threat against marginalized groups through the enforcement of unfair or prejudicial laws that infringe upon human rights.

33. Even if States represent a potential threat, they also represent the best opportunity for constructing fairer societies for most people. Therefore, civil authorities should be able to exercise democratic control over security and justice institutions and should be capable of supporting human rights approaches and progress towards Goal 16.

34. At the same time, building institutions is not sufficient to guarantee the effective operation of the State. Institutions require legitimacy to function effectively. They also require some form of access for those who wish to use the system, which may involve formal justice systems recognizing customary or other informal systems operating in parallel. Thus, seekers of justice may be faced with a positive choice rather than no choice at all and no access to justice.

35. Reluctance to consider issues of legitimacy and power in security sector reform may lead to a lack of civilian and political oversight, politicization of appointments within the police and judiciary and an eventual decline in effectiveness and trust in public justice. The division of powers and control of such institutions remain a crucial factor that will determine the success or failure of Sustainable Development Goal 16.

#### **Processes and structures**

36. Historically, approaches to justice systems have not been process-based, compared with the construction of institutions and organizations. The adoption of a process-oriented approach implies that, instead of starting out with a predetermined view of what a justice system or police force should look like and then working

towards that view, the qualities of a desired system emerge as a result of discussion and agreement.

37. A process-oriented approach raises the issue of the provision of justice and policing, not least the extent to which local security providers are able to exercise authority, what offences should be subject to formal police inquiry and whether there is access to recourse for those seeking justice. In practice, the justice system in rural areas of developing countries, for example, tends to show that more people appeal to customary authorities than to formal policing structures and face institutional multiplicity at the local level. The current direction of reform is based on the idea that external intervention should enable local populations to make their own choices within local frameworks.

38. The new direction of reform interventions would allow a degree of choice for individuals who might be adversely affected within a traditional or customary system – usually women or youth – who would then be able to pursue justice through other avenues, including the State. This does not amount to an abdication of responsibility or an exercise in cultural relativism. It is a call to develop more subtle forms of intervention to provide support for seekers of justice in making choices and incorporate fundamental human rights in rule of law frameworks.

#### **Engagement with embedded power relations**

39. Most reforms in the security and justice sectors have been technocratic, and some may have had profound political implications. An emphasis on process over building institutions alongside the continuing importance of institutions themselves over time, raises some very difficult questions. Emphasis on process requires the reconfiguration of a programming architecture that rests on finite time periods and measurable outputs. Working within existing frameworks to develop processes that enhance security and justice takes considerable understanding, effort and time, and international actors may find it difficult, if not impossible, to understand local contexts.

40. Multi-layered approaches also tend to avoid discussions of power within justice systems. Some of those approaches establish a way of criticizing linear, liberal approaches, but end up championing local solutions instead of recognizing them as power structures in their own right. Understanding the reality of politics in most contexts requires understanding that the real world is not divided into simple binaries like modern and traditional, international and local or formal and informal, but understanding how they link together, relate to and influence each other. In justice systems this is particularly important since systems may overlap and have serious societal implications for people in their everyday lives.

41. Politics are important in justice systems. The definitions of crime, the system of detection, prosecution and punishment and the levels of impunity or prejudice within the system are all affected by the political environment, as well as by more direct matters such as the appointment of senior judges. However, it is also a political decision to apply the law equally to all, provide fair treatment to all groups and enforce the results of trials. Without political will, the law cannot operate. Ultimately, politics play an important part in how and whether people access justice.

42. Politics are particularly important in post-conflict justice systems and in States in which enforcement of the law is weak. Post-conflict societies often face the challenges of corruption, criminal activities, smuggling and trafficking (arms, persons, drugs, tobacco, etc.), which cause huge inequalities. The inequalities are reflected in the legal systems that punish some, but not others. The issue of impunity from the law is a very broad one and tends to reflect the nature of conflict to post-conflict transitions, as well as the level of corruption within any given country. The

lack of prosecution of former warlords in several post-conflict environments under transitional justice arrangements serves as an example.

43. Impunity in post-conflict societies further underscores the need for financial transparency and accountability within public finance and financial flows. With demands for greater financial and budget transparency, there could be an effective limit on activities that harm and constrain the development of institutions, including justice institutions.

#### **IV. Learning from the failures of justice reforms**

44. The mixed results of previous security sector reform programmes and justice reform initiatives are all too evident and have prompted a focus on the interaction between the international community and States concerned with security and justice programmes. The lack of clear success has led to a reconsideration of approaches, not least in terms of the limitations of the liberal State and the incorporation of non-linear approaches to security sector reform. However, non-linear approaches to security reform have been only partial owing to hidden agendas in practice.

45. In many ways, much of the theoretical discussion on reform focuses on the local level without examining the implications of incorporating traditional systems into security sector reform programmes and justice reform initiatives, which are characterized by their own politics and power structures. Identifying hidden politics and agendas with notions of “resistance”, for example, places local political structures in opposition to the international order, whereas in reality local structures and the actual hidden politics and agendas of States are far more complex. Theoretical discussions also fail to recognize that local politics have their own hierarchies and power structures that may not be offering resistance or opposing the international order. The reality is that a multiplicity of institutions, overlapping political networks and hidden politics and agendas that are not actually hidden at all, just may not be recognized or known and comprise an evolving political process of contestation over power and resources.

46. The development of non-linear approaches to security and justice can be seen as a way of incorporating traditional structures into a broader global security system and as a means through which “the other” can be assimilated into liberal strategies and, by extension, into the liberal world system, thereby overcoming something that is perceived as an obstacle or spoiler in a wider process of modernization. Rule of law approaches need to take on three sets of issues: recognition that institutions are important, but not necessarily the institutions that have been supported in the past or supported in isolation from politics; the development of inclusive processes and that may be sustainable in the medium to long-term; and the engagement with the hidden politics and agendas of States, recognizing that they are not blank slates and that institutions of the State do not exist in a political vacuum.

#### **V. Approaches for a way forward**

47. The Committee of Experts on Public Administration can play an important role in advising on governance and public administration with a view to constructing a more pragmatic approach to building systems that provide access to justice for all. For example, there is an opportunity to demonstrate leadership in terms of developing longer timespans for interventions through international reform programmes and more realistic methods of institutional development that account for political dynamics.

48. The review of the United Nations peacebuilding architecture highlighted some important successes in approaches to peacebuilding through political and military means in conflict contexts. However, the review also highlighted the fact that the United Nations had been far less successful in turning short-term gains of stopping violence into longer-term peacebuilding and in achieving a reduction in underlying conflicts. The review explains this comparative shortcoming as a result of the following: a silo approach coupled with short-term solutions; a poor understanding of peacebuilding; an unwillingness to reach beyond States and to engage with civil society and non-State entities and actors; and the resilience of elites in blocking alternatives to the existing sociopolitical orders from which they benefit. In other words, the long-term engagement with underlying causes of conflict and alternative constituencies required by peacebuilding has itself been undermined by a reluctance to look beyond the State and its vested interests.

49. The United Nations may be better equipped to assist countries affected by crisis and conflict than it is to assist countries that may be vulnerable but have not yet collapsed. Conflict prevention through improving security and justice is much harder in a system that is very protective of State sovereignty. It requires broader coalitions between the United Nations and those seeking inclusion and peacebuilding, and the Committee can play an important role in highlighting this connection. Specifically, the Committee may be in a position to broaden the scope of discussions on the nature of public administration and partnership beyond the civil service and provide guidance on reconfiguring the public sector so that it works effectively with partner organizations to facilitate inclusion.

50. The Committee could provide guidance on building institutions that go beyond blueprint approaches to inclusivity and take into account local contexts and political structures. Institutions without supporting political systems do not function properly and lack legitimacy. This does not mean that the Committee should take on a political aspect. Rather, in its analysis and deliberations, the Committee could be careful to give sufficient attention to the role of local political systems and the links between State and non-State institutions where warranted.

51. In security and justice systems, this may mean the recognition that some sectors of the population do not get everyday justice from formal judicial systems, but from customary authorities or non-State actors. This may be a positive or a negative process, but it is also a political one. If countries aim to uphold the rule of law and international human rights, it is important to ensure that local seekers of justice and security are not just left outside the formal system but are given the option to be subject to laws that are based on human rights. Many people may be comfortable with customary systems available to them, but such systems are also designed to maintain existing social norms and frequently fall short of international standards, thus increasing the risk of exclusion related to dealing with those who do not conform sexually, gender, ethnicity or other issues. In such circumstances it is important that the Committee encourage the development of inclusive institutions that provide services to the population as a whole and not just some of it.

## **VI. Indicators of access to justice for all**

52. States operate within a framework of international agreements with regard to justice and human rights that obligate them to carry out certain activities. In general, the activities are related to the adoption of legislation that is in line with international law and with the definition of the rule of law, including the establishment of institutional frameworks that set out and enforce clear rights for all citizens, such as monitoring and coordination of rights and procedures for enforcement. Those

processes can be measured through analysing the processes, results and the structures of legal frameworks, such as security and justice indicators approved by the General Assembly as part of the global Sustainable Development Goals indicator framework.

53. In practice, structural indicators tend to be the most visible since they are the easiest to measure. Structural frameworks relate primarily to the existence of normative rules, regulations and standards that are consistent with international human rights agreements. Such structural indicators include the ratification of human rights instruments on access to justice, as well as the harmonization of national legal frameworks with international norms of access to justice.

54. Process indicators derive from structural indicators and refer to the appropriateness of the policies, regulations and laws in place to conform to the international definition of the rule of law. They also refer to the existence, or lack thereof, of a process to implement international legal standards. This area can be complex for many countries since traditional justice systems may not have the same definitions, consistency or legal standards as the international community, yet they may be considered as legitimate sources of justice by the local population. This is one area where there may be discrepancies between international definitions of the rule of law and local definitions of what justice means in practice.

55. The ways in which processes are implemented within structural frameworks determine the results or outcomes of the justice process. While most international norms set out detailed sets of rights that should be upheld within a justice system, understanding of what a person may or may not do, and even what rights a person is deemed to have, varies considerably at the local level. In particular, the rights of women and children are interpreted differently in societies with strong societal norms that are reflected in customary or traditional systems, perhaps less so in formal judicial systems, which exist as much to maintain a sense of social harmony by reinforcing traditional hierarchies as to enforce an abstract definition of justice. Results are therefore highly variable both among and within countries.

56. In practice, the measurement of justice is difficult because it is both subjective, despite international norms, and contextual, in terms of expectations. It is also dependent on a number of variables that determine the quality of justice within any given system. International benchmarks alone do not provide clarity on the capacity of any given legal system to deliver justice, the capacity of the individual agents responsible for delivering justice, or the empowerment of rights-holders to bring cases. They may be affected by the following:

(a) The existence of remedies or outcomes that satisfy justice, fit the needs of seekers of justice and do not have negative externalities from those decisions, for example, a female complainant who wins a case against someone within a community for a sexual offence, but loses on a social basis. Justice needs to include a component of cultural awareness in terms of changing cultures, as well as enforcing international law;

(b) The level of empowerment of the those who are disadvantaged to claim and fight for their rights. The capacity of marginalized groups is limited by a lack of legal access, other barriers such as finance, and lack of legal knowledge in systems that are often deliberately designed to be exclusive. This happens in both the formal justice system and among non-State actors and in informal justice mechanisms;

(c) The ability of the justice and security systems (e.g., the police) to enforce decisions made by the legal system. This may include a range of outcomes from ensuring sentencing and imprisonment through to restorative justice and alternative dispute resolution.

57. The successful implementation of Goal 16 from the point of view of justice, will rely on the ability to take a systems-based approach to justice. Any attempt to examine justice failures in terms of access will have to take into account underlying social, economic and political pressures that act as barriers to seeking justice and enforcement of human rights in the national context. This will require a focus on populations that are excluded from exercising their rights, as well as on a detailed analysis of the different groups that are engaged in either preventing or enabling access to justice. There is also a significant need to clarify relationships between rights and legal requirements to prevent misinterpretation or deliberate obfuscation of the law.

58. Finally, there should be a recognition that the international human rights framework exists within a complex set of international, national and subnational contexts, and that access to justice has to be negotiated by different groups of people. Some of those groups have the adequate resources, skills, power and knowledge to participate in this negotiation and some do not.

## **VII. Conclusion and recommendations**

59. In order to support peace and achieve Goal 16, it is essential to form partnerships with civil society. The development of processes is needed to support bottom-up working, beyond State institutions that may be dysfunctional, illegitimate or unrepresentative. This is an approach that brings political considerations into the discussion by recognizing that peacebuilding may require explicit challenging of the power structures that perpetuate poor governance and unresponsive and exclusive institutions.

60. Peacebuilding should be a central component of conflict prevention and recovery from conflict. There needs to be a sustained public dialogue on positive peace, led by countries that are able to persuade greater numbers of actors to scale up investment, both financially and politically. Such efforts entail winning support beyond the usual peace advocates, as well as ensuring local ownership of peace and justice processes.

61. Local ownership is a critical issue but is difficult to realize in practice. There is a need to build capacity, through training and experience within international institutions, that recognizes the complexities of international involvement in conflicts; acknowledges that there is not a blueprint approach to peacebuilding; accounts for the long-term, messy nature of peacebuilding; and develops networks and/or partnerships of agents involved in peacebuilding both at international and local levels.

62. Interventions need to be contextually appropriate, with a clear acknowledgement that each society is different and therefore the causes of conflict are different. Interventions need to focus on processes as well as institutions, ensuring that functions are prioritized over form and acting in a politically smart way, this involves working with local norms and political realities and requires incremental changes over longer timescales than those accounted for in existing best practices.

63. The rule of law is an important element of the long-term process of inclusive justice. Respect for legality represents a principle of governance for minimizing arbitrary power by providing clear rules for how power should be exercised, changed and contested. Strengthening the rule of law is not something that can be introduced by the stroke of a pen. Most people subject to exclusion experience justice as a local phenomenon through a local actor. Most customary or traditional systems are designed to support local social hierarchies and therefore those who exist at the margins or who represent a specific social group or category, such as women or

children, are frequently subject to justice norms that are not compatible with human rights. In such circumstances those advocating rule of law approaches need to recognize that existing local systems may have legitimacy and work with them in the short-term with the aim of long-term change.

64. Gender considerations remain key within approaches to inclusive security and justice. Research shows that there is a positive correlation between levels of peace and gender equality. Patriarchal gender norms deliberately exclude women, girls and other sexual minorities and play an important role in sexual and gender-based violence, those norms may impose rites of passage for young men through violent activities, like cattle-raiding, or be deliberately discriminatory, for example, making it difficult for women to access security and justice or to take part in decision-making, or even regarding women as property. Women may be subject to discriminatory laws restricting inheritance or land ownership and several countries criminalize certain gender identities, excluding those groups from security and justice. Gender is not just synonymous with women and may not be the primary identity marker determining exclusion. Taking an inclusive approach to gender will involve designing interventions based on the experiences of all people regardless of gender, class, ethnicity, sexual orientation or religion, among others.

65. A change in attitude with regard to the issue of gender involves a considerable shift in cultural norms as well as in the rule of law. Laws and quotas will not transform patriarchal gender norms and attitudes on their own. There is a clear need for the United Nations to work in partnership with organizations that seek to support gender equality and human rights. Many local groups and organizations may be already working towards progress on Goal 16, but may be restricted in their access to policy networks at the national or global levels. Many women's organizations, for example, may be working at the community level but are barred from public forums at other levels. Integrating gender will require connecting with and supporting this disparate group.

66. Beyond support for those engaged in gender equality work, the United Nations should also make gender a core element of its accountability mechanism for the evaluation of the 2030 Agenda itself. This would entail supporting grass-roots organizations to enhance their capacity for participation in the evaluation of inclusive security and justice under Goal 16. The increased capacity could also compensate the lack of sex-aggregated data in many areas and, combined with the necessary qualitative analysis of gender issues at the local level, would provide an improved methodology for the assessment of progress on gender within the Goal.

67. Goal 16 is about peace, not just "hard" security, and involves broader issues of justice and recognition of human security concerns with the aim of building legitimacy for States and governance systems. There are concerns, however, within some approaches, to shifts in international approaches to security, including the redefinition of some overseas development assistance activities to include the prevention of violent extremism, migration management and military costs for humanitarian relief. While this may increase funding for Goal 16, the question is whether this is the core aim of the Goal and if this might reduce spending on development activities that are broader in scope. It raises the question of whether donors' security interests (such as countering violent extremism) are being prioritized at the expense of citizens in conflict-affected environments.

68. Goal 16 puts human security at the core of United Nations approaches to peace alongside traditional concerns about institutions and infrastructure. It focuses on everyday security in neighbourhoods and whether justice is inclusive and also recognizes that the main obstacles to violent conflict are peacebuilding, inclusion and governance. Human Security is necessary for the successful achievement of the peace and security aspects of Goal 16.