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Justice as Prevention

David Steven

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Challenge paper: Justice as Prevention

Background paper for the Task Force on Justice

This draft paper was discussed at the Big Think on Justice, a public consultation for justice experts convened by the Knowledge Platform Security & Rule of Law, the Dutch Ministry of Foreign Affairs' Department for Stabilization and Humanitarian Aid and The Pathfinders' Task Force on Justice. Two thematic sessions on prevention were convened by UNDP's Christi Sletten and ILAC's Rhodri Williams. We would like to thank the conveners and participants in these sessions for their input. We would also like to acknowledge the feedback provided by IDLO's Irene Khan.

Discussion Draft

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Part 1 ¦ Introduction

This challenge paper has been prepared as background for the Task Force on Justice. The Task Force is chaired by ministers from Argentina, the Netherlands, and Sierra Leone, and by Hina Jilani from the Elders. It is an initiative of the Pathfinders for Peaceful, Just and Inclusive Societies, a multi-stakeholder partnership for the implementation of the SDG targets for peace, justice, and inclusion (SDG16+).[1]

The Task Force will make recommendations for the implementation of SDG16.3 – *justice for all* – ahead of the High-level Political Forum in 2019. It takes a people-centered view of justice and is undertaking an analysis of the scale of the justice gap, asking what people need and want when they seek justice and what kind of justice they receive.

The scale of unmet legal need is large. Based on its survey data, the World Justice Project finds that "many people's legal problems remain unresolved, either because they could not fully settle the issue or because they ultimately give up or move away."[2] HiiL estimates that 1 billion people suffer from a legal problem each year, with only a quarter of these problems fully solved.[3] Half of these problems have a major negative impact on people's lives.

Surveys of people's experience of violence paint a similar picture of an unmet need for justice. More than half a million people died directly from violence in 2016.[4] On current trends, this figure will rise by 2030.[5] A systematic review of surveys from 96 countries estimates that 1 billion children experienced violence in the past year.[6] During their lifetimes, 35 percent of women have experienced either physical or sexual violence at the hands of their partner, or non-partner sexual violence.[7]

Levels of impunity are high, with relatively few victims of violence receiving justice. In the United States, the clearance rate for homicides was only 62 percent in 2017.[8] In the United Kingdom, only half of violent crimes are reported.[9] In Australia, fewer than one in five sexual assaults are reported and just 1 percent lead to a conviction.[10] In Rwanda, just 6 percent of girls and 3 percent of boys had sought services of any kind after being victims of sexual violence in the previous year.[11]

Conflict is a major source of injustice. According to the UN-World Bank report *Pathways for Peace*, the period since 2010 has seen "a surge and expansion of violent conflict," with the number of conflicts increasing and a sharp rise in battle-related deaths.[12] Civilians are increasingly targeted in contemporary conflicts. Women experience heightened levels of violence during and after conflict, while impacts on children often last for the rest of their lives.

But injustice also increases conflict risk, with the *Pathways* report finding that "a significant proportion of contemporary violent conflicts are rooted in group-based grievances around exclusion that forge deep-seated feelings of injustice and unfairness."[13] Abusive and coercive behavior by justice actors is an accelerant of conflict. A central challenge for peace processes is how to rebuild trust in justice institutions and in the rule of law, and to re-establish their capacity to protect human rights.[14]

In its terms of reference, the Task Force is asked to identify strategies, tools, and approaches that will help close the justice gap and accelerate delivery of SDG16.3. In part, this requires exploring how justice systems can better respond to the unmet legal needs of people involved in a dispute, victims of violence and crime, or those who experience other forms of injustice in their daily lives.

But on its own, response will not be enough. The justice gap is too wide to be bridged using justice systems as currently configured. In terms of both outcomes and costs, it is preferable to prevent problems from occurring, rather than to respond to them after the fact. We also need to look

beyond individual justice needs to systemic challenges – building justice systems that uphold human rights norms, protect societies from a range of risks, and provide a platform for people to fulfil their potential.[15]

A shift to *justice as prevention* has two inter-related dimensions:

- **From justice systems to the wider society**. Use of justice systems as a tool for prevention, as justice actors design and implement strategies that reduce the number of disputes, decrease risks of conflict and levels of violence, and protect human rights.
- **From the wider society to justice systems**. Multisectoral approaches to prevention that reduce the number of legal problems, decreasing the burden on justice systems and allowing scarce resources to be devoted to the most serious legal needs.

The first section of this paper primarily focuses on the first dimension, reviewing what we know about justice as prevention. It brings together an evidence base that has previously been fragmented across multiple fields and disciplines. Evidence is presented on prevention within the civil justice sphere, justice and the prevention of criminal and non-conflict violence, the role of justice in conflict prevention, and justice and the prevention of human rights abuses and mass atrocities.

The second section of the paper draws conclusions on justice as prevention, revealing common features that emerge from the different justice domains covered by the review. When they make the shift from response to prevention. First, justice actors focus on increasing justice for populations, rather than on meeting individual legal needs. Second, prevention is strategic and evidence-based. It designs an intervention based on a theory of change for achieving a desired outcome. Third, while prevention faces many obstacles, innovative approaches have been developed and are thriving in multiple fields. This reflects powerful incentives for justice actors to find new ways of bridging the justice gap.

Part 2 ¦ Justice as Prevention – a Review

"There are more things in heaven and earth… than are dreamt of in your philosophy."

This section presents a review of justice as prevention. It takes a broad view of justice:

- The 2030 Agenda for Sustainable Development makes a commitment to just societies that are based on respect for human rights.[16] It emphasizes the responsibility of all states "to respect, protect and promote human rights and fundamental freedoms for all, without distinction of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status."
- SDG16.3 promises to promote the rule of law and provide access to justice for all. Like all targets, it is universal and applies to the need for justice in all countries. Other SDG targets demonstrate that the designers of the 2030 Agenda had a comprehensive conception of what they meant by a just society (see figure 1).
- The 2030 Agenda links justice to peaceful and inclusive societies. It includes targets for reducing all forms of violence in all countries, developing effective, accountable, and transparent institutions, and for promoting the social, economic and political inclusion of all. These targets cannot be delivered unless justice systems play their role.

This broad perspective is consistent with a people-centered approach to justice. People have "an 'indivisible' experience of injustice" – not one that is defined by traditional sectors and siloes.[17] Within the justice sector, recent years have seen a shift from a focus on structures and processes towards a broader view of how justice systems can deliver just outcomes in people's lives. In Canada, for example, a recent review aims to improve "the justice quality of people's social, civic and economic relations."[18]

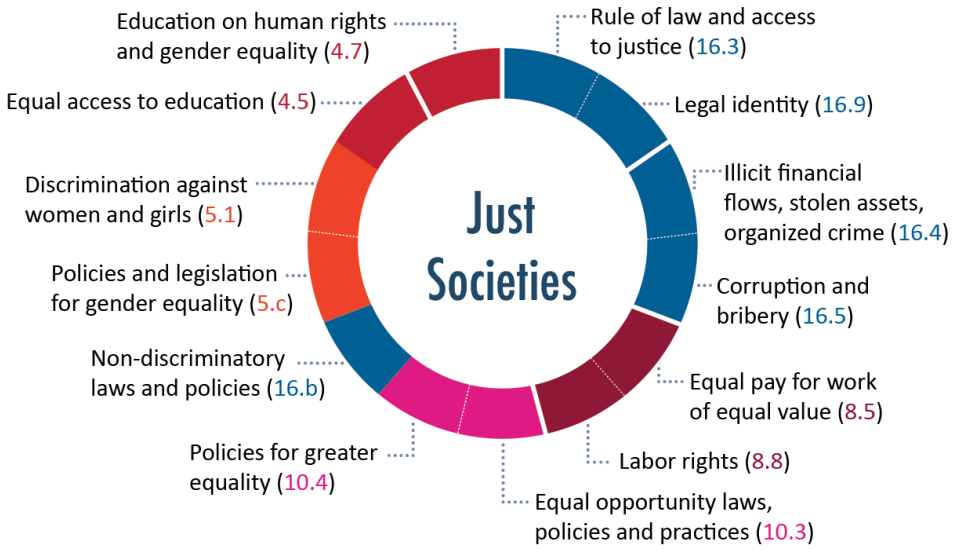


Figure 1

The review also takes an expansive view of prevention, while trying to isolate the distinctive role of justice actors within what are often multisectoral coalitions.

It draws on evidence from the full range of justice domains. Actors in these domains have motivations that vary from helping a lawyer prevent disputes that will prove costly to her clients, through enabling a community to challenge structural injustices, to rebuilding confidence in a justice

system in order to avoid the recurrence of large-scale human rights abuses. Approaches to prevention differ markedly as a result.

The current disaggregation of knowledge across these different domains is an important obstacle to effective prevention.[19] Many approaches to prevention that are contained in this review have good demonstrated effectiveness, but this evidence is little known outside a narrow circle. By drawing together a wide range of lessons, the review prepares the ground for a more comprehensive approach to justice as prevention.

Civil Justice: Preventing Disputes

> *Preventive law ▪ Commercial dispute prevention ▪ Low-cost agreements ▪ Strategic approaches to legal empowerment ▪ Learning from individual cases ▪ Prevention in reverse ▪ Prevention and the major causes of civil dispute ▪ Prevention and family breakdown ▪ Whole-of-government approaches to prevention*

Civil justice has traditionally been reactive, responding to legal problems after they arise.

In his work on preventive law, Barton argues that lawyers will better serve their clients if they proactively prevent disputes from occurring.[20] He distinguishes prevention from a more traditional problem-solving approach. Prevention starts with understanding not only articulated legal needs, but also unexpressed needs and the underlying factors that lead to disputes or injustice. Instead of solving individual problems, preventive law aims to identify strategies for altering or interrupting a 'problem dynamic' in a way that will reduce the number or severity of problems. Barton urges lawyers to reach beyond their traditional tools to explore "very cheap adjustments to particular problematic environments… that result in the complete preemption of substantial financial and psychological costs."[21]

Preventive approaches have flourished in the field of commercial law, where larger and more sophisticated businesses are highly motivated to avoid expensive disputes. The World Economic Forum estimates the global direct costs of commercial claims resolved through litigation as $870 billion.[22] According to one in-house counsel:

> *If I can prevent one potential problem from escalating into a dispute that would otherwise have to be litigated, I have covered my salary for the year. If I can prevent two or more problems from escalating into litigation, I have added positive value to my company.*[23]

In the commercial sphere, dispute prevention starts with getting the basics right – for example, through clearer agreements that are less likely to be contested.[24] But this is also an area of considerable innovation. The construction industry, for example, has seen a shift to collaborative contracting models which aim to strengthen relationships across complex networks of contractors, in place of traditional interaction.[25] In the future, some technologists predict a shift from natural language to smart or 'computational' contracts that encode the law in ways that allow automated execution.[26*] Legal prediction models can already out-perform lawyers and have the potential to increase legal certainty in a way that will reduce disputes.[27] Artificial intelligence is also being used to improve the accessibility and quality of agreements, allowing non-lawyers within businesses to define agreements according to the parameters they feel are strategically significant.[28]

Similar technologies have been largely out of the reach of small businesses and of people who do not have access to traditional lawyers. That may change as "new companies staffed with lawyers, business persons and coders are forming to serve those consumers and small businesses who

[*] Stephen Wolfram credits this idea to the Enlightenment philosopher and scientist, Gottfried Wilhelm Leibniz.

currently do not seek advice from lawyers when they have a legal issue."[29] So called 'Tiny Law' – in contrast to 'Big Law' – aims to formalize agreements at scale and at low cost through online services such as Shake, which "lets you quickly record agreements for everyday transactions that you otherwise might do with a verbal "handshake" agreement."[30] As in the commercial sphere, the aim is to move beyond contracts that are "written by lawyers for lawyers."[31] Visual contracting can make agreements more accessible, with "comic contracts" first used in South Africa for employment contracts for fruit pickers.[32]

Other online platforms provide user-friendly access to company and land registrations and wills.[33] LegalZoom aims to "democratize law" by giving small businesses and individuals access to legal agreements that matches that enjoyed by larger corporations.[34] The company claims to have helped 4 million people worldwide.[35] It is now experimenting with automatically-executing contracts. The United Kingdom has seen rapid innovation in the field of online legal services, following legislation that diluted the monopoly of traditional legal providers, with the emergence of many online platforms.[36] According to HiiL, the primary impact of these innovations is on prevention, as greater accessibility of quality agreements reduces the risk that disputes will arise.[37] This is, however, yet to be formally tested.

At the grassroots level, legal empowerment interventions also support people to form better agreements. In South Africa, a community paralegal explains that "local people often do not enter into formal agreements and relations go sour."[38] As well as resolving disputes, the paralegal advises on how clearer and more formal agreements can reduce the risk of disputes in the future. In theory, this should unlock new economic opportunities. However, in Liberia, a field experiment found no support for the hypothesis that "informal legal aid will assist individuals in engaging in the credit market and taking steps to protect their property rights."[39] Advice from paralegals had not led to an increase in land titling and demarcation, or to greater lending and borrowing.

The impact of legal empowerment on prevention may be multiplied by a shift from a 'retail' model (services from a paralegal to an individual) towards strategic approaches to advancing justice for a group or a community.[40] In Guatemala, the Sepur Zarco case saw the first ruling by any national court on sexual slavery during conflict.[41] As part of the verdict, 'transformative reparations' were granted to the affected community. In Sierra Leone, paralegals working for Namati – a grassroots legal empowerment movement – "have honed their focus on cases involving the greatest imbalance of power, like conflicts between rural communities and mining or agricultural companies."[42]

Taking on powerful interests can require public interest litigation, but this is not inevitable. Berenschot and Rinaldi show how community paralegals can use their knowledge of national legislation and regulations to "extend the shadow" that the law casts over powerful state or private sector interests.[43] In other words, a potentially protracted dispute is resolved without the need for litigation. The community may be better placed to defend its rights in the future, while other communities in a similar position could also benefit.

This approach is in line with the mantra of the legal empowerment movement to help people know, use, and shape the law.[44] By empowering communities to shape the law, members of a society are enabled to "actively take part in the rules and institutions that tie them together."[45] A systematic review finds that a strategic approach to legal empowerment can lead to changes in laws and policies at a local level, with presumed longer-term benefits for communities.[46] Community mobilization and issue-based advocacy was the most common strategy for delivering institutional change. The review notes that "an important frontier for the legal empowerment movement going forward is translating the lessons of grassroots efforts into large-scale policy change."[47]

Members of the legal empowerment movement are highly motivated to deliver just outcomes for the people they serve. Their work is often driven by an understanding of the 'goldmine' of evidence generated by individual cases.[48] In England and Wales, the Citizens Advice Service says that it is best known for responding to problems, but it also makes a difference "by solving the underlying causes of these problems through our research and campaigns."[49] Citizens Advice has used research to identify the needs for justice of vulnerable groups, such as people with mental health problems, supplementing case data with survey and ethnographic research.[50] The resulting advocacy focuses on both on public services and on market sectors, such as energy and telecoms, that are generating growing numbers of legal problems reported by people with mental health problems.[51] Structural reforms could lead to a decline in the number of legal problems *and* a decrease in the role of injustice in exacerbating mental illness.

The state has many preventive tools at its disposal, should it choose to use them. Governments, too, can make the leap from individual cases to considering risks and opportunities at a population level. An obvious starting point is where the justice system itself is perpetuating injustice or causing unnecessary socioeconomic damage. In many US states, for example, traffic fines are used to generate revenue, leading to a cycle of debt and bankruptcy for those living in the poorest communities (see box). Following the shooting of Michael Brown by a police officer in Ferguson, Missouri, it was revealed that the police "routinely and disproportionately charged African Americans fines and fees for parking violations, traffic violations, housing code infractions, and more."[52] Even from a narrow perspective – just taking into account the costs of incarceration due to unpaid fines – this practice leads to net losses for the public sector.[53] A preventive lens would encourage policymakers to consider "the full scope and impact of fines and fees within their jurisdictions" and to use this understanding to reduce the harm on people, communities and society.[54]

Beyond *doing no harm*, governments can act to guarantee 'gateway rights' such as legal identity. At present, 987 million adults and children are unable to prove their identity, while only 10 percent of countries have fully integrated, multipurpose ID systems.[55] In 2012, around four in ten babies did not have their births registered.[56] Universal civil registration and legal identity systems underpin other human rights.[57] They allow people to participate in societies and economies in ways that minimize the potential for future disputes (for example, by making it possible for women to own land).[58] They underpin social protection programs, which themselves have an impact on various forms of prevention.[59] They also make government programs less susceptible to corruption. Digital identity systems create new risks and legal challenges, however. They can be used to further exclude disadvantaged groups.[60] They may also threaten privacy, with a recent analysis arguing that "current law is not even remotely prepared to handle these developments."[61]

The government can also lead strategies that aim to use the law and justice systems to prevent disputes in areas that account for most civil legal needs: family, employment, neighbors, and land.[62] Effective prevention requires a whole-of-government approach, a focus on results, and a long-term vision of "a culture in which fewer disputes need to be resolved."[63] Benefit and costs are felt in many different sectors, and each of these sectors has a role to play in delivering just outcomes. Policymakers need to study and understand justice pathways and to invest in preventive approaches that address the underlying drivers of disputes.[64] At the same time, laws and policies must be designed and implemented in a way that helps "minimize or avoid downstream problems."[65]

In the area of family law, legal problems result from "failures of families, of parenting, of relationships." [66] The breakdown of relationships has "serious social and economic impacts on parents and can cause lifetime damage to children."[67] Both adults and children face elevated risks of

domestic violence both before and after a relationship breakdown.[68] Affected children are more likely to engage in anti-social behavior and crime, and to see their own relationships fail. In these and other ways, failures of families create further legal problems, in some cases years or decades after a family breakdown.

In most countries, the courts respond to family breakdown, but no-one is responsible for understanding and mitigating the damage that family breakdown cases cause. It is no-one's job to "manage divorce," while few countries have configured their justice systems to minimize the adverse impacts of other forms of family breakdown. In the United Kingdom, for example, a review found "a system that is not a system, characterized by mutual distrust and a lack of leadership, by incoherence and without a solid evidence-based knowledge about how it really works."[69]

Preventive approaches and tools are available, however. Improved divorce laws can lead to lower levels of conflict. In the United States, a switch from fault-based divorces to less adversarial models led to a decline in female suicide and domestic violence. Impact was also seen for relationships that hadn't ended, likely resulting from an improvement in women's bargaining power.[70] Laws can also be rewritten to favor consensual approaches to divorce, with courts explicitly treated as a method of last resort.[71] Legal identity can also mitigate the impacts of family breakdown. Marriage and divorce registration protect the rights of women, providing them with documentation to own and inherit land, for example, or by allowing them to register the births of their children.[72] Measures to support parental income after a family breakdown and to enforce child support arrangements lead to better outcomes for children.[73]

These examples represent primary approaches to prevention, with universal application across all families. Secondary prevention models aim to have a preventive impact during a family breakdown. In Ecuador, access to legal aid clinics for poor women and their children led to a 17 percent decline in domestic violence following a divorce.[74] In Kolkata, specialist family courts have had some success in allowing women to "resolve marriage disputes through mediation rather than being alienated by legalese as they stand off to the side."[75] Alternative forms of dispute resolution, such as mediation, ask the parties in a family breakdown to "create their own laws of fairness."[76] When compared to court procedures, reviews demonstrate modest effects on outcomes such as emotional satisfaction and understanding of children's needs that are likely to have longer-term impacts on the wellbeing of children and parents. Online dispute resolution platforms have also been used to lead to less conflictual divorces, leading to lower reported levels of stress during a separation.[77]

Prevention in Reverse

Fines and fees are increasingly used to generate revenue in the United States.

Chicago raises 7 percent of its operating budget from parking, traffic, and vehicle compliance fines, with the burden falling disproportionately on poorer communities and on African-Americans.[78] It has $1.45 billion of fines outstanding.

The city forces 10,000 people into bankruptcy each year for failing to pay their fines. People with unpaid fines have their vehicles confiscated and lose their driving licenses. They are blocked from public service jobs (including in schools) and from receiving licenses to work as a hairdresser, beautician, or taxi driver.[79]

Many states operate "*de facto* debtor prisons," as they lock people up for unpaid fines.[80] They then charge *pay-to-stay* fees for time spent in prison.[81] At the same time, private debt is increasingly criminalized.[82] According to one study, "the people who are jailed or threatened with jail are the most vulnerable Americans, living paycheck to paycheck, one emergency away from financial catastrophe."[83]

Even a narrow financial calculation finds that these policies lead to increased government expenditure, due to the cost of pursuing unpaid debt, hauling people back into court, and – above all – the costs of incarceration.[84]

Those affected and the communities they live in suffer a much greater harm in terms of foregone opportunities, increased stress and anxiety, and loss of trust in the justice system and in the state. As one study found, "ultimately, the use of fines and fees leads to a cyclical path of financial crisis for not just defendants and their families, but for local governments as well."[85]

An effective alternative requires an understanding of the range of these costs and a strategy that draws on proven solutions – such as those identified by the Financial Justice Project which was launched by the San Francisco Office of the Treasurer and Tax Collector – to prevent harm and promote more just outcomes.

The Public Health Approach: Justice and the Prevention of Interpersonal Violence

Public health, criminal justice and prevention ▪ Legislative framework for violence prevention ▪ Best-buy strategies for preventing violence ▪ Framework for preventing violence against women ▪ The INSPIRE strategies for ending violence against children

An increased focus on the prevention of interpersonal violence has been driven primarily by the public health community.[86]

The public health approach aims to prevent violence at a population level, rather than responding to individual cases.[87] The Violence Prevention Alliance, which is led by the World Health Organization, identifies four steps: collection of data and evidence on the scope of the problem; identification of risk and protective factors, especially those that could be modified; implementation of evidence-based interventions; and monitoring of impacts and cost-effectiveness.[88]

The public health framing has aimed to distance violence prevention from traditional criminal approaches, with Nelson Mandela using his foreword to the 2002 World Report on Violence and Health to note that:

> *While violence traditionally has been the domain of the criminal justice system, the report strongly makes the case for involving all sectors of society in prevention efforts.*[89]

Over time, this has led to divisions between public health and justice practitioners, with sensitivities that "the public health approach could replace, or at least subsume, the criminal justice approach to reducing violence."[90] Some approaches emphasize the role played by health workers, social protection systems, teachers, and others from outside the criminal justice sector. Others, such as Cure Violence, aim to move beyond the 'bureaucracies of justice' by using community workers (who are often former gang members) to interrupt the transmission of violence in the most affected communities.[91]

However, justice is clearly an essential dimension of a multisectoral response to interpersonal violence, with the 2014 Global Status Report on Violence Prevention calling for strengthened collaboration between public health, the criminal justice sector, and the police.[92] The report assesses the status of legislative, policy, and program measures in 133 countries, representing 81 percent of the world's population. Amongst many other questions, countries are asked to report on the existence and enforcement of a legislative framework for violence prevention. On average, 80 percent have laws for sexual violence, family violence, corporal punishment, weapons on school premises, elder abuse, and gang membership, but only 56 percent say they are implemented and enforced (see annex 1). Reporting drew on perspectives from government and independent national experts. An assessment of the quality of implementation is an acknowledged weakness of the methodology.[93]

The Global Status Report identifies six 'best buy' strategies for violence prevention at a policy and programmatic level (see box). Of these, strategies on restricting the harmful use of alcohol and on the availability of weapons are most clearly within the domain of justice actors. Laws and regulation that prevent alcohol abuse and underage drinking have a significant impact on levels of violence, including for women and children.[94] Enforcement requires collaboration between administrative authorities, the police, and the courts.

Legislation and enforcement are also important in reducing access to firearms and other lethal weapons.[95] A recent systematic review of 130 studies from ten countries suggests that implementation of a comprehensive package of laws is likely to lead to a reduction in firearm-related deaths.[96] One study found that South Africa's Firearm Control Act was followed by a 13.6 percent annual reduction in firearm-related homicides in five cities (other homicides fell much more slowly).[97] The study estimates that 4,585 lives were saved over five years. More broadly, "making criminal justice systems more effective and ensuring that they are perceived as just are critical steps in reducing civilian demand for lethal means."[98]

Strategies for Preventing Interpersonal Violence

Prevention

1. Developing safe, stable and nurturing relationships between children and their parents and caregivers.
2. Developing life skills in children and adolescents.
3. Reducing the availability and harmful use of alcohol.
4. Reducing access to guns and knives.
5. Promoting gender equality to prevent violence against women.
6. Changing cultural and social norms that support violence.

Response

7. Victim identification, care and support programs.

Source: Global Status Report on Violence Prevention

Laws to restrict the availability of weapons are more likely to be more effective as part of a multi-pronged approach.[99] As part of his Knife Crime Strategy, for example, London's Mayor has set up a multidisciplinary Violence Reduction Unit to work with "boroughs, local police Basic Command Units, the local community, families, the health service and criminal justice agencies."[100] The new unit is explicitly tasked with taking a public health approach, drawing on experiences from Scotland and from the United States. It demonstrates the growth of connections between cities that are pursuing common approaches to prevention.

Justice actors may also play a role in the other prevention strategies identified in the Global Status Report, for example in targeting at-risk adolescents for inclusion in programs that improve anger management, conflict resolution, and problem-solving (strategy 2).[101*] They also play an important role in the seventh strategy which covers responding to the needs of victims of violence. A sharp dividing line is often drawn between response and prevention, but support for victims is itself an important component of prevention, given the frequency of repeat victimization for violent crime.[102] Better identification, support, and care for victims within the criminal justice system can also break cycles of violence.[103] Due to violence's contagious effect, many perpetrators are also at high risk of

[*] For a recent review, see Andreas Beelman and Friedrich Lösel, "Child social skills training in developmental crime prevention: Effects on antisocial behavior and social competence," *Psicothema* 2006. Vol. 18, nº 3, pp. 603-610

being victims of violence, offering potential to interrupt cycles of violence during times when they are in contact with the justice system. This often requires partnership between criminal justice actors and civil society. In El Salvador, for example, cooperation with faith groups, businesses, and NGOs has been used to provide an alternative to gang membership.[104]

Over the past decade, public health approaches to preventing interpersonal violence have concentrated largely on high levels of violence against women and children. More than a third of woman have experienced intimate partner physical or sexual violence, or non-partner sexual violence in their lifetimes (or both).[105] Half of the world's children are victims of violence each year.[106] The scale of these problems – and their hidden nature – has driven a shift from response towards prevention.

In 2015, a group of international organizations[*] published a framework to underpin action to prevent violence against women in 2015.[107] In 2016, a similar group[†] launched INSPIRE, a package of seven strategies for ending violence against children. Both prevention frameworks are multisectoral but provide a clear role for justice actors. INSPIRE calls for partnership between "national and local government departments responsible for education, health, justice, and social welfare; the private sector; and civil society organizations, such as professional associations, faith-based organizations, academic institutions, foundations, and other NGOs."[108]

For violence against women, the prevention framework identifies the law "as an important means available to demonstrate that certain behaviors are unacceptable."[109] This is line with research suggesting that criminalization of these forms of violence has a preventive impact, in part, because it helps establish and reinforce social norms.[110] Women's mobilization has driven further legal reforms in both developed and developing countries.[111] The #MeToo movement against sexual abuse, which begun in the United States but has spread globally, may intensify this virtuous cycle.

As yet though, it is unclear whether legal activism will lead to improved outcomes for women.[112] In South Africa, gender activists pushed for legislative reform from the late 1990s onwards. They saw new laws as "a social statement about sexual violence" and "a definitive and persuasive statement" the government would not tolerate high levels of rape.[113] The reform processes have been contested. They have not yet led to a decline in sexual and intimate partner violence, at a time when the homicide rate has fallen.[114]

Justice actors have a range of more immediate tools to prevent violence against women. Victims are most at risk of repeat victimization in the three months following a report of violence.[115] They can be protected through restraining orders and offender intervention programs.[116] A study in the United States targeted women at the highest risk of being killed by their partners.[117] It found a reduction in the frequency and severity of violence when compared to a control group. Women were also more likely to engage in protective strategies, such as obtaining help from family and friends, accessing services, or removing or hiding weapons.[118]

Similar tools are available in a range of settings. In the Philippines, for example, the 2004 Anti-Violence against Women and their Children Act allows a local elected official to issue a protection order in cases of physical, sexual, psychological, or economic abuse, or violence.[119]

[*] UN Women, ILO, UNDP, UNESCO, UNFPA, UNOHCHR, WHO

[†] WHO, CDC, End Violence Against Children, PAHO, PEPFAR, Together for Girls, UNICEF, UNODC, USAID, and World Bank

Domestic violence can account for as much as half the caseload of paralegals in South Africa.[120] In Argentina's government-run Centers for Access to Justice, lawyers, psychologists, social workers and community mediators work together to solve the justice problems of a poor community.[121] Many cases involve violence against women, with the center aiming to prevent further occurrences, rather than simply to respond to an historical incident.

The 2006 Secretary-General's report on violence against children stated that "no violence against children is justifiable; all violence against children is preventable."[122] It called on all states to reform their laws to more fully protect children from violence. The first of the seven INSPIRE strategies repeats this demand. It covers the implementation and enforcement of laws banning the violent punishment of children, criminalizing the sexual abuse and exploitation of children, preventing alcohol misuse, and limiting youth access to firearms and other weapons.[123]

The campaign to ban physical punishment of children has gained international traction, illustrating the potential for global movements to support a preventive strategy. Sweden criminalized the physical punishment of children in secondary schools in the 1920s and banned all forms of punishment in all settings in the 1960s.[124] Just 3 percent of parents admit to having beaten their child in the past year.[125] In 1979, Sweden was the only country with full prohibition, but a growing number of countries have followed its example. By 2017, 53 countries had adopted a comprehensive ban.[126]

Legislation directly protects children from violence at the hands of parents, teachers, and other caregivers, but it has broader impacts on prevention. Experience of punishment is a risk factor for future aggression and anti-social behavior.[127] An 88-country study found that adolescent males were 69 percent less likely to be involved in frequent fights in school in countries with complete bans on physical punishment.[128] Girls were 42 percent less likely to be involved in fights. Other studies show impacts on mental health for children, youth, and adults, higher levels of substance abuse, and reduced cognitive development.[129] Children who are punished are also substantially more likely to experience other forms of parental abuse.[130] With only 10 percent of the world's children fully protected by law from physical assault, there is considerable scope for further action.[*131]

As with legislation on violence against women, there is an interplay between laws and norms. The evidence demonstrates that legislation leads to both reductions in the prevalence of physical punishment and to reduced public support for the practice – in other words, the law shapes norms.[132] The relationship also runs the other way, with attitudes and practices changing before legislation is introduced and providing the political support legislation needs. As a recent review notes, "in order for lawmakers to consider such a ban, there must be sufficient popular support."[133] Only democracies have banned all forms of physical punishment (some non-democracies have banned physical punishment in schools).

The INSPIRE strategies demonstrate the potential for concerted support for prevention, with a role for international, national, and local actors. They are being used to inform national actions plans that aim to scale up comprehensive and multisectoral responses to preventing violence against children. The Inspire Handbook envisages that implementation of a strategy to implement and enforce laws will bring together legislators; government ministries who translate laws into protocols in their sectors; service providers, civil society, and businesses

[*] Zolotor and Puzia recommend advocating for partial bans where there is insufficient popular support for a full ban – in schools, or against very young children, or the use of objects such as a cane or a belt.

who support implementation of the law; and families and individuals who change their behavior.[134]

"Laws alone do not reduce violence," the handbook argues, "but their effective implementation and enforcement supports and strengthens all INSPIRE strategies to end violence against children."

Justice and the Prevention of Criminal Violence

Deterrence and prevention ▪ Mano Dura ▪ Place-based prevention ▪ Focused deterrence ▪ Prevention in the Northern Triangle ▪ Evidence-based policing ▪ Criminal violence prevention strategies

Prevention has long been an important function of criminal justice systems. As far back as the 18th century, Sir William Blackstone argued that "preventive justice is upon every principle, of reason, of humanity, and of sound policy, preferable in all respects to punishing justice."[135]

The traditional route to prevention in this sphere has been through deterrence, "the idea that if state-imposed sanction costs are sufficiently severe, criminal activity will be discouraged, at least for some."[136]

This theory has been extensively tested over the past 30 years, a period which has seen a rapid increase in imprisonment, with more than ten million prisoners worldwide.[137] According to a recent review of the evidence, longer prisons sentences have a limited deterrent effect.[138] Criminals often have limited knowledge of sanctions and tend to discount the future at a higher rate than the general population.[139] Where prison is effective, it is primarily through *incapacitation* rather than deterrence, with prisoners (young men, in particular) not at liberty to commit further crimes.[140]

A heavy reliance on deterrence can have counter-productive impacts (*prevention in reverse*). In El Salvador, the 2003 *Mano Dura* plan to reduce crime and violence was followed by a 50 percent increase in the homicide rate in four years.[141] Gangs expanded their presence, strengthened their political connections, and became more violent. The justice system deteriorated, with a growth in extra-judicial killings, a weakening of due process, and a near-collapse of a prison system that is largely gang-controlled.[142] Poorly-targeted mass incarceration helped build "sophisticated prison-based criminal networks, with significant political leverage over state actors."[143] El Salvador spent $775 million (or 4 percent of its GDP) on justice and security in 2014.[144] Only 1 percent of the total budget was spent on prevention.

Mano Dura approaches have proved popular in other Latin American countries, both with politicians and voters.[145] Claims of success rely largely on process indicators (gang members arrested and incarcerated, drugs and weapons seized) rather than outcome data showing a reduction of violence.[146] These approaches have also "routinely generated unintended consequences, including the use of excessive force, the stigmatization and rights violations of young people, the erosion of the procedural rights guaranteed to suspects, and the undermining of democratic legitimacy and basic norms of human rights and procedural justice."[147] At the same time, armed gangs increasingly compete with the state and to use "a range of coercive, administrative and persuasive means" to provide some semblance of order for the community which they control.[148] According to an NGO worker in El Salvador, "gangs did not steal territory from the state, they simply occupied it when it was empty."[149]

While evidence has grown that deterrence in the criminal justice sphere, narrowly conceived, is counterproductive, there is growing support for the impact of more constructive forms of prevention.[150] This is a result of an accumulating body of evidence that has challenged the consensus

that took root in the 1990s that "nothing works" to prevent violence and crime.[151] According to recent synthesis of more than 100 systematic reviews, there is now compelling evidence for the preventive impact of a range of policies and interventions in the criminal justice sphere.[152] Research has also shown that some seemingly-appealing models are in fact ineffective or damaging. The authors describe this as a shift from a "nothing works" to a "what works?" paradigm.

Some of the proven or promising interventions from this review are implemented outside the justice sector (for example, family or school-based programs). Others, such as place-based policing or non-custodial sentences, are narrowly in the domain of criminal justice actors. A third group, such as focused deterrence or neighborhood watch schemes, rely on "proactive engagement with the police and other civic partners to enhance legitimacy and build social cohesion."[153]

An important finding is that while long prison sentences do not prevent crime, "the certainty of being caught is a vastly more powerful deterrent than punishment."[154] This changes the emphasis from the use of prisons to the work of the police. Total police numbers are less important than where and how they are deployed.[155] In response, place-based policing focuses police time and resources on the "hot spots" where most crime occurs.[156] It requires a shift from a model where police react to incidents as they are reported, to a proactive, problem-solving approach that aims to target underlying risks and stresses in a community.[157] According to the World Health Organization, 94 percent of countries report that they are using problem-solving strategies.[158] Community policing models similarly give priority to "police work where officers are akin to 'peace officers' embedded in the networks of their communities rather than as reactive 'law officers.'"[159] These models originated in the United States and United Kingdom, but have spread globally. In Lebanon, for example, municipal police are shifting "from a law enforcement model towards community-oriented policing."[160] The Ukraine's patrol police work with Citizens Advisory Groups to develop integrated strategies for crime prevention.[161]

Focused deterrence provides an example of an approach that aims to "strengthen communities' capacity to prevent violence" while improving relationships between communities, social services, and police and prosecutors.[162] It aims to reduce levels of lethal violence in the most seriously affected communities by increasing certainty amongst gang members about the likelihood and severity of sanctions, while re-connecting these offenders to their communities and mobilizing the communities to support more positive behaviors. Deterrence targets gangs that perpetuate tit-for-tat killings,[163] a strategic use of enforcement that creates strong incentives to refrain from violence.[164] The impact can be dramatic, with nine out of ten evaluations demonstrating statistically significant reductions in violent crime.[165] In Chicago, for example, youth homicides fell by 63 percent.

Alternatives to traditional courts have also been shown to have preventive results. Restorative justice "encourage[s] offenders to take responsibility for their actions and to repair the harms they have caused, usually (although not always) in communication with their personal victims."[166] According to a systematic review, face-to-face restorative justice methods are effective for victims, who find the process more satisfactory and are less likely to experience post-traumatic stress. They lead to a reduction in crime, especially violent crime. The impact is modestly cost effective when considering costs and benefits solely for the criminal justice systems. Benefits greatly exceed costs when also including personal costs to victims and all costs to the state (health, welfare, etc.).

Informal justice systems may also support "problem solving through direct participation and restoring relationships where forgiveness played a central role."[167] For criminal matters, these systems often favor restorative approaches over retribution.[168] In Indonesia, for example, informal mediation can lead to a faster resolution of cases where the risk of further violence is high.[169] Indonesians report a higher level of trust in these local processes and favor them primarily because

they promote community harmony.[170] Informal and formal processes can be combined. For example, in the case of a manslaughter in Indonesia, a court imposed a prison sentence, while "the families of the victim and perpetrator and restored relationships" through an informal process.[171]

While much of the evidence on the prevention of criminal violence comes from the United States, the research base has broadened in recent years. A recent systematic review identifies focused deterrence and cognitive behavioral therapy as having the most promise for application in the Northern Triangle (Guatemala, Honduras, and El Salvador).[172] Through field interviews, it explores obstacles to effective prevention, including a lack of reliable data, the "fear, anger, and mistrust" that prevents coordination between sectors, and a lack of capacity from the state to administer "fundamental justice tasks."[173] A lack of state capacity and distrust between justice actors and communities pose significant obstacles to the implementation of approaches such as focused deterrence which rely on a partnership model.

Countries in the region are exploring new approaches to prevention. In 2015, the government launched the *Plan El Salvador Seguro* (Safe El Salvador Plan), marking a shift (in theory, at least) from *Mano Dura* approaches.[174] It may have led to reductions in violence in the worst affected communities, while UNDP argues that the multi-stakeholder and inclusive nature of the initiative has "reinforced the notion that democratic dialogues around major challenges are key to finding a common and sustainable solution."[175] A recent review of prevention in El Salvador calls for justice and security institutions to continue to redirect resources to the most violent areas.[176] It underlines the potential for targeted interventions, such as improved coordination between courts, prosecutors, and police, rather than attempts to reform the whole justice system. Prevention also needs greater political support, given "lukewarm" backing from the public, and continued incentives for political parties to return to a *Mano Dura* approach.

As in civil justice, a shift to prevention within the criminal justice sphere requires a shift away from reactive models. Sherman identifies three strategic principles for evidence-based policing.[177] Police resources are *targeted* through data and evidence. Methods are *tested* to see how well they reduce harm. Implementation is *tracked* to determine a range of outputs and outcomes, including changes in perceptions of police legitimacy. A USAID review identifies the need to bring partners together around a clearly-articulated theory of change. To succeed, prevention must increase "the perceived and actual legitimacy of strategies and institutions," convincing communities that they will benefit from declining levels of violence and increased justice.

Justice as Conflict Prevention

Pathways for Peace ▪ Justice reforms ▪ Judicial independence ▪ Capacity for prevention ▪ CICIG's impact on homicides ▪ Arenas of contestation: land and service delivery ▪ Prevention framework and sequencing

The World Development Report 2011 placed justice at the heart of its roadmap for breaking cycles of violence and conflict.[178] It argued that restoring confidence in security and justice institutions was possible within a generation, even in a country that had experienced severe conflict.

Recently, this message was reinforced by the joint UN-World Bank flagship report on prevention, *Pathways for Peace*:

> *A robust justice system creates incentives for peaceful behavior. It can settle disputes in a peaceful manner, ensure accountability of power, promote respect for human rights, combat corruption through the enforceability of contracts and property rights, and ensure checks and balances.*

Conversely, a breakdown of justice systems and the rule of law generally can inflame the grievances that may be mobilized for conflict and create incentives for violent behavior.[179]

The *Pathways* study underlines, when the risks of conflict are high, there are no 'quick fixes' that will allow justice systems to realize their potential for prevention. In these contexts, justice systems "must manage multiple, often competing, demands to address abuses of the past and demonstrate a clear departure from past practices, while simultaneously responding to the current security and justice needs of the population."[180]

Judicial reforms are complex and politically contentious. Increased judicial independence has strengthened post-conflict societies, especially in Latin America (though not without signs of a backlash).[181] Reforms commonly aim to strengthen the judiciary along three dimensions: impartiality, compliance with decisions once rendered, and freedom from political interference.[182] However, formal independence does not necessarily translate into independence in practice, with the World Development Report finding that "constitutional guarantees of independence and best-practice forms of judicial appointment often do not correlate with de facto measures of independent judicial behavior."[183]

In its report on 'judges as peacebuilders,' the International Legal Assistance Consortium argues that "justice sector actors require sustained, long-term support in order to meet their full preventive potential."[184] Based on lessons learned from the Middle East and North Africa in the wake of the Arab Spring, it emphasizes the need to improve strategic capacity, through assessment that allows justice actors to understand the nature of the challenges they face and use this to prioritize reform. Judges and other justice actors also need to be supported through a process of cultural and attitudinal change, including a greater openness to people who seek justice. Data is needed to measure the preventive impact of judicial reforms, which will often be "indirect, long-term and difficult to measure."[185]

The potential dividends are substantial, as can be seen by the impact of the International Commission against Impunity in Guatemala (CICIG). CICIG was based on an unprecedented cooperation between the Guatemalan state and the United Nations. It was set up to combat the impunity of illegal security forces and clandestine security organizations.[186] Over time, it has played an increasingly important role in investigating corruption. It has had successes in capacity building and institutional strengthening, and in promoting 'modest' legislative and constitutional reforms.[187]

These reforms have been effective at preventing the worst forms of violence. A recent Crisis Group analysis compares trends for homicides in Guatemala against those of a 'synthetic control group' composed of nine neighboring countries.[188] Guatemala experienced a 5 percent decline in the homicide rate, while the rate rose for the control group. 4,658 homicides are estimated to have been averted between 2007 and 2017. Crisis Group attributes these results to institutional reforms that included a witness protection program, special courts for high-profile cases that were insulated from external influence, improved investigative techniques, and strengthened partnerships between security and justice institutions. A change in perceptions – a renewed belief that the worst crimes will be punished and that justice professionals will be permitted to do their jobs – may also have played a role.

CICIG has enjoyed high levels of public support, with a 70 percent approval rating in early 2018.[189] But its popularity and impact have not insulated it from criticism from political elites. President Morales has recently announced that he will not review its mandate.[190] This again demonstrates the fragility of preventive approaches to justice and their vulnerability to a loss of political support.

Alongside competition over security and justice, the *Pathways* framework identifies three 'arenas of contestation' – access to power, to land and resources, and to inclusive service delivery – that feed insecurity and conflict. Each arena sees competition between groups, and between groups and the state. As well as broad reforms that tackle past failures and abuses, justice systems can also be enabled to play a preventive role in other arenas of contestation by "creating sets of rules to reduce conflict and increase productive cooperation."[191]

According to the *Pathways* report, "violent conflict around land is typically stoked by grievances related to land scarcity, insecurity of tenure, and historical injustices."[192] Natural resources not only create risks of conflict, they often provide resources through which these conflicts are sustained.[193] Risks in this arena are growing due to demographic trends, land grabs in rural areas, urbanization, climate change, and other factors. Justice systems have a variety of levers that can increase a society's ability to prevent land disputes at a time of rapid social, economic, and environmental change.

Legal protections for vulnerable groups can be strengthened, for example by improving women's land and property rights or through widening access to land and identity documents.[194] Over the longer term, land law and administration reforms can provide a framework for a sharp reduction in conflict. Intensified efforts to resolve land disputes peacefully may reduce more immediate risks of violence. Legal empowerment of local communities can defend their rights when powerful state and commercial interests seek access to land or natural resources.[195] Free, prior and informed consent can be used to protect the rights of indigenous people to land and natural resources.[196] Peru's Office of the Ombudsman provides an example of a mediating institution that has managed natural resource conflicts[197] and which has empowered citizens to press for broader reforms.[198] International standards and partnerships can support national efforts to strengthen legal protections in this arena. In the Philippines, for example, the Extractive Industries Transparency Initiative has supported machine readable and searchable contracting in the natural resources sector.[199]

Through the provision of public services, governments play an important role in delivering health and education, social protection, water and sanitation, transport and other infrastructure, citizen security, and other highly visible and valued services. This is "not only a technical exercise, but also an expression of the norms and rules that govern the state, and of the values it seeks to uphold."[200] When a citizen encounters the state, it is most likely to be in the shape of a teacher, a health worker, or a police officer. Their perceptions of the state's legitimacy are shaped by their experiences of the quality of the services they receive, but survey evidence suggests that the fairness of decision-making and of the way they are treated is as important.

Justice systems provide regulatory frameworks that encourage this fairness and that prohibit discrimination against marginalized groups. They can tackle highly visible forms of corruption, including non-monetary abuses such as 'sextortion' ("the abuse of power to obtain a sexual benefit or advantage").[201] Survey evidence from conflict-affected states finds that "positive perceptions of governments are strongly influenced by knowledge and use of grievance mechanisms."[202] This again demonstrates the preventive potential of mediating institutions.

As in the other domains covered in this review, preventive strategies are often built on evidence that emerges from individual cases and incidents. Ukraine's Community Safety Network System "tracks incidents and concerns of the local population" providing results to a coordinating group of security and justice actors, local government, and civil society which uses them to address possible areas of tension.[203] Community policing models have been used in Sri Lanka to encourage communities "to work and collaborate with the police to collectively tackle the underlying threats that may otherwise escalate into conflict."[204] In Sierra Leone, Local Police Partnership Boards have police and civilian

members.[205] The boards play an immediate role in prevention when a local conflict threatens to trigger large scale violence, but they also shape long-term term prevention strategies by identifying crime hotspots for greater police attention.[206]

Given the lack of capacity on conflict-affected settings, questions of capacity and sequencing are paramount. The 2011 World Development Report noted that "when trust is low, people do not believe grand plans for reform will work."[207] It recommended that justice reforms should begin by strengthening basic functions but should do so in ways that "go beyond paper reforms and reach into local communities."[208] De Greiff calls for a framework approach that does not try to advance on all fronts *at the same time*, but that ensures that *over time* all relevant factors are covered.[209] A framework approach encourages prioritization and sequencing, with actions that are different in degrees of ambition, magnitude, costs, and that call for different degrees of institutional coordination.

Justice and the Prevention of Human Rights Abuses

Impact of human rights abuses ▪ From normative to evidence-based ▪ The prevention of torture ▪ Rebuilding institutional credibility ▪ Judicial independence and constitutional guarantees ▪ International human rights standards ▪ Culture and norms

The prevention of human rights abuses is important for reasons that go beyond moral and legal obligations. In addition to the harm caused to individuals, human rights abuses of any significant scale undermine communities, damage social integration, and destroy trust between people, and between people and institutions.

A quantitative study has shown that increased abuse of human rights leads to increased risk of conflict and to higher levels of violence when a conflict begins.[210] Rights abuses by security and justice actors, such as political imprisonment, extrajudicial killings, disappearances, and torture, are all associated with increased risk of conflict, or increased severity, or both. Abuses also fuel violent extremism, with "communities… often more afraid of state security forces than violent extremist groups."[211] In a survey conducted in six African countries, recruits to extremist groups showed higher levels of distrust of the police than any other institution. 71 percent of voluntary recruits pointed to a government action, such as the arrest or killing of a family member or friend, as the "trigger" that pushed them to make the decision to join a group.

Mass rights violations, most often carried out during a conflict or in its immediate aftermath, pose a fundamental threat to a society's integrity.[212] They speak of justice and security systems that are radically unreliable and untrustworthy, of *de facto* or *de jure* executive powers that are unchecked, and of unrealized or wasted social capital. They leave in their wake significant obstacles to development, including diminished expectations and capacities, the destruction of physical and human capital, and a loss of capacity for the social coordination that societies rely on to function.[213] Mass atrocities are more likely to occur in the wake of past atrocities, especially "where perpetrators have not been held to account for their crimes."[214] Smaller scale violations may act as "trial massacres" with atrocities intensifying as a "cycle of impunity" is established.[215]

Historically, the human rights discourse has been primarily normative, with little research undertaken to establish why measures to prevent the abuse of human rights succeed or fail.[216] The evidence base has been strengthened in recent years, providing insights into the role justice systems and actors can play in the prevention of rights abuses. There are, of course, overlaps with approaches discussed in other sections of this review (especially the conflict and criminal justice domains, but also measures to strengthen legal capabilities and empowerment in the civil justice domain). But "an atrocity prevention lens" may require different strategies than those for conflict

prevention (while conflict prevention may itself create new risks of atrocities).[217] Similarly, the prevention of human rights abuses by security and justice actors calls for distinct strategies and approaches.

The prevention of torture, which remains common in most countries in the world, provides an example of where achievable reforms in the justice sector can significantly reduce risks. A recent empirical analysis found that "when opportunities to torture are reduced, the incidence of torture falls; and if torturers are effectively investigated and prosecuted, it falls further."[218] The evidence suggests that the most effective intervention is to strengthen laws, rules and procedures that safeguard detainees in the period immediately after their arrest. A decreased reliance on confession evidence decreases motivation to torture, while audio or video recording of interrogations may also be effective. The criminalization of torture and the use of independent monitoring mechanisms also reduce risks. The study notes the gap between legal frameworks and practice. Training of prosecutors, judges, and police can help fill this gap, reducing the risks of torture.

Broader institutional reforms aim to re-build the credibility of justice institutions, through "practical and symbolic changes in institutional culture and practices and demonstrable legitimacy, accountability and independence."[219] De Greiff, in his role as Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, underlined the role that justice reforms can play in mediating conflicts over power during moments of transition.[220] At a time when the political settlement is in flux, a window opens for fundamental reforms of the constitution, legal system, and judiciary. These reforms can be guided by the ratification and incorporation of international human rights treaties. Human rights standards can then guide changes in emergency or counter-terrorism legislation to prevent the misuse of law-enforcement competences, and to limit the purview of military jurisdiction over human rights cases.

Georgia provides an example of an unusually bold approach to police reform. Following the Rose Revolution, President Mikheil Saakashvili dismissed every member of the country's notoriously corrupt traffic police.[221] The aim was to visibly demonstrate that the public would no longer be exposed to rampant levels of extortion. A new Patrol Police was recruited from scratch, leading to dramatic improvements in public trust and an increased willingness of citizens to report corrupt behavior.[222] The country also built new 'glass police stations' – which act as both a symbol of transparency and as a practical approach to removing the dark corners in which abuse can occur.[223]

Strategies may also seek to strengthen judicial independence, as part of efforts to "clean up" and reconstruct the judiciary.[224] The justice component of UN peacekeeping missions has often focused on re-establishing the independence of both the judiciary and the prosecution service.[225] The vetting of justice actors also plays a preventive role "not necessarily because the sanctions it metes out (loss of job, public prestige, etc.) are sufficient to deter individuals, but because it dismantles networks of criminal activity."[226] Vetting may help rebuild trust in institutions, promoting their legitimacy and ability to combat further abuses. Judicial independence can also be promoted in a way that changes the culture of the justice system. In Tunisia, judges and prosecutors were brought together in a format that invited them to "reconceive their independence in terms of an obligation to serve ordinary citizens."[227]

Effective prevention of human rights abuses may also require strengthening constitutional guarantees, by enshrining the principle of judicial independence, for example, or to define the roles of the police, military, and intelligence services. A post-conflict period can provide "the perfect opportunity for a direct injection of international standards into the machineries of domestic law, and thus can contribute to the development and crystallization of important norms."[228] Strengthened mechanisms for civilian oversight and control over security and justice institutions may

also reduce the risk of future rights abuses. In Tunisia, for example, a Citizen Bureau within the Ministry of Interior investigates complaints and addresses grievances.[229] Strengthening parliamentary oversight increases accountability for security and justice actors, while raising awareness that could lead to improvements in the legislative framework for the prevention of human rights abuses.[230]

A distinctive feature of prevention in this domain is the role of independent monitoring institutions and the interplay with international human rights standards. National human rights institutions "can have a tangible impact in the reduction of human rights violations, especially in the most grievous incidences of torture, arbitrary imprisonment, and murder."[231] The Afghanistan Independent Human Rights Commission, for example, issued "A Call for Justice" in 2005 based on an extensive consultation on transitional justice.[232] This prepared the ground for a national Action Plan on Peace, Justice and Reconciliation. National human rights institutions are, themselves, reviewed against internationally agreed standards (the Paris Principles), with 37 percent currently compliant.[233] Human rights institutions support legal empowerments strategies, with a combination of top-down and bottom-up pressure advancing the protection of rights.

The Universal Periodic Review (UPR) provides an opportunity for dialogue between national actors, civil society, and the international community, with the potential to strengthen human rights protections. In 2014, nearly half of UPR recommendations had triggered action half-way through the review cycle, although only 28 percent of recommendations directly related to the justice system had been implemented.[234] In some countries, the UPR process has contributed to "a more cooperative, partnership-based relationship" between governments and civil society, which may help build the trust that underpins effective prevention.[235] Other international mechanisms may also play a preventive role. The International Criminal Court, for example, has "a preventive function involving timely intervention in situations where there are tangible indicia of future crimes falling within the [its] jurisdiction."[236]

As in other domains, prevention of human rights abuses is multisectoral, with justice actors playing a central but not unique role. As de Greiff has argued, a comprehensive framework for the prevention of human rights violations would include measures in different sectors such as education, housing, health, and employment.[237] Prevention in this domain requires not just institutional reform, but broader shifts in the culture of these institutions and in how they relate to broader society. Civil society plays a preventive role that includes monitoring, reporting, and advocacy, but goes beyond it to the greater challenge of rebuilding trust and creating the resilience that reduces the risk of future human rights abuses.

Part 3 ¦ Justice as Prevention – Towards a Synthesis

The review of justice as prevention reveals common features that emerge across different justice domains. (These preliminary conclusions will be further developed for the final draft of this paper.)

Prevention focuses on populations, not individual legal needs

Across multiple domains, the shift to prevention takes justice actors from responding to individual legal needs or acts of violence, towards an attempt to increase justice for populations or for groups.

In civil justice, the aim is to prevent disputes happening. Justice actors, both state and non-state, "draw on their frontline experience to address systemic weaknesses in laws, policies and practices more efficiently."[238] They offer people legal identity and civil registration in order to allow them to claim their rights. They help people to form agreements that are less likely to cause conflict. And they offer early assistance to those who are most likely to have justice needs, with the aim of forestalling a dispute or preventing it from escalating.

When preventing interpersonal or organized civil violence, the objective is to understand and address underlying risk and protective factors. Laws can be changed in ways that benefit whole populations, strengthening the legislative framework for violence prevention. Alternatively, interventions can be tightly targeted on communities that face disproportionate risk, based on the principle that "interventions that focus on the highest risk places, people, and behaviors generate the strongest effects."[239]

When preventing conflict, the focus is on "addressing the roots of conflict, which often lie in poverty, exclusion, inequality, discrimination and serious violations of human rights."[240] Justice actors face the challenge of delivering reforms to institutions that have often helped fuel a conflict, while meeting expectations that they will deliver justice in a conflict's aftermath.[241] Justice systems can also help mediate conflicts and reduce risks in contested arenas, such as power, land, and service delivery.

This shift matches the difference between a medical and a public health model.[242] Public health approaches also work at the level of populations, focusing on "interrelated conditions and factors that influence the health of populations over the life course… and applies the resulting knowledge to develop and implement policies and actions to improve the health and well-being of those populations."[243]

Prevention strategies are outcome-focused

Prevention focuses not on the number of arrests that are made or the number of court cases that are heard, but on outcomes that matter to communities and societies. As Canada's Action Committee on Access to Justice puts it:

> *We are trying to improve law and process not for their own sake, but rather for the sake of providing and improving justice in the lives of Canadians. Providing justice — not just in the form of fair and just process but also in the form of fair and just outcomes — must be our primary concern.*

Justice actors aim to achieve different types of preventive outcomes:

- For **individuals**, outcomes include fewer or less serious disputes, lowered risk of violence in all its forms, and lowered risk of a rights abuse. More broadly, prevention should provide a platform for human development, with impacts felt across sectors (health, education, prosperity, etc.).

- For **societies**, outcomes include decreased risk of violent conflict, the more peaceful management of disputes, and higher trust in governments and institutions. Governments should also see a fiscal return, if they "prevent or reduce the escalation of legal problems, which in turn can mean reduced costs to other taxpayer funded services."[244]
- For the **justice system** itself, outcomes include improved confidence that the system is fair, and an increased capacity to devote scarce resources to responding to the most serious risks and abuses. Effective prevention, in other words, should support a more effective *response* to legal needs and problems.

These outcomes are inter-related. Effective torture prevention may lead to a lowered risk of abuse of young men who are arrested (individual), increased confidence in the police among communities (justice system), and reduced grievances that could lead to political instability or violent conflict (society).

Prevention is strategic and evidence-based

Because prevention is outcome-focused, strategies must start with the desired outcome and "wind the tape backwards" to find ways of addressing a cluster of problems.[245] They rely on an explicit or implicit theory of change, "a method that explains how a given intervention, or set of interventions, is expected to lead to specific development change, drawing on a causal analysis based on available evidence."[246]

Throughout the review, we see the recurrence of the same basic strategic principles that underpin prevention: using data and evidence to set priorities and target resources; rigorous testing of interventions to understand what does and does not work; and monitoring of outputs and evaluation of outcomes to understand whether results are being achieved. Strategic capacity, however, is often problematic – with many justice actors unable "to abstract or strategize beyond an immediate firefighting approach to routine cases." [247]

There are efforts to turn evidence into frameworks for prevention that support effective policymaking. The World Health Organization has proposed 'best buy' strategies for violence prevention, while the INSPIRE strategies provide a common framework for ending violence against children. De Greiff proposed a framework approach to prevention, not as a policy blueprint, but to provide more comprehensive guidance for decision makers.

In many cases, however, evidence is fragmented. There is limited understanding of the range of interventions that could mitigate the worst impacts of family breakdown, for example, despite many promising models. There is a similar lack of consensus around how to respond to the conflicts over land which underpin a large proportion of disputes in many societies.

Prevention is hard

Prevention runs against the grain for justice systems that are 'wired' to respond to problems. Response is visible and can be dramatic, appealing to politicians and publics. *Mano dura* approaches remain politically popular, despite their failures to deliver benefits. In contrast, the outcomes from prevention can be diffuse and hard to track. Politicians may gain little benefit from risks averted.[248]

Prevention may require a shift in resources within the justice sector (from prisons to policing, say) or from formal justice system to those working in communities. It also requires much broader partnerships, encouraging some countries to experiment with cross-sectoral mechanisms to bring these partnerships together around shared prevention strategies.

The starting point for these partnerships should not be what already exists, but which are "the necessary institutions, knowledge, resources and services to avoid, manage and resolve" justice

problems and disputes.[249] To be effective, justice actors will need to reach out to other sectors, given that these sectors have levers that allow the root causes of injustice to be addressed.

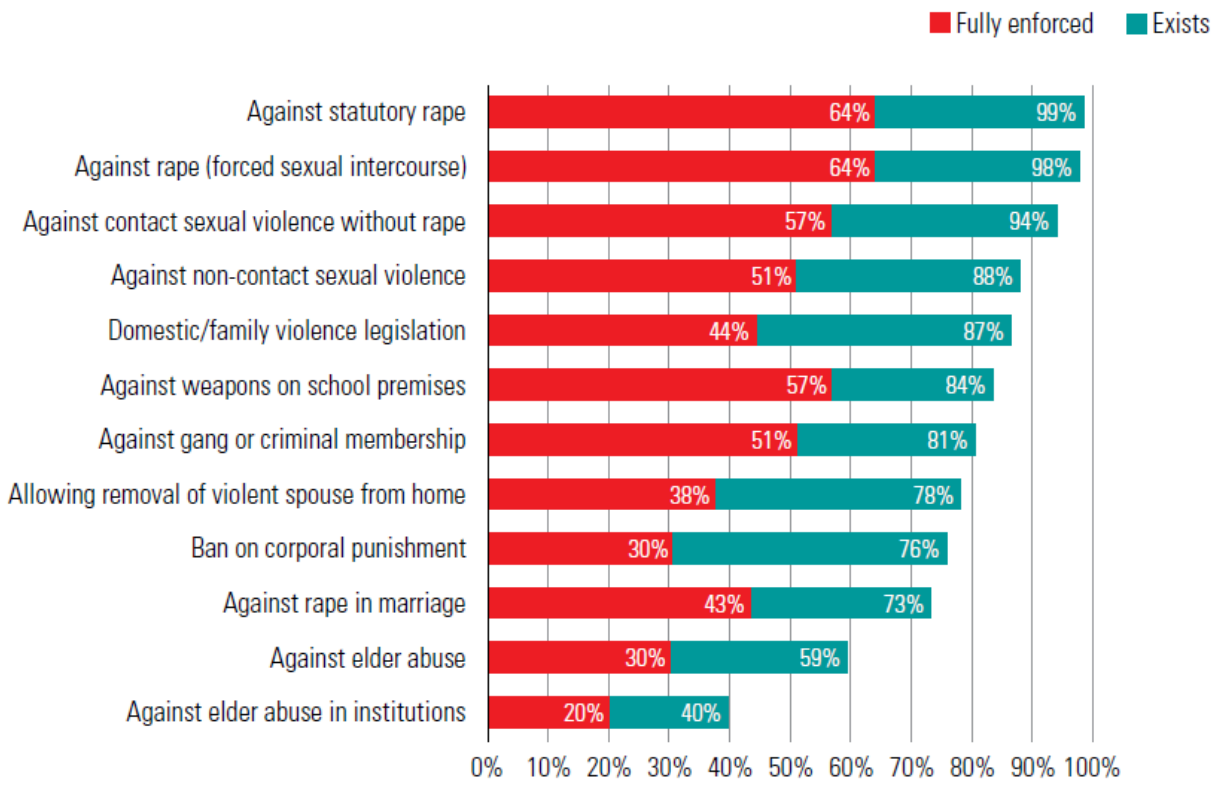
Effective prevention very often relies on a much stronger partnership between justice actors and communities, as communities are empowered to solve their own justice problems. A legacy of distrust can make it very hard to form and sustain these partnerships. Cultural and attitudinal change is needed – from a model that places high barriers to participation to one that is much more open to people.

Yet preventive approaches continue to thrive in many contexts. Justice actors have a range of motivations:

- They recognize that risks are unacceptably or dangerously high for a group, community, or society. Tackling systemic injustices is the only way to build a more peaceful and resilient society.
- They understand that the scale of violence or the number of disputes overwhelms the capacity to respond at a feasible cost. Prevention is the only way to provide justice for the many, not the few.
- They believe that current models of responding to justice needs are expensive, ineffective, or impose unacceptable costs on other sectors or part of society. The case for investing in prevention is compelling.
- They have strong evidence that an approach to prevention works. They want to persuade others to learn from and build on this model.
- They find that prevention creates opportunities for long-term thinking and for less adversarial relationships with those who seek justice. Prevention is professionally rewarding.

Annex 1

Figure 15: The proportion of countries with laws to prevent violence and the extent to which countries report these laws as being fully enforced (n = 133 reporting countries)



Source: WHO Global Status Report on Violence Prevention, 2014, page 39

Endnotes

[1] See https://www.sdg16.plus/ and Pathfinders for Peaceful, Just and Inclusive Societies, *The Roadmap for Peaceful, Just and Inclusive Societies – A Call to Action to Change our World*. (New York: Center on International Cooperation, 2017), accessed November 12, 2018, http://cic.nyu.edu/publications/roadmap-peaceful-just-and-inclusive-societies-call-action-change-our-world

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Cover Photo: Security Council Delegation Visits South Sudan A delegation of the Security Council conducted a three-day visit to South Sudan, following the Council's recent renewal of the mandate of the UN Mission in South Sudan (UNMISS), which included the approval of a 4,000-strong regional protection force to aid with security in the capital, Juba.

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726 Broadway, Suite 543
New York, NY 10003
cic.nyu.edu