Beyond the Pandemic

The Justice Emergency

UNDP

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Introduction

"There is no guarantee that the world will alter its course and evolve towards less violence and less injustice, but positive changes will not occur without considered thought and political action." [1]

We are facing a justice crisis. The COVID pandemic has exposed and worsened the inequalities and injustices experienced by billions of people around the world.[2] Governments responses to the pandemic, the climate emergency, protracted conflicts, rising authoritarianism and other global challenges, are calling into question our conceptions and perceptions of justice, fairness and accountability. In this complex environment, what can and should justice and development practitioners do to address this justice crisis?

This background paper reflects on some emerging trends, opportunities and challenges for responding to and overcoming today's pandemic of injustice. Its primary aim is to stimulate and facilitate strategic conversations about UNDP's current and future work to promote justice and the rule of law. The paper is not a comprehensive review of justice in development. It also does not address in-depth the inter-connected issues of human security, rule of law and human rights, although their relevance and importance in this discussion is unquestionable. It does, however, raise issues and ideas that are highly pertinent for development practitioners working across the fields of democratic governance, conflict prevention, security and human rights and others. As such the paper seeks to raise questions and present ideas that can encourage reflection, spur debate and inform positive collective action towards a more just and peaceful future.

Part one of this paper opens with a reflection on how justice is conceptualized and by whom, and what it means to apply a justice perspective to development. It suggests that adopting **a narrow conception of justice can limit its transformative potential** for addressing people's immediate justice needs and the deep-rooted inequalities and injustices that drive conflict. Part two starts with a consideration of several global threats to justice and reflects on the responsibility and accountability of powerful stakeholders, including transnational corporations and foreign donors, for ensuring and promoting justice. The following sections examine general trends in justice and rule of law promotion, including people-centred justice, and specific thematic areas of conflict, environmental justice and gender. The paper highlights **the potential of a systems approach** for addressing the inherently political nature of justice and for enabling a multi-pronged and multi-disciplinary response to injustice. Part three challenges us to imagine a more just future and explores some of the innovative tools, technologies and process approaches that could help achieve that vision. The paper concludes with a final reflection on the role of justice and accountability as enablers of systemic transformation towards more just and peaceful societies.

What is justice?

Section 1: The justice demand

The pandemic has done little to slow the global upward trend of social mobilization against injustice.[3] According to Carnegie's Global Protest Tracker, new anti-government protests emerged at a rate of approximately one every five days in 2021. While this figure is slightly down from 2020, it is still significantly higher than pre-pandemic rates.[4] The pandemic itself created new protest triggers, including public health measures (such as lockdowns, mask mandates and vaccination requirements), economic insecurity, and government mismanagement of the crisis.[5] The geographical spread of protests, the specific purpose or cause, and the profiles of protesters is diverse, but there are commonalities in their demands: for greater respect for and protection of their rights, more equality, inclusion and accountability, and an end to impunity.

Protests are visible statements of peoples' outrage, their discontent and a general lack of trust that political systems and those in power are really working for them. They are demands for change. Faced with growing social unrest, many governments have responded by using laws, measures and physical force to quash unwelcomed public dissent. In the absence of effective remedies, these responses will likely only fuel grievances, compound experiences and perceptions of injustice, and provoke more unrest. As the pandemic persists, as authoritarianism continues to rise, and as structural inequalities and inequities remain unchecked, the relationship between the governing and the governed is only becoming increasingly strained.

A common thread across the majority of social protests today is a broad demand for justice–from more fair and just legal systems, services and institutions, to greater social, economic, racial, gender and environmental justice.[6] These wide-ranging demands are challenging liberal ideological and political positions on justice and accountability that have prioritized civil and political rights (rights to life, liberty, freedom from torture, or cruel, inhuman and degrading treatment etc) over economic, social and collective rights. These demands are not just those of specific interest groups. They are global demands for the **deep transformation of entire legal, political, economic and social structures and institutions that have long been indifferent to social and economic inequalities and the injustices they seed**. Today's 'justice demand' is therefore not only a call for the punishment of those who commit 'wrongs', but also for the making of 'rights.' It is an urgent call for both the accountability and *responsibility* of all persons (the governed and the governing) within a society to actively eradicate persisting structures of inequality, and ensure an enabling environment where societal systems and institutions not only respect the rights of all people, but are responsible for actively ensuring their protection and promotion today and in the future.[7] Put simply, it is about placing the needs and expectations of everyday people at the centre of decision-making. It underscores the nature of **justice as a fundamental principle organizing society that must be at the heart of the new social contract**.[8]

What implications does this complex justice demand have for our work in promoting justice and sustainable development today and in the future? Are our current tools and approaches adequate for understanding and meaningfully responding to people's justice needs and expectations? If not, what needs to be done? The following questions intend to help kick-start this thought process:

? What does it mean to place justice at the heart of efforts to promote peace, development and prosperity?

Justice is not only a set of institutions or a desired end state. It is a set of principles and approaches that can address both people's immediate justice needs and also the drivers of injustice. The justice remit does not lie with judges and lawyers alone. Applying a justice

lens to development helps to facilitate synergies across multiple sectors and disciplines. It enables a more integrated approach to ensuring that development interventions address the symptoms of inequalities and injustice and also advance efforts towards systemic and structural change. The 2030 Agenda and its 17 Sustainable Development Goals (SDGs) is one framework for furthering these multi-disciplinary efforts. Initiatives such as the SDG16+ Forum and framework and the new people-centred indicator (SDG 16.3.3) highlight a growing consensus that sustainable development cannot be achieved by limiting justice to the realm of courts and legal professionals.

? Do our efforts to promote justice contribute to strengthening the social contract?

Access to secure employment and a decent income, education, adequate housing, and opportunities for social mobility, are all essential to human dignity. Most people's daily 'justice' problems relate to economic and social disputes, such as over land use and ownership, debt, family relationships, employment or access to basic services.[9] Yet, international development assistance tends to prioritize support to addressing criminal injustices. Inadequate attention has been given to addressing economic and social injustices and the structural inequalities that perpetuate them. When left unresolved, these daily injustices diminish people's dignity, fuel frustrations and undermine their confidence in government. A fair, legitimate and trustworthy justice system that puts people, their rights and the outcomes they need, at the centre, is vital for enabling people to live with dignity and for creating incentives for them to trust and invest in the economy and society.

? What are the implications of a broad conceptualization of justice for understanding violence?

Conceptions of justice that primarily focus on accountability for direct or physical violence over other forms of structural violence, will be inadequate for addressing the inequalities and injustices that contribute to societal unrest, instability and violent conflict. The role of justice in addressing all forms of structural violence, which can include violations of economic and social rights, political exclusion, and exploitation of natural resources, is an important component for the prevention and resolution of violent conflict. Beyond prosecuting perpetrators of violence and reforming judicial institutions, justice is also critical for reducing marginalization, addressing the horizontal inequalities between groups that can provoke violence, promoting socioeconomic inclusion, strengthening the social contract and building hope in the future. Justice, defined broadly, is an integral part of understanding

and addressing discrimination and marginalization, preventing and responding to crisis and conflict, and promoting good governance.

? Is our current justice programming 'politically smart' enough?

Justice is not only a legal question. It is also a political question that asks, how can we reach a political settlement that offers a pathway to change?[10] Justice interventions that seek to challenge and transform systems and structures of inequality, exclusion and discrimination must acknowledge and understand power–who has power, how is power exercised and how is it constrained? Transformation requires changing mindsets, attitudes, behaviours and relationships across individuals and institutions. But addressing power imbalances is not easy. Asymmetrical power structures are difficult to break down and power holders will seek to protect their vested interests. Power relations are often deeply embedded in institutional structures. Identifying challenges and opportunities for transformative change requires understanding the political economy, and the interests, incentives and motivations of all stakeholders. Programming needs flexibility to test innovative approaches to change and to adapt based on evidence and learning.

A landscape of injustice

Section 2: Global threats to justice

The need for international coordination and cooperation to address today's global threats, from the COVID-19 virus to the climate emergency, has never been greater or more urgent. The pandemic uniquely highlighted the extent to which the world is interconnected and interdependent while simultaneously shining a spotlight on the reality of multilateralism in decline. Rising nationalist populism, heightened political polarization and tense geopolitics were shaking alliances and relations between governments, and between governments and their own people before the pandemic. The arrival of the virus only reinforced these global and domestic divides. The extraordinary speed with which COVID-19 vaccines were produced demonstrated the great potential of international cooperation. Yet the nationalistic responses of many wealthy governments resulted in vaccine hoarding, severe inequity in global vaccine distribution, and a new international 'vaccine diplomacy' effort by non-democratic countries keen to capitalize on the gap left by Western democracies distracted by domestic concerns.[11] In the competition between globalist and nationalist worldviews, the latter appears to have the upper hand.

DEMOCRATIC GOVERNANCE AND RULE OF LAW IN DECLINE. Global trends in the quality of democracy, rule of law, and the protection of rights and freedoms are in decline.[12] Government responses to the pandemic only emphasized these trends–'autocratization' (the inverse of democratization) in many non-democratic countries deepened, and the fragility of several new or transitioning democracies was revealed.[13] A significant number of countries, including some established democracies, implemented measures that limited rights in a way that was disproportionate, illegal, indefinite or unnecessary. Some governments seized the opportunity to silence critics, weaken rule of law institutions, or undermine other accountability systems. Democratic countries appeared faster at recalibrating and redressing actual or potential rights violations, for example, as legislatures and courts resumed their functions and civil society mobilized to challenge executive overreach attempts.[14] At the same time, other governments sought to consolidate their hold on power by furthering a narrative, explicitly or implicitly, that a strong non-democratic regime is more efficient at addressing crises. What does a global decline in democracy and respect for democratic principles mean for justice? How can we meaningfully reassert justice as a global priority? Merely maintaining the liberal democratic narrative is not adequate. There is a need for serious discussion around how to reform and re-invigorate the concepts of democratic governance and rule of law, in the face of their shortcomings in addressing the inequalities and injustice experienced by so many.[15] Today's justice demand suggests an urgent need for innovative thinking around the government-society relationship. New inclusive spaces are needed that meaningfully give voice to the needs and expectations of youth, minorities, women and other silenced groups, ensuring they are not only heard but their needs are responded to. Civil society, scholars and practitioners all need to be mobilized and actively supported in the effort to reassert the global 'goods' of justice, rule of law and equality.

THE GLOBAL STANDARD OF JUSTICE UNDER PRESSURE. The securitization effect of 9/11 and the war on terror that placed a premium on security (over justice), the experiences of Iraq and Afghanistan, impunity for serious crimes under international law, and other factors, have negatively impacted global justice efforts in recent years. The entire pursuit of justice as a standard to which all are held equally has been put into question. There have been slow but steady advancements in international criminal justice efforts. The extension of the International Criminal Court's (ICC) investigative focus beyond Africa, and the expansion of its substantive remit to crimes of cultural destruction, environmental crimes and forced evictions are notable. The January 2020 decision of the International Court of Justice in the genocide case

taken by The Gambia against the Myanmar government shows the possibilities for smaller nations to promote international justice where the traditional enforcers of international norms are unable or unwilling to do so.[16] At the same time, lessons from transnational courts and hybrid tribunals designed to deliver justice for war crimes, crimes against humanity and genocide, highlight the complex political landscape of justice, and the challenges in delivering fair, efficient and effective justice for all. These lessons, when not well understood and learned, undercut the global legitimacy of justice.

NATIONALIST INTERESTS FUEL INJUSTICES AND INEQUALITIES.
Peace is not achieved merely by the absence of armed conflict. Justice cannot be attained solely through external military interventions and international courts. Achieving and maintaining peace and justice requires a global commitment to addressing the grievances, inequalities and structural violence that fuel instability and conflict within and across states. It requires all states to have the capacities to be effective 'peace players' within the international community. Today the traditional North-South relationship, and its inherent economic and power inequalities, are being challenged.[17] For example, while billions of aid dollars flow to the Global South each year, trillions of dollars flow in the opposite direction, including billions in illicit financial flows that end up in banks in developed countries and tax havens. Such figures underscore the significant maldistribution of resources around the world.[18] There are rising demands for a level playing field for trade, financial dealings, intellectual property transactions and other aspects of international relations that will enable equality of opportunities for all countries. The downward trend in 'principled' overseas development aid is undermining the global goods of peace and justice and creating space for non-democratic governments to advance their own agendas.[19]

RESPONSIBILITY AND ACCOUNTABILITY OF NON-STATE AND PRIVATE ACTORS.
Non-state actors can have significant roles to play in the pursuit of justice or the perpetuation of injustices. Transnational corporations, for example, wield enormous power and influence with governments. In some cases, governments that are aligned with powerful companies have enabled unregulated corporate activity, environmental harms and violations of human rights. In other situations, governments are outsourcing public functions (such as education or health) to private companies without adequate accountability safeguards. Advancements in areas such as Business and Human Rights and environmental justice are positive recent trends for advancing the responsibility and accountability of the private sector for human rights and justice. Facebook's release in March 2021 of a corporate human rights policy, for example, was a public articulation of its commitment to upholding human rights. How this commitment will be realized and enforced remains a serious question. Global civil society has a critical role in promoting and ensuring justice. Authoritarian leaders are obvious perpetrators of a shrinking civic space, but they are not the only ones. Policies and interests promoted by international financial institutions, foreign donors and other global actors, can also significantly constrain the space for independent civic life. Better understanding these dynamics is critical for identifying leverage points for the protection and enhancement of the transformative potential of civil society organizing.

Section 3: The justice ecosystem