The 2030 Sustainable Development Agenda:
Why goal 16 on justice is critical for the WANA region

Dr. Erica Harper

"Knowledge from the region, action for the region"

Dr. Erica Harper

Dr. Harper was appointed by HRH Prince El Hassan bin Talal as the Executive Director of the WANA Institute in 2014. Prior to this, she was the Senior Rule of Law Advisor for the International Development Law Organization in Geneva where she ran a portfolio of legal empowerment projects spanning 13 countries in the areas of customary justice, community land titling, and child protection. During this period she was also seconded to UNHCR as Chair of the Global Protection Cluster Taskforce on Natural Disasters. Dr. Harper has worked for various international organisations including UNHCR and UNDP, as well as NGOs and academic institutions in Indonesia, the Philippines, Switzerland, Italy and Australia. Dr Harper is the author of six books on international legal issues, and has been published in more than 15 academic journals. She holds a Bachelor of Commerce (Economics), Bachelor of Laws (Hons) and Doctor of Philosophy (International Law). Dr. Harper is a thought leader and regular commentator on international criminal law and the state-civil society compact; she has worked as an advisor and speech writer for political leaders and former Heads of State in Europe and Asia. The mother of three daughters, Erica aspires for a world where equal opportunity, critical thinking and social consciousness are embedded rather than tolerated norms. She is passionate about anything that takes her into the outdoors, literature and the people of Jordan.

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Introduction

On 27 September 2015, a high-level plenary meeting of the United Nations General Assembly adopted 17 Sustainable Development Goals (SDGs) — the culmination of a 3-year process aimed at synthesising the environmental, social and economic dimensions of development.[1] Goal 16 contains a strong emphasis on justice: "to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels". This outcome, at least in part, is the result of advocacy by key stakeholders such as Prince El Hassan bin Talal of Jordan, UN agencies including the Economic and Social Council for West Asia, and grassroots agencies like Namati, all of which have presented strong evidence on the mutually constituting relationship between justice, good governance and development.

The inclusion of goal 16 is a remarkable achievement, not least, because justice is a broadly contentious issue. Opposition ranged from a justice goal compromising state sovereignty, to justice outcomes being immeasurable or only relevant to developing countries. States were also not blind to the challenges of implementation; forging consensus on minimum standards for an independent judiciary, accountability, transparency and access to justice was always going to be a difficult process.

But the inclusion of justice is a critically important step, if for no other reason than the impact this will have on development outcomes. For better or for worse, these global targets channel funding, and thus programming, in specific ways. When the Millennium Development Goals (MDGs) curiously failed to include a rule of law or justice element, the effect was to demote the importance of the justice sector in development strategies and to cut it off from mainstream funding mechanisms. Grassroots organisations, all the way up to UN agencies felt pressured to couch proposals in MDG-terms, and this manifested in a marked retreat from rule of law initiatives.

By no means is this the end of the story. A justice goal forming part of the international development agenda, and commitment by individual states to integrate it into national development planning, are very different processes. The countries of the West Asia-North Africa (WANA) region now need to decide how justice will be prioritised and implemented. This will be difficult, because civic rights and freedoms, separation of powers and citizen empowerment are polarizing issues. In this region, such challenges are even more intense — complicated by ongoing conflict, the legacy of the Arab uprisings, the emerging threat of violent extremism, and how these pressures spill over onto existing economic challenges. Against this backdrop, stick-over-carrot approaches have broadly been perceived as the most effective means of maintaining stability. Some policy experts support this, arguing that rapid changes to governance models are more likely to weaken stability than reinforce it. There is also some evidence that the people of the region are more concerned with existential issues such as jobs, economic growth and counter-terrorism than they are with rights, access to justice and legislative reform.[2] According to civil society leader, Hadeel Abdul Aziz, this "chronic apathy towards social justice" is indicative of a crisis in confidence in the justice system that needs to be resolved before more substantive reforms can take effect.

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[1] In 2000, world leaders committed to a new global partnership to reduce poverty set out in time-bound targets with a deadline of 2015: the eight Millennium Development Goals. A decade later, it was clear that 'poverty had not been made history', thus in June 2012, at the UN conference known as Rio+20, it was agreed that a set of Sustainable Development Goals would be developed to replace the Millennium Development Goals. The UN Secretary-General established a High-Level Panel of Eminent Persons to advise on this process. At the same time, the UN facilitated thematic consultations on 11 key issues and 50 national dialogues. In January 2013, the General Assembly established an Open Working Group to prepare a proposal. In July 2014, the Open Working Group concluded its report; a proposal comprising 17 goals and 169 targets.

[2] See The World WE Want Survey; <https://www.worldwewant2015.org> accessed at 1 August 2015, author's own analysis.

An alternate way of looking at this situation is that the connection between social justice, stability and broader development is not sufficiently understood, both at the community and policy-making levels. There is a solid body of evidence that links justice, weak growth and conflict in mutually constituting ways. Injustice is a driver of conflict, whereas access to justice and a strong rule of law system play a role in preventing conflict and its recurrence. Likewise, weak progress in the fight against violent extremism has demonstrated that military solutions are far from complete answers, as they do not address the root causes of radicalisation. As policy analysts examine the deficits in this approach, the importance of bolstering human security, creating legitimate spaces within governance frameworks for all groups, and developing mechanisms to detect, counter and respond to violent extremism, has come to the fore. Such steps will only be possible in an environment where all governance organs fall under the rule of law, safeguards exist to prevent rights encroachment and basic freedoms are guaranteed. A final hallmark of the WANA story is that development is taking place, in some cases very rapidly, but at starkly uneven rates. Progress has also not been inclusive, with the result that the gap between the rich and poor is rising, as well as deficits in areas that have a tangible impact on development, such as gender equality. Such skewed development is not without consequence. It is increasingly clear that the Arab uprisings were largely the result of poor access to basic resources and limited opportunity, coupled with weak accountability. In other words, a failure of social justice. The lesson is that development should not be solely concerned with growth, but also with its fair distribution and participation in decision-making processes.

As states begin to ponder these issues in the context of the new development agenda, an opportunity exists to spearhead a discussion about how justice and governance aligns with national and regional development priorities. There was no roadmap annexed to the MDGs and there will likewise be no roadmap supplied for the SDGs. The region's stakeholders need to write this roadmap for themselves, and this will require a frank assessment of constraints, opportunities and the messy interconnections between goals. Forging consensus around how justice and good governance fits into the WANA development architecture will involve difficult conversations, and it is critical that such discussions are grafted onto a solid evidence base. In response, this paper presents a case for why states in the WANA region should take goal 16 seriously. It analyses evidence on the relationship between justice policies and actions in three thematic areas: conflict resilience, countering the emerging threat of violent extremism, and economic growth. The conclusion is that justice is not only an end in itself, but is critical to interrupting the conflict trap, permanently extinguishing the threat posed by radicalised groups and providing a platform for growth that is steady, inclusive and sustainable. It explains that justice outcomes require ongoing prioritisation and regular fine-tuning. Moreover, that the obligation to develop a strong and responsive justice sector transcends national boundaries, and should be approached as a shared responsibility.

1: Justice as a Tool of Conflict Resilience

Its staggering cost in terms of human loss and humanitarian assistance, the curious role of oil, and the rise of Daesh make protracted conflict in the Arab world a topic of global debate. Many connect the regional crisis to post-war colonial mapping — a move that ignored demographic composition, split tribal networks and carved out states with vast inequalities. However, while these borders provided fertile ground for instability, colonial mapping hardly offers a complete explanation. Rentier economics, skewed natural resource endowments, sectarian division and chronic state weakness, have all fed into the conflicts affecting the WANA region today. Current thinking on how such cycles are broken suggest that the role of justice — both in institutional terms and the implementation of the rule of law — is key. As the following sections elaborate, just as injustice is a known conflict driver, access to justice and functioning rule of law institutions seem to play a role in preventing conflicts from igniting and ensuring that they do not relapse.

1.1 A region plagued by conflict

It is frequently asserted that the Palestine-Israel conflict is at the root of unrest and fragmentation in the Arab region. Indeed, the post-war decisions by Western powers[3] that allowed Palestine to be offered up as a site for a Jewish national home with territorial overlap on sacred sites had pernicious implications. Such events resulted in a political and demographic

> **Just as injustice is a known conflict driver, access to justice and functioning rule of law institutions seem to play a role in preventing conflicts from igniting and ensuring that they do not relapse.**

upheaval that compromised Arab identity and set the stage for an identity-based geopolitical struggle that involved, not only Palestinians and the State of Israel, but the entire region. Today, grievances rest around a basic territorial claim to land that is now Israel and a desire for freedom from occupation. Israel's policies of land appropriation, settlement building and the separation wall — acts that are deemed in breach of international law — manifest in denied freedom of movement, economic marginalisation and lack of opportunity. The de facto impunity under which these acts have taken place have spawned feelings of injustice and disenfranchisement. Moreover, the manner in which such conflicts have been waged and won (Israel's military might and disproportionate causality burdens) severely impacted the Arab nationalism movement, and contributed to a burgeoning sense of humiliation on the part of Arabs who have been unable to secure a socially just set of circumstances in a region where they geographically, ethnically and religiously dominate.[4]

These tensions have spilled over onto neighbours. Lebanon has been in a state of fragility since 1975. The civil war (1975-1990) was fuelled by concern over state weakness in the face of sectarian division between a conservative Christian alliance, revisionist Muslim grouping and refugee Palestinian force.[5] Lebanon's conflicts have also had decisive non-Lebanese and proxy elements. Syrian troops entered the country in 1976 to restore peace and curb Palestinian military strength, resulting in an occupation that did not end until 2005. In 1978, Israeli troops occupied territory on the Litani River, leading to the south Lebanon war that was effectively fought between Israeli and Palestinian troops. Israel again invaded Lebanon in 1982, acting as a catalyst for the formation of Hezbollah, a strong, armed Shi'a Islamist group. After six years of provocations along the border, Hezbollah's kidnapping of Israeli soldiers in 2006 triggered a reaction. The ensuing 33-day conflagration is largely viewed as an Israeli failure insofar as it showcased Hezbollah's powerful alliance with Iran and its capacity for large-scale conventional

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[3] Manifesting in the Sykes-Picot Agreement (1916) and Balfour Declaration (1917).
[4] See generally A Siodlak Arab-Israeli Fact Sheet Series WANA Institute (2015).
[5] Palestinians created a base in Lebanon following expulsion from Jordan in 1971.
[6] E Inbar "How Israel Bungled the Second Lebanon War." *Middle East Quarterly* (Summer 2007) 57-65.

warfare.[6]

Iraq's conflicts, by contrast, originated more from economic and geopolitical concerns. Tensions grew with Iran over the Shatt al-Arab waterway,[7] and together with Iran's support for Iraq's Kurdish population and Ayatollah Khomeini's call for an uprising modelled off Iran's Islamist revolution, resulted in an Iraqi invasion in 1980. The ensuing war lasted nearly eight years. Post-war, Saddam Hussein's Ba'athist regime brutally repressed Iraq's Kurds and majority Shi'a community, causing deep sectarian divisions that still plague Iraq today. Hussein's fear of an uprising was exacerbated by Iraq's dire post-war financial straits. In a desperate attempt to address imploding debt, Iraq invaded Kuwait in 1990.[8] The conflict was quickly brought to an end by United States (US) intervention Desert Storm in 1991 — a move that liberated Kuwait but set a dangerous precedent of US intervention in Arab affairs.[9]

Subsequent sanctions crippled Iraq, provoking further violence and repression, and culminating in the allied invasion of Iraq in 2003 — purportedly to uncover weapons of mass destruction and liberate the Iraqi people, but also to remove Hussein and secure better access to crude oil. Reconstruction efforts foundered. De-Ba'athification — whereby the US effectively destroyed the three pillars that had propped up the Iraqi State (the ruling Ba'ath party, the military and the experienced bureaucracy)[10] — saw the collapse of law and order and breakdown of essential service provision. Amidst this chaos, the head of the transitional government, Nouri al-Maliki, implemented sectarian policies favoring Iraq's Shi'a majority and pivoted towards Iran and Hezbollah as allies.[11] Sunni marginalisation offered fertile ground for a joint initiative by Sunni Islamist extremists and resentful former Ba'athists, who implanted the notion of a purist, Sunni Islamic state in the shape of Daesh — an evolution that today threatens the entire region.[12]

Then, in 2011, a series of sudden and simultaneous protests that came to be known as the Arab uprisings swept over the region. Beginning in Tunisia, calls for policy change spread to Oman, Jordan, Saudi Arabia, Morocco, Algeria and Bahrain, while more intense demands for regime change escalated protests in Egypt, Libya, Yemen and Syria. Although the uprisings were geographically diverse and wide-ranging in composition and strategy, there were some common causal features. The events brought into question years of speculation about the sustainability of authoritarian rule in the region and the people's desire for representative and responsive government. Protestors united across religious and ethnic divides demonstrating a fervent demand for social justice, opportunity and an end to widening inequality. A central grievance was poor governance — principally corruption, poor accountability and a breakdown in public goods such as education. Less tangible but equally important was a sense of government indifference to Arab citizens and their grievances, a feeling that some commentators have likened to a regional deficit in human dignity.

While four autocratic regimes have fallen, the uprisings are widely seen as a missed opportunity. Tunisia's inspiring progress has been threatened by violent extremism, while Egypt's new Government ap-

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[7] Despite agreement on equal access to the waterway in 1937, Iran refused to pay Iraqi shipping duties from 1969 prompting a decade of tense relations. The Algiers Agreement conceded Iraqi control of the Shatt al-Arab waterway in exchange for an end to Iranian support for the Kurds. The deal was humiliating for Iraq and did little to better relations; Iraq wanted to assert dominance over the rich oil-producing border region of Khuzestan and get back both banks of the Shatt al-Arab waterway.

[8] A further driver was that Iraq wanted to control oil price, but the pretense was that Kuwait was stealing oil.

[9] UN Resolution 598 ended the war in July 1988.

[10] F. G. Gause III, 'Beyond Sectarianism: The New Middle East Cold War' (2014) *Brookings Doha Centre Analysis Paper* 11, 10.

[11] D. Byman, 'Sectarianism Afflicts the New Middle East' Survival: *Global Politics and Strategy,* 56 (1), 81.

[12] S. Simon et al., 'The Crisis in Syria: What are the Stakes for its Neighbours?' *Middle East Policy,* 20 (3) (2013) 5.

[13] Even in countries where there was no regime change, reforms were necessary. Algeria and Saudi Arabia, for example, bought-off dissent with major infusions of money and broad wage increases. Other concessions came in the form of legislative reform and the resignation of full Cabinets, as in Jordan and Morocco.

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pears to have retracted to the authoritarianism of pre-2011.[13] While Libya and Yemen have descended into conflict in the absence of their strongman dictators, without doubt the largest disaster has been Syria. A simmering conflict along the country's borders combined with Assad's disproportionate assault on reformists and targeting of the secular opposition, inflamed the conflict's sectarian dynamics. What descended into civil war, even more rapidly became an internationalised conflict that continues to exacerbate tensions between Sunni and Shi'a in Iraq and Lebanon, and has played an irrefutable role in the evolution of Daesh.[14]
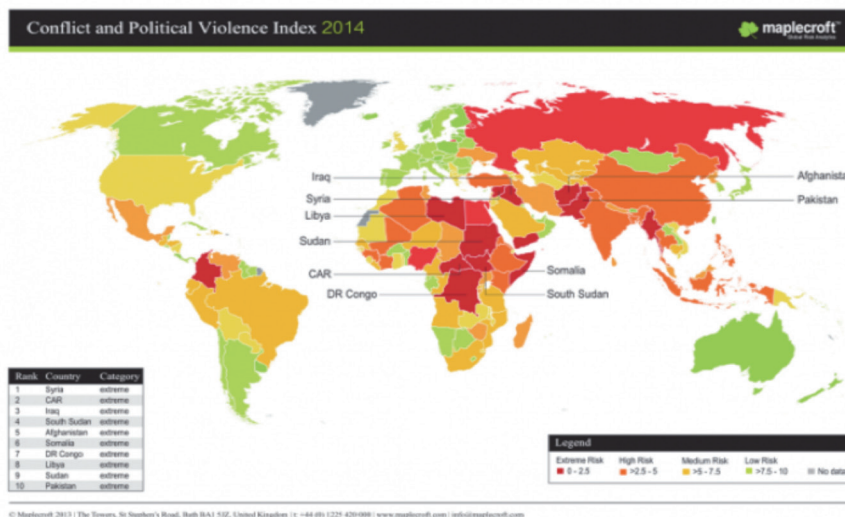
1.2 The relationship between conflict, growth and poverty

Against clear and steady trends of declining war and violence worldwide,[15] the Conflict Barometer (Figure 1) seems to indicate that violent conflict is concentrating in the WANA region. This volume of conflict and its interconnected drivers have led some commentators to infer that the region has fallen into a conflict 'trap'.[16]

> **Conflict traps are a manifestation of the cause and effect relationship between conflict and poverty.**

As explained below, conflict traps are a manifestation of the cause and effect relationship between conflict and poverty.

The cost of conflict on a society's asset base and development is clearly established. On average, civil war reduces a country's growth by 2.3 percent per year; a typical seven-year war leaving a country 15 percent poorer than it would have been without conflict.[17] In lower middle-income states the impact can be more dramatic. Although the economic data is limited, a recent study by Chatham House found that during its four years of war, Syria's economy contracted by over 50 percent in real terms,[18] throwing the

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[14] L Anderson, 'Authoritarian Legacies and Regime Change - Towards Understanding Political Transition in the Arab World', in F. A. Gerges (ed) *The new Middle East: protest and revolution in the Arab World* (2013).

[15] See also Uppsala Conflict Data Program available at <http://pcr.uu.se/research/ucdp/> accessed 21 September 2015.

[16] 41 percent of all Arab countries have experienced at least one internal conflict in the five years between 2009-2013.

[17] Research by Collier based on cross-country panel date in the last 50 years suggests that the cost of civil wars range from 1.6 percentage to 2.3 percentage of GDP per year of violence; P Collier, *The Bottom Billion: Why the Poorest Countries in the World are Failing and What Can be Done About It?* (2007) 27.

[18] S Heller. "The Cost of Civil War: Syria>s Economy After Four Years of Conflict" Global Envision <http://www.globalenvision. org/2015/03/25/cost-civil-war-syria's-economy-after-four-years-conflict> accessed 6 July 2015; see also D Butter "Syria>s Economy: Picking Up the Pieces." Chatham House 2.

country back to its economic status in the 1970s. At the domestic level, such costs accrue in the forms of direct asset and infrastructure destruction, increased spending on health, policing and security, reduced productivity, and the opportunity costs that flow from governments diverting funds earmarked for socially useful forms of investment to cover military and other conflict-related expenditures.[19] Externally, disruption to trade and reduced investment are the main explanations for lost growth. The Wold Bank has found that investor risk perception in the first year of a war can reduce trade by between 12-25 percent, and up to 40 percent for severe civil wars (those with a cumulative death toll greater than 50,000, as is the case in Syria).[20] Terrorist violence has a particularly sharp relationship with foreign investment;[21] in Lebanon it reduced foreign direct investment by 26.6 percent between 2012-2013.[22] These impacts last long after fighting subsides; recovering to original growth paths takes around 14 years of peace.

The destruction, slowed growth and weakened civic cohesion that accompanies conflict manifests in increased poverty.[23] Countries experiencing conflict have, on average, a poverty rate 21 percentage points higher than those that are conflict-free; they also perform worse on a range of development indicators including primary school enrolment, infant mortality and nutrition.[24] This, in turn, gives rise to the additional problem of increasing gaps between countries affected by conflict and those that are not.

The key concern is that slow growth and poverty — the consequences of conflict — are also key predictors of conflict. Conflict, reduced growth and poverty hence work in a mutually constituting cycle. This theory is supported by strong evidence on conflict recurrence; 39 percent of states emerging from conflict return to war in the first five years, and another 32 percent return to conflict in the following five years.[25]

> **Slow growth and poverty — the *consequences* of conflict — are also key *predictors* of conflict.**

A final issue is that the costs and risk of conflict spill over onto neighbours. A country making develop-

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[19] Military spending typically increases by 2.2 percent during civil war; a civil war reduces a country's average rating on the International Country Risk Guide by around 7.7 points (on a 100-point scale); World Bank, *World Development Report* (2011) 64-65.

[20] id.

[21] ibid 65. Terrorist violence is not defined under international law, but see C Walter, 'Defining Terrorism in National and International Law' in C Walter, S Voneky, V Roben and F Schorkoph (eds) *Terrorism as a Challenge for National and International Law: Security Versus Liberty* (2003).

[22] International Monetary Fund, UNCTAD World Investment Report (2014). A key reason why conflict impacts growth so severely is that the costs of war do not end with a cessation of hostilities. Three years after peace, investor risk perception remains 3.5 points lower than non-conflict affected countries and, on average, it takes 20 years for trade to recover to pre-conflict levels; ibid 64.

[23] The World Bank has established that "a country that experienced major violence over the period from 1981 to 2005 has a poverty rate 21 percentage points higher than a country that saw no violence" Saferworld (2013) *Addressing Conflict and Violence from 2015;* see further Figure 1.6, World Bank (n 18) 60-62.

[24] "People in fragile and conflict-affected states are more than twice as likely to be undernourished as those in other developing countries, more than three times as likely to be unable to send their children to school, twice as likely to see their children die before age five, and more than twice as likely to lack clean water." ibid 5. "Poverty reduction in countries affected by major violence is on average nearly a percentage point slower per year than in countries not affected by violence. After a few years of major violence, the contrast can be quite stark: countries affected by violence throughout the 1980s lagged in poverty reduction by 8 percentage points, and those that had experienced major violence throughout the 1980s and 1990s lagged by 16 percentage points". ibid 60.

[25] ibid 57; "90 percent of the last decade's civil wars occurred in countries that had already had a civil war in the last 30 years" ibid 2.

[26] The cost of a typical 7-year civil war on countries and their neighbors is USD64 billion; Collier (n 17) 31.

[27] ibid 37.

[28] "Syria Regional Refugee Response—Regional Overview." UNHCR, 5 July 2015.

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ment advances loses an estimated 0.7 percent of GDP every year for each neighbour in conflict.[26] Other spillover costs include disease and refugees — nearly 75 percent of the world's refugees are hosted by neighbouring countries.[27] Syria, for example, once home to over a million Iraqi refugees, now has four million refugees of its own,[28] hosted mostly by Lebanon, Turkey, Jordan and Iraq. There is also evidence of a phenomenon called conflict contagion, which holds that the presence of a civil war in a neighbouring country increases the probability of conflict outbreak domestically.[29] Recent research by UN-ESCWA suggests that the concept of neighbourhood may be more extensive than originally thought. They explain that 'neighbours' are not only geographical, but can also be countries that have cultural, ideological or economic connections. This is important for Arab states because of their shared history, the multiplicity and intensity of transmission channels, and the regional dimension of contemporary events. Examples include the Arab-Israeli and Iraq conflicts, proxy wars in Lebanon and Yemen, civil war in Syria and the shared burden of conflict-driven displacement.

1.3 Where justice fits into the conflict trap cycle

1.3.1 Injustice as a driver of conflict

The suggestion of a regional conflict trap necessitates urgent inquiry into actions that can prevent both new conflicts and their recurrence. Justice, as elaborated below, is key in both scenarios.

Unpacking the relationship between injustice and conflict requires a deeper explanation of how conflicts evolve. Low incomes, economic inequality, poverty, limited opportunity and, in particular, poorly functioning and illegitimate institutions all weaken a country's 'immune system'. Conflict can ensue when a country with a weakened immune system meets an internal or external 'stress' that it is unable to respond to. Stresses can relate to security (invasion, cross-border conflict, terrorism), economics (rapid urbanization, price shocks, natural disaster), and justice.[30] Justice stresses include:[31]

> **The suggestion of a regional conflict trap necessitates urgent inquiry into actions that can prevent both new conflicts and their recurrence.**

- **Poor access to justice,** for example because courts are financially or geographically inaccessible, corrupt, biased, or the legal framework does not uphold basic rights. As shown in Table 1 below, WANA states — although performing moderately well in terms of enforcement — are less able to deliver civil and criminal justice and perform poorly in terms of basic rights provision.
- **Corruption,** which fuels grievances by undermining institutional effectiveness and social norms,[32] as demonstrated during the Arab uprisings.
- **Exclusion,** in terms of political participation and opportunity based on ethnicity, religion or geograph-

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[29] Y Chaitani and F Cantu, *Beyond governance and conflict: measuring the impact of the neighborhood effect in the Arab region,* Economic and Social Council for Western Asia (October 2014) <http://www.escwa.un.org/divisions/ecri_editor/Download. asp?table_name=ecri_documents&field_name=id&FileID=272> accessed 3 June 2015; see also World Bank (n 18) 65.
[30] World Bank (n 18) 7 (Table 1.1).
[31] ibid 9 (Figure F2.1).
[32] A 2014 Carnegie report highlights that when governments systematically behave in criminal or unjust ways, the "very fabric of society begins to fray. High-level organized corruption underestimates the agency of ordinary people – their perceptions of corruption and the increasing tendency of populations to lash out violently against governing systems they can no longer tolerate"; S Chaynes *Thieves of State: Why Corruption Threatens Global Security,* W. Norton and Company (2014) 184.
[33] "… analysis across 55 countries for 1986–2003 reveals a significant rise in the probability of conflict in countries with severe horizontal inequalities, both economic and social". World Bank (n 19) 82.
[34] M Ncube and J Anyanwu 'Inequality And Arab Spring Revolutions in North Africa and the Middle East' African Development Bank, Volume 3, Issue 7, July 2012, 7.

- **Exploitative government,** which may use oppression, rights abuses and authoritarian approaches to maintain order.[35]

Table 1: Drawn from the World Justice Project, Rule of Law Index (2015)

	Civil Justice		Criminal Justice		Enforcement		Fundamental Rights		Absence of Corruption		Constraint on Govt		Open Government	
	Rate	Rank	Rate	Rank	Rate	Rank	Rate	Rank	Rate	Rank	Rate	Rank	Rate	Rank
Jordan	0.62	31	0.55	34	0.51	34	0.52	68	0.59	32	0.49	69	0.46	76
Iran	0.56	40	0.39	60	0.54	35	0.22	102	0.42	64	0.37	94	0.35	99
Lebanon	0.45	78	0.39	62	0.41	83	0.55	57	0.37	76	0.56	59	0.45	81
Morocco	0.51	54	0.33	86	0.53	39	0.45	86	0.49	48	0.57	49	0.51	60
Tunisia	0.52	49	0.49	41	0.52	43	0.54	72	0.40	44	0.62	34	0.51	59
UAE	0.63	29	0.77	9	0.68	21	0.50	75	0.82	13	0.58	45	0.48	69
Egypt	0.63	93	0.43	55	0.39	93	0.32	98	0.47	52	0.39	91	0.42	91

1.3.2 Justice as a tool of conflict resilience

If prioritised, justice can be a key tool to lift countries out of conflict traps. A central conclusion of the World Bank Development Report (2011) was that following a peace agreement, strengthening institutions and governance to provide citizen security, justice and jobs is crucial to breaking a cycle of violence.[36] Institutional dysfunction is also very important in explaining conflict recidivism. Peace processes are inherently fragile, and can rarely be sustained in the absence of legitimate state and society institutions that can absorb the shocks that accompany the reforms required during a fledgling peace. A priority action is therefore the development of institutions — including justice institutions — that can deliver necessary services and generate a level of trust and confidence in state and society. As explored below, for justice institutions, such actions include restoring law and order, providing access to justice and eliminating corruption.

First, a secure environment must be understood as a sine qua non for post-conflict reconstruction. In the absence of security, justice sector institutions cannot operate, political organs will remain dormant and measures to jump-start the economy cannot be set in place.[37] Further, until perceptions of safety are

> **A priority action in post-conflict situations is the development of institutions — including justice institutions — that can deliver necessary services and generate a level of trust and confidence in state and society.**

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[35] World Bank (n 19) 8. "Each one-step deterioration on the Political Terror Scale— which measures arbitrary detention for nonviolent political activity, torture, disappearances, and extrajudicial killings—resulted in a more than twofold increase in the risk of civil war in the subsequent year. Holding large numbers of political prisoners makes a renewal of civil war twice as likely, while significant numbers of extrajudicial killings make it three times more likely. This is best summed up by Walter: 'A reasonable interpretation of these results is that greater repression and abuse by a government creates both grievances and signals that those governments are not dependable negotiating partners; suggesting that less coercive and more accountable approaches significantly decrease the risk of civil conflict'." World Bank (n 19) 82 (Box 2.8). "It is not clear whether human rights abuses affect the motives of those who engage in armed opposition, whether there is a wider effect in spurring indirect popular support for armed opposition movements, or whether oppressive state tactics can under certain circumstances cause disaffection among groups within the military or political and economic circles of power. Whatever the specific mechanisms at work, the results suggest that improvements in human rights often accompany a reduced risk of violence". ibid 83.
[36] World Bank (n 19) 2.
[37] J Stromseth, D Wippman and R Brooks Can Might Make Rights? Building the Rule of Law After Military Interventions (Cambridge UP 2006) 134.

restored civil society cannot begin to rehabilitate: militia groups will be unlikely to demobilise, parents will resist sending their children to school, farmers will delay planting crops, shops will remain closed and refugees will not repatriate. Most importantly, insecurity prevents humanitarian aid from flowing and reconstruction projects from commencing.[38] In both Afghanistan and Iraq, threats to staff and cargo led to a scaling back in post-conflict aid activity in the months following the ceasefire. A security vacuum also spawns violence in the form of everyday criminality (opportunistic assault and lootings as well as revenge attacks) and organised crime (either in response to a non-functioning economy or as a means of perpetuating the conflict). An effective justice system staffed by judges and police, and an operational detention facility, is therefore imperative for curbing criminality, reigning in spoilers and restoring public confidence.[39] As demonstrated in Iraq, the alternate scenario is debilitating with long-term implications. Here, US soldiers were largely unable to prevent looters from demolishing government buildings, hospitals, schools, museums, private businesses and residences. This made the reconstruction process longer and more complicated, and undermined popular confidence.[40] Quick justice 'wins', by contrast, seem to set the scene for a progressive return to order and build momentum and confidence. Examples include the resumption of regulatory services such as business or vehicle licensing, police dealing swiftly with crime in accordance with due process; the release of detainees held without charge, for political reasons or for prolonged periods; and the repeal of laws that abrogate rights or facilitate discrimination.[41] Ultimately, means to raise more functional institutions while the security environment remains unstable must be identified, as well as mechanisms to alter the balance towards more effective institutions and enhanced security.

Second, justice institutions must deliver equal access to justice based on the rule of law. In the years leading up to conflict, justice systems may have lacked independence, been influenced by powerful factional elements,[42] or had high levels of corruption.[43] In pre-occupation Iraq, the Ba'ath party had removed the judiciary as a distinct branch of government by incorporating the civilian court system into the military court system.[44] Similarly, prior to the Syria civil war, the judiciary was engaged in widespread corruption and lacked substantive independence from the executive.[45] In post-conflict scenarios, it is important that such trends are reversed. Justice institutions should be inclusive in terms of ethnic and political balance, appointments need to be merit-based and take place in a transparent manner, and steps may be required to remove actors who were involved in the perpetration of serious crimes. Another priority will be capacity building. Justice sector actors often lack sufficient education and training or, may be well trained, but in systems that are discriminatory or do not respect basic rule of law values.[46] Experience demonstrates that capacity building should be sequenced and balanced — taking into account the need

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[38] ibid 141-143.

[39] S Chesterman *You, The People: The United Nations, Transitional Administration, and State Building* (Oxford U Pres 2004) 181.

[40] Stromseth (n 37) 146.

[41] ibid 53.

[42] Examples include Bosnia and Herzegovina: Stromseth (n 37) 241; M Doyle 'Too Little, Too Late? Justice and Security Sector Reform in Bosnia and Herzegovina' in C Call (ed) *Constructing Justice and Security After War* (US Institute of Peace 2007) 231-232; Haiti: S Beidas, C Granderson and R Neild 'Justice and Security Reform After Intervention: Haiti' in C Call (ed) *Constructing Justice and Security After War* (US Institute of Peace 2007) 95, 115-6; and Afghanistan: Stromseth (n 37) 241.

[43] eg Afghanistan M Drumbl 'Rights, Culture and Crime: The Role of Rule of Law for Women in Afghanistan' (2004) 42) Colombia J of Transnational Law, 363; and Iraq SA Roberts 'Socio-Religious Obstacles to Judicial Reconstruction in Post-Saddam Iraq' 33 Hofstra L Review (2004) 367, 386.

[44] Establishing the Rule of Law in Iraq, the United States Institute of Peace, April 2003, available at http://www.usip.org/sites/default/files/resources/sr104.pdf.

[45] A Al-Sheikh and A Hamadah, Corruption in Syria: Causes, Effects, and Anti-Corruption Strategies, Syrian Economic Forum, available at <http://www.syrianef.org/En/wp-content/uploads/2014/07/Corruption-in-Syria.pdf.>

[46] A key example is post-invasion Iraq where de-Ba'athification drained the government of its qualified and experienced employees. 'De-Ba'athification' barred all members of the ruling Ba'ath party from office, but because Ba'ath membership was a requisite for professional success – often even appointment in Iraq, their disqualification drained the government of its qualified and experienced employees. See E Stover, M Sissons, P Pham and P Vinck, *Justice on hold: accountability and social reconstruction in Iraq,* International Review of the Red Cross, Volume 90 Number 869, 14, March 2008, available at <https://www.icrc.org/eng/assets/files/other/irrc-869_stover.pdf>

for coordination and effective linkages between the police, judiciary, public prosecutors and prisons. Moreover, attention should focus on basic justice administration functions and extending justice to meet the needs of all groups. This might include the reopening of land transfer and business license registrars and replacing identification and qualifications.

Broadly speaking, the WANA region has high institutional capacity, but scores poorly on accountability, which is a key vulnerability point for post-conflict peace maintenance.[47] A third area where the justice system plays a key role is thus in tackling corruption. Effective justice institutions and mechanisms constrain arbitrary decision-making, promote effective service delivery, and circumvent the elite capture of public resources. They do this by erecting strong safeguards to protect against the misuse of public funds, preventing interference in the administration of justice and ensuring a balance of power between the police, judiciary and military. Examples include legislation that secures the judiciary's independence, criminalises corruption and bribery, and promotes transparency regarding budgets and expenditures, public officials' assets and procurement measures. Such steps must be complemented by complaints and disciplinary procedures, oversight bodies such as judicial councils and ombudspersons, and whistle-blower protections. Moreover, the sequencing of such activities is very important. Eliminating corruption and ensuring adequate complaints procedures, for example, should come before other aspects of institutional strengthening.[48] There could be no clearer example than post-invasion Iraq where lack of judicial independence, coupled with conflicts of interest, resulted in flagrant human rights violations, a fuelling of internal security concerns and a messy corruption scandal.[49]

1.4 Conclusion

That well-functioning justice institutions strengthen a country's resilience to conflict may have particular relevance in the WANA region where authoritarian governance structures have long been the norm, inequality is high, and many have difficulty accessing affordable and equitable dispute resolution fora. Thus while it is not a complete explanation, the region's history of conflict seems to correspond to a history of social injustice, at a cost that vastly outweighs the price of providing well-functioning rule of law institutions. As discussed, many have identified such injustice and a weak justice system as a key driver of the Arab uprisings, and there is also some evidence that injustice can be a motivating factor to join a rebellion. As will be explored in the next chapter, the persistence of al-Qaeda and affiliated groups, an evolving plethora of militant Islamist groups, and the rise of Daesh constitute present day examples of a growing threat from violent extremism. Just as understanding the ways in which injustice drives people into extremism is crucial to counter terrorism, deconstructing how the rule of law can be a key tool in preventing violent extremism, is imperative.

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[47] World Bank (n 19) 84-85.
[48] Stromseth (n 37) 235-236.
[49] Z Al Ali. *The Struggle For Iraq's Future.* Yale University Press (2014) 182.

2: Justice and Countering the Threat of Violent Extremism

As discussed in the last chapter, the Arab uprisings demonstrated the people of the region's appetite for justice, opportunity and participatory governance. It was widely anticipated that these forces would lead to the decline of extremist factions such as al-Qaeda.[50] In fact, the opposite has occurred. These events pushed states to the brink of collapse, exposing the fragility of institutions and tenuous national unity and identity. In Egypt, Iraq and Syria, a shrinking political space for Islamists, broad disenfranchisement and breakdowns in governance aligned to create ideal conditions for the growth of extremism. This chapter examines these forces, possible entry points for countering the emerging threat of extremism, and the role of the justice sector in both addressing the drivers of radicalisation, and the architecture required to detect and arraign responsible actors.

2.1 The development of Islamism

Islamism is a belief in governance under Islamic principles, generally those derived from *Shari'ah* (Islamic law). Its manifestations are diverse, and Islamists range in ideology and in their vision of an ideal Islamist state. The roots of modern day Islamism can be traced back to the fall of the Ottoman Empire in 1924 — an event that triggered a crisis in the Muslim world and challenged Islam's position in the world order. With the rise of the nation-state in WANA, Muslims' transnational *ummah*, or community, faced political diminution. This provoked a new wave of thinking among Islamic scholars. One man, Egyptian school teacher Hasan al-Banna, who took specific issue with Western, secular and nationalist influences, advocated a reestablishment of the Islamic state from the time of the Prophet Mohammad.[51] To realise this aim, in 1928 al-Banna founded the Muslim Brotherhood, initiating the first wave of modern Islamism.

Although today's political groupings can mostly be linked to the Brotherhood, the ideologies that developed went far beyond its founder's aspirations for a return to religious fundamentals by peaceful means. One example is Jamaat Al Islamiyya, a splinter group committed to overthrowing the Egyptian State and replacing it with an Islamic regime. This group was responsible for the infamous 1977 Luxor attack that left 58 foreigners and 4 Egyptians dead.[52] The Gaza-based organisation, Hamas, is another spinoff of the Muslim Brotherhood. Established in 1987 during the first Palestinian intifada, Hamas aspires for an Islamic state in a liberated Palestine. While the organisation supports democratic processes, it has a notorious militant wing, the activities of which caused it to break ties with the Brotherhood, and led to its classification as a terrorist organisation by the US and European Union.

Another important movement has been the Afghan Jihad — an armed liberation movement that formed when the Soviet Union invaded Afghanistan in 1979. Arab dissidents joined this group, fuelled by frustration with the corruption inherent in their domestic political regimes, resentment of foreign interference in the region, and anger surrounding the 1967 defeat of Arab forces in Palestine. Mustafa Hamid (or Abu Walid Al Masri, as known by his *nom de guerre*) explains the general feeling at the time: "The Arab world was, quite simply, on the boil… The Afghan jihad took people back to Islam, and absorbed the

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[50] See also Abu Rumman, M, 'Is it "Al Qaeda Spring?" in *The Rise of Religious Radicalism in the Arab World: Significance, Implications and Counter-Strategies* (2015), 9.

[51] H Ullah. *Vying for Allah's Vote: Understanding Islamic Parties, Political Violence and Extremism in Pakistan* (2013) 79.

[52] H Fletcher, Jemaat Al Islamiyah, (2008) Council on Foreign Relations http://www.cfr.org/egypt/jamaat-al-islamiyya/p9156 Accessed on 17 July 2015.

negative feelings in Arab countries; because of this, Islamic ideas and movements began to rise again."[53] But it was not the rise of the Taliban that would change the course of radical Islam, it was one participant: Osama bin Laden.

In 1988, Bin Laden, along with Ayman al-Zawahiri and Sayyed Imam Al-Sharif, founded Al-Qaeda in Peshawar, Pakistan. The organisation is another spin-off of the Muslim Brotherhood and was heavily influenced by Brotherhood writer and philosopher, Sayyid Qutb, in particular his 1964 manifesto, Milestones. But while the Brotherhood subsequently turned away from Qutb's message (on the basis of it being too radical), al-Qaeda and other organisations built off such thinking, including using it as a justification to consider 'insufficiently Islamic' governments as apostate targets in their struggle. This interpretation of Qutb's message gave way to a violent anti-West vision, now a defining element in modern-day terrorist organisations from the WANA region.

While the political and ideological explanations of today's militant Islamic groupings are quite clear, their evolution has not taken place in a vacuum. Space and opportunity were required to attract a constituency and enable ideas to take place in a functional sense. Ironically, the spaces that turned out to be the most effective for such evolution were those once hoped to be the inroads for improved governance and political moderation. The fragmentation and unrest that followed intervention or uprising in Iraq, Egypt and Syria proved to be fertile conditions for extremism to take hold, as demonstrated by the rise of Daesh and its terrorist actions in these and other countries today.

> **The evolution of extremist groups has not taken place in a vacuum. Space and opportunity were required to attract a constituency and enable ideas to take root in a functional sense.**

2.2 The rise (and rise) of Daesh

The emergence of Daesh began in Iraq. Following Saddam Hussein's ousting, de-Ba'athification facilitated a role reversal; the authoritarian government that repressed the majority Shi'a population was replaced by a Shi'a-dominated security force and government. Sunni disenfranchisement fed growing discontent, which initially found outlet in al-Qaeda and other extremist groups. Also critical to pave the way for Daesh was the dissolution of the Iraqi army in 2003, which left thousands of professional and well-trained army officers without a job. Against this background, it is hardly surprising that most of Daesh's senior command structure is made up of former Iraqi army officers. Between 2007-2009, Sunni commitment wavered (largely due to the groups' hyper-extremism), but surged again following al-Maliki's expulsion of US forces and associated Sunni clampdown. The combination of disenfranchisement, humiliation and escalating chaos provided the catalyst extremist elements needed to form Al Qaeda in Iraq. Sensing an opportunity, on 8 October 2004, Jordanian Abu Musab al Zarqawi, who led Al-Tawhid wa al-Jihad (Oneness of God and Jihad), pledged allegiance to bin Laden. The result was the birth of Al

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[53] M Hamid and L Farrall, *The Arabs at War in Afghanistan* (2015) 22-23.

[54] H Abu Hanieh and M Abu Rumman, *The Islamic State Organisation;* The Sunni Crisis and the Struggle of Global Jihadism (2015) 41.

[55] Many believe the divide between Daesh and Al Qaeda Central is a result of Daesh being too violent. However this does not get to the heart of their disagreement, which is a fundamentally ideological one; specifically they diverge on "the strategic priority of Jihadi Salafist Ideology". This stems from Daesh's prioritisation of the near enemy, or the Shiites and 'apostate governments' over the 'far enemy', namely the US and its allies. It is true that Daesh's violence, its extreme 'warfare doctrine,' did concern Al Qaeda central, but it was this fundamental dispute over who should be their target, that largely caused the schism between Al Qaeda and Daesh.

Qaeda in Iraq (AQI).[54] Following al Zarqawi's death in 2006, his followers announced the creation of the Islamic State of Iraq, headed by Abu Omar Al Baghdadi.[55]

Critically, Sunnis were not necessarily seeking out extremist options, but needed an outlet for their grievances and a political situation that would secure their interests. It was in lieu of a better (or arguably any) alternative, that many joined AQI. This also explains how the group was able to quickly move into Syria; they capitalised on poor law and order, and played into popular uncertainty about the future of the State and Sunni fears about their shrinking political footprint. In terms of their ability to recruit, the Islamic State has distinguished itself as most the successful jihadi group in history, attracting large numbers of both regional and foreign fighters to join the frontlines in Syria and Iraq. Their effectiveness lies in a sophisticated social media campaign, a claim that they have established a Caliphate (which plays on a powerful symbol in Muslim imagery) and a deliberate exploitation of a sense of humiliation among Sunni Muslims. So when Abu Bakr Al Baghdadi, who succeeded Abu Omar following his death, in 2013 proclaimed the merger of AQI and Jabhat al Nusra (a claim that was denied by Nusra leader al-Julani) to establish the Islamic Caliphate in Iraq and the Levant, the regrettable success of a destructive force now known as Daesh became fact. The overall result has been that al-Qaeda decentralised and a third generation of salafist-jihadism has evolved, manifestations of which now include AQI, Jabhat al Nusra, as well as Daesh.[56] Radicalisation expert Peter Nuemann sums up this state of global jihadism: "[Islamic State etc.]… represent a new breed of jihadist groups which thrive on religious and sectarian fault lines, are state builders, and seem to have fewer restraints in using excessive forms of violence".[57]

> **The combination of disenfranchisement, humiliation and escalating chaos provided the catalyst extremist elements needed to form Al Qaeda in Iraq.**

> **The overall result has been that al-Qaeda decentralised and a third generation of salafist-jihadism has evolved, manifestations of which now include AQI, Jabhat al Nusra, as well as Daesh.**

2.3 Responding to the emerging threat of violent extremism

Today Daesh is wreaking havoc in Iraq and Syria, attempting to destabilise border communities around Jordan, and undertaking violent attacks in Tunisia and Egypt. The group defies traditional definition — not only due to the unprecedented numbers and multiplicity of foreign fighters, but because of the unconventional nature of its aims and the threat it poses to the stability of the broader WANA region.[58]

Current thinking is that traditional security measures will not be sufficient to respond to the emerging threat of violent extremism. There is strong evidence that securing a military victory against Daesh is unlikely. The group is not an inexperienced adversary; it is a militarily savvy organisation that includes ex-Iraqi army within its ranks. This somewhat explains why the US-led military coalition has been unable to prevent the group's expansion and their taking of strategic territory. Arming and training moderate rebels has had similar efficacy. Key difficulties include determining which rebel groups to empower, and guarding against such groups subsequently joining ranks with more extreme factions. There is also no guarantee that weapons stay in rebel hands, as demonstrated in a recent battle between Jabhat Al Nusra and

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[56] It is important to highlight that the nationalist extremist group is Al Nusra (linked to al-Qaeda) does not share Daesh's broader strategic objectives, but instead wants to depose Assad and create an Islamic State inside Syria.

[57] P Neumann, BBC World Service and BBC Monitoring *The New Jihadism; A Global Snapshot,* The International Centre for the Study of Radicalisation and Political Violence (2014), 16.

[58] L Anderson, 'Authoritarian Legacies and Regime Change - Towards Understanding Political Transition in the Arab World', in FA Gerges (ed) *The new Middle East: protest and revolution in the Arab World* (2013).

[59] I Black, 'US Syria policy in tatters after favoured <moderate> rebels disband', *The Guardian (Online)* 2 March 2015 http://www.theguardian.com/world/2015/mar/02/us-syria-policy-tatters-moderate-rebels-disband accessed 16 July 2015.

Hazm which ended with the former assuming control of the anti-tank Tow missiles provided by the US.[59]

A military victory might even be a strategic mistake. Expulsion of Daesh will not address the deep grievances that gave rise to the organisation's strength. Moreover, acts of military prowess risk re-entrenching or creating new grievances. Some analysts speculate that broadcasting the execution of international hostages was intended to bait the West into intervention, which they anticipated would bode well for them in terms of recruitment.[60]

These challenges raise the question of what types of responses might have greater effectiveness. It is clear that the drivers of extremism need to be eliminated and that the deficits such drivers evolved to fill be addressed. One framework for developing such entry points is an approach dubbed Countering Violent Extremism (CVE).

> **New tools and approaches need to be crafted to reduce the risk of extremism as a new socio-political architecture develops.**

CVE advocates tailoring responses around a more comprehensive understanding of the complexity of circumstances and processes that lead to radicalisation. It draws on a wide range of disciplines, including social and economic development, conflict prevention, peace-building, security sector reform and diplomacy. However, even if CVE approaches are successful, responding to key gaps will neither be fast nor simple. New tools and approaches need to be crafted to reduce the risk of extremism as a new socio-political architecture develops. As discussed below, justice, the prevention of injustice and legal frameworks to mobilise counter-actions, will play a key role in securing successful outcomes.

2.3.1 Injustice and a weak justice system as drivers of radicalisation

Ideology and socio-economic disenfranchisement are presented as two main groups of drivers for radicalisation.[61] Of course, far from all political Islamists, those in poverty or those in situations of political repression, join extremist groups. A combination of negative social, economic, political and ideological

> **While the core drivers of violent extremism are generally ideological and economic, the tipping points are often justice-related.**

factors are usually in play.[62] In the WANA region, it has particularly been the frustration created by the gap between expectations and opportunities; for example educated male youths having few prospects for social or economic advancement.[63] But while the core drivers of violent extremism are generally ideological and economic, the tipping points are often justice-related. They can include a belief that the legal system does not accord with widely held conceptions of justice, deep corruption, inequality, or the absence of a platform to air grievances and have them resolved in a fair manner.[64]

Extremist group leaders often play active roles by espousing narratives of injustice or legal exclusion. As stated by Maajid Nawaz, a former Hizb ut-Tahrir member: "I had always been taught — and had passion-

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[60] See also M Hamid and L Farrall, *The Arabs at War in Afghanistan* (2015) 22-23.
[61] Drivers fall into two camps: those that believe that ideology, culture and religion are the main drivers and those believing socio-economic factors, including lack of education, unemployment and poverty.
[62] "Some scholars posit a relationship between poverty and terrorism, but many others find no direct evidence that poverty (or a lack of education) leads to terrorism. On the contrary, some research finds that perpetrators of terrorist attacks are more likely to be well-off, with advanced education". World Bank (n 19) 83.
[63] This explains, at least to some extent, why profiles of Arabs joining Daesh are that they are employed and educated and why Tunisia, which has a stronger middle class and education system than most of the Middle East, has disproportionately high numbers joining Daesh.
[64] S Chaynes (2014) *Corruption: The Priority Intelligence Requirement,* Carnegie Report; see also World Bank (n 19) 83 (Figure 2.1).
[65] M Nawaz, *Radical* (2012), 290.
[66] World Bank (n 19) 78.

ately believed — that the presence of Islamism meant justice, and the absence of it created injustice."[65] Accord to the World Bank, when the motives for individuals to join extremist groups are connected to larger causes, leaders often need to re-link these narratives to local claims of injustice to garner support.[66] The Taliban gained a following in Pakistan's Swat valley, for example, in part by building on dissatisfaction with weakness in local law enforcement and justice institutions.[67] How Daesh recruiters exploited Sunni feelings of disenfranchisement and excessive treatment in post-Saddam Iraq is another illustration.

One modality for countering injustice drivers is the generation of alternate narratives that refute extremist propaganda and violent interpretations of Islam, as well as provide individuals with a framework within which to decouple such narratives against ones that are compatible with non-extremism. Such messaging must tap into the complex and diverse thinking of recruits and the allure of the Daesh counter-culture. Daesh in Syria is mainly comprised of foreign fighters, most of whom joined based on variations on the themes outlined above: frustration, relative deprivation, isolation and lack of opportunity. These groups are attracted to what Daesh offers in terms of community, respectability, dignity and excitement, and messaging must respond to this. Some grass-roots work, such as the #notinmyname campaign and the Abdullah-x videos,[68] has already been done in this regard, mainly focused on factual interpretations of Islamic law.

Another modality involves investing in the development of representative and inclusive institutions including in governance, law enforcement and dispute resolution. In the case of Daesh, it is unlikely that the group will be defeated until Sunnis are provided with a legitimate and viable option to become part of the Iraqi socio-political fabric. Integral to this is a state legal framework where Sunni rights and interests are protected.

2.3.2 Rule of law institutions as a tool to protect against extremsim

Extremist groups are better able to mobilise, recruit followers and gain strength in the context of weak, insular or dysfunctional rule of law and security institutions. Particularly where states lack reliable law enforcement and an operational judicial system, there is a greater incidence of lawlessness and organised crime. The associated instability provides a fertile recruiting ground

> **Extremist groups are better able to mobilise, recruit followers and gain strength in the context of weak, insular or dysfunctional rule of law and security institutions.**

and organisational platform for terrorism.[69] Moreover, in such environments, public assets and resources can be seized and high-risk groups become vulnerable to recruitment, kidnapping and exploitation.

Justice sector actors play important roles in preventing, detecting and addressing violent extremism. The justice framework must provide a legal basis for the prevention of extremist acts and facilitate effective cooperation between investigators, prosecutors, judges, lawyers, police, corrections officers and relevant government officials. Communication between the different arms of the justice sector chain that is timely and informed is very important in this regard. Rule of law actors — particularly police — are also key links between the justice sector and communities. Where police are trusted, reliable and fulfil the role of duty-bearers, they are more likely to be privy to relevant information. By contrast, where there is high and long-standing antipathy between law enforcement and the population, as in the case of Iraq, Afghanistan and Kenya, such information channels do not exist or can be manipulated to work in counter-productive ways. Actors who do not uphold rule of law standards can also drive ex-

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[67] ibid 83.
[68] See e.g. <http://freespeechdebate.com/en/2014/03/how-to-make-counter-speech-sexy-on-combating-online-hate-speech-and-extremism/>.
[69] Stromseth (n 37) 60.

tremism; negative experiences erode the legitimacy of justice institutions and generate grievances that can contribute to radicalisation. Examples include police brutality, detention without charge, targeting of minority groups, and harsh and punitive sentencing. While the most extreme example relates to US military actions in Abu Ghraib prison, Al Shabaab has used footage of police harassing Kenyan Muslims, and (non-verified) images of arbitrary arrests, detentions and extra-judicial killings of Kenyan Muslims and Somalis in their recruitment videos and propaganda efforts. Likewise, Daesh has attempted to recruit American Muslims dissatisfied at police brutality and racial discrimination in the context of recent Baltimore riots.

> What I have seen on Al-Jazirah [sic]... of people in Abu Ghurayb [prison] torturing people, including women... It made me angry. Americans cross 20,000 kilometers to kill our brethren here.[70]

At the enforcement end of the spectrum, countries must have rule of law-based criminal justice systems to prosecute persons involved in illegal activities associated with radicalism. The legal framework must clearly define the acts and behaviours that are legal under freedom of expression and association, and those that are not. The law must also be sufficiently extensive, covering not only those that perpetrate criminal acts but also actions that support, plan, facilitate, or finance such acts, command responsibility, and the provision of safe havens. Finally, legislation must provide a legal basis for extradition and cooperation between law enforcement agencies. Prosecutors, public defenders and judges should be specially trained, and mechanisms in place to protect the privacy and safety of victims, informants and families of defendants.

2.3.3 The linkages between radicalism and organised crime

The operation and actions of radicalised groups are almost exclusively financed by criminal activities, including the seizure of state resources (extractive industry, oil fields, agricultural production), extortion (taxes, levies, ransom), money laundering, people trafficking, and illicit trade (drugs, light arms, weaponry).

> **The operation and actions of radicalised groups are almost exclusively financed by criminal activities.**

Radicalised groups not only feed off the criminal economy, they also accelerate its growth. Radical groups develop tools that depend on criminal activity, and use ideological arguments to conceal the criminal and profit-driven nature of their activities. Economic pressures in the region are likely to amplify this threat potential, giving rise to both increased crime and the growth of radical networks.

> The financing structures of radical groups are diverse, tailored to a specific operating environment and dependent on natural resource endowments. Daesh derives its profits mainly from oil sales (in Iraq), drug trade (Afghani cocaine shipped through territories it controls), conquest (assets such as vehicles and arms), illicit taxation systems, and smaller revenue sources such as ransom and extortion. Of these, oil represents the greatest challenge to law enforcement; not only is it generating revenues of up to USD1 million per day, it is also creating a source of dependence between the group and civilians in terms of its capacity to supply oil at below market prices. The Taliban has relied more on illicit drug trade, kidnapping, extortion and foreign donations, while Al Shabab profits from money laundering, control of port cities in Somalia that export charcoal, poaching and selling ivory, and trading primary food commodities such as sugar.

The integrated and growing nature of this phenomenon is becoming more widely recognised. Modern

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[70] M Bin Hassan Rabih, cited in A Hashim, *Insurgency and counter-insurgency in Iraq* (2006) 144.

This integration of and inter-reliance between organised crime and extremists has flourished princi-pally in environments with vulnerable financial and commercial networks. Restricting and eliminating such activity requires a two-pronged approach, both of which rely on justice actors and institutions. First, domestic surveillance, monitoring and investigatory capacity needs to be in place. This includes an adequate legislative framework, mechanisms in support of anti-corruption, border and customs man-agement (including container control) and a framework to investigate and prosecute organised crime. Second, front line law enforcement needs to be complemented by capacity at the transnational level to monitor trends, conduct surveillance, build and lend technical capacity, and collect and share criminal intelligence. Legal actions to prevent groups from accessing international financial and trade systems are also imperative, and again this requires cross-border legal cooperation.

2.3.4 Safeguards, checks and balances to obfuscate new drivers of extremism

Preventing and bringing to justice the planners and perpetrators of extremist acts requires that state authorities possess the necessary powers to conduct surveillance, gather evidence and detain suspects. Such needs must be balanced against the importance of individual rights, due process and investigations taking place within a clearly defined rule of law framework. In theory, such balancing is widely accepted; in practice, however, the line between preventing extremist acts and abrogating suspects' rights can be unclear and breeches do take place, particularly in times of heightened threat. Examples include:

- intelligence and surveillance laws that abrogate rights to privacy,
- laws that impact freedom of speech,
- restrictions on political organisations that compromise rights of association,
- protocols, such as 'stop and search' that adversely impact certain ethnic groups,
- retrospective (ex post facto) legislation,
- laws that permit indefinite detention or detention with limited rights to judicial review if there is a suspicion of terrorism.

At the extreme, without legal checks, safeguards and oversight, actions that abrogate both national and international law can take place. The rights viola-tions against detainees in Abu Ghraib prison in Iraq, Afghanistan and Guantanamo Bay as part of the US practice of extraordinary rendition, are widely known. Other examples include Tunisia's Anti-Terrorism Act

> **Policy-makers must craft laws that are flexible enough to be effective, but comprise sufficient controls to offer adequate protection and safe-guards against the risk of abuse.**

(2003), which was used to try thousands of people during the rule of Zine El-Abidine Ben Ali in violation of basic defence rights; Egyptian judges sentencing hundreds of people — mostly Muslim Brotherhood members — to death in one hearing; and the recently-ousted Australian Prime Minister's proposal to use ministerial discretion to cancel the citizenship of dual nationals suspected of terrorism activities without trial or conviction. In each of these cases, checks on executive and administrative power pro-vided by the rule of law and judicial review, were critical, both to preventing abuses in the first instance (as in the Australian example) and to expose illegal practices (as in the US example). In short, Policy-makers must craft laws that are flexible enough to be effective, but comprise sufficient controls to offer adequate protection and safeguards against the risk of abuse. At minimum, all sanctioned actions and techniques must have a legal basis, procedures for review, and not affect basic legal principles such as the presumption of innocence, protection against self-incrimination, and the rights to due process, judicial review and a defence. Finally, accountability mechanisms to monitor law enforcement officials, particularly with respect to the production of admissible evidence, must be in place.

2.4 Conclusion

Today, salafist-jihadism has taken on an enigma-like quality. Their tactics, aim and the ensuing 'rules of the game' are not well understood and this somewhat explains the weak effectiveness of response efforts to date. There is an emerging consensus that addressing the drivers of radicalisation and extremism is more likely to be effective than exercises of military might. Such drivers include denials of social justice, widespread corruption and unequal opportunity, opening up a clear role for rule of law actors and actions. Preventing manifestations of violent extremism also requires new tools and methodologies. These include mechanisms to facilitate effective cooperation between all actors within the justice chain, and rule of law-based systems to identify and prosecute persons involved in acts associated with radicalism. Finally, a legitimate space for moderate political Islam needs to be created. This will only be possible in an environment where all governance organs fall under the rule of law, safeguards exist to prevent rights encroachment, and basic freedoms are guaranteed. In this context, SDG 16 translates into a strengthened justice sector to support good governance, a legal architecture to deal with transnational and organised crime, and an inclusive society that provides a political space for peaceful Islamism.

A key issue in the above discussion was that the drivers of extremism are diverse but fundamentally related to perceptions of injustice. Two key drivers are relative deprivation and lack of opportunity, which — as discussed in chapter 1 — are also drivers of conflict. This theme is further explored in the following chapter, which examines the role of the justice sector in promoting equal and sustainable economic growth.

3: Justice and Sustainable Economic Growth

The economies of the WANA region have become synonymous with deficits such as unemployment, rentierism and stunted private sector growth. Even the region's oil-producing economies, which enjoy some of the highest GDP per capita rates in the world, have had difficulty directing their massive wind-falls to diversify their markets, raise living standards and address food and water insecurity. The region is also characterised by high inequality: in 2013, Qatar's GDP per capita stood at USD93,714 compared to Yemen's meagre USD1,473. Before examining what policies might be raised to facilitate more sustainable economic development, and the role of law and legal institutions in this process, the profiles of WANA economies require more thorough examination.

3.1 The Economies of the WANA region

3.1.1 Resource-poor and labor-abundant economies: Egypt, Jordan, Lebanon, Morocco, Tunisia, Djibouti, Mauritania and Palestine

These countries have weak natural resource bases and hence rely on oil, gas, and in some cases food and water, imports. Despite their large native workforces, such economies are mainly classified as low to middle-income. Egypt, Jordan and Lebanon have GDPs per capita of USD3314, USD5214, and USD9928 respectively;[71] and the percentage of the population living below the poverty at some point during the year sits at 26 percent, 14 percent, and 28 percent respectively.[72] Weak economic activity means that there are insufficient opportunities to keep all of those able and willing to work employed. Unemployment in Egypt, Lebanon, and Jordan is 12.8 percent, 6.5 percent, and 12.3 percent respectively,[73] with youth unemployment sitting at between 20-40 percent.[74]

One consequence of a young, employable population with a job market that is unable to absorb them is a net outflow of skilled labour, mainly to the West and oil-producing Gulf countries. According to a 2014 UN Development Programme (UNDP) report, Arab 'brain-drain' is worsening, from an estimated 10-15 percent loss in workforce in 2012, to 20-25 percent today.[75]

Insufficient economic activity coupled with a depletion of skilled labour leaves these economies unable to compete both with low-income countries producing labour-extensive products, and with advanced economies in terms of exporting technological and knowledge-intensive goods and services. Most economists opine that the way forward for these countries is making structural changes towards value-added activities (such as manufacturing),[76] and at the same time attracting large-scale capital inflow investments to counter unemployment and increase growth rates.[77]

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[71] 2013 figures.
[72] The World Bank, *World Development Indicators* < http://data.worldbank.org/country/mauritania> at 6 August 2015.
[73] 'Egypt Unemployment Rate' < http://www.tradingeconomics.com/lebanon/unemployment-rate> at 7 August 2015; 'Jordan Unemployment Rate' <http://www.tradingeconomics.com/jordan/unemployment-rate> at 7 August 2015; 'Lebanon Unemployment Rate' < http://www.tradingeconomics.com/lebanon/unemployment-rate> at 6 August 2015.
[74] The share of the labor force aged 15-24 without work but available for and seeking employment.
[75] R James, 'Arab <brain drain> accelerates after Arab Spring: UN', *Middle East Eye,* 8 May 2015.
[76] UN-ESCWA, 'Measurement and Analysis of Poverty in Jordan' (2014), 25.
[77] D Rodrik 'The Return of Industrial Policy,' Project Sydnigate, 13 April 2010.

3.1.2 Resource-rich, labor importing economies: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (UAE)

As at 2012, the Gulf Cooperation Countries (GCC) accounted for around 60 percent of all economic activity generated in the Middle East and managed sovereign wealth funds totaling over USD1.7 trillion. While these countries wield significant economic and political leverage in the region, they have small native populations and employ large numbers of expatriate workers. Ninety percent of the UAE's workforce, for example, comprises migrant workers, both in the form of low and high-skilled labour.[78] Although total unemployment is low, native labour force participation is limited, and the employment of young educated natives is extremely low.[79]

The principal economic challenge for these countries is resource over-dependency, the so-called 'oil curse'. Reliance on volatile hydrocarbon markets causes local currency appreciations, making other exports uncompetitive (as the money earned is worth less in terms of local currency).[80] This retards the growth of labour intensive exports that otherwise have the potential to grow rapidly and further technological progress.[81]

> The Gulf states' drama is that it [oil extraction] is not simply another economic activity added to the other existing productive sources within a viable and modern economy, as it is with the Netherlands or, for that matter, Canada, Australia, and the Scandinavian countries. In the

Country	Percent of Export Earnings	Percent of State Budget	Percent of GDP
Bahrain	69	86	24
Kuwait	90	93	45
Oman	65	77	41
Qatar	91	80	46
Saudi Arabia	85	85	50
United Arab Emirates	69	77	32

Despite such foreboding, unprecedented current account surpluses have made the GCC economies the world's largest net supplier of financial resources.[83] Gulf wealth, flowing from both governments and private businesses, has been invested in development projects both at home and abroad, including Jordan's revamping of the Queen Alia International Airport and the USD90 billion GCC education program.[84] This has unexpectedly demonstrated that oil rents can, at times and under certain conditions, generate productive economic activity.

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[78] F Malit and A Youha, 'Labor Migration in the United Arab Emirates: Challenges and Responses', *Migration Policy* (2013).
[79] S Salacanin, 'GCC Sovereign Wealth Funds Manage over USD 1.7 trillion', Qatar BQ Magazine (Doha), December 9th, 2014; see also, A Sullivan, M Rey, and J Mendez, 'Opportunities and Challenges in the MENA Region', *OECD (2014).*
[80] Collier (n 17) 39-40.
[81] ibid 121, 162. See also M Hvidt 'Economic Diversification in GCC Countries: Past Record and Future Trends', *Kuwait Program on Development, Governance, and Globalization in the Gulf States, London School of Economics* (2013).
[82] Hvidt (n 81).
[83] Salacanin (n 79).
[84] 'GCC to spend $150 billion on education reform,' *AlBawaba News,* 14 July 2014.

Over the long term, it is unlikely that the oil benefits can continue to outweigh the costs. Rentierism is broadly incompatible with political resilience and resource insecurity will ultimately become an existential threat. Moreover, it is impossible to ignore that oil revenues have not translated into human development gains. Despite enjoying OECD levels (or higher) of GDP per capita, the GCC lag behind on important development indicators.[85] This abnormal discrepancy between material wellbeing and human development exposes some of the broader limitations of the rentier welfare state model. Eventually therefore, investments will need to move away from retail, real estate and services and into sectors that generate value-added economic activity, a more inclusive and resilient form of governance will need to be adopted, and a local, high productivity labour force will need to grow.

3.1.3 Resource-rich, labor abundant economies: Algeria, Iraq, Syria, and Yemen

These countries, despite their fossil fuel reserves and large native populations, serve as harsh reminders of how the region's massive economic potential has fallen victim to conflict. Syrian economic performance in the decade before 2011 was considered impressive; between 2000-2010 real growth averaged nearly 4.5 percent, inflation was running at less than 5 percent and positive external balances allowed an accumulation of international reserves to USD18.2 billion.[86] Today, it is estimated that Syria's economy has been cut in half.[87] Another striking example is Yemen; when conflict engulfed the region in 2011, the economy slipped into recession with GDP contracting by 12.7 percent.[88] Likewise in Iraq, breakdowns in governance, civil unrest and the rise of Daesh shrank the economy by 2.7 percent in 2014 alone.[89] Even Algeria, the region's oft-forgotten oil giant, has been unable to escape the wrath of regional instability to implement necessary structural reforms. These countries will all require significant foreign investment to place them on a more positive trajectory. For such investment to take place and be effective, however, stability must be re-established, deficits in opportunity addressed, and governance strengthened.

> **Algeria, Iraq, Syria and Yemen serve as harsh reminders of how the region's massive economic potential has fallen victim to conflict.**

3.2 The law-growth relationship

The economics literature suggests that there is no single route to economic development.[90] These paths are contextual and complex, with drivers that interact in ways that even development experts do not fully understand. Some things, however, are clear. As demonstrated above, geography, size, and the presence or absence of conflict, are each important to economic development.[91] But the preponderance of evidence is that the principal driver of growth is functional institutions.[92] This is important in the WANA region, where sectorial weakness is less the exception than the rule.

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[85] For example, while Qatar ranks second in terms of global GDP per capita, it still ranks 36th on the Human Development Index (UNDP 2013).

[86] M Khan and S Milbert, 'Syria's economic glory days are gone', *The Atlantic Council,* April 3 2014 <http://www.atlanticcouncil.org/blogs/menasource/syria-s-economic-glory-days-are-gone> accessed 8 August 2015.

[87] M Lobel, 'Syria>s economy cut in half by conflict', BBC News, 23 June 2015.

[88] The World Bank, 'Country Overview: Yemen' <http://www.worldbank.org/en/country/yemen/overview> at 11 August 2015

[89] 'Iraq's economy: an empty chest', *The Economist,* 21 March 2015.

[90] K Dam (citing Rodrick) The Law-Growth Nexus: The Rule of Law and Economic Development, Brookings Institution Press (2006), 3.

[91] ibid 56-61, 223-224.

[92] ibid 1, 223, 14-18.

If institutions matter, the next question is the extent to which such institutions are legal? Kenneth Dam's examination of how high income countries have developed suggests that while rule of law institutions are not essential for economic activity, they are relevant to growth.[93] He explains that in seventeenth century England, the emergence of the rule of law facilitated unprecedented per capita GDP growth by protecting private property rights, introducing executive constraints and facilitating the enforcement of contracts.[94] To a large extent, these principles remain true today. Rules to protect, and legal institutions to enforce, private property rights are fundamental to growth. Without safeguards against encroachment, rights-holders are less inclined to invest in wealth-creating property and property is used in unproductive ways.[95] This is particularly relevant in countries like Iran, Syria, and Libya where land is shrouded in legal uncertainty. The Property Rights Index (PRI) measures the degree to which laws protect private property rights and the degree to which the government enforces those laws (a score closer to 100 being most desirable).[96] The index also assesses the likelihood that private property will be expropriated and analyses the independence of the judiciary, the existence of corruption within the judiciary, and the ability of individuals and businesses to enforce contracts. The aforementioned group of countries (Iran, Syria, and Libya) rate a score of 10 on to the PRI, and even countries that are more politically stable, like Tunisia, Egypt, and Lebanon, score between 20-40.[97] Weak property rights create economic drag because such property cannot be mortgaged, which limits both investment (and hence land productivity) and the potential for land users to become land owners. The same applies in urban areas where low ownership potential limits business investment.[98] But as Dam points out, the potential of property rights is not only found in titling laws; functioning registries, land use regulations and rules establishing access to credit and mortgages are all necessary features in the path to growth.[99]

Likewise, a strong corporate sector and financial markets are key to large-scale economic activity. Financial development tends to spur growth and reduce inequality, which has positive knock-on effects for growth and poverty reduction. But as in the case of property rights, trust is not sufficient to facilitate financial transactions. Laws and enforcement are needed to protect minority shareholders from predatory actions and investors in the event of liquidation.[100] Law thus plays a key role in financial sector development, particularly credit and bankruptcy laws, judicial performance and enforcement efficiency.[101] This is illustrated in countries such as Libya, Iraq, and Yemen and Syria, where debt recovery was problematic and lengthy, even before recent conflicts.[102] As a result, credit is scarce and rates are high, encouraging overcollateralization and weakening investment.[103]

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[93] ibid 85.
[94] ibid 71-72.
[95] ibid 72-93, 135.
[96] *Middle East Property Rights Index,* Global Property Rights (2015) <www.globalpropertyguide.com/Middle-East/property-rights-index> accessed 7 September 2015.
[97] ibid
[98] Dam (n 90) 136-138.
[99] ibid 138-157.
[100] ibid 159-162.
[101] ibid 230.
[102] *Doing Business 2015 Fact Sheet: Middle East and North Africa,* World Bank Group (2015) <http://www.doingbusiness.org/~/media/GIAWB/Doing%20Business/Documents/Fact-Sheets/DB15/DB15MENAFactSheetEnglish.pdf> accessed 7 September 2015.
[103] Dam (n 90) 203.

So is it the rules or legal institutions that matter to development? It is actually both; rules that can be enforced by legal institutions seem to matter the most for development.[104] Rules alone tend to be insufficient when institutions are dysfunctional or enforcement

> **Rules that can be enforced by legal institutions seem to matter the most for development.**

is problematic, and at the same time, enforcement cannot take place outside of a clear and efficient legal framework. Judicial performance, however, is critical for business development, where it is imperative that disputes can be adjudicated and enforced easily, fairly and quickly, at reasonable cost.[105] Likewise, judicial independence is imperative to protect economic stakeholders from powerful interests and predatory state actions.[106] There is even some empirical evidence linking high income countries and judicial efficiency,[107] judicial independence to growth,[108] and better courts to higher investment, more developed credit markets and the growth of diverse businesses.[109] Conversely, weak, slow and unreliable courts discourage competitiveness and innovation and thus limit economic expansion because long-term, complex contracts (which are essential for generating infrastructure) are less attractive.[110]

3.3 The path ahead: Rule of law as a driver of growth

In summary, the evidence supports the importance of legal institutions to development; in Dam's words, growth and the rule of law seem to go hand in hand, a lot of the time.[111] This should not imply that law reform or the strengthening of legal institutions is a guaranteed growth stimulant.[112] First, the rule of law is not a clean manifestation of legislation and institutions alone; it is a composite of broader society, including its history, customs, endowments and social norms.[113] Second, a relationship between growth and institutions does not establish causality. Some scholars opine that it is not that institutions create growth, but that growth and wealth create the conditions required to develop strong institutions. Roderick cites the example of China — which has experienced massive growth in the absence of strong rule of law institutions — as an example in this regard.[114] Another theory is that that economic growth leads to institutional strengthening where strong leadership is in play.[115] Most likely, legal institutions and growth, plus a number of other factors, are operating in complex but mutually constituting ways, and one of the offshoots is rising incomes.

What does this mean for WANA states in terms of their potential and best trajectories for growth? It is clear that strengthening rule of law institutions will be important to achieving more consistent levels of economic development, combating poverty and reducing inequality — for a host of reasons, not solely connected to economic drivers. Historic analysis suggests that such legal evolution is a slow process[116] and that law reform is neither a predictable nor clear path to development.[117] Transplants of legal mod-

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[104] ibid 207, 228, 39.

[105] ibid 69.

[106] ibid 113-114.

[107] ibid 103.

[108] ibid 93.

[109] ibid 93-94.

[110] ibid 94-5, 102, 123.

[111] ibid 276-277.

[112] ibid 231, 221.

[113] ibid 231, 62-77.

[114] ibid 221, 232-250. China is the fastest growing economy in the world, but does not exhibit a well developed legal or financial system. Dam's thesis is that rapid growth provided the resources and public constituency to allow better rule of law institutions to develop. Moreover, that while high rates of growth can be achieved in the absence of the rule of law, to get to high income levels requires developed legal institutions.

[115] ibid 277, see also 276, 52.

[116] ibid 112.

[117] ibid 69.

els and legislation have proven largely ineffective; changes in substantive law rarely provoke behavioural changes in the absence of corresponding legal norms and values and functioning rule of law institutions.[118] Investing in the capacity of courts and lawyers, however, does seem to make a difference; this might include courts organisation, electronic case management, budget support (particularly providing salaries sufficient to dissuade corruption) and legal education.[119]

It must also be acknowledged that, despite marked differences in the economic structures and performance of WANA states, a common trait is the reality that growth and political stability are deeply interconnected. Since 2011 alone, conflict and unrest has cost the region an estimated USD170 billion in foregone economic potential.[120] For some scholars, the toll of instability on economic outcomes is a greater challenge than economic weakness in its own right. Conflict's cost, its tendency to recur and how it impacts neighbouring countries, mean that peace at a regional level is not only a humanitarian imperative, but also an economic one. Modalities to promote such stability are integrally related to the rule of law — improved regional trade, credit availability and foreign direct investment are simply not possible without contract enforcement, legal safeguards and fair recourse.

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[118] See generally R Ehrenreich Brooks 'The New Imperialism: Violence, Norms and the "Rule of Law" ' (2003) 101 Michigan L Rev 2275 and C Alkon 'The Cookie Cutter Syndrome: Legal Reform Assistance Under Post Communist Democratization Programs' (2002) J Dispute Resolution 327.
[119] ibid 69, 93, 224, 276.
[120] World Bank Group, *Innovative Financing Mechanisms: Middle East and North Africa Region,* 2015.

4: The SDG 16 on Justice: Why Take It Seriously?

In 1762, Jean-Jacques Rousseau asserted that justice under a social contract is nothing less than forcing people to freedom. Brutal as this may seem, Rousseau was actually arguing that in order for justice to prevail — and the good life and freedom that would ensue — people must force such freedom by electing accountable representatives, who would create institutions to maintain 'a good state'. That force was, and still is, the rule of law and justice.

This paper has provided a basis for understanding the challenges facing the WANA region — recurrent conflict, the growing threat of extremism and economic stagnation — as integrally related to justice. Insofar as Goal 16 elaborates a development framework premised upon justice, an opportunity exists to address these challenges in new and arguably more effective ways. But the road ahead will not be straightforward. Implementing Goal 16 will take far more courage, both political and social, than the inter-state negotiations that preceded it. Regimes will be called upon to embrace a level of citizen empowerment; justice is difficult to quantify, and will be thus hard to measure; and the costs associated with reforms will be high. Each of these steps will need to be balanced against competing imperatives, such as food security deficits, water scarcity, high unemployment and a burgeoning refugee population. The people of WANA's priority list is long, and this makes understanding the inter-connections between justice, conflict, protection and growth, all the more important. It is also the time to reaffirm that justice values — fairness, equality and protection of the vulnerable — are at the heart of the Islamic tradition. One need only look to the communities in Jordan, Lebanon, Turkey and Iraq who are hosting the latest wave of refugees fleeing conflict to see this principle in action.

Even when justice planning is initiated, securing outcomes will require constant prioritisation. Social justice is not something that is fought for, achieved, and then placed on the backburner. It is a constant journey that needs close attention and regular refinement. Moreover, the obligation to build justice institutions transcends national boundaries, and must be approached as a shared responsibility. There must also be an inquiry into what justice ideal to promote. In development circles, the emphasis has long been on the reform of state institutions. Yet it is not ontologically given that state law, and the institutions that maintain it, is the only locus of justice in WANA. The reality is that tribal law, customary law and other informal legal systems are equally valid for many. This reality must be addressed before any state's justice institutions can claim sole and legitimate authority to maintain law and order.

Taking Goal 16 seriously starts with WANA states deciding that inclusive and sustainable development is a process accompanied by freedom, dignity and social justice, and that the benefits of implementing a justice goal outweigh the cost of remaining indifferent to it. Justice is not ipso facto worth striving for, but is crucially important in breaking the conflict trap, eradicating the threat of violent extremism, and providing the necessary conditions for economic growth that is steady and inclusive. If what is at stake is the elimination of Daesh, Jabhat al-Nusra, al-Qaeda and their likes, is justice not worth the journey? If what is at stake is to live without a notion that conflict is just around the corner — or like in Syria, Iraq and Libya, right in one's home — is justice not worth the cost? If what is at stake is a fundament on which to build a diversified economy and sustainable growth, how can anyone not be up for the challenge of implementing Sustainable Development Goal number 16 on justice?