

IFP SECURITY CLUSTER

COUNTRY CASE STUDY: HONDURAS

REFORM WITHOUT OWNERSHIP?

Dilemmas in Supporting Security and Justice Sector
Reform in Honduras

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November 2010



INITIATIVE FOR PEACEBUILDING



THIS INITIATIVE IS FUNDED
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REFORM WITHOUT OWNERSHIP?

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ACKNOWLEDGMENTS

I would like to thank the people that have shared valuable insights in interviews and informal discussions in Europe as well as in Honduras. Special thanks are extended to Juan Zaratiegui Biurrun from the EU delegation in Honduras for sharing his knowledge about the country and for his generous assistance in establishing relevant contacts in Tegucigalpa. I would also like to thank our editors David Ackers and Chandani Thapa.

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ACRONYMS

CICIG	International Commission against Impunity in Guatemala (Comisión Internacional contra la Impunidad en Guatemala)
CIDH	Inter-American Commission of Human Rights (Comisión Interamericana de Derechos Humanos)
CONADEH	National Commission for Human Rights (Comisionado Nacional de los Derechos Humanos)
CONASIN	National Council for Internal Security (Consejo Nacional de Seguridad Interior)
DAC	Development Assistance Committee
DPLF	Due Process of Law Foundation
EDF	European Development Fund
FLASCO	Latin American School of Social Sciences (Facultad Latinoamericana de Ciencias Sociales)
GDP	Gross Domestic Product
IDB	Inter-American Development Bank
IFP	Initiative for Peacebuilding
IFS	Instrument for Stability
IMF	International Monetary Fund
OAS	Organisation of American States
OECD	Organisation for Economic Co-operation and Development
OSCE	Organisation for Security and Co-operation in Europe
PASS	Programme of Support to the Security Sector (Programa de Apoyo al Sector de Seguridad)
SICA	Central American Integration System (Sistema de la Integración Centroamericana)
SSR	Security sector reform
UNDP	UN Development Programme
UNODC	UN Office on Drugs and Crime
WFP	World Food Programme
WHO	World Health Organisation
WOLA	Washington Office on Latin America

EXECUTIVE SUMMARY

Honduras simultaneously faces the recovery from a severe political crisis due to a coup d'état in June 2009 as well as a sustained crisis of security and legitimacy. Since then, society has been ever more marked by polarisation and the political equilibrium is very fragile. Levels of violence are at an all-time high and organised crime, especially drug trafficking, is threatening the bases of state institutions and people's physical security. The country's socio-economic situation is dire and the global economic crisis has fuelled increasing levels of poverty and unemployment.

Honduras' security and justice sector suffers from severe deficiencies. It remains largely inefficient and unable to safeguard security and the rule of law for its citizens. Criminal investigative units are plagued with serious problems of incompetence, corruption and progressive penetration by organised crime. The judiciary lacks independence and is subject to systematic political interference. Inter-institutional coordination is poor and flawed by a climate of mutual mistrust and rivalry over competencies.

This report describes and analyses the EU's contribution to strengthening security and the rule of law in Honduras through a major security sector reform (SSR) programme earmarked with a budget of €44 million. The report underlines the crucial need for increased local ownership as a *sine qua non* condition if the EU's endeavours are to trigger sustainable institutional change and thus further human security in Honduras. The report also examines prospects for the creation of an international commission against impunity, following the example of the International Commission against Impunity in Guatemala (CICIG).

The EU's Support Programme to the Security Sector (PASS) in Honduras meets local needs, is comprehensive in its approach and targeted at the relevant institutions. However, the current political climate of polarisation and a government that is weak and lacking in legitimacy seriously compromises the programme's prospects for successful implementation. A solid political, legal and budgetary framework for reform is missing, as is local ownership. The EU and other donors eager to support security and justice sector reform in Honduras should use their joint weight to ensure basic conditions are met with regards to the political, legal and budgetary framework, thus preparing the ground for reasonable prospects for successful implementation and the sustainability of their activities.

Keywords: Honduras, EU, security sector and justice reform, ownership

INTRODUCTION

Honduras simultaneously faces the recovery from a severe political crisis as well as a sustained crisis of security and legitimacy.¹ In June 2009 a power conflict between the opposition and the government erupted, and on 28th June, the military forced President Manuel Zelaya from the Liberal Party to leave the country. The following day, the Honduran Congress, backed by the Supreme Court, legalised the coup d'état and swore in congressional leader Roberto Micheletti as the new president. In November 2009 Porfirio Lobo of the National Party won general elections. He did so amid a climate of severely compromised civil liberties and press freedom. Lobo was sworn in as president of Honduras in January 2010.²

The state of Honduras and its institutions are historically weak. Although the constitution provides for the separation of powers, the country's system of checks and balances is seriously flawed. The state is widely controlled by the country's oligarchy, excluding the majority of the population, which lives in abject poverty. Transition to democracy in 1982 did not eradicate clientelism as the traditional power base nor translate into a more equitable redistribution of wealth. Since then 'governance has been affected by pressures from business interests, traditional political elites, the military, and deeply entrenched wealthy families seeking to preserve their position by opposing reforms or ensuring their ineffectiveness', argues Freedom House.³ Today, Honduras' socio-economic situation is dire. The country is among the poorest in Latin America, with more than half of the population living below the poverty line.⁴ Pronounced inequality related to income⁵ and access to state services persist. The combined impact of the economic and political crises triggered a 2.5 percent decrease of the Gross Domestic Product (GDP) in 2009⁶ and an increase in unemployment and poverty.⁷ Non-humanitarian aid flows were frozen due to the coup, when approximately 25 percent of the country's budget was dependent on foreign aid. Corruption, in the form of bribes, intimidation of judges as well as low accountability for abuses of authority by public officials, is endemic.⁸

The crime rate is at an all-time high, with an estimated murder rate around 60 per 100,000 persons according to the UN Development Programme (UNDP).⁹ The rapidly growing drug trade is threatening the bases of state institutions and people's physical security. The Honduran state is unable to provide its citizens with security or ensure the rule of law. During the coup and after the removal of former President Zelaya, Honduran security

1 The description 'dual crisis of security and legitimacy' is borrowed from M. Barnett and C. Zürcher (2009). 'The peacebuilder's contract: How external statebuilding reinforces weak statehood'. In R. Paris and T. D. Sisk. *The dilemmas of statebuilding. Confronting the contradictions of postwar peace operations*. London: Routledge. p.28.

2 While most countries of the international community recognise the new government, several Latin American countries, such as Argentina, Bolivia, Ecuador, Nicaragua and Venezuela, don't. Due to the coup, Honduras was excluded from the Organisation of American States (OAS), and has yet to regain membership as of November 2010.

3 M. Orozco and R. Rouse (2009). *Country Report Honduras*. Freedom House. Washington DC. p.1. Available at <http://www.freedomhouse.org/uploads/ccr/country-7837-9.pdf>

4 Honduras ranked 117 out of 179 countries in the UN Development Programme's (UNDP) 2008 Human Development Index.

5 According to UNDP, Honduras has a Gini index of 55.3, one of the highest within the region. See UNDP (2009). *Human Development Report 2009 – Economy and inequality*. Available at <http://hdrstats.undp.org/es/indicators/161.html>

6 Against a growth rate of 6 and 4 percent in 2007 and 2008.

7 According to a World Food Programme (WFP), a wave of global food-price increases caused Honduras' poverty rate to rise from 69 percent in September 2007 to 73 percent in June 2008. See WFP (2008). *Alzas de Precios, Mercados e Inseguridad Alimentaria y Nutricional en Centroamérica*. San Salvador.

8 M. Orozco and R. Rouse (2009). *Op. cit.* p.2.

9 European Commission, *Mid-Term Review of the Country Strategy for 2007-2013 Honduras*. Available at http://www.eeas.europa.eu/honduras/docs/2010_midterm_honduras_annex_en.pdf

forces (i.e. the military and the police) systematically committed serious human rights violations, including mass arrests, beatings and torture.¹⁰

Supporting the justice and security sector is one of the EU's priorities in Honduras.¹¹ This report is about the EU's contribution to state-building in the country in the field of security and justice. The provision of security and the safeguarding of the rule of law are core state functions, which require the existence of a codified and promulgated body of laws and a reasonably effective police and justice system.¹² "State-building" refers to the strengthening or construction of effective and legitimate governmental institutions.¹³ It is an essentially endogenous process, the course of which donors can affect by their interventions but not determine.¹⁴

This report seeks to describe and analyse the EU's contribution to strengthening security and the rule of law in Honduras. It highlights the crucial need for increased local ownership as a *sine qua non* condition if these endeavours are to trigger sustainable institutional change and therefore further human security in Honduras. The first section of the report briefly describes the climate of polarisation after the coup d'état in June 2009 and the dual structural crisis of legitimacy and security the country is facing. It also provides information on the main drivers of conflict and violence. In the second section, the report examines how the EU aims to support the security and justice sector and what are the dilemmas in terms of a lack of local ownership. Finally, it analyses the prospects for the creation of an international commission against impunity, following the example of the International Commission against Impunity in Guatemala (*Comisión Internacional contra la Impunidad en Guatemala*, or CICIG). The recommendations in the final section are primarily directed to international policymakers, and in particular the EU.

The information and qualitative analysis in this report is essentially based on primary data gathered in research interviews undertaken in Brussels and Tegucigalpa, Honduras between May and October 2010. It is complemented by secondary data collected through desk research drawing on relevant literature, media coverage, official policy documents and other reports. A field trip to Honduras in October 2010 allowed for interviewing and consulting representatives of the EU delegation, EU Member States, the UNDP, Honduran state institutions and civil society.

10 Comisión Interamericana de Derechos Humanos [Inter-American Commission of Human Rights] (CIDH) (2009). *Honduras: Human rights and the coup d'état*. OEA/Ser.L/V/II, doc. 55. Available at <http://www.cidh.org/pdf%20files/HONDURAS2009ENG.pdf>; Amnesty International (2010a). 'Honduras: Recommendations to the new Honduran government following the coup of June 2009'. AMR 37/003/2010. Available at <http://www.amnesty.org/en/library/info/AMR37/003/2010/en>; Plataforma de Derechos Humanos [Platform of human rights] (2010). Comunicado de Prensa, CDM-CIPRODEH-CODEH-COFADEH-CPTRTFIAN sobre violaciones a los derechos humanos en Honduras desde el golpe de Estado de junio de 2009. Tegucigalpa. Available at http://www.cptrt.org/pdf/plataforma_comunicado.pdf

11 The other sectors are poverty reduction, forestry and natural resources.

12 R. Paris and T. D. Sisk (2009). Op. cit.

13 Ibid. p.14. See also the Organisation for Economic Co-operation and Development's (OECD) definition, according to which state-building is a 'process of strengthening the capacity, institutions and legitimacy of the state driven by state-society relations'. OECD (2008). *Initial findings on statebuilding*. Paris.

14 OECD (2010). *Do no harm. International support for statebuilding*. Conflict and Fragility Series. Paris. p.145; OECD (2008). Op. cit.

THE CONTEXT: POLARISATION AND A DUAL CRISIS OF LEGITIMACY AND SECURITY

The elections held in November 2009 helped to establish a precarious political equilibrium, but were not enough to reconcile a deeply divided society split between those who supported the coup and those who rejected it. This situation has been further aggravated by a severe economic downturn, rampant crime rates and widespread violence, as well as a corrupt security and justice sector, which is responsible for serious human rights abuses and has been widely infiltrated by organised crime.

A PRECARIOUS POST-COUP POLITICAL EQUILIBRIUM

The current situation in Honduras is one of acute polarisation and deteriorating governance against the background of a notoriously fragile state with weak institutions. The November 2009 general elections led to a precarious political equilibrium and a weak government. The coup in June 2009 had destroyed some of the elementary values of the social contract and the political settlement.¹⁵

Since its transition to democracy in 1982, Honduras has had a two-party system. This has consisted of the National Party and the Liberal Party, who have dominated the political scene ‘through short-term pacts, excluding smaller parties and civil society’.¹⁶ Both parties have strong ties to the country’s economic elite and a vested interest in maintaining the status quo. Continuity in public policies is very rare in Honduras. In the words of an interlocutor, ‘the state disappears every four years’.¹⁷ A professional civil service does not exist; partisan purges over civil service officers and agency and institution heads at every level hinder continuity in programming and compromise overall government efficacy. Since the coup, society and the political scene have been split into so-called *golpistas* (coup supporters) and coup opponents, some of them organised in the *resistencia* (the resistance movement). According to several interlocutors, the risk for social unrest and institutional crisis persists.¹⁸

President Lobo’s government is weak and suffers from a significant legitimacy deficit. With a 49 percent turnout, participation in the November elections was the lowest in the country’s democratic history. Within his own party, Lobo lacks support from the conservative wing. He has the difficult task of reconciling a deeply divided society. Due to the crisis, the state is practically bankrupt; foreign debt has risen dramatically and Lobo’s government had to ask the International Monetary Fund (IMF) for assistance.¹⁹ In the meantime, levels of poverty and unemployment are on the rise. The political climate does not allow for putting forward much needed institutional and political reforms. Initiatives to further dialogue and reconciliation, such as the so-called “National Plan” (*Plan de Nación*), are hampered by the reluctance of key stakeholders to engage in such a dialogue. In particular, private-sector elites – in general, supporters of the coup – act according to the perception that they “won” the

15 As argued by the OECD, ‘every state is founded on what can best be conceptualised as a political settlement, or a balance of power and interests, and understanding the parameters of the political settlement is crucial to understanding how external intervention may have an impact on statebuilding’. See OECD (2010). Op. cit.

16 M. Orozco and R. Rouse (2009). Op. cit. p.4.

17 Interview, Tegucigalpa, Honduras, October 2010.

18 Interviews, Tegucigalpa, Honduras, October 2010.

19 ‘Nuevo gobierno de Honduras afirma que recibe al país en “bancarrota” [Honduras’ new government finds nation ‘bankrupt’], *latercera.com*, 28th January 2010. Available at http://latercera.com/contenido/678_221686_9.shtml; ‘IMF Mission reaches agreement in principle on a stand-by agreement for US\$196 million with Honduras’, IMF, Press Release No. 10/338, 13th September 2010. Available at <http://www.imf.org/external/np/sec/pr/2010/pr10338.htm>

battle and therefore don't need to have a dialogue.²⁰ The lack of an independent media, which is controlled by business and political interests, only reinforces the general climate of polarisation.

RAMPANT INSECURITY, VIOLENCE, CRIME AND ECONOMIC DOWNTURN

Levels of insecurity, violence and crime are severe in Honduras; the state does not control the legitimate monopoly of violence within its territory. Impunity is the rule, and the state does not guarantee the rule of law. Part of the country's territory is already controlled by transnational drug cartels, such as “Los Zetas” and the “Sinaloa Cartel” from Mexico. The number of homicides across the country amounted to 4,473 in 2008, representing a 25.2 percent increase in comparison to the previous year.²¹ According to recent estimates, the country's murder rate currently stands at an all-time high of around 60 per 100,000 persons.²² Ninety-five percent of the Honduran population feels threatened by crime, while more than 70 percent are always or almost always concerned they could fall victim to an act of crime.²³ Unemployment, crime and drug trafficking are perceived as the most important threats.²⁴ Like in other Central American countries,²⁵ the high number of readily available small arms is one important factor for such high levels of violence.²⁶ Close to 40 percent of homicides seem to be linked to contract killings (*sicariato*). Experts account for a new sophistication in how organised crime operates in the country (increase in internal drug consumption, territorial control, commercialisation and distribution networks and links to youth gangs (*maras*), money laundering, extortion, kidnapping and human trafficking).²⁷ Estimates vary as to the extent to which youth gang members are responsible for rising crime levels in Central America.²⁸ In Honduras the *maras* have been blamed for the bulk of the crime, but research indicates that less than 5 percent of all crimes in the country are committed by people under 18 years of age, the demographic that constitutes a large share of *mara* membership.

Organised crime and especially drug trafficking is threatening the population and state institutions, which have been significantly infiltrated – in particular the security forces (the police and military). In the words of one Honduran civil society representative, this leads to a situation where ‘the state is threatened by organised crime, but we are threatened by the state’.²⁹ Similar to other Central American countries,³⁰ power alliances have shifted over time: from the oligarchy closely allied to the military before the transition to democracy and a rebalancing of civil and military power during the 1980s, to the emergence of a corporate state based on the alliance of business and politics in the 1990s³¹ and a new triangular configuration between politicians, the business elite and organised crime since the new millennium.

20 Interviews, Tegucigalpa, Honduras, October 2010.

21 UNDP Observatorio de la Violencia and Universidad Nacional Autónoma de Honduras (UNAH) (2009). *Mortalidad y Otros Presentación: Enero-Diciembre 2008* [Mortality and others presentation: January–December 2008], Edition No.13. Available at http://www.undp.un.hn/publicaciones/Observatorio_Violencia/boletin_Mortalidad_nacional_2008_edi_13.pdf

22 In the northern department of Anlántida, the rate reaches 108 homicides per 100,000 inhabitants. According to the World Health Organisation (WHO), the global average murder rate is 8.8 per 100,000 inhabitants, while the average rate for Latin America is 18 per 100,000.

23 Facultad Latinoamericana de Ciencias Sociales [The Latin American School of Social Sciences] (FLACSO) (2010). *Estudio de opinión pública en Latinoamérica 2009–2010. Gobernabilidad y Convivencia Democrática en América Latina* [Study on public opinion in Latin America 2009–2010]. Available at <http://www.flacso.org/publicaciones/flacso-ipsos-final/>

24 Ibid.

25 Especially Guatemala and El Salvador.

26 C. T. Call (2000). *Sustainable development in Central America: The challenges of violence, injustice and insecurity*. CA 2020: Working Paper No. 8.

27 Interview, UNDP expert, Tegucigalpa, Honduras, October 2010.

28 UN Office on Drugs and Crime (UNODC) (2007). *Crime and development in Central America. Caught in the crossfire*. United Nations. p.16. Available at <http://www.unodc.org/pdf/Central%20America%20Study.pdf>

29 Interview, Tegucigalpa, Honduras, October 2010.

30 See, for example, M. Orozco and R. Rouse (2009). Op. cit. p.3; P. Gavigan (2009). ‘Organized crime, illicit power structure and Guatemala’s threatened peace process’, *International Peacekeeping*, Vol. 16, Issue 1. pp.62–76; S. C. Peacock and A. Beltran (2003). *Hidden powers in post-conflict Guatemala: Illegal armed groups and the forces behind them*. Washington Office on Latin America (WOLA): Washington DC; J. Schünemann (2010). “Looking the monster in the face”: The International Commission against Impunity in Guatemala and the “rule of law-builders contract”. IfP: Security Cluster.

31 This falls into the period of the Washington Consensus and the politics of structural adjustment, market liberalisation and privatisation.

MAIN CHALLENGES IN THE SECURITY AND JUSTICE SECTOR

The provision of security and the safeguarding of the rule of law are core state functions. They are paramount to a state's legitimacy and require the existence of a codified and promulgated body of laws and a reasonably effective police and justice system.³² In spite of a series of institutional, legal and constitutional reforms after the transition to democracy, Honduras' security and justice sector has severe deficiencies,³³ remaining largely inefficient and unable to safeguard security and the rule of law for its citizens. Criminal investigative units remain plagued with serious problems of incompetence, corruption and infiltration by organised crime. Inter-institutional coordination is poor and flawed by a climate of mutual mistrust and rivalry over competencies.

Honduras' security and justice sector consists of three main institutions: the Security Secretariat/Security Ministry, the Public Prosecutor's Office and the judiciary, with the Supreme Court as its highest body. The Security Ministry is in charge of the police (preventative and investigative) and the penitentiary system, and is meant to closely coordinate its actions with the Public Prosecutor's Office. The latter was created as an independent body in 1994 to prosecute law offences and crime. In order to initiate criminal proceedings, it heavily relies on collaboration with the investigative police.

THE POLICE: CORRUPTION, LACK OF CAPACITY AND HUMAN RIGHTS ABUSES

In 1997 Honduras shifted its renamed National Police from military to interim civilian control, and to a new Public Prosecutor's Office (*Ministerio Público*) in 1998. However, nominal separation from the armed forces' high command does not necessarily imply a shift to a civilian-oriented police force.³⁴ Many of the top officials are still former military personnel and the military continues to carry out policing functions, such as conducting raids to combat youth gangs and maintaining order in major cities. In 1998 a new organic police law was approved, stressing the professional nature of policing and setting forth more stringent selection standards and processes, although salaries remained fairly low.

Education and training standards within the National Police are poor. Under former president Zelaya, the police force grew significantly, but the 14,000 new officers would only receive between three and six months of training, which is clearly insufficient. There is little focus on preventative policing or investigations, and the increased manpower has not improved the security situation.³⁵ The association of crime prevention with law enforcement, and thus the police, is a frequent one. However, although the police are seriously under-resourced and more resources and deep reform are needed throughout the criminal justice sector – as is the case in many countries in Central America – it would be a serious mistake to assume that increasing police resources will, in itself, result in lower crime rates.³⁶ 'The police may sincerely believe that all that lies between them and crime prevention are greater numbers and better equipment, but numerous studies have demonstrated that this is not the case,' says the UN Office on Drugs and Crime (UNODC).³⁷ Honduras' police still detain in order to investigate rather than investigate in order to detain, and an increase in numbers of detainees puts additional stress on the overcrowded and extremely precarious penitentiary system, which is about to collapse.³⁸ Rehabilitation measures are non-existent. In the context of rising crime, the quantitative up-scaling of the police is a widespread measure, which is often supported by the international donor community. However, it lacks effectiveness when not accompanied by parallel reforms in the penitentiary system – usually an "aid-orphan" – as witnessed in Haiti, for example.³⁹

In general terms, the National Police has serious problems of corruption, is infiltrated by organised crime, and is responsible for serious abuses and violations of human rights, including extrajudicial killings, torture, arbitrary arrests and illegal searches. The latter increased during and after the coup.⁴⁰ In recent years, Honduran youth in

32 R. Paris and T. D. Sisk (2009). *Op. cit.*; OECD (2010). *Op. cit.*

33 C. T. Call (2000). *Op. cit.* p.17.

34 *Ibid.*

35 UNODC (2010). *Op. cit.*

36 *Ibid.* p.22.

37 *Ibid.*

38 'Declaran emergencia en el sistema penitenciario' [Declaration of emergency in the penitentiary system], *El Heraldo*, 13th July 2010. Available at <http://www.elheraldo.hn/content/view/full/414247>. Pre-trial detention often exceeds the time which would have been served under a conviction. See C. T. Call (2000). *Op. cit.* p.41.

39 J. Schünemann (2009). 'What role for the EU? Finding a niche in the Haitian peacebuilding process'. IfP: Security Cluster. pp.14–15.

40 Amnesty International (2010a). *Op. cit.*

particular have become victims of strict anti-gang campaigns reminiscent of the army's violent street recruitment raids of the 1980s.⁴¹ The institutional weakness of the state implies a lack of control and breaks in the chain of command. Furthermore, the police forces lack capacity for efficient criminal investigation. In 1998 the criminal investigation unit (*Dirección de Investigación Criminal*) was transferred from the Public Ministry to the police and thus the Security Secretariat.⁴² This weakened the capacity of the Public Ministry for criminal investigation and boosted levels of impunity. Moreover, the police lacks resources (human, material and financial). Ninety percent of its budget is currently used for salaries.⁴³

THE JUSTICE SYSTEM: POLITICISATION AND LACK OF INDEPENDENCE

An efficient justice system requires adequate resources, personnel selected based on merit, adequate structures and procedures to deliver services, sufficient intra-institutional coordination and a minimum of political interference.⁴⁴ Honduras' justice system does not fulfil these criteria.

Honduras' judicial system is extremely politicised and not transparent. Its independence is severely undermined by pressure from the executive and the two main political parties. The legislative branch is generally subject to significant control by the leader of the Congress. The highest judicial instances are divided along partisan lines. There is strong political interference in the selection of judges for the Supreme Court (and other judges), with each administration changing a significant number of judges according to political preferences and bargaining over judge positions as "compensation" for electoral favours.⁴⁵ The judicial system also suffers from widespread corruption and judicial processes are usually delayed, leading to lengthy pre-trial detention. More than 70 percent of prison inmates have never seen a judge.⁴⁶ Judges lack the capacity and moral integrity, as well as prosecutors' professional training. Moreover, effective witness protection is not ensured.

Judges of the Supreme Court can be removed at any time by the President of the Supreme Court, who often acts according to political motivations.⁴⁷ In June 2010, for example, the Honduran Supreme Court confirmed the dismissal of three judges and one magistrate from their posts. According to Amnesty International, they were removed after unfair disciplinary proceedings brought against them for their critical stance towards the June 2009 coup d'état.⁴⁸ As a matter of fact, the Supreme Court had backed Zelaya's overthrow.

Prosecutors are often subject to strong political pressure.⁴⁹ In 2004 200 prosecutors went on strike after ten of their colleagues were removed from their posts and seven were transferred due to their criticism regarding the prosecutor general's decision to block 90 corruption cases.⁵⁰ In April 2008 the Public Prosecutors' Association organised a 38-day hunger strike. Protest was directed against Attorney General Rosa's interference in their professional activities, claiming that senior officials in the Public Ministry pressured, threatened and arbitrarily transferred several prosecutors, while firing those with knowledge of high-profile corruption cases.⁵¹

41 M. Orozco and R. Rouse (2009). Op. cit. p.3.

42 S. Caballero Mendaña (2007). *Asistencia técnica a la Secretaría de Seguridad, a la Corte Suprema y al Ministerio Público para sentar las bases para una el diseño de una política nacional de seguridad ciudadana* [Technical Assistance to the Security Secretariat, the Supreme Court and the Public Prosecutors Office in order to set the ground for the design of a national public security policy]. Proyecto Reforma y Modernización de la Administración Pública de Honduras HNO/B7– 310/98/0239 de la Unión Europea. p.43; L. Hammergren (2008). *La Justicia y la Seguridad Ciudadana en Honduras* [Justice and citizen security in Honduras]. Unpublished document, elaborated as a consultancy for the World Bank; Fundación para el Debido Proceso Legal [Due Process of Law Foundation] (DPLF)/World Bank (2008). *Las Reformas a la Administración de Justicia en Honduras y Bolivia* [Justice reform in Honduras and Bolivia]. Washington DC. p.10. Available at <http://www.dplf.org/uploads/1227112057.pdf>

43 Interview, UNDP representative, Tegucigalpa, Honduras, October 2010.

44 According to L. Hammergren (2008). Op. cit.

45 Ibid. p.8.

46 According to programme fiche of the EU's Programme of Support to the Security Sector (PASS).

47 International Commission of Jurists (2005). *Attacks on justice – Honduras*. Geneva.

48 Amnesty International (2010b). 'Independence of the judicial system is seriously undermined as dismissal of judges is confirmed', Public Statement, 2nd June 2010. AI Index: AMR 37/010/2010. Available at <http://www.amnesty.org/en/library/asset/AMR37/010/2010/en/239278fd-5ce0-473a-8190-dca89f2f19a6/amr370102010en.html>

49 Instituto Estudios Comparados Ciencias Penales (INECIP) (2002). *Informe sobre Monitoreo a la Afectación de la Independencia Judicial en la República de Honduras* [Report on the monitoring of interference in the judicial independence in the Republic of Honduras]. Buenos Aires.

50 International Commission of Jurists (2005). Op. cit.

51 R. Osorio (2008). 'Honduras: Fiscales en Demanda de Justicia' [Honduras: Prosecutors claiming justice], Radio Nederland Wereldroep (RNW), 15th May 2008; M. Orozco and R. Rouse (2009). Op. cit. p.15.

The judiciary has very low levels of credibility and legitimacy within Honduran society. A majority of the population considers the justice system to be complicated, inefficient and slow, unfair and subject to political and economic pressures.⁵² Moreover, over 80 percent believe that bribery is a necessary condition for timely proceedings.⁵³

There is a lack of articulation between the Public Prosecutor's Office, the Security Secretariat and the Supreme Court; mistrust, rivalry over competencies and inter-institutional conflict prevail. The level and quality of cooperation between the different institutions of the justice and security sector in Honduras are thus poor (see the section entitled 'Ownership: An Unreachable Donor's Dream?' below).

According to C. T. Call, 'in general, internationally backed reforms have proven better at getting rid of "bad" old traits such as overt militarization and politicization than at introducing "good" new police and judicial practices which are effective, accountable, and publicly accepted and supported'.⁵⁴ Moreover, overly technical and equipment-centred approaches⁵⁵ have failed to take into account the political nature of justice and security sector reform (SSR), not to mention the problem of competing donor agendas and lack of coordination.⁵⁶ International donors – just like national actors – have failed to integrate a violence-prevention rationale into their programmes and projects, and thus missed the opportunity to contribute to long-term solutions to an increasingly complex environment of violence, crime and exclusion.⁵⁷ It is important to formulate 'research-based cross-sectoral crime prevention strategies at [a] national and regional level'.⁵⁸ Crime-prevention thinking should be integrated into all development interventions in Honduras (and in Central America), whether initiated by international actors or local governments.⁵⁹

52 DPLF/World Bank (2008). Op. cit. p.47.

53 Ibid.

54 C. T. Call (2000). Op. cit. p.17.

55 L. Rakner, A. Rocha Menocal and V. Fritz (2007). *Democratisation's third wave and the challenge of democratic deepening: Assessing international democracy assistance and lessons learned*. Working Paper 1 of the research project of the Advisory Board for Irish Aid. London: Overseas Development Institute. Available at <http://www.odi.org.uk/resources/download/201.pdf>

56 C. T. Call (2000). Op. cit. p.21.

57 Ibid. p.69.

58 UNODC (2007). Op. cit. p.24.

59 Ibid.

EU ENGAGEMENT TO SUPPORT THE SECURITY AND JUSTICE SECTOR IN HONDURAS

Supporting the security and justice sector is one of the EU's priorities in Honduras. This chapter describes the Programme of Support to the Security Sector (PASS).⁶⁰ It underlines the crucial need for increased local ownership as a *sine qua non* condition if these endeavours are to trigger sustainable institutional change and therefore further human security in Honduras. Throughout the research, the lack of national ownership and capacity have been identified as the main dilemmas for the EU in its efforts to help strengthen the rule of law in Honduras.

Moreover, the coup d'état in June 2009 and its aftermath also triggered European engagement to further political reconciliation in Honduras.⁶¹ The project has a budget of €1.15 million and is implemented by UNDP. Its objective is to support the government of Honduras, Congress and civil society to reach consensus on a series of reforms in different areas, which would allow for the reconstruction of a "civil pact" and thereby strengthen the legitimacy of the institutions, the protection and promotion of human rights, and democratic governance in general.

THE EU'S PASS PROJECT

PASS in Honduras is among the EU's most comprehensive SSR projects worldwide. With a total budget of €44 million, it is also one of the best equipped in terms of financial resources. The programme's overall objective is 'to contribute to the development of Honduras through the protection of Honduran society from crime and delinquency'.⁶² Specifically, the programme aims to promote SSR through supporting a national security policy and the strengthening of the relevant institutions.

The programme takes a comprehensive stance, addressing all the relevant institutions and national counterparts in the security and justice sector, as well as non-state actors. The former are the Security Ministry, the Public Prosecutor's Office and the Supreme Court (see also section on main challenges in the security and justice sector). PASS was designed on the basis of the existing EU and Organisation for Economic Co-operation and Development (OECD) policy framework and guidelines for SSR.⁶³

60 Financed through the European Development Fund (EDF).

61 Financed through the short-term or crisis response component of the Instrument for Stability (IfS), a rapid and flexible tool at the disposal of the European Commission to engage in conflict prevention, post-conflict political stabilisation and early recovery after a natural disaster.

62 According to programme fiche.

63 Council of the European Union Brussels (2007). *EU Code of Conduct on Complementarity and Division of Labour in Development Policy – Conclusions of the Council and of the Representatives of the Governments of the Member States meeting within the Council*. Brussels. 9558/07. Available at http://www.dev-practitioners.eu/fileadmin/Redaktion/Documents/Reference_Documents/EU_Code_of_Conduct.pdf; OECD (2007). *OECD DAC handbook on security system reform: Supporting security and justice*. Paris. Available at <http://www.oecd.org/dataoecd/43/25/38406485.pdf>; Commission of the European Communities (2006). *Communication from the Commission to the Council and the European Parliament – A Concept for European Community Support for Security Sector Reform*. Brussels. COM(2006) 253 Final. Available at http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0253en01.pdf; Commission of the European Communities (2007). *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – Towards an EU response to situations of fragility: Engaging in difficult environments for sustainable development, stability and peace*. COM(2007) 643 Final. Brussels. Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0643:FIN:EN:PDF>; Council of the European Union (2007). *Council Conclusions on Security and Development – 2831st External Relations Council meeting Brussels, 19-20 November 2007*. Brussels. Available at http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/gena/97157.pdf; European Council (2001). *Programme of the EU for the prevention of violent conflicts*. Brussels. Available at <http://www.eplo.org/documents/EUprogrammePreventionViolentConflicts2001.pdf>; Council of the European Union (2003). *A secure Europe in a better world: European Security Strategy*. Brussels. Available at <http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>

The programme explicitly takes the local context, i.e. the situation of the security and justice sector in Honduras, as its starting point and is thus well tailored to local needs rather than being an imposed “blueprint”. It allows for participation from non-state actors, while stakeholders from civil society were also involved in the design of the project through consultations, a central component of ensuring ‘national ownership’.⁶⁴ However, the polarisation of Honduran society constitutes an obstacle to the establishment of a dialogue between civil society and the government and the institutions of the security sector, and in particular the police. Some actors are reluctant to engage in a dialogue with the government, as in their view it lacks legitimacy, and therefore explicitly refuse to talk to representatives of the security sector.⁶⁵

The programme is meant to be implemented in two phases. The first phase, comprising a budget of €9 million, aims to set the basis for a comprehensive reform of the SSR on the basis of a national public security strategy and provide priority technical and material assistance. Once the necessary political, legal and sectoral conditions are met to ensure a viable framework for the reform of the security sector, the second phase, with a budget of €35 million, shall be implemented. The commission established a number of specific indicators, which are meant to be met before the programme can enter the second phase. These include the formulation of a national security policy adopted by the relevant institutions of the security and justice sector and backed by the main civil society stakeholders, as well as the demand that these security institutions implement adequate and transparent selection, training and promotion procedures for civil servants. They also stipulate the approval of the Law of the Inter-institutional Commission on Criminal Justice,⁶⁶ Organic Police Law,⁶⁷ Organic Law of the Judiciary,⁶⁸ Law on the Judicial Career,⁶⁹ Law on the National Penitentiary System⁷⁰ and their respective regulations, as well as the Regulation on the Law of Witness Assistance, Appraisers, etc.⁷¹ An additional requirement is the establishment of a medium-term budgetary framework for the sector, to be articulated with the national security policy. The aforementioned laws have already been presented to Congress, but their approval is still pending.

PASS has created a steering committee for the supervision and validation of the direction and general policies of the programme, which will come together three times a year and take its decisions per unanimity. The committee consists of a representative from the Security Ministry, supervisors from the Public Prosecutor's Office and Supreme Court, and an observer from the head of the EU delegation.

The programme was designed in 2007/2008 during the Zelaya administration, but was put on hold due to the 2009 coup. With the EU resuming its development cooperation with Honduras in 2010, the programme had to be renegotiated with the new authorities after the elections in November 2009. This will mean a delay of a minimum of two years, if not more. As of November 2010, the programme is still in its early stages and conditions on the ground have not allowed for the implementation of the first phase. So far, the most fundamental requirement – the formulation of a public security strategy – has not been met by the government of Honduras.

OWNERSHIP: AN UNREACHABLE DONOR’S DREAM?

Evidence is abundant that local ownership is vital for reform processes to succeed, as is commitment.⁷² Reforms in the security and justice sector that are not shaped and driven by local actors are unlikely to be implemented properly nor sustained.⁷³ L. Nathan emphasises that the principle of local ownership does not mean high levels of domestic support for donor activities, but donor support for programmes and projects initiated by local actors.⁷⁴

64 L. Rakner et al (2007). *Op. cit.*; OECD (2010). *Op. cit.* p.170.

65 Interviews, Tegucigalpa, Honduras, October 2010.

66 Ley de Comisión Interinstitucional del Sistema de Justicia Penal.

67 Ley Orgánica de la Policía Nacional.

68 Ley Orgánica del Poder Judicial.

69 Ley de la Carrera Judicial.

70 Ley del Sistema Penitenciario Nacional.

71 Reglamento de la Ley de Asistencia de testigos, peritos y demás intervinientes en el proceso.

72 OECD (2005). *Security system reform and governance*. DAC Guidelines and Reference Series. Paris. pp.11-14; L. Nathan (2007). *Local ownership of security sector reform: A guide for donors*. p.3. Available at <http://www.crisisstates.com/download/others/SSRReformNathan2007.pdf>

73 L. Nathan (2007). *Op. cit.* p.7.

74 *Ibid.* p.9.

In the case of Honduras, local actors do not even support donor activities – the watered-down form of ownership – let alone come up with strategies, programmes and projects to which the donor community could align.⁷⁵ As of November 2010, the Honduran government has not elaborated a security strategy or any specific plans for institutional reforms in the security and justice sector.⁷⁶ While several donors, in particular the EU, UNDP and Inter-American Development Bank (IDB), are eager to support reform in the security and justice sector, the government and state elites in the respective institutions in Honduras do not show the necessary political will and leadership, nor the capacity.

The government of Honduras does not have a security strategy. Consequently, no coherent, multisectoral violence-prevention policy exists. In general, the maintenance of public order is considered more important than prevention and rehabilitation, both by the government and the population. There is a lack of capacity as well as political will. Several interview partners highlighted politicians' general reluctance to elaborate concrete strategies and sectoral policies, as this would reduce power and scope for discretionary measures.⁷⁷ The absence of clarity, furthermore, reduces possibilities to hold politicians accountable. Common practices of clientelism and the high turnover of "civil servants" reinforce the lack of continuity regarding the elaboration and implementation of strategies and policies.

As for the participation of civil society in the elaboration of strategies and policies in the security sector, the transition from military to civilian rule during the 1980s gave rise to the creation of the National Council for Internal Security (*Consejo Nacional de Seguridad Interior*, or CONASIN), a body to ensure civilian oversight over the security sector. CONASIN allows for civil society and inter-institutional participation and consists of members of the judiciary, representatives of business and civil society groups, and the National Commission for Human Rights (*Comisionado Nacional de los Derechos Humanos*, or CONADEH). However, in recent years the functions of CONASIN have been severely cut, turning it into a toothless, "ornamental" body, and ultimately reducing civilian oversight and participation. National Human Rights Commissioner Ramón Custodio severely criticised these developments and asked to re-strengthen and re-activate CONASIN.⁷⁸

In 2007 the Honduran government attempted to elaborate a comprehensive security strategy, but, due to the coup in 2009 and political developments since then, this document is no longer considered relevant. However, UNDP is currently trying to assist the government of Honduras with the elaboration of a security strategy and is also assisting Honduran institutions in establishing an inventory regarding the material needs in the security and justice sector.

The nature and scope of PASS requires firm political commitment and leadership from the government of Honduras. In the light of the non-existence of a national security strategy/policy, the programme cannot be aligned with anything. Moreover, intensive efforts of inter-institutional coordination led by the Security Ministry, responsible for its implementation, are imperative. However, there is a power struggle going on between the presidency and the Supreme Court backed by the Public Prosecutor. While the Security Ministry shows a relatively high level of commitment to PASS, support from the Supreme Court and Public Prosecutor's Office is clearly insufficient. This is yet another example of how the political climate can impact security sector and justice reform, and the difficulties this can cause for external actors aiming to strengthen the rule of law in a given country.⁷⁹ Prospects for effective national ownership are thus very poor, which significantly reduces the possibility of a successful implementation of PASS, let alone the sustainability of supported reforms.

⁷⁵ Interviews, donor and civil society representatives and government officials, Tegucigalpa, Honduras, October 2010.

⁷⁶ Interviews, range of interlocutors, Tegucigalpa, Honduras, October 2010.

⁷⁷ Interviews, Tegucigalpa, Honduras, October 2010.

⁷⁸ 'Custodio aboga porque se fortalezca al CONASIN' [Custodio pleads to strengthen CONASIN], *hondudiaro.com*, 4th November 2010. Available at <http://www.hondudiaro.com//content/custodio-aboga-porque-se-fortalezca-al-conasin>

⁷⁹ On this problem see also L. Rakner (2007). *Op. cit.*

AN INTERNATIONAL COMMISSION AGAINST IMPUNITY FOR HONDURAS?

In September 2010 President Lobo declared that the government of Honduras was considering asking the UN for assistance to fight impunity in the country.⁸⁰ He made explicit references to CICIG in neighbouring Guatemala.⁸¹ The initiative came up in talks between President Colom of Guatemala, President Funes of El Salvador and President Lobo in the framework of a Central American Integration System (*Sistema de la Integración Centroamericana*, or SICA) meeting.

CICIG is based on an agreement between the state of Guatemala and the UN Secretary-General from 2006. CICIG's mandate is to support, strengthen and assist Guatemalan institutions in identifying, investigating, prosecuting and ultimately dismantling domestic illegal security apparatuses and clandestine security organisations.⁸² Its original mandate was for two years, which was extended in September 2009 for a further two. CICIG is not vested with independent prosecutorial powers and can only join cases as a private prosecutor. Such a mandate is unprecedented among UN or other international efforts to strengthen the rule of law. It is the first international criminal justice mechanism not targeted at serious human rights violations, but rather at dismantling organised crime or its infiltration in state institutions.⁸³

According to some interlocutors,⁸⁴ Lobo's initiative can be interpreted as part of the government's efforts to normalise relations with the international community and to be readmitted as a member of the Organisation of American States (OAS). In any case, it remains to be seen what such a commission would concretely look like. For the time being, the debate about creating an international commission to fight impunity in Honduras is incipient and only starting to permeate the public sector and organised civil society, in particular human rights activists. The latter are generally in favour of establishing such a commission and deem it a necessary tool to fight against impunity and the infiltration of state institutions by criminal structures.⁸⁵ However, they do not have an articulated agenda or concrete recommendations for its mandate, and consequently do not lobby the government for its implementation.

At the same time, strong resistance from different actors has to be expected against an international commission similar to CICIG, in particular from the conservative private-sector elite and state elites representing the security and justice sector.⁸⁶ The current climate of political polarisation in Honduras does not facilitate the difficult task of forging the necessary consensus throughout society. In Guatemala, the creation and setup of CICIG is the outcome of a long and complex process of bargaining between both internal (local) and external (international) actors.⁸⁷

80 'Comisión de la ONU llegará a Honduras' [UN Commission will come to Honduras], *El Heraldo*, 10th September 2010. Available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/04/23/AR2009042304220.html>

81 For more information about CICIG, see <http://www.cicig.org/>

82 UN and State of Guatemala (2006). *Agreement between the United Nations and the State of Guatemala on the establishment of an International Commission against Impunity in Guatemala (CICIG)*. Art. 1.

83 On CICIG, see also J. Schünemann (2010). *Op. cit.*

84 Interviews, Tegucigalpa, Honduras, October 2010.

85 Interviews, civil society representatives active in the field of human rights, Tegucigalpa, Honduras, October 2010. See also 'CPTRT: Oponerse a Comisión Internacional Contra Impunidad es ignorar fracaso de fuerzas de seguridad y del sistema jurídico' [To reject the International Commission against Impunity means ignoring the failure of the security forces and the justice system], statement issued by a human rights defenders organisation, 21st September 2010. Available at http://resistenciahonduras.net/index.php?option=com_content&view=article&id=1161:cprtr-oponerse-a-comision-internacional-contra-impunidad-es-ignorar-fracaso-de-fuerzas-de-seguridad-y-del-sistema-juridico-&catid=95:resistencia&Itemid=334

86 See, for example, 'Honduras: Inadvertidos pasos que apuntan el camino hacia tutelaje internacional' [Unnoticed steps towards international tutelage], *Proceso Digital*, 12th September 2010. Available at <http://www.proceso.hn/2010/09/12/Reportajes/Honduras.A.Inadvertidos/28005.html>

87 J. Schünemann (2010). *Op. cit.*

One of CICIG's most compelling features is that it is a body explicitly designed for the Guatemalan context and not simply a transferred "blueprint".⁸⁸ The Commission has its roots in Guatemalan civil society, namely human rights organisations, which is why it is vested with an important degree of domestic ownership and legitimacy – the central conditions determining success in security sector and justice reform, as the lack of local ownership necessarily leads to dysfunctional outcomes.⁸⁹ These conditions are not met, or at least not yet met, in Honduras.

88 L. Rakner et al (2007). Op. cit.

89 L. Nathan (2007). Op. cit. p.8.

CONCLUSIONS

In spite of a series of reforms, Honduran institutions in the security and justice sector remain inefficient and suffer from widespread corruption as well as increasing infiltration by organised crime, in particular related to drug trafficking. The judiciary lacks independence and is systematically subject to political and economic interests. In the light of rampant crime and violence, the Honduran population is thus largely unprotected.

The EU's PASS meets local needs, is comprehensive in its approach and targets the relevant institutions. Moreover, it is supported with the necessary financial resources to have an impact. However, the programme's prospects for successful implementation are seriously compromised by Honduras' polarised political climate, its weak national government – also lacking in legitimacy – and the inter-institutional mistrust in the country.

Most importantly, as of November 2010 the government has not been able to elaborate a national public security strategy adopted by the relevant institutions of the security and justice sector and backed by the main stakeholders from civil society. Furthermore, progress in relation to the approval of a series of laws, most importantly the law on the inter-institutional commission on criminal justice, is still pending. A solid political, legal and budgetary framework for reform is thus lacking. Clearly, the condition of ownership has not yet been met – this is, programmes and projects that are initiated by local actors and supported by donors. There is even a lack of “watered-down” ownership, i.e. high levels of domestic support for donor activities. Yet local ownership is one of the central conditions determining success in security and justice sector reform. A lack of it leads to dysfunctional outcomes.

Splitting PASS into two phases and making the successful implementation of phase one a condition for kicking off phase two is therefore a necessary way of proceeding. The EU must closely monitor the established indicators for the fulfilment of conditions and apply strong conditionality before disbursing funds for phase two. Given the high levels of corruption, lack of capacity and transparency, PASS should, in principle, be excluded from direct budget support.

The proposal to create an international commission against impunity in Honduras is considered pertinent. However, such a commission would have to be thoroughly adapted to the specificities of the Honduran political and security context. CICIG can serve as a model, but must not be taken as a blueprint. For the time being, conditions of ownership and potential legitimacy have not yet been met in Honduras.

RECOMMENDATIONS

To the government and the state of Honduras:

- Elaborate a national public security strategy and thus ensure a solid framework for reform in the security and justice sector.
- Integrate a violence- and crime-prevention rationale into strategies, programmes and projects.
- Approve pending laws and regulations related to the security and justice sector.
- Increase the quality of inter-institutional coordination in the security and justice sector, in particular among the National Police and Public Prosecutor's Office.
- Elaborate a medium-term budgetary framework for the security and justice sectors in articulation with the national public security strategy and agreed policies.
- Decrease tensions and build confidence between the Security Ministry and Supreme Court and Public Prosecutor.
- Further engage in a dialogue with the governments of Guatemala and El Salvador, as well as the UN and donor community, with regards to the creation of an international commission against impunity in Honduras.
- Engage in a national dialogue, including non-state actors, on the creation of such a commission.

To the EU (and the wider donor community):

- Cooperate and put pressure on the government of Honduras to elaborate a national public security policy.
- Closely monitor indicators for fulfilment of conditions to implement phase two of PASS.
- Apply conditionality before disbursing funds for phase two of PASS.
- In principle, exclude PASS from direct budget support unless the government meets conditions of capacity and transparency.
- Make sure pressure for disbursement from the headquarter level does not trump guiding principles and decision-making based on the context and evidence.
- Integrate a violence- and crime-prevention rationale into strategies, programmes and projects.
- Sustain and intensify existing donor coordination efforts, especially between the EU, IDB and UNDP, in order to avoid duplication of activities.
- Use the joint weight of donors active in the security and justice sector to make sure the basic political, legal and budgetary conditions are met to ensure reasonable prospects for successful implementation and sustainability.
- Further explore with the government, state and non-state actors, as well as within the donor community, the possibility of creating an international commission against impunity in Honduras, taking CICIG as a valid model but not a blueprint.
- Draw lessons learned from why early warning failed to prompt preventive action during the period preceding the coup d'état in June 2009.⁹⁰

⁹⁰ On failed early warning prior to the coup in Honduras, see L. Montanaro and J. Schünemann (2010). *Walk the talk: The EU needs an effective Early Warning system to match its ambitions to prevent conflict and promote peace*. IfP–Early Warning. Available at <http://www.ifp-ew.eu/>

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