

## The Deaf, the Blind and the Politician: The Troubles of Justice and Security Interventions in Fragile States<sup>1</sup>

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This article argues for an integrated, political and pragmatic approach to justice and security development as one of the key objectives of effective international support to peace building and state building in conflict-affected and fragile states. Developments since the 1990s suggest that different actors and communities have started to work on the same issues from different angles and with – perceived – different mandates. As a result, important parts of the debate on how to deal with security system reform (SSR), justice reform and the rule of law seem somewhat stuck in conceptual arguments. This article suggests moving away from such debates and instead to focus on what such justice and security engagements are meant to achieve, for whom, and which general approaches are likely to provide most added value. It argues that results require political focus, long-term processes and need to be in tune with local elite interests – whilst pursuing the aim of gradually helping to improve delivery of justice and security as basic services for all, to appropriate local standards. External and domestic objectives require careful balancing, creative compromises and strong incentives. The article also outlines a number of recurrent challenges to effective programming and suggests some ideas for improvement to achieve better results and more value for money.

Basic security matters in every society because otherwise ‘the life of man would be solitary, poor, nasty, brutish, and short.’<sup>2</sup> The current situation in, for example, the Democratic Republic of Congo (DRC), Somalia, Afghanistan, Mexico and Guatemala illustrate the sad truth of this statement. Justice matters equally because without transparent processes and principles that allow for the adjudication of

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<sup>2</sup> John C.A. Gaskin (ed.), ‘Leviathan’, Oxford World’s Classics, reissue of: Thomas Hobbes, *Leviathan or the Matter, Forme and Power of a Common Wealth Ecclesiastical and Civil 1651* 2009, ch. 13, para. 9.

grievances in a manner that produces swift and affordable results that are perceived as fair, safety and security will ultimately prove illusory as individuals or groups will find different ways to resolve them. Simply put, justice and security provide a necessary measure of order and dignity to human life and, if provided effectively and accountably, a key ingredient for peaceful progress. Leaving aside normative and cultural considerations as to what exactly constitutes basic justice and security, it seems reasonable to suggest they are frequently absent in today's conflict-affected, fragile and autocratic states.<sup>3</sup> Because of the security and development challenges generated by conflict and fragility, the international community has increasingly focused on, and dedicated significant resources to, support for justice and security development. Yet, such support has generally fallen short of its objectives.

This article advances a number of ideas on how international support to justice and security development in conflict-affected and fragile states can be made more effective. It addresses three issues. First, it attempts to practically clarify the debate about the relation between the concepts of security system reform (SSR), justice reform and reform of the rule of law (ROL) (second paragraph). Second, it examines how international efforts that aim to help establish and increase basic justice and security can align better with elite interests (which is, we argue, essential for the success of such efforts) while maintaining long-term focus on improving service delivery for the population at large (third paragraph). Third, it outlines some ideas on how the current practice of international support to justice and security programming can be improved, given its currently low rate of success (fourth paragraph).

#### RECONCILING SECURITY SYSTEM REFORM, JUSTICE REFORM AND RULE OF LAW REFORM: A PRAGMATIC VIEW

From the 1990s onwards, the idea that security and development form an inseparable nexus has become more and more accepted. On the one hand, evidence started showing that conflict and insecurity have negative impacts on development.<sup>4</sup> On the other hand, underdevelopment was increasingly seen as enabling, trigger-

<sup>3</sup> For instance: Judy Smith-Höhn, *Rebuilding the Security Sector in Post-Conflict Societies: Perceptions from Urban Liberia and Sierra Leone* 2010; Deepa Narayan et al., *Voices of the Poor* 1999-2002; Interdisciplinary Analysts and Saferworld, *On Track for Improved Security? A Survey Tracking Changing Perceptions of Public Safety, Security and Justice Provision in Nepal* 2009; UNDP, *Kosovo Internal Security Sector Review* 2006; Fund for Peace, *Fragile States Index* 2005-2010.

<sup>4</sup> Frances Stewart et al., 'Internal Wars: An Empirical Overview of the Economic and Social Consequences', in Frances Stewart and Valpy Fitzgerald (eds.), *War and Underdevelopment, Vol. 1: The Economic and Social Consequences of Conflict* 2001, p. 67.

ing or increasing the risk of conflict and violence.<sup>5</sup> These insights allowed the development community to start focusing on security, justice and governance as part of its work,<sup>6</sup> while the security community started to see development as a relevant ingredient for achieving security.

Although the insights of the security-development nexus provided different communities with space to consider and work on issues that were traditionally part of other domains, they did not lead to the development of a common agenda and policy toolbox. Instead, a range of policies, tools and programmes, such as SSR, justice reform, ROL reform, Armed Violence Reduction (AVR), Disarmament, Demobilization and Reintegration (DDR) and small arms reduction were developed. These concepts have similar aims: increasing (access to) justice and security for people and states. Yet rather than looking at commonalities and comparative strengths, debates largely focused on how each concept and policy is unique, holistic and situated higher in the hierarchy than others. Either passively (e.g., by not engaging with, and learning from other communities) or actively (e.g., by making joint work, assessments and programming difficult, or by engaging in overly conceptual policy debates), the relevant communities seem to have focused on staking their claim over the entire policy territory and often on competing for scarce donor resources. As a result, several discourses and tools co-exist, and different policy communities tend to mistrust the concepts used by others.

However, this is both unnecessary and unhelpful. It is unnecessary because all communities recognize that justice and security are critical instruments to manage violence, conflict and grievances, which many other activities can prevent or mitigate, but do not manage. Each community also recognizes justice and security as key elements of international strategies to support peace building, state

<sup>5</sup> For example: Paul Collier, 'Economic Causes of Civil Conflict and Their Implications for Policy', in Chester A. Crocker et al., *Leashing the Dogs of War. Conflict Management in a Divided World* 2007; or: Paul Collier et al., *Breaking the Conflict Trap. Civil War and Development Policy* 2003.

<sup>6</sup> For instance, UNDP broadened the definition of security from its traditional state-centred focus to human security in its 1994 human development report (*New Dimensions of Human Security* 1994). Similarly, starting with the Brahimi report in 2000, the UN has paid great attention to the concept of Rule of Law, first in the form of the task force for development of comprehensive rule of law strategies for peace operations (2002), subsequently with the establishment of the UN ROL focal point network (2003), the UNSG's report on the rule of law and transitional justice in conflict and post conflict societies (2004), the UNSG's report 'Uniting our Strengths: Enhancing United Nations Support for the Rule of Law' (2006), the creation of the Rule of law coordination and resource group (2006) and in the form of the UNSG's guidance note on a 'United Nations approach to RoL assistance' (2008). Finally, the Millennium Declaration pays ample attention to peace, security and disarmament (Millennium Declaration, A/RES/55/2, e.g., section II), although this did not translate in any specific focus in the form of, e.g., a goal that addresses conflict/violence.

building and development in conflict-affected and fragile states.<sup>7</sup> In addition, it is unhelpful because the international community devotes significant time and energy to debating conceptual differences, instead of using this to deliver better interventions in situations where it matters most.

As a result, a pragmatic way out of the controversy is called for. We suggest, first, to use the term ‘rule of law’ primarily as an overarching principle of governance. Second, we suggest to stop using the labels of SSR, ROL reform and justice reform for programming and to use the term ‘justice and security development’ as a more appropriate label instead. This has three benefits in our view. First, it elevates the ROL to the higher level of principles from where it can guide and inform justice and security programming. Second, it shifts focus to considering justice and security as areas that are interlinked and that require correspondingly coherent interventions if these are to be successful. Third, using the term ‘development’ instead of ‘reform’ reduces notions that existing systems are inferior, which opens up conceptual space for thinking about locally appropriate modalities, methods and approaches. It also highlights that the justice and security area undergoes permanent change everywhere, and not just in developing countries.

To start with the first point, according to the Secretary General of the United Nations (UNSG) the Rule of Law is:

‘A principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.’<sup>8</sup>

This definition of the ROL is by no means universally shared, but it is probably the one that is best known.<sup>9</sup> The UNSG’s definition suggests that the Rule of Law,

<sup>7</sup> OECD, *Supporting Statebuilding in Situations of Conflict and Fragility: Policy Guidance* 2011; World Bank, *World Development Report on Conflict, Security and Development* 2011; International Dialogue on Peacebuilding and Statebuilding, ‘A New Deal for Engagement in Fragile States’ (2011), [www.pbsdialogue.org](http://www.pbsdialogue.org) (accessed 30 December 2011). The International Dialogue is a structured conversation between the major donors, multilaterals and a self-declared group of fragile and conflict-affected countries that focuses on how (inter)national support for peace building and state building can be improved.

<sup>8</sup> UNSG, *Guidance Note of the Secretary-General: United Nations Approach to Rule of Law Assistance, summary* 2008. This definition reflects a long process of development in thought and philosophy, which arguably culminated in the Universal Declaration of Human Rights in 1948 (as described in Tom Bingham, *The Rule of Law* 2010, ch. 2), but it is not universally accepted amongst UN member states.

<sup>9</sup> For a recent and more in-depth discussion of ROL concepts and definitions, see, e.g., Camino Kavanagh and Bruce Jones, *Shaky Foundations: An Assessment of the UN’s Rule of Law Support Agenda* 2011.

as a principle of governance, extends far beyond the specific field of justice and security. It embodies a normative and aspirational ideal that is applicable to all areas of private, public and private-public social interaction. It is also noteworthy that this definition of the Rule of Law offers space for a range of different understandings of accountability, independence and how human rights norms and standards are upheld in different societies. In other words, it accommodates diversity and a notion of gradualness. This resonates well with the conception of state building as a continuous process that develops and balances the 'political settlement', state capability and responsiveness, and state-society relations.<sup>10</sup> Although the purpose and function of the ROL are absolute, its form is relative and takes shape on the basis of local perceptions and practice.

Whereas the ROL can give direction to the content of justice and security interventions as a principle of governance – together with other principles – it is difficult to see its utility as a label for justice and security programming. It needs to be recalled that there are more principles of governance than the ROL (like representation, impartiality and the responsibility to protect). A strong emphasis on one principle can easily result in neglect of others, much like an overemphasis on effectiveness can create a deficit in accountability. Principles of governance need to jointly inform policy and programming in substantive areas of engagement like education, security, justice and infrastructure in ways that are appropriate to that area. The issue with using the ROL as a label for programming is, therefore, first of all, the fact that it only represents one principle of governance. The second issue is that pretty much any programming activity can be labelled as ROL as a result of the UNSG's broad definition. This is problematic for connecting interventions with results and impact, which makes monitoring and measurement difficult and reduces accountability.

To continue with our second suggestion, i.e. to start using the term 'justice and security development' as a more appropriate label for programming that aims to contribute to more accountable and effective justice and security services, having three different labels for fairly similar purposes and activities is simply confusing. Also, the terms 'Security Sector Reform', 'justice reform' and 'ROL reform' all have become too 'colored' in the view of other communities. We briefly turn to some of the issues associated with these labels.

The concept of SSR has, paradoxically, had limited traction in the development circles where it was most coherently formulated and formalized.<sup>11</sup> Instead, it has largely found resonance in diplomatic and security communities in the context of reconstruction activities such as those in Iraq and Afghanistan. This has given the

<sup>10</sup> OECD, *Supporting Statebuilding in Situations of Conflict and Fragility*.

<sup>11</sup> See for instance: OECD DAC, *Handbook on Security System Reform: Supporting Security and Justice* 2007.

concept somewhat of a makeover in camouflage colours, making it (more) suspect to parts of the development community, in particular NGOs, governance and justice practitioners.<sup>12</sup> Moreover, the term SSR largely excludes justice issues, both optically and substantially. Although for instance the OECD handbook emphasizes that ‘the term SSR should in no way be seen as implying that justice is subordinate to security,’ it nevertheless does not put justice on equal footing with security and largely limits its understanding and treatment to criminal justice,<sup>13</sup> in spite of the fact that this is only one important intersection between justice and security (see below). Finally, SSR has come to be considered by some, in particular in the UN’s Non-Aligned Movement (NAM) as a term that is associated with foreign intrusion in matters of national sovereignty.<sup>14</sup> This diminishes the value of the label for programming because it shifts focus to perceptions and conceptual debates, rather than discussions on finding ways to improve support for justice and security service delivery. The concepts of ROL reform and justice reform have become somewhat interchangeable terms. Programming efforts under these labels have generally tended to ignore the dominant role security forces – in particular the military – often play in the politics of justice and security in fragile and conflict-affected states. Moreover, ROL and justice reform programs and practitioners often emphasize *access* to justice. Unless this follows as a priority from a granular assessment of the context, such a preset focus can be to the detriment of other critical issues and/or different part of the criminal/civil justice ‘chain’. Finally, SSR, ROL and justice reform efforts share the characteristic that they often confine themselves to the technical aspects of reform (for instance, amending laws and legal texts, or strengthening executive agencies charged with the provision of security, such as the police), without due acknowledgement of its political aspects.<sup>15</sup> It is a testimony to the interchangeability of terms that the label given to a particular intervention in practice often depends as much on the political interests at stake as it depends on the substantive focus of a program. For example, the EU’s Common Security and Defence Policy (CSDP) mission in Kosovo undertakes many activities that could be characterized as SSR, but is named ‘EU Rule of Law

<sup>12</sup> The idea (or fear) that development cooperation is being ‘militarized’ or ‘securitized’ is well expressed in for example: Mrinalini Menon (s.d.), *Human Security and the Militarization of Aid Delivery* or Mark Duffield, *Global Governance and the New Wars: The Merging of Development and Security* 2001. For a discussion of the limitations of, and implementation problems with, SSR: Mark Sedra ‘Towards Second Generation Security Sector Reform’, in Mark Sedra (ed.), *The Future of Security Sector Reform* 2010.

<sup>13</sup> OECD DAC, *Handbook on Security System Reform*, at p. 5.

<sup>14</sup> On imperialist tendencies in SSR: Barnett R. Rubin ‘Constructing Sovereignty for Security’, in: 47(4) *Survival* (2006), p. 93.

<sup>15</sup> Maria Derks and Megan Price, ‘Rule of Law and Security System Reform: A Pragmatic Approach to Addressing the Security and Justice Spectrum’, *Clingendael internal working paper* (2011) (unpublished).

Mission in Kosovo.’ This reflects the internal politics of the EU in which several member states do not recognize Kosovo and object to the label SSR on the basis that it would entail a de facto recognition of Kosovo’s sovereignty.

Considering the above, replacing the three existing labels with the term ‘justice and security development’ seems a practical way of refocusing the discussion on the practical purpose, means and approaches to justice and security interventions. This will be especially helpful for practitioners, for whom the added value of concepts lies in their practical ability to increase the effectiveness of interventions. Yet, to make the label ‘justice and security development’ useful, key interlinkages between both areas need to be clarified. For the purpose of starting a discussion on this complex question, we highlight three in the context of conflict and fragility, which extend well beyond the criminal justice chain. We fully appreciate this to be a rough and incomplete representation of a vast and nuanced issue area.

*First, in the long run, progress in the development of (formal and informal) justice provision must more or less be matched by progress in the development of security provision (formally and informally) – and vice versa.* It is unlikely that justice can be credibly provided without an adequate level of security or without the ability to enforce justice. Vice versa, a secure environment will not remain secure without increasingly well functioning justice mechanisms. Justice and security are vessels that are connected, but that do not automatically communicate. In programming practice, it is important that such communication is established. This, however, does not mean that programs should cover the whole range of justice and security interventions simultaneously – this would make them unwieldy and unfeasible. Instead, programming must feature two characteristics in recognition of this interconnection. To start with, international support for specific justice or security priorities needs to include ongoing *horizontal analysis and monitoring* of the entire justice and security spectrum. This is necessary to ensure international actors know when the activities they support approach critical junctures where broader issues, capacities, stakeholders or institutions need to be taken into account to avoid disparities from emerging that can hamper further progress. This raises challenges in terms of mandates, cooperation and resources. Greater standardization of who provides central coordination services, supported by an adequate measure of authority, is one way to overcome these challenges. For instance, where peace support missions are present, the office of the Special Representative of the UN Secretary-General provides a logical fulcrum, as is currently the case in Liberia and being attempted in South-Sudan.

In addition, international support for justice and security needs *practical vertical mechanisms* to generate and synchronize support for the parallel development of various layers of government and non-government institutions that deliver

justice and security, while taking account of their often complex and contested interactions.<sup>16</sup> The reality is that the justice and security environment typically is a highly complex mixture of seemingly disconnected issues, actors and institutions at different levels of capability and formality that are in flux in terms of their relations, hierarchies and procedures. Despite knowing that the best course of action usually is not to build formal justice or security institutions in the image of their Western cousins, this often is the best the international community has on offer.<sup>17</sup>

*Second, and by way of specification of the above, justice bodies and security forces need to become increasingly accountable if they are to retain legitimacy and confidence.<sup>18</sup> The governance of justice/security and the possibilities for legal redress that individuals and institutions have when (members of) the justice system or security forces overstep their mandates or violate rights, critically link the justice and security domains. Accountability consists of an actor's sense of obligation to explain and justify actions to a forum (and ultimately the people) that can pass judgment on those actions, and can enforce consequences if the actions are considered inappropriate, unlawful or abusive.<sup>19</sup> It directly links justice with security. If there are no opportunities for complaints and redress in cases of misbehaviour, security forces in particular can easily be perceived as a threat rather than an asset. Yet, improving the capacity of justice institutions that can pass and enforce judgement on justice and security actors when they overstep their mandates, or commit abuses, faces two critical challenges. The first is that the very nature of security organizations is often one of secrecy, comradeship and self-protection, all of which are likely to resist*

<sup>16</sup> Peter Albrecht et al., *Perspectives on Involving Non-State and Customary Actors in Justice and Security Reform* 2011.

<sup>17</sup> OECD, *International Engagement in Fragile States: Can't We Do Better?* 2011. To assess whether an existing mechanism 'works', it is critical to examine the conditions under which this is the case, especially if one considers expanding what 'works' – e.g. is it scalable?, for whom is it working?). See: Patricia Rogers, 'Why learning "What Works" Is Often Not Enough – Dealing with Complication and Complexity', Impact Evaluation Design Clinic, Rome, 19 September 2011: [www.fao.org/fileadmin/user\\_upload/oed/docs/Evaluation\\_Docs/Rogers\\_2011\\_Why\\_learn\\_ing\\_What\\_works\\_is\\_often\\_not\\_enough\\_Rome\\_FINAL.pdf](http://www.fao.org/fileadmin/user_upload/oed/docs/Evaluation_Docs/Rogers_2011_Why_learn_ing_What_works_is_often_not_enough_Rome_FINAL.pdf) (accessed 30 October 2011). For a more detailed discussion of this topic: Eric Scheye, *Rule of Law in Africa: Just Say Yes* (forthcoming); Eric Scheye, *Pragmatic Realism in Justice and Security Development: Supporting the Improvement in the Performance of Non-State/Local Justice and Security Networks* 2009; Eric Scheye, *State-Provided Service, Contracting Out, and Non-State Networks: Justice and Security as Public and Private Goods and Services* 2009.

<sup>18</sup> Of course, security forces also need to be effective. Effectiveness without accountability can lead to repression; accountability without effectiveness to token security. In both cases the rule of the strongest prevails, the difference being that in the first case the strongest is state-sanctioned and in the second case it is not.

<sup>19</sup> See Mark Bovens, *Analysing and Assessing Public Accountability. A Conceptual Framework* 2006; Nicole Ball and Michael Brzoska, *Voice and Accountability in the Security Sector* 2005.



calls for increasing accountability. Starting a dialogue with security actors and establishing linkage with the broader society can create space for building trust and increasing transparency. Second, accountability needs to be ensured at different levels that each feature their own challenges. It is one thing for the operational 'street' side of security forces to be accountable to the general public, yet it is quite another for the political and senior chiefs of these forces to be accountable for force performance and focus. Each requires a different approach. The former can for instance be improved by ensuring adequate remuneration, changing the working culture, training members of the security forces to improve their professional conduct and by improving the capacity of civil society to respond to abuses and misbehaviour. However, any improvements in lower level accountability are unlikely to be sustainable if they are not matched by corresponding improvements in upper level accountability. The latter can only be realized gradually by working to slowly depoliticize organizations at the managerial level, creating different incentive sets (like compensating individuals in positions of power who stand to lose from such changes) and improving leadership skills. Individual examples matter and champions will need to be sought to lead processes of slow institutional and normative change.

*Third, a limited set of legal issues, including the organization and protection of property rights (in particular regarding land), administrative rights (in particular regarding identity and citizenship), the manner of resolution of criminal offenses (including violence against women) and commercial rights (in particular regarding natural resources) have a high potential to generate insecurity and must therefore be addressed from a combined justice-security perspective.*<sup>20</sup> For example, land rights are often not registered, unclear and susceptible to manipulation, which may well reduce incentives to invest, increase tensions, grievances and stimulate violence. Similarly, given the large rents that natural resources generate, disputes over the unfair distribution or appropriation of their revenues can also easily lead to violent clashes. The Eastern DRC is the most tragic example to date, but similar issues loom in Afghanistan and West-Africa. A (lack of) access to, or provision of, justice to resolve disputes is bound to have security consequences. To give a blunt example: beefing up the Afghan police and army without also addressing criminal justice and land issues may improve the capacity to fight the Taliban better, but it does little to diminish their recruitment base.

<sup>20</sup> It is often argued that abuses committed in earlier periods of conflict can reignite violence if left unaddressed. Hence, dealing with the past in a just and transparent manner is important for future stability (transitional justice). However, since the topic of transitional justice is specific to post-conflict and transitional situations, and this paper deals with the linkages between security and justice more generally, we have intentionally left transitional justice issues out of this account.

## JUSTICE AND SECURITY FOR ALL, THE MANY OR THE FEW?

One of the most vexing questions that justice and security engagements face, is how the tension between the general interest of the population and the interests of elites can be productively addressed about the purpose, scope and manner of justice and security delivery. History, the low success rate of many justice and security initiatives to date and the current political state of affairs in many fragile countries lead us to argue that where justice and security initiatives are perceived by elites as potentially threatening to their interests, they are almost guaranteed to fail. This section briefly discusses the nature of this tension and these interests, their consequences for international actors and offers three basic 'elite incentivizing' strategies that international actors can use to try to reframe elite attitudes towards justice and security development initiatives that they perceive as running counter to their interests.

Throughout history, elites have often employed institutions of justice and security for their own interest and advantage. As instruments of power, these institutions are easily used to impose and enforce decisions forcefully, with immediate impact on power relations and power distribution. Hence, justice and security systems are valuable assets to maintain control and to generate political, social or economic rents. Examples abound, including the alleged collusion of the police, judiciary, politicians and organized crime in the drugs trade in places like Kenya, Jamaica and Mexico, the implication of members of the Burundian police and intelligence service in natural resource smuggling, or the use of armed factions in South-Sudan by Khartoum against the Sudanese People's Liberation Movement (SPLM).<sup>21</sup> In short, elite interests have dominated the organization and use of justice and security mechanisms at most stages of development in most states. In elite struggles for control over justice and security systems, notions of equality, protection of citizens, judicial independence, rights and transparency usually played little or no role. These notions emerged only gradually over a period of hundreds of years in a particular part of the world (the West) and usually only when elites perceived they were in their interest.<sup>22</sup>

<sup>21</sup> Peter Gastrow, *Termites at Work: Transnational Organized Crime and State Erosion in Kenya* 2011; UN Group of Experts, Reports Pursuant to Resolution 1533 (2004) Concerning the Democratic Republic of the Congo, in particular: 'Interim report of the Group of Experts on the DRC', 25 May 2010.

<sup>22</sup> North, Wallis and Weingast describe this process in great detail in Douglass C. North et al., *Violence and Social Orders. A Conceptual Framework for Interpreting Recorded Human History* 2009. See also: Charles Tilly, 'War Making and State Making as Organized Crime', in Peter B. Evans et al. (eds.), *Bringing the State Back In* 1985, p. 169; Robert Bates, *Prosperity and Violence. The Political Economy of Development* 2001. This should already provide salutary warning against expectations that the modern Western understanding and organization of security and justice will

Robert Bates provides a useful starting point for unpacking what elite interests may consist of. He dubs rulers 'specialists in violence' (which we equate with elites for the purpose of this article<sup>23</sup>) and argues that the extent to which political order forms a state depends on the sum of the values of three variables: the level of public revenues that specialists in violence can expect to enjoy if they offer protection to citizens, the rewards they can expect to enjoy from predation of their citizens and their rate of discount.<sup>24</sup> Simplistically put, those who are in command of the means of violence weigh the benefits and cost of protection of vs. predation on the civilian population over time and the highest expected return decides their strategy. In response, civilians put their resources either to a productive use, enjoying the specialist's protection, or to the mobilization of violence to resist the specialist's predation. The latter scenario represents state failure, according to Bates. In this analysis, profit maximization and continuity of power over time are key elite interests.

Coming from a more justice and security oriented direction, Louis-Alexandre Berg in a way adds to Bates' analysis by arguing that two critical variables, which both centre on elite interests, shape the possibilities for successful justice and security development efforts.<sup>25</sup> The first critical variable is the level of cohesion or fragmentation of the ruling political coalition and its support base. He suggests that where ruling coalitions depend on a broad and fragmented constituency for their support, they are more likely to engage in initiatives that enhance service-delivery for society at large as this serves their support base and helps them to maintain power. Where coalitions depend on a narrower segment of society for survival, their incentives to improve justice and security for the entire population are lower, because they are better served by distributing benefits only to the limited few upon which their power depends.<sup>26</sup> The second critical variable is the origin of the main sources of state revenue. Here the argument is that where ruling coalitions depend on society for their revenue (i.e., taxation), they are more likely to engage in initiatives that benefit all. Where they have access to easily controlled alternative sources of revenue, like oil or diamonds, they have less of a need to engage with society and their incentives for improving the general provi-

find resonance with elites (or even citizens) in areas where conditions are entirely different, let alone in a brief period.

<sup>23</sup> We use 'elites' and 'elite interests' as aggregated notions, which hide broad diversity. Such diversity needs to be analysed and unpacked to allow for effective engagement. However, this is a topic for a different paper.

<sup>24</sup> Robert Bates, *When Things Fell Apart – State Failure in Late-Century Africa* 2008, pp. 5, 19-20. This work does not specifically focus on justice and security.

<sup>25</sup> Louis-Alexandre Berg, 'Guns, Laws and Politics: The Political Foundations of Rule of Law and Security Sector Reform', in: 41(1) *Hague Journal on the Rule of Law* (2012).

<sup>26</sup> See: Berg, 'Guns, Laws and Politics'.

sion of security and justice services will be correspondingly weaker.<sup>27</sup> In this analysis, the maintenance of their power base, financial gain and continuity of power over time are key elite interests.

Hence, for the purpose of this article we suggest to provisionally understand elite interests as the pursuit of adequate levels of domestic legitimacy, financial resources and international reputation by elites to retain their power and to turn a profit. Justice and security organizations are powerful tools in this endeavour. The first two elements follow from Bates and Berg. We assert that domestic legitimacy is the key to continuity of power over time and that it takes the form of successful competition for votes in elections in multiparty democracies. However flawed this process may be in many places, it has become the norm for legitimate government. The introduction of international reputation as a key elite interest recognizes the fact that national elites operate in a global environment where international engagement and intervention has increased significantly over the past two decades.<sup>28</sup>

Although the nature of the tension and interests we have discussed above are reasonably well recognized by international actors, much support for justice and security development seeks to improve basic justice and security service delivery for the general population, disregards elite interests and assumes that notions like equality and transparency enjoy universal acceptance. Before turning to three 'incentivizing strategies' that international actors can use to ensure their interventions take better account of, or even influence, elite interests, we point to three implications of this conundrum, which set the stage for the fourth paragraph.

First, a vital task for any external actor is to ensure that its interventions and expectations are grounded in a good understanding of a 'who-is-who', the relations, interests, opportunities and constraints of local political actors. Without an adequate understanding of prevailing interests, external actors risk being used for partisan local agenda's without realizing it – especially as the prospect of funding and the often asymmetric relation between international and national actors makes an 'honest' conversation about interests unlikely. At the same time, understanding broader social justice and security priorities is critical to ultimately broaden service delivery from the few to the many. Both needs and interest assessments are required on an ongoing basis and must be integrated into an intervention.<sup>29</sup> Yet it is surprising how often this is not the case. It also follows that initiatives aimed at identifying and fostering leadership capacity, especially to form coalitions across

<sup>27</sup> See: Berg, 'Guns, Laws and Politics'.

<sup>28</sup> For instance: Human Security Report Project, *Human Security Report 2009/2010: The Causes of Peace and the Shrinking Cost of War* 2011, pp. 61-76.

<sup>29</sup> For a discussion on the merits of 'needs based' versus 'what works' approaches to international engagement: Scheye (forthcoming).

the divides that are so typical of fragile societies, are crucial components of justice and security initiatives.<sup>30</sup> For example, it is argued that the leadership of a core group of Sierra Leonean government officials, together with strong support in the UK's political leadership at the time, is one of the key success factors of Sierra Leone's security transformation over the period 1997-2007.<sup>31</sup> Yet, the role of leadership and of leadership coalitions in justice and security development efforts seems to be under-researched, under-programmed and under-funded.

A second implication is that to effectively generate change, external support to justice and security development must either appear harmless, or be made attractive, to those controlling the provision of justice and security. Hence, international engagement needs to be built around concrete incentives that align with, or appeal to, elite interests.<sup>32</sup> The challenge is to identify forms of engagement that are in line with elite interests, but which have the potential to gradually influence such interest sets and to broaden the provision of security and justice. An example might be the inclusive policy dialogue on military reform in Guatemala between 1999-2002, entitled 'Towards a Security Policy for Democracy' (POLSEDE). Recognizing the stalling implementation of the relevant provisions of the 1996 Peace Accords on the transformation of the state security apparatus, POLSEDE was created as an inclusive, research-based dialogue on how to best shape and enable agreed reform. By placing a premium on open deliberation, participation, decision-making by consensus and reflection, the government – military officials in particular – perceived the process as sufficiently non-threatening to find advantage in participating. Adversarial posturing between civil society, international actors and governmental stakeholders was avoided and the proposals that ultimately emerged fed into the development of a White Paper on Defence Policy that the Ministry of Defence started in 2002.<sup>33</sup>

Thirdly, the sensitive nature of justice and security makes it likely that results will be realized at a much lower pace than in other areas. As a result, international actors need to have a great deal of patience, a high tolerance for risks and

<sup>30</sup> As has for instance been suggested more generally in Adrian Leftwich and Chris Wheeler, 'Politics, Leadership and Coalitions in Development: Findings, Insights and Guidance from the DLP's First Research and Policy Workshop' (Frankfurt 10-11 March 2011), and in Eric Scheye, *Rule of Law in Fragile and Conflict-Affected Countries: Working within the Interstices and Interfaces* 2009.

<sup>31</sup> Peter Albrecht and Paul Jackson, *Security System Transformation in Sierra Leone 1997-2007* 2009, pp. 1, 170.

<sup>32</sup> Instead of donors enforcing downsizing of military and police forces via budgetary and aid pressure, it may for example be more effective to support increases in pension schemes for high-level security officials to expedite change in the medium term while accepting higher payroll cost.

<sup>33</sup> Bernardo Aravélo de Leon, 'Guatemala Case Study: Inter-Sectoral Dialogue on SSR', in Laurie Nathan (ed.), *No Ownership, No Commitment: A Guide to Local Ownership of Security Sector Reform*, 2<sup>nd</sup> edn. 2007.

for gradual results.<sup>34</sup> Although donors cannot be expected to uncritically continue with program implementation when politics interfere, their ability to engage constructively with these politics needs to be improved. When negotiating political issues at home, within international organizations such as the EU, or elsewhere, donor countries show great skill and nuance. Yet in development cooperation in general, and in justice and security support in particular, donor responses are often crude, unilateral and in immediate response to single events. If a partner country ‘misbehaves’ in the eyes of a donor, the response often is (to threaten) to withdraw support completely, without much discussion or negotiation. This blunt tool of ‘change now or we withdraw aid’ can and should be refined in recognition of the politics inherent in development in general and in respect of justice and security issues in particular.<sup>35</sup>

We argued that if external actors wish to gradually help increase the provision of justice and security from the few, to the many and, possibly, to all, they need to take account of elite incentives. Because fundamental changes to such incentive structures must come from within, external influence is limited. An additional limiting factor is the fact that external actors often bring their own agenda and will not necessarily be trusted.<sup>36</sup> This notwithstanding, we suggest three basic strategies that can be used to incentivise elites and thereby assist international actors to engage productively and realistically. They build on the three components of elite interests outlined above (domestic legitimacy, financial resources and international reputation).

<sup>34</sup> When assessing realistic ranges of progress in institutional transformation to achieve basic governance transformations in a range of countries, the World Development Report (WDR) suggests that establishing the ROL takes longest: World Bank, *World Development Report 2011* (policy overview) 2011, p. 11. North et al., *Violence and Social Orders*, at p. 27 show that historic transitions from closed to open access orders, which may happen long after the threshold of fragility has been crossed, take about fifty years. The difficulties facing the initially optimistic estimates of the ongoing transitions in Tunisia, Egypt and Libya also demonstrate the complexity and slowness of change. For instance: Erwin van Veen, ‘From Spring into Summer: Key Peacebuilding Actions for Libya’, in: ‘*Open Democracy*’ (25 September 2011), [www.opendemocracy.net/erwin-van-veen/from-spring-into-summer-key-peacebuilding-actions-for-libya](http://www.opendemocracy.net/erwin-van-veen/from-spring-into-summer-key-peacebuilding-actions-for-libya) (accessed 30 October 2011).

<sup>35</sup> OECD, *Can't We Do Better?*, pp. 41–42.

<sup>36</sup> North et al. describe the conditions under which it seems that societies have historically moved from a natural state – in which elites control the means of violence as well as access to economic and political opportunities amongst themselves – to an open access society in which access to economic and political opportunities is open to all. These so-called ‘doorstep’ conditions are: 1) rule of law for elites; 2) perpetually lived forms of public and private elite organizations; 3) consolidated political control of the military. These conditions arose because elites themselves had incentives to develop them, but even when they are in place, there ‘[is] nothing [that] inevitably impels a society on the doorstep to make the transition to an open access order.’ North et al., *Violence and Social Orders*, at pp. 26–27.

*Support basic improvements in justice and security service delivery that citizens care about and that do not threaten elites.*<sup>37</sup> *Do this in such a way that elites can claim and use improved service delivery in their political competition for votes and influence.* It matters where one starts. If elites can claim the responsibility for positive change to their advantage, they will be more likely to support it. A strategy for donors is therefore to find out which improvements matter most to people and how they can be linked to political profit. The challenge is to ensure improvements do not solely favour a particular social group but are as universal in scope as possible. This is particularly important in states where the governing elite relies on a narrow support base.

*Find out what works locally as a complementary starting point (i.e., local networks that organize security and/or justice), why and how – and then support this, if appropriate.*<sup>38</sup> As part of such ‘basic improvement’ initiatives, organizations can be supported that can become advocates for further change, such as bar associations and labour unions. In addition, the existence of hybrid and yet legitimate legal orders in many conflict-affected and fragile states often comes with different interest sets, which can be developed to compete, negotiate and co-operate. If a balance can be found between increasing the effectiveness of what works and keeping any ensuing tensions and competition peaceful, change may be set in motion. By way of example, Burundi’s Taxi-cyclist Association emerged from taxi-cyclists’ need to better protect themselves against police harassment. It now closely cooperates with the police to reduce crime. With its estimated 15,000 members, its own income and a democratic structure, it has a wide reach and intimate knowledge of many neighbourhoods.<sup>39</sup> Support for such an organization could help it to further mature, to increase the safety it provides and to advocate both for a better police force as well as for a more accountable one.

*Work with relevant parts of the justice and security system to improve public revenue streams.* It may be attractive to (parts of) the elite to develop those parts of justice and security organizations that can improve public revenue generation. For instance, a review of the substance and practice of laws and regulations governing foreign investment might increase such financial flows to the advantage of elites that are

<sup>37</sup> The OECD’s SSR handbook already suggested taking existing problems as a starting point. OECD, *Handbook on Security System Reform*, at p. 63.

<sup>38</sup> For example: Eric Scheye, *Local Justice and Security Programming in Selected Neighbourhoods in Colombia* 2011; ‘Local Justice and Security Development in Burundi. Workplace Associations as Pathway Ahead 2011; Local Justice and Security Providers in South Kivu: Going Local to Support Youth-Neighbourhood Watch-Community-Development Groups’ (2011), [www.clingendael.nl/cru/publications/2011](http://www.clingendael.nl/cru/publications/2011) (accessed 22 December 2011).

<sup>39</sup> Eric Scheye, *Local Justice and Security Development in Burundi* 2011, pp. 12-14.

well placed to benefit from them. In similar vein, providing greater clarity on certain land rights might well stimulate investment that can be taxed or that will generate other revenue. The challenge here is to understand which interests are at stake, who competes and what likely effects of such an intervention will be. Also, interventions would need to be able to combine capacity building with attention for governance and transparency. But success might allow for an ink-pattern type of approach that brings benefits to elites and creates new interest groups – much like the creation of the legal concept of limited liability both protected the economic interests and opportunities of the elites of that day and opened up opportunities for new entrepreneurs, which helped the rise of a broader middle class that became a strong change agent in itself.

*Use a country's international reputation as entry point for justice and security engagement.* Often, a country's international reputation matters a great deal to (parts of) its elite. A negative reputation can mean sanctions, prosecution or even invasion. A positive reputation can mean more aid, more investment and a larger international role. This can be valuable for those parts of the elite who, formally or informally, interact most with the external world. A good example is Yemen, where president Saleh derived part of his power and leverage in Yemen from his access and ability to influence international opinion and collaboration.<sup>40</sup> Donors can explore this angle for justice and security engagements, for instance by offering to help improve national capacities for contributing to peace support operations and to subsequently use such assistance as an entry point for a broader engagement with the military. It is of course critical that such support does not merely create more effective militaries, but also improves internal accountability, discipline and oversight over time. By way of example, it is interesting to note that the prestige and growing reputation of Ghana's army, resulting from its successful participation in several peace support operations, seems to have had a restraining influence on its domestic role.

These are only some initial ideas that need to be further elaborated on the basis of the central question as to how external support can align with elite interests to ensure it is attractive – while also creating opportunities to increase justice and security service delivery beyond the elite in the long run, and in ways that are locally appropriate in terms of coverage, accountability and effectiveness.

<sup>40</sup> Sarah Phillips, 'Yemen: Developmental Dysfunction and Division in a Crisis State', *Developmental Leadership Program, Research Paper 14* (2011), pp. viii; 17.



## MEETING RECURRENT CHALLENGES TO JUSTICE AND SECURITY PROGRAMMING

Ever since justice and security have become areas of programming, a set of operational challenges has continued to plague international support. Numerous recent analyses suggest that the approaches, procedures and capacities of most international actors are not well configured for effective engagement in conflict-affected and fragile environments.<sup>41</sup> Challenges include the inability to articulate meaningful outcomes and report results, limited contextual understanding,<sup>42</sup> limited timeframes for engagement, inflexible planning and poor prioritisation methods, inappropriate risk management models, inadequate modalities for mobilizing financial and knowledge resources and use of monitoring methods that are not able to inform real time program management.<sup>43</sup> It is of concern that these challenges have proven resistant to change for a number of years now and that, as a result, there are few examples of successful international support to justice and security development. Although the evidence suggests the need for a fairly radical rethink of existing approaches and practices, the current political environment in a number of OECD countries offers few incentives for this, as it features domestic pressures to increase the accountability of aid, a focus on demonstrable results in short time periods and a decreasing total aid volume.

Hence, changes in donor operating practices must be stimulated in a more incremental and innovative manner that can accommodate existing constraints. Recent work by the OECD's International Network on Conflict and Fragility

<sup>41</sup> OECD, *Supporting Statebuilding*; World Bank, *Conflict, Security and Development*; International Dialogue on Peacebuilding and Statebuilding, 'The Role of Political Dialogue in Peacebuilding and Statebuilding: An Interpretation of Current Experience; Capacity Building: Evidence Supporting Candidate Recommendations and Actions in respect of Issues Identified at First Meeting'; 'Policy Paper on Innovative Aid Instruments and Flexibility of Financing', *Strategic Planning Recommendations Paper* (2011), unpublished; OECD, *Can't We Do Better?*; United Nations, *Civilian Capacity in the Aftermath of Conflict: Independent Report of the Senior Advisory Group* 2011.

<sup>42</sup> While this is true, it is also clear that many field based officials recognize the value of evidence-based programming and have identified a range of ways of obtaining information. See: Nicole Ball and Luc van de Goor, *Promoting Conflict Prevention through Security Sector Reform: Review of Spending on Security Sector Reform through the Global Conflict Prevention Pool* 2008, section 3.3, pp. 9-10.

<sup>43</sup> For example: Laurent Banal and Vicenza Scherrer, 'ONUB and the Importance of Local Ownership: The Case of Burundi', in Heiner Hänggi and Vicenza Scherrer (eds.), *Security Sector Reform and UN Integrated Missions: Experience from Burundi, the Democratic Republic of Congo, Haiti, and Kosovo* 2008; Alan Bryden and Heiner Hänggi, *Reforming and Reconstructing the Security Sector* 2005; Alan Bryden et al., *Shaping a Security Governance Agenda in Post-Conflict Peacebuilding* 2005; Michael Brzoska and Andreas Heinemann-Grüder, *Security Sector Reform and Post-Conflict Reconstruction under International Auspices* 2004; Timothy Edmunds, *Security Sector Reform: Concepts and Implementation* 2002; Nicole Ball and Luc van de Goor, *The Challenges of Undertaking Effective Security and Justice Work* 2011.

(INCAF) suggests that the development of a *process approach*, which is in essence an incremental approach to engagement, as a format for donor engagement, might help improve the delivery of results in this sensitive and complex area.<sup>44</sup> A process approach would function as an organizing concept that provides a practical lens to improve the way in which interventions deal with the critical challenges of political ownership, program management, monitoring and the definition of results. To work, a process approach needs to combine five elements. First, it needs to gradually construct the intervention, e.g., from 'smaller' problems focusing on short-term results to larger problems with longer timeframes and results. Second, it needs to gradually understand, negotiate and broaden stakeholder ownership while delivering short-term results. Third, it needs to be able to develop capacity appropriate to the (changing) scale of the activity, the nature of the political environment and on the basis of what is available. It needs to be able to manage (political) risk through a greater capacity for adaptation. This requires flexible results frameworks and M&E systems. Fourth, it needs to help identify and test options for justice and security development while being tolerant to a range of outcomes. This requires models for program management that are able to experiment and innovate. Finally, it needs to be able to combine the need for mutual long-term commitments (measured in decades) with the need to work in shorter-term political cycles to determine ambition and to allocate resources. While none of these elements may be new in themselves, their joint application as part of an integrated concept, supported by practical tools and approaches, could result in a significant shift of working methods. It could also offer a means to break down very long term, even generational, programs of reform into elements that are manageable within the timeframes suitable for donor investments while accommodating partner absorptive capacity. The remainder of this section outlines what applying a process approach to three substantive issues (ownership, program management and monitoring & results) could look like.<sup>45</sup>

*Negotiating the politics of ownership.* Ownership is a confusing term, especially when it is conflated with 'buy-in'. The latter happens when 'ownership' is used in connection with verbs like 'building', 'creating' or 'stimulating' it, as this type of language suggests that ownership entails obtaining domestic support from a partner country for normatively superior external security and justice development interventions. However, buy-in is about making certain that programs run well and money is used efficiently from a funder's point of view, rather than about

<sup>44</sup> Ball and van de Goor, *The Challenges of Undertaking Effective Security and Justice Work*. For an early articulation of the process approach: Nicole Ball et al., *From Project to Program: Effective Programming for Security and Justice* 2007.

<sup>45</sup> Ball and van de Goor, *The Challenges of Undertaking Effective Security and Justice Work*.

supporting effective change from within. Instead, local ownership goes much deeper, and raises, the challenge of understanding who one is dealing with and whose interests are ultimately being served. A process approach to the politics of ownership would amount to four gradual sets of activity: a) building a relation with a set of critical domestic stakeholders to understand their interests and incentives; b) negotiating with these stakeholders to identify whether their interests and those of the external actor can be made to overlap, what entry points look like and whether a productive justice and security engagement can be developed; c) gradually broadening this relation to include a wider set of domestic stakeholders to ensure a more granular picture of social interests pertaining to justice and security is obtained; d) building the ability of the international actor to navigate domestic interests and incentives with increasing skill.

The Dutch supported Burundian Security Sector Development (SSD) program offers a concrete example of what this looks like in practice.<sup>46</sup> Over a period of nine months, Dutch and Burundian counterparts discussed the development of a Memorandum of Understanding (MoU) for an eight year period to guide their collaboration in what became the SSD program. The two groups worked together to produce a non-paper, which gave them a better understanding of each other's positions. An institutional assessment of the police and military as key security actors, their needs and the type of support required took place during two Dutch missions to Burundi. This provided an opportunity to discuss an initial program of action. In the run up to the MoU, two quartermasters were sent to start work with the institutions and key actors within the institutions. The SSD program was set up as a process that allowed for continuous analysis, relationship building and dialogue. Concrete activities in support of the army and the police, which were taken as the starting point for the first two years, were used as entry points for discussing issues of a more strategic nature.

*Developing options for program management.* Funding for international support to justice and security development mostly comes from bilateral donors. However, much of the actual programming is outsourced to international organizations, non-governmental organizations and commercial companies. Many of the beneficiaries are national ministries or agencies. Contractors seem to play an increasingly important role in the management and implementation of justice and security work. It is questionable whether this makes sense given the highly political nature of the work (see the third paragraph). It certainly creates difficult questions of accountability, decision-making and risk-taking. For instance, a contractor is likely to be accountable to its funder on the basis of its contract.

<sup>46</sup> Ball and van de Goor, *The Challenges of Undertaking Effective Security and Justice Work; Memorandum of Understanding between the Kingdom of the Netherlands and the Republic of Burundi* 2008.

However, this contract may contain criteria and conditions that do not serve the purpose of national stakeholders (e.g. due delivery dates, disbursement). As a result, tensions may arise between contractors and beneficiaries that hamper effectiveness. Moreover, differences in the level of risk-appetite between funder, contractor and local stakeholders can paralyse action or cause demands for unrealistic fiduciary or governance measures. Finally, addressing the political dimension of justice and security development is key to successful change, yet by contracting the programming out funders may surrender their ability to use their relations with a beneficiary to influence political processes. It would seem that at a minimum, sufficient donor staff with adequate political seniority needs to be available to guide the program on a daily basis. Hence, appropriate program management is of paramount importance for successful justice and security development. A process approach would help in identifying the minimum requirements and standards for program management at the different stages of an activity, as well as the types of personnel required (funder, contractor) for effective security and justice programming.

By way of a practical example of the issues that can arise in this area, the design, implementation and monitoring of the DFID funded program in the DRC in support of the Congolese police was largely outsourced to a consortium of commercial companies. Leaving aside the difficulties of engagement in this area in the DRC in general, the experience to date suggests that the program suffered significant delay because of different expectations as to roles, responsibilities and approaches on the part of DFID, the contractor and the Congolese police authorities.<sup>47</sup>

*Improving monitoring and the definition of results.* Justice and security development processes are complex, lengthy and political efforts that are constantly in flux.<sup>48</sup> A key characteristic of effective interventions therefore is the ability to adapt and innovate. As a consequence, interventions need to be flexible, which requires a swift and deep understanding of how realities 'on the ground' develop. They have a high need for sophisticated monitoring & evaluation methods that are able to inform real time program management. This is all the more so because flexibility also creates risks (of, for instance, capture of funds, creating too much change and under- or over-resourcing). Monitoring and evaluation methods must be combined with sophisticated risk management methods to balance flexibility with risks. Achieving effective justice and security development also requires tolerance for a range of outcomes. It is a misperception that a program can set long-term objec-

<sup>47</sup> Author interviews with consultants and DFID staff involved in this program.

<sup>48</sup> The WDR 2011 notes in an analysis of institutional change that, historically it took the fastest reformers of the 20th century on average 41 years to achieve a basic good governance threshold in the rule of law (World Bank, *Conflict, Security and Development* (policy overview)), at p. 11.

tives based on a vision that is construed at the start of an initiative. In (post) conflict and fragile settings, where urgent problems demand immediate attention, where mistrust reigns, and where there is a lack of capacity, it is next to impossible to negotiate and develop such ideas about the future. As a consequence, it is unrealistic to expect such visions to drive developmental processes. Setting specific long-term objectives at the outset of an initiative is also at odds with the highly political nature of the justice and security area. A process approach would offer options for monitoring mechanisms that allow regular review of the level of alignment between developments in the environment, results to be achieved, relations between stakeholders and available resources. Such reviews would both aim to enable management decisions that can (re-)synchronize such operational elements and to inform higher-level political stakeholders.

The DFID supported police program in Nepal offers an example of what this could look like in practice. Its monitoring includes a focus on the sustainability of the program by assessing the ability of the Nepalese police to deploy appropriately skilled manpower to key program areas, its retention in post of trained individuals and government budget allocations to key programme work streams. The resulting analysis informed conversations with the Nepalese government and stimulated adjustments in the intervention.

In short, a process approach would be a step away from current practice, where programming is often based on a program cycle approach (which assumes that results can be identified upfront, implementation can be planned in detail and that plans can be executed in a linear fashion), technical objectives, a limited political foundation and weak or non-existent local ownership. Although a processes approach will face challenges of its own, it would at least allow for programming that is more in line with the realities of justice and security development processes while working on the basis of existing constraints.

## CONCLUSION AND RECOMMENDATIONS

The analysis and ideas outlined in this article suggest three broad conclusions and recommendations:

1. *Accept the term 'rule of law' as a principle of governance that guides justice and security programming, abandon the terms 'justice reform', 'rule of law reform' and 'security system reform' and start using 'justice and security development' for programming aimed at improving the level of accountability and effectiveness of justice and security service delivery.* This is a pragmatic way out of the unhelpful and unnecessary running controversy between justice and security communities about which concept takes precedence and which one encompasses the other. To make the label 'justice and security development' useful, we suggest three critical interlink-

ages between both areas. First, development requires relatively synchronized progress in the provision of security and justice. Second, security forces and justice mechanisms need to become increasingly accountable if they are to retain legitimacy and confidence. Third, improving security will often require addressing a set of legal issues such as land rights and dispute resolution mechanisms. In recognition of such interlinkages, international organizations and donors should pragmatically reorganize any artificial divides in their organizations between SSR, ROL, police and justice units. Integrated units must guide operational activities. Operational guidelines and tools that reflect justice-security interlinkages more strongly would also be a step forward.

2. *Ensure that justice and security interventions take account of elite interests while aiming to improve the delivery of justice and security services for society at large in the longer-term.* We have suggested three strategies towards this purpose. First, focus interventions on realizing basic improvements in justice and security service delivery that are important to citizens but that do not threaten elites. In doing so, it is important to ensure that elites can claim and use such improved service delivery in their political competition for votes and influence. Second, work with relevant parts of the justice and security system to improve public revenue generation. Third, use a country's international reputation as entry point for justice and security engagement. International organizations and donors must ensure they have the ability to navigate the political shoals of engagement and that working on the basis of elite interests is a standard element of their program design, planning and toolkit.

3. *Develop and apply a process approach to programming. Such an approach can offer an incremental programming method and an organizing lens to improve responses to critical challenges around issues of ownership, program management, monitoring and the definition of results.* It is important to ensure that such an approach recognizes existing constraints and reflects the views of both international and national stakeholders. This agenda would best be taken forward by an organization that can convene both policymakers and practitioners from multilateral and bilateral donors as well as Southern partners, such as the OECD, or research groups in the UN or World Bank.

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