



WORLD DEVELOPMENT REPORT 2011

BACKGROUND PAPER

PUBLIC SECURITY, CRIMINAL JUSTICE, AND REFORMING THE SECURITY SECTOR

SECURITY AND JUSTICE THEMATIC PAPER

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Public Security, Criminal Justice, and Reforming the Security Sector
Justice and Security Thematic Paper
Input Paper to the WDR

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The following paper is a contribution to discussions on Rule of Law (RoL) and Security Sector Reform (SSR) for the World Development Report 2011. It outlines:

- A policy framework identifying the specific characteristics of post-conflict operations,
- The implications for a Demobilization, Disarmament and Reintegration (DDR) transition strategy,
- The implications for Security Sector reform,
- The implications for rule of law and criminal justice.

Examples are drawn especially from Haiti and the Democratic Republic of Congo (DRC), where SSR efforts have been extensive and are ongoing, but also from Afghanistan, Bosnia, East Timor, Rwanda, Sudan, Liberia and Sierra Leone.

The policy framework

1. Prioritizing governance is now a widely accepted principle in the policy debate on development. It is also considered as a key element of a state-building strategy in a post-conflict country, commonly described as “fragile states.” The choice of words suggests a continuum, from fragile to strong institutions, implying that the governance strategies for “fragile states” are not qualitatively different from a typical governance strategy in a stronger developing country. The effort to improve governance might have to be more intensive, but not necessarily qualitatively different.

2. In my view, such an approach under-estimates the different challenge that states emerging from conflict pose to the international community. *A state that has ineffective and unreliable administrative structures does not equate with a state whose very foundations have been dissolved in a civil war. In a country emerging from conflict, the “social capital” has been depleted, and the underlying contract between the citizens and the government has been broken, and it needs to be rebuilt.* In absence of trust binding them to the state, citizens now depend on narrower affiliations, often ethnic, for their basic security. There may indeed be a State authority that has gained more legitimacy than other competing groups through elections or some internationally supported process. But the consolidation of its legitimacy and trust between people and the state is often not achievable without an inclusive political process that will confer a measure of legitimacy on the opposition who will become part of the fabric of the emerging post-conflict state.

3. How to rebuild the trust between a state and its people is therefore the central challenge of the post-conflict phase. Where to start? In a civil war, the Weberian concept of the state has been challenged, because the state has lost its monopoly on the legitimate use of force. *Re-establishing trust between the people and the state must therefore start with the core function of a state, the capacity to assert its monopoly on the legitimate use of force.* Without the capacity to enforce, the state will not be in a position to raise taxes, and will therefore be unable to provide services. Without the capacity to enforce, the state will be continuously challenged

by competing players who have an enforcement capacity. But if the capacity of the state to enforce is not seen as legitimate, it will be dependent on a balance of power that can shift very quickly: the security forces can switch loyalty unpredictably, and the respect of the citizens for the security forces entirely depends on the perceived balance of power. In other words, *security forces will be much more effective if trust is established not only between the security forces and the people, but also between the authorities of the state and the security forces*. The two processes are mutually reinforcing. In the end, arbitrary power is much weaker than legal authority, and the authority of the law is a very potent force-multiplier. Totalitarian regimes understood that point, and tried to compensate for the potential weakness of their arbitrary power by building impressive one-party systems to create ideological loyalty.

4. *The reform of the security sector within a framework of rule of law may therefore be the most fundamental priority of a stabilization strategy*. The security sector is the most visible element of the state, the most concrete manifestation of its power. If done well a reform of the security sector will bolster the credibility of the government and enhance the trust of the people. A well functioning security sector not only directly enforces the law, but by building the legitimacy of the legal enforcement, it creates incentives for the population to respect the laws of their country from internal conviction rather than external intimidation. In a stable country, the vast majority of the people comply with the law not out of fear of enforcement authorities, but respect for the law. Only when its inevitably limited capacity to enforce is complemented by internal respect for the law among the people, can a police force focus on deterring and arresting those people at the fringe of society who are motivated by fear of the law.

Implications for a DDR and stabilization strategy

5. As a country emerges from conflict, guns are widely available, and they are a threat as well as a necessary re-assurance. There is often little difference between uniformed personnel and militias: they have all preyed on the population, often committing sexual abuse and practicing extortion. In such a context, the sensible response of a citizen is to distrust everyone, including the security forces of the state, to keep weapons, and to rely on ethnic solidarities. Meanwhile, a disproportionate part of the population – boys and young men - has been deprived of education and has no other expertise than the use of weapons, which have become their best way of making a living. A stabilization strategy has to overcome those daunting obstacles.

6. DDR programs are the first step in an effective response to that challenge. They are closely linked to the reform of the security sector; first, armed men have little incentive to disarm if they have no assurance that their security will be guaranteed through some alternative mechanism; second, they have little incentive to disarm if they are not provided with an alternative and sustainable source of income; third, the easiest answer to the first two concerns is to integrate them in the reformed security sector, which will give them security as well as income.

7. In practice, the international community has had great difficulties in DDR programs, except when re-integration of ex-combatants is achieved through integration in a reformed security sector. Re-integration through the creation of civilian jobs has usually been very disappointing. In Afghanistan, for example, ex-combatants excluded from, or failed by, civilian reintegration efforts have been recruited into illegal armed groups—militia unaccountable for criminal activities and human rights violations. Re-integration through integration in a reformed security

sector creates a whole set of other issues, however: from a fiscal standpoint, it may lead to the creation of a bloated security sector that will not be sustainable. From a political standpoint, it can undermine the trust in the new security sector as the authors of egregious crimes are now expected to provide re-assurance. Recognizing those tensions is critical to the success of DDR programs.

Implications for Security Sector Reform

8. Managing DDR programs successfully depends in large part on the design of the reform of the security sector. SSR must integrate the above-mentioned political considerations, and should not be conceived as a technical program comparable to the bilateral programs focused on bolstering the capacities of the security sector in a functioning state. Actually many SSR efforts in post-conflict situations have failed precisely because they were a juxtaposition of bilateral programs that did not factor in the critical political dimension of SSR in a post-conflict situation. In East Timor, SSR took on an excessively technical approach. By addressing the issues of police reform and of military reform separately, the process ignored the fact that these two forces had different political affiliations. Ignoring the underlying political tensions was bound to unravel the progress achieved not only in SSR, but in the political stabilization of the country.

9. The first consideration is the trade-off between fiscal sustainability and political acceptability. It may be politically advisable, in a first phase, to accept an oversized security sector, to accommodate the political and security concerns of the former belligerents, who must be convinced they have enough of a stake in the new security sector that they will not feel threatened by it. In Liberia from 2003-2005, for example, when the country suffered 85% unemployment, many ex-combatants were absorbed into a bloated security sector that later reforms worked to moderate. The composition can also make an important contribution to legitimacy of the security sector and by extension the state: all sides of the conflict should feel adequately represented in the security sector. Lastly, in the absence of effective alternative job-creation programs, it is also probably the least bad answer. But, as the example of Liberia also demonstrates, a gradual downsizing of the security sector should have been built in the original plan, to make it sustainable in the long run.

10. *The acceptability and legitimacy of a reformed security sector depends in part on the perception by the people that the security forces truly reflect the whole country, and are not under the domination of one of the parties of the conflict.* Such perceptions will be shaped by the command structures and by the composition of the units. Here also, some trade-offs will have to be managed. On the one hand, a purely merit-based selection of commanders would be preferable, but it should not lead to the dominance of a particular faction. Likewise, units should ideally mix soldiers or police officers from various ethnic and political alignments. On the other hand, such mixing may not be practical and may weaken the operational effectiveness—and even accountability, when soldiers are extracted from their home communities—of the security forces. At other times, where local accountability mechanisms have broken down and local police are embedded in networks of patronage and corruption, police deployed from outside a community may be more effective and trustworthy. In Afghanistan, civil order police deployed to communities on an interim basis have won respect from local communities in the south -- even where these units are ethnically different or mixed. One should accept that there is no single answer to those questions, and that the specific circumstances of each conflict may require

adjustments of those general principles. The important point is to always remember the political dimension of the choices that have to be made.

11. *Trust depends on legitimacy, but legitimacy is also a function of effectiveness. A reformed security sector needs to be perceived as professional.* The professionalism of a force—police or military—is the end-result of a series of actions that include:

- a. **Recruitment and vetting:** This is probably the single most important factor. It is very difficult to conceive of a credible and professional force composed of war criminals, especially at senior levels. The selection of the higher echelons of the police and the army is the most critical factor for the success of a reform of the security sector. At the same time, in civil wars, most combatants have committed war crimes. In Bosnia, the systematic vetting of the police force helped build what is probably the most credible Bosnian institution, despite later challenges to the process. The tension with justice and the trust that a security force must inspire is therefore inevitable, and needs to be managed through appropriate mechanisms, discussed later.
- b. **Training:** This is usually the focus of most international efforts. It is indeed important, but one of the key objectives of police or military training – discipline – will not be attainable if vetting has not been conducted at senior levels. Commanders shape the posture of a force, and it is an illusion to expect a force to be accountable if its commanders are not. Training will wash away very quickly if a sound command structure has not been put in place.
- c. **Support and logistics:** A force that has no uniforms, no equipment, no proper accommodation, and which is irregularly paid, has no professional pride and no loyalty. This is often neglected in international efforts, but the administrative and support structure of a force is critical to its credibility. The anti-corruption measures that need to be put in place in all parts of government structures must not ignore the security sector.

12. The security sector includes all components of the state that have an enforcement capacity: military, police, and customs. Thus far, we have considered this security sector in its totality. Can some general principles be elaborated to determine the optimal balance between its various components? A comparison of two countries where SSR is ongoing, Haiti and DRC, seems to suggest not. The security challenge in Haiti is largely urban gang violence, with the additional threat of a drug trade destabilizing the tenuous peace. With the army disbanded, the security threat posed by gangs falls under the police, though it is at the outer limit of police capacities. In the Democratic Republic of the Congo, territorial control in remote areas is vital to stability, and it requires military capacities. In both countries, control of the borders is essential, though in DRC, the task is to keep natural resources in to provide badly needed fiscal resources to the state, rather than drugs out.

As a state moves from conflict to stability, it shifts from threats originating in groups—which may require the use of military or paramilitary forces—to threats from individuals, dealt with by the police. As Haiti and DRC demonstrate however, this shift is not smooth, requiring immediate training for criminal police even as threats that cannot be ignored continue emanating from groups. Whether they should be dealt with through crowd-control techniques under the domain of the police or the gendarmerie, or through military means is an operational question the answer to which will be determined by the specifics of each situation. These observations suggest that *in designing the priorities of security sector reform, it is advisable to analyze the drivers of conflict and tailor the response to them, rather than applying a predetermined template.*

13. While one needs to recognize the deeply political nature of the issues to be addressed, *it is equally important to build institutions that will make it less difficult for politicians to share the weight of their decisions.* The people of a country emerging from conflict have been both the victims and authors of violence, they see force as arbitrary and detached from accountability, and they are deeply suspicious of any authority, including that of the state. The state needs to win their trust. The implementation of a credible SSR therefore needs a parallel effort to connect the reemerging enforcement capacity of the state to the rule of law.

Implications for RoL and criminal justice

14. In a country emerging from conflict, the law is a somewhat abstract concept, but accountability is not. The danger is that collective responsibility often trumps individual accountability, and for as long as this is the case, the vicious cycle of violence may not be broken: in the absence of individual accountability, the political dynamics remain dominated by protection from and revenge against groups rather than justice meted out to individuals, and the state, confronted to group solidarities, is in a weak position to assert its authority and break that cycle in an impartial way. It needs to move from a situation in which group-to-group relations shape politics—which puts a premium on the raw balance of power between competing groups, to a situation in which the state relates to its people as individuals. In such a context, many aspects of law need to be quickly addressed, including issues of civil law for property rights on land (which are often an important post-conflict issue), but the capacity to enforce criminal law is at the heart of the consolidation of state authority and should be prioritized.

15. This effort is closely connected to the reform of the security sector: without an enforcement capacity, the state cannot deter and detain criminals. Without a judiciary capacity, the state cannot follow up on enforcement operations, and it cannot exercise effective control over security forces; their lack of accountability undermines their credibility, and destroys the goodwill and respect of the people so necessary to successfully performing their daunting task of ensuring law and order. A reform of the security sector that would not be accompanied by an equally intensive effort to put in place the building blocks of an effective criminal justice system that includes military justice to ensure accountability within the military as well as civilian prosecutors, tribunals and corrections, would operate in a vacuum. The repercussions of not doing so were felt in Haiti in the 1990s where pre-MINUSTAH missions had no mandate for the judiciary. Still today jails are overrun, compromising justice and the credibility of international and national reform efforts. To continue with previous comparisons between the current missions in Haiti and the DRC, gangs might be temporarily put out of business, as happened in Haiti after successful operations in the slums of Port-au-Prince, but their leaders would either languish indefinitely in preventive detention, or buy their way out of jail. Control of natural resources by militias in the DRC might be temporarily disrupted, but the sight of militia leaders guilty of well-publicized crimes walking free, and in some cases taking positions of responsibility, would send a chilling message to their victims that they should be prepared for the next round of violence, and seek the protection of a powerful militia over a weak state.

16. The relationship between SSR and the reform of criminal law institutions needs to be managed. A strategy that puts the onus of stabilization on justice institutions will not succeed: in many situations the magnitude of crimes committed during the conflict would quickly overwhelm a small and weak judiciary as well as the limited enforcement capabilities. Other quasi-judiciary mechanisms, such as truth and reconciliation commissions or community-based

traditional mechanisms need to be considered. In Rwanda, “gacaca” courts supplemented an overrun formal system of justice, processing over 1.5 million cases according to court records. In Darfur, victims of violence received customary “blood money” as part of the reconciliation process. Moreover, the rigidity of a legal process may not be compatible with the politics of a particular situation: the decision when to indict a criminal who still wields considerable power very much depends on the prevailing balance of power and political dynamics. An indictment may precipitate his delegitimation and further weaken his authority, or lead to a breakdown of the political process and a resumption of violence. Conversely, a stabilization strategy that is not supported by judiciary institutions puts too much onus on the political process. In particular security sector reform may be greatly facilitated, if the responsibility of difficult decisions – such as the elimination of major criminals from senior positions, and their eventual indictment- can be shared with judiciary institutions, possibly supported by the international community, in, for example, mixed courts. In Sierra Leone, the sustained involvement of the British Defense Ministry through the International Military Assistance Training Team (IMATT) helped build a credible force; simultaneously funds and assistance are flowing in for the Special Court for Sierra Leone to remove some of the gravest offenders. Nonetheless, sustainability of reforms would be greatly enhanced by building up the national permanent judicial system, and increasing coordination with the police reform. *The critical element is to broaden the ownership of difficult decisions through transparent processes, quasi-judiciary or judiciary, while recognizing that political judgments will still need to be made.*

Conclusion

17. The international community is still in a learning phase as it addresses the nexus of security, justice and state building. It can learn from its mistakes and from its successes.

All these examples show that there are no recipes that provide an easy answer. However, by developing a policy framework of its efforts in fragile states, the international community will be in a better position to address transparently and effectively the inevitable tensions and dilemmas of a post-conflict strategy.