Without viable security and justice, the prospects for long-term development initiatives are bleak. The role that the reform of the security and justice system can play in conflict-prone or conflict-affected countries has been well established. The challenge, however, remains how to ensure short-term service delivery, while supporting the long-term goal of developing a functioning and sustainable security and justice system.

The reality in fragile states is that justice and security are delivered by a large number of actors, some of which are state agencies and services, but the vast majority are likely to be non-state organisations and systems, that are often more legitimate, accountable, effective and cost-efficient than state service providers. This provides a particular challenge for development agencies where supporting non-state providers of security and justice may expose donor countries and agencies to a degree of risk to which they are unaccustomed.

This study provides groundbreaking analysis of the challenges faced in security and justice service delivery. More importantly, it proposes an innovative solution for development agencies engaging in supporting security and justice development. A multi-layered approach to security and justice programmes is a methodology that is highly context specific, targeting donor assistance to those providers – state and non-state actors simultaneously – at the multiple points where actual day-to-day service delivery occurs. A multi-layered strategy recognises that unorthodox solutions and partnerships may be necessary to respond to the severe challenges of fragile states. The primary objective is to develop and strengthen the relationship between service providers (state and non-state) and the users of those services in the marketplaces where they work, in the neighbourhoods where they live and on the roads they travel, while fostering greater performance accountability.
Enhancing the Delivery of Justice and Security
Governance, Peace and Security
Foreword

Recent debate surrounding the “security and development nexus” has highlighted the indispensable role that security and justice play in creating a conducive environment for sustainable economic, social and political development. The positive role of security system reform in stabilising conflict-prone or conflict-affected countries has been established in the 2004 DAC Guidelines on Security System Reform and Governance. Subsequent work by the DAC has focused on how to enhance short-term security and justice service delivery, while supporting the long-term goal of developing a viable and sustainable security and justice system.

Many donors approach security and justice delivery in fragile states through the lens of democratic governance and state building. This is an important and necessary perspective and the state is, unquestionably, a principal actor and has an irreducible role in the delivery of justice and security services. This approach, however, needs to be balanced with the reality in fragile states; the state may not be deemed legitimate by significant proportions of the populace, and historically may have never exercised full sovereign authority over its territory. Furthermore, recent studies have indicated that a significant majority of people in fragile states access security and justice services through non-state means. Working with non-state providers can expose donor countries and development agencies to a degree of risk to which they are unaccustomed. It may require a paradigm shift, challenging donors and fragile state governments to work in unfamiliar ways and with unfamiliar partners. Overcoming this challenge of enhancing service delivery in the short term, while developing the state’s capacity to provide and regulate services in the long term, is crucial and the issue at the heart of this study.

This study was undertaken under the auspices of the SSR Task Team of the DAC Network on Conflict, Peace and Development Co-operation (CPDC) and was the product of a consultative process that brought together policy makers and field practitioners from both donor countries and states affected by conflict. The findings of this work were informed by a workshop hosted by the United Kingdom’s Department for International Development (DFID) in March 2006. This workshop investigated security and justice service delivery in a number of fragile and conflict-affected states including: the Democratic Republic of Congo, Nepal, Sierra Leone and the Solomon Islands. This study represents one of the pillars of the workstream on “Service Delivery in Fragile States” being undertaken by the DAC fragile States Group. The other areas covered by that work include education, health and water. The multi-layered approach, a central policy recommendation from this work, was also included in the forthcoming Implementation Framework for Security System Reform (IF-SSR), a practical guide for practitioners working to support security and justice system reforms.

This study provides in-depth analysis of the challenges faced in security and justice service delivery, together with groundbreaking recommendations for development agencies working in fragile and conflict-affected countries. Its central recommendation is that development agencies take a multi-layered approach to their support of security and justice reform programmes. The primary objective of this innovative approach is to help development agencies overcome the challenge of targeting donor assistance to state and non-state actors simultaneously and to ensure short-term service delivery with long-term institutional reforms.

Richard Carey
Director of the Development Cooperation Directorate, OECD
Acknowledgements

This publication is the result of a collaborative effort by members of the DAC Network on Conflict, Peace and Development Co-operation (CPDC). It is based on a commissioned study written by Eric Scheye and Andrew McLean. We would like to express our great appreciation to both authors for their excellent work.

Particular thanks are due to Graham Thompson (Chair of the CPDC Taskteam on Security System Reform), and Mark Downes (OECD Directorate for Development Co-operation), who managed and led the process to develop this work, as well as members of the SSR Taskteam Core Group including: Peter Bachelor, Carola Baller, Katharina Buse, Inger Buxton, Victoria Coakly, Junior de Fabrickers, Sophie Da Camara, François Gaulme, Bjorn Holmberg, Cristina Hoyos, Kate Joseph, Annette Kaiser, Michael Koros, Marie-Josee Lafleur, Glyn Lewis, Laure-Hélène Piron, Caroline Smith, Michael Wanning, Julie Werbel, Mark White and Caitlin Wilson. Special thanks also go to Tjip Walker who was responsible for the overall workstream dealing with service delivery in fragile states. The taskteam would also like to thank those security and justice practitioners who provided their extensive field experience and expertise to this process including: Louise Andersen, Guy Banim, Colonel Barry Barnwell, Colonel Jean-Pierre Bayala, Oliver Blake, Ester Ellioeff, Aldo Gaeta, Emma Garo, Adrian Howlett, Robert Kaua, Satish Krishna Kharel, Natacha Meden, Prasad Pandit, Khagendra Prasai, Jonathan Sandy and Dr. Govind Thapa.

A team of OECD staff prepared this publication including: Ben Dickinson, Mark Downes, Anne-Friederike Röder and Lisa Williams while Carole Miras provided advice and Phyllis Flick provided practical assistance on all stages of the publication process. We thank them all.

Acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>ANC</td>
<td>Afghanistan National Army</td>
</tr>
<tr>
<td>CPDC</td>
<td>DAC Network on Conflict, Peace and Development Co-operation</td>
</tr>
<tr>
<td>CPLC</td>
<td>Citizen Police Liaison Committee</td>
</tr>
<tr>
<td>DFID</td>
<td>Department for International Development, UK</td>
</tr>
<tr>
<td>GDP</td>
<td>gross domestic product</td>
</tr>
<tr>
<td>IF-SSR</td>
<td>Implementation Framework for Security System Reform (will be published as the “Handbook on Security System Reform – Supporting Security and Justice”)</td>
</tr>
<tr>
<td>RAMSI</td>
<td>Regional Assistance Mission to Solomon Islands</td>
</tr>
<tr>
<td>SFD</td>
<td>Social Fund for Development</td>
</tr>
<tr>
<td>SSR</td>
<td>security system reform</td>
</tr>
</tbody>
</table>

Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreword</td>
<td>3</td>
</tr>
<tr>
<td>Table of contents</td>
<td>5</td>
</tr>
<tr>
<td>Executive Summary</td>
<td>6</td>
</tr>
<tr>
<td>I. Why Justice and Security matter</td>
<td>8</td>
</tr>
<tr>
<td>II. Objectives of Justice and Security Service Delivery in Fragile States</td>
<td>10</td>
</tr>
<tr>
<td>III. Political Economy of the Justice and Security Sector</td>
<td>17</td>
</tr>
<tr>
<td>IV. Practical Experiences of Justice and Security Delivery in Fragile States</td>
<td>29</td>
</tr>
<tr>
<td>Tables</td>
<td></td>
</tr>
<tr>
<td>Table 1. Numbers of lawyers/population in fragile states</td>
<td>20</td>
</tr>
<tr>
<td>Table 2. OECD DAC typology of fragile state contexts</td>
<td>30</td>
</tr>
<tr>
<td>Boxes</td>
<td></td>
</tr>
<tr>
<td>Box 1. Supporting the multi-layered approach to justice and security delivery</td>
<td>11</td>
</tr>
<tr>
<td>Box 2. Public-private partnership to deliver citizen security in Karachi, Pakistan</td>
<td>14</td>
</tr>
<tr>
<td>Box 3. The role of international actors in security system reform in Solomon Islands</td>
<td>35</td>
</tr>
<tr>
<td>Box 4. Pragmatic and realistic approaches to supporting policing and justice sector services in Eastern Democratic Republic of Congo</td>
<td>36</td>
</tr>
</tbody>
</table>
Executive Summary

Justice and security are key concerns of poor people in fragile states. Strengthening the delivery of justice and security is an important development challenge, for without justice and security other public goods and services cannot be provided or accessed. As the OECD states, “a measure of physical security is necessary to make relief, much less development, possible. Without reform of [security] policies and institutions that address incentives and expectations, [other development] capacity building (endeavours) will be largely futile.”

Justice and security are different from other public goods and services. In fragile states, the actors providing justice and security – state and non-state – are often actual sources of insecurity and injustice. Health care and education may not always offer a good service, but they rarely do direct harm. However, the means by which justice and security are delivered or withheld by providers is often a matter of life and death. The dual OECD emphasis on “providing effective services to all members of society while addressing the weak governance and limited accountability that lead to fragility” is, therefore, especially important in the delivery of justice and security. It is also imperative to focus on the fragmentation of social cohesion and target assistance to help rebuild its fabric in order to deliver sustainable justice and security services.

Supporting the state to deliver justice and security may be the “first best” solution. However, an approach to security and justice delivery that focuses solely on strengthening governance and state capacities is unlikely to be an effective strategy in fragile states – countries where the state has exceedingly limited capacity, may not be deemed legitimate by significant proportions of the populace and historically may have never exercised full sovereign authority over its territory. Furthermore, the nature of the post-colonial state may not correspond to Western assumptions of how a state is structured and functions, and the degree to which it interacts with civil society. In many fragile environments, as the state itself may be partially incomplete and unformed, the development of effective, co-ordinated, state-provided justice and security may be a remote prospect, a prognosis that severe capacity and sustainability limitations only reinforce.

Nevertheless, the state has an irreducible role in the delivery and accountability of justice and security. At the very least, this role includes setting minimum standards, formulating policy and legal frameworks, developing varying types of accountability mechanisms, upholding the principles of human rights, and establishing mechanisms for engaging among service providers. The premise that the state does not, and should not adopt, however, will vary from context to context. Furthermore, local context should determine what development activities occur when, how and in what order, as the provision of justice and security is based upon historical legacies, cultural value systems, political calculations and intricate balances of power. What is central in fragile states, however, is vigilance to the twinned issues of:

- “Who” actually provides justice and security, where, when and how; and
- “For whom” justice and security are being provided.

The reality in fragile states is that justice and security are delivered by a large number of actors, some of whom are state agencies and services, but the vast majority are likely to be non-state organisations and systems. Research in many fragile states suggests that non-state systems are the main providers of justice and security for up to 80-90% of the population. Non-state systems may often be more effective, accessible, faster, quicker, cheaper and in tune with people’s values. It is also important to recognise that some non-state providers may be purveyors of insecurity and injustice. There may be other challenges associated with them in terms of corruption, manipulation by local elites and discrimination against disadvantaged groups. However, it is mistaken to presume that the challenges faced by non-state justice and security systems are any more severe than comparable ones in the state system without a thorough study of local contexts. More likely than not, the challenges of one are mirrored in the other. It is also erroneous to believe that development of the non-state system is more onerous and difficult than that of state justice and security service providers, without examining local political circumstances and capacities.

Admittedly, working with non-state providers may expose donor countries and development agencies to a degree of risk to which they are unaccustomed. It may also be true that working in the non-state sector may be highly charged politically for the donor and the fragile state. Additionally, fragile state governments may resist donor engagement with non-state actors. Assistance to non-state providers may require a paradigm shift, challenging donors and fragile state governments to work in unfamiliar ways and with unfamiliar partners. Nevertheless, this conceptual shift is vital to help meet local needs for justice and security. In the short- and medium-term, assistance to non-state providers should be a core element of donor strategies to support the delivery of justice and security in fragile states, as there may be few other viable options.

What fragile state justice and security delivery requires, therefore, is a multi-layered approach. It is a methodology that is highly context specific, targeting donor assistance to those providers – state and non-state actors simultaneously – at the multiple points at which actual day-to-day service delivery occurs. A multi-layered approach recognises that orthodox solutions and partnerships may be unable to engage with the severe challenges of fragile states. The primary objective is to develop and strengthen the relationship between service providers (state and non-state) and the users of those services in the marketplaces where they work, in the neighbourhoods where they live and on the roads they travel. The intention is to reinforce the already existing range of choices that users have in fragile states, while developing providers’ service delivery to make it more effective, fair, accessible, accountable and rights respecting. At the same time, a multi-layered approach seeks to strengthen governance, organisational structures and systems at the local, provincial and national levels. The objective is to develop the capacities of the state at its various levels to engage in productive partnerships with non-state providers and to formulate the necessary policies, frameworks and minimum standards by which the contours of an enabling environment for service delivery can be established.

The most fundamental lesson in justice and service delivery in fragile states is that context trumps everything. However, the DAC typology of fragile states with particular needs (deteriorating environments, collapsed states and countries recovering from conflict or crisis) is helpful in drawing out broad recommendations of the types of issues to address and the nature of support that can be effective. Some of these recommendations apply to all categories of fragile states. Complementing the OECD’s principles for engagement in fragile states, this paper recommends that donors can support service delivery in these environments by:

Deteriorating fragile states

- Staying engaged and focusing on long-term development building blocks. Focusing on the non-coercive elements of the security system such as state-delivered justice. Developing building blocks for long-term judicial reform, such as new legislation on codes of criminal and civil procedure, family and juvenile law; developing a judicial training institute; publishing laws and digests of court decisions; modernising court administration; and fostering integrative financial budgeting.

- Supporting non-state justice and security systems. In worsening conflict and human rights situations, non-state justice and security providers provide a “safety net” at the community level and can ensure that basic local needs are addressed, when state actors are unable to do so.

- Supporting broad-based human rights activities through assistance to community organisations, non-governmental organisations, bar associations and independent lawyers’ groups that protect human rights, monitor allegations of abuses and defend victims.

- Assisting women’s groups because in conflict, they exhibit particular resilience, become increasingly active and can be one of the primary vehicles for the multiple provision of justice.

Supporting the multi-layered approach to justice and security delivery

The multi-layered approach to justice and security proportions international assistance between and among:

- The state, at its various levels, as a minority provider of justice and security delivery service; and
- The state, in its role of regulator, to establish the parameters for justice and security service delivery and ensure accountability of providers; and
- Non-state justice and security service providers, given their position as the primary purveyors of day-to-day service delivery; and
- The users and recipients of justice and security services to increase their voice and hold providers accountable.

Supporting the state to deliver security and justice may be the “first best” solution. However, an approach to security and justice delivery that focuses solely on strengthening governance and state capacities is unlikely to be an effective strategy in fragile states – countries where the state has exceedingly limited capacity, may not be deemed legitimate by significant proportions of the populace and historically may have never exercised full sovereign authority over its territory. Furthermore, the nature of the post-colonial state may not correspond to Western assumptions of how a state is structured and functions, and the degree to which it interacts with civil society. In many fragile environments, as the state itself may be partially incomplete and unformed, the development of effective, co-ordinated, state-provided justice and security may be a remote prospect, a prognosis that severe capacity and sustainability limitations only reinforce.

Nevertheless, the state has an irreducible role in the delivery and accountability of justice and security. At the very least, this role includes setting minimum standards, formulating policy and legal frameworks, developing varying types of accountability mechanisms, upholding the principles of human rights, and establishing mechanisms for engaging among service providers. The premise that the state does not, and should not adopt, however, will vary from context to context. Furthermore, local context should determine what development activities occur when, how and in what order, as the provision of justice and security is based upon historical legacies, cultural value systems, political calculations and intricate balances of power. What is central in fragile states, however, is vigilance to the twinned issues of:

- “Who” actually provides justice and security, where, when and how; and
- “For whom” justice and security are being provided.

The reality in fragile states is that justice and security are delivered by a large number of actors, some of whom are state agencies and services, but the vast majority are likely to be non-state organisations and systems. Research in many fragile states suggests that non-state systems are the main providers of justice and security for up to 80-90% of the population. Non-state systems may often be more effective, accessible, faster, quicker, cheaper and in tune with people’s values. It is also important to recognise that some non-state providers may be purveyors of insecurity and injustice. There may be other challenges associated with them in terms of corruption, manipulation by local elites and discrimination against disadvantaged groups. However, it is mistaken to presume that the challenges faced by non-state justice and security systems are any more severe than comparable ones in the state system without a thorough study of local contexts. More likely than not, the challenges of one are mirrored in the other. It is also erroneous to believe that development of the non-state system is more onerous and difficult than that of state justice and security service providers, without examining local political circumstances and capacities.

Admittedly, working with non-state providers may expose donor countries and development agencies to a degree of risk to which they are unaccustomed. It may also be true that working in the non-state sector may be highly charged politically for the donor and the fragile state. Additionally, fragile state governments may resist donor engagement with non-state actors. Assistance to non-state providers may require a para-
Collapsed fragile states

- Undertaking comprehensive assessments of who is actually delivering justice and security on the ground and to whom. This should assess state and, especially, non-state providers and the impact of international interventions on those service providers.
- Being realistic and modest about what is feasible and sustainable, remembering that international intervention does not begin with a blank slate and that the vast majority of existing service providers will be non-state actors.
- Addressing priority security issues while developing a longer-term strategic plan. Recognising that collapsed states are unlikely to possess the capacity to participate fully in the design of these plans, international actors may be compelled to take the lead. Nevertheless, local stakeholders should be involved in the process to help develop ownership and increase capacity.

Recovering fragile states

- Focusing on the financial sustainability of service delivery programmes with detailed estimates of the costs the recovering state will have to assume, correlated to its projected state revenues over a period of five years.
- Concentrating on managerial sustainability, recognizing that “train and equip” projects with their emphasis on outputs have repeatedly been proved to be ineffective and cost inefficient, unless embedded in enduring management development programmes.
- Integrating security and justice issues into national development frameworks to ensure they are established as a priority in national government and donor planning and budgeting.
- Supporting non-state justice and security providers that have endured throughout violent conflict and are already often delivering more than 80% of all services, and endeavouring to link them into networks and partnerships with one another, as well as with state providers of justice and security.

I. Why Justice and Security Matter

1. Justice and security are key concerns of poor people in fragile states. Many local communities in the World Bank’s Voices of the Poor research identified insecurity as their major barrier to development.

   This view was amplified by the development ministers of the Organisation for Economic Co-operation and Development in 2005 who said,

   “security matters to the poor and other vulnerable groups, especially women and children, because bad policing, weak justice and penal systems, and corrupt militaries mean that they suffer disproportionately from crime, insecurity and fear. They are consequently less likely to be able to access government services, invest in improving their own futures and escape from poverty.”

2. Justice and security have not traditionally been viewed as development services. For example, the World Development Report 2004 focuses on education, health, water, sanitation and electricity as “those services that have the most direct link with human development.” However, without security and justice the poor will be unable to receive these vital services. As the OECD states, “a measure of physical security is necessary to make relief, much less development, possible. Without reform of (security) policies and institutions that address incentives and expectations, (other development) capacity building [endeavours] will be largely futile.” Enhancing the delivery of security and justice, therefore, is a key challenge for development. This may be particularly true in fragile states where insecurity and disorder are often most acute.

3. The costs associated with disorder, insecurity and injustice pose an enormous drain on development in fragile states. The World Bank estimates that the direct cost of crime in Jamaica is at least 3.7% of the country’s gross domestic product (GDP). If indirect expenditures were to be accounted for, the costs would rise exponentially. Estimates suggest that in El Salvador and Colombia, in the late 1990s, the costs of insecurity may have reached as high as 25% of GDP; once the full range of indirect costs associated with insecurity was included.

4. Divided into four sections, this paper examines how donors can best support the delivery of justice and security in fragile states. Part II looks at the objectives of justice and security services and identifies the particular challenges of delivering them in fragile states. Part III discusses the political economy of the justice and security sector, examining who actually delivers services in fragile states, and how they may be effectively, efficiently and accountablely provided. Part IV presents practical experiences of delivering justice and security in different fragile state contexts and draws out lessons for policy makers and practitioners.

5. This paper defines the scope of services within “justice and security” as addressing:

   - Safety, security and protection of persons and property from violence, crime and disorder;
   - Equal access of justice and security for all;
   - Fair and equitable resolution of disputes according to publicly known principles of due process; and
   - Human rights-respecting treatment of alleged offenders from detention through arrest, prosecution and imprisonment or the imposition of other sanctions.

6. This paper seeks to address the full range of actors that play a role in policing, justice, prosecutions and corrections in fragile states. In addition to official state justice and security institutions (e.g. the police, courts, prosecutors), this involves looking at the military and intelligence services where they are involved in the provision of internal security. It also necessitates examining the roles, functions and activities of the myriad private, community and international actors that deliver justice and security in fragile states.

7. The rights to justice and security are enshrined in the Universal Declaration of Human Rights. Justice and security are “public goods” because every state has the obligation to uphold and preserve them. They are public goods for four other reasons as well. First, no single individual can exercise or protect his/her rights in isolation, without the concurrence and co-operation of others. Second, the consumption of the good by one individual does not necessarily reduce the amount of the good available for consumption by others. Third, “it is difficult to exclude individuals that the group might wish to disqualify (tax evaders).” Finally, as universal human rights, justice and security must be equitably and fairly distributed, with equal access for all, which implies a further responsibility on the state. The importance of the Weberian model of the state attaches to the state monopoly of violence and coercion only reinforces this perspective.

8. The reality of justice and security service delivery in fragile states, however, is quite different for two reasons:

   - The nature of the fragile state; and
   - The existence of non-state providers

9. The fragile state does not necessarily resemble Western notions of what constitutes a state in terms of its control over its sovereign territory, legitimacy, structure, cultural value systems and capacity to exercise its will. At best, the fragile state is weakly institutionalised with its writ rarely extending beyond the main urban centres, if that far. Second, in fragile states the public goods of justice and security are delivered by a number of actors, some of which are state agencies, while the vast majority are often non-state organisations. Similarly, the public responsibility to ensure the equitable and effective delivery of justice and security does not imply that their provision must necessarily be performed by public state services or that state provision is necessarily more accessible, legitimate, fair, effective or cost efficient. The issue of public goods, and who delivers the service and is held accountable for that delivery, are distinct and separate categories of equal importance.
II. Objectives of Justice and Security Service Delivery in Fragile States

10. The OECD characterises fragile states as "states which lack either the capacity and/or the willingness to deliver on their core functions".8 Given its poverty reduction focus, DFID specifies the most important state functions as being "territorial control, safety and security, capacity to manage public resources, delivery of basic services and the ability to protect and support the ways in which the poorest people sustain themselves".9

11. With its slightly different perspective on fragility, concentrating on issues of governance and democratisation, USAID emphasises the relationship between effectiveness and legitimacy, with the former referring: To the capability of the government to work with society to assure the provision of order and public goods and services. Legitimacy refers to the perception by important segments of society that the government is exercising state powers in ways that are reasonably fair and in the interests of the nation as a whole. Where both effectiveness and legitimacy are weak, conflict or state failure is likely to result.10

12. Whichever lens is used, service delivery lies at the heart of state fragility, with the provision of the public goods of safety, security, law and order being not only the most elemental exercise of state power, but the foundation upon which all other human rights are grounded.

13. The OECD recognises this and defines best practice in service delivery as "providing effective services to all members of society while addressing the weak governance and limited accountability that lead to fragility".11 This is as true for justice and security delivery as it is for the delivery of other public goods and services. The importance of the dual emphasis on operational effectiveness and good governance/legitimacy was a key conclusion from a survey of security system reform (SSR) programmes in developing countries.12 The need to work on both objectives simultaneously is a central theme of the forthcoming OECD Implementation Framework on Security System Reform (IF-SSR).

14. However, fragile state contexts pose particular challenges to achieving and maintaining this balanced approach to security and justice delivery. Because of legitimacy, capacity and political willingness issues, there are three axes that describe the different dimensions of security and justice in fragile states, each of which describes a balance to be achieved and a tension addressed between equally valid goals:

- Short-term achievements – long-term development;
- State building and centralisation of governance – responsiveness to local needs; and
- Rights accountability – performance accountability.

15. There may be instances when the opposite ends of the spectrum may appear to be irreconcilable, though this may be mainly attributable to political considerations and calculations (donor and partner country) rather than inherent contradictions in service delivery. The urgency of needs and the high degree of disorder in fragile states further complicate the situation. Development aid, however, should attempt to minimise the trade-offs between the objectives, by providing assistance at varying levels and types of local ownership (state and non-state) that are necessary for programme development and implementation. It is essential to prepare the political terrain and increase the ownership of multiple stakeholders throughout the design and implementation phases.13

16. The manner in which justice and security is provided in fragile states is based upon historical legacies, cultural value systems, political calculations and intricate balances of power. Development assistance can support, disrupt, change and recast these pre-existing rationales, creating winners and losers, advocates and resistors, enthusiasts and spoilers. There may be multiple and competing “local owners” whose legitimate interests may not be capable of reconciliation.14 In fragile states, the concept of “local ownership” is inherently contested and difficult for a number of reasons. First, even with the best of intentions, the government may be unable to effect control over the disparate branches of governance. This is not merely a question of organisational behaviour with its natural differentiation between “official” and “unofficial” values, behaviours and structures. In fragile states, this refers to the often unacknowledged or minimised certain legitimacy of political authorities and their highly circumscribed capacities. Second, the division of state power between and among levels of government – national, provincial and local – may, in many fragile states, be an inherent source of dispute and conflict, with poorly delineated roles, competencies, functions and responsibilities, not to mention the differing ability of each level to acquire resources (financial, human, capital, infrastructure, etc.). Third, given that the majority of service providers are often non-state actors, the government may be only a “minority owner” of the issue, one whose actions may be severely restricted by other stakeholders for numerous reasons, including questions of legitimacy, effectiveness, accessibility, accountability and the exercise of political power. Fourth, the nature of the state in fragile environments may bear little similarity to Western understandings of what constitutes a state, thereby complicating notions of governance and what “local ownership” entails.

17. These factors do not undermine the importance of local ownership of programmes to strengthen justice and security delivery. Rather, they imply the existence of multiple, sometimes competing, owners, one of which is the national government. The recognition of multiple local owners and the severe capacity constraints means that donors need to be realistic and politically sensitive in understanding the varying levels and types of local ownership (state and non-state) that are necessary for programme development and implementation. It is essential to prepare the political terrain and increase the ownership of multiple stakeholders throughout the design and implementation phases.15

18. Enhancing security and justice delivery in fragile states is, therefore, an inherently political and sensitive issue, with local political and community leadership, at various levels, a key variable. Local context should determine what development activities occur when, how and in what order. In the assessment, design, implementation, monitoring and evaluation of justice and security development programmes, priority must be given to the needs and strictures of local context. As the OECD has stated, “analysis and action must be calibrated to particular country circumstances…” Sound political analysis is needed to adapt international responses to country context, above and beyond quantitative indicators of conflict, governance or institutional strength”.16

19. What fragile state justice and security delivery requires is a multi-layered approach, that recognises the complexity of the local ownership issue and works with multiple stakeholders. The multi-layered methodology is context specific, targeting donor assistance to service providers – state and non-state – at the multiple points at which actual day-to-day delivery occurs. A multi-layered approach recognises that unorthodox solutions and partnerships may be necessary to respond to the severe challenges of fragile states. Complementing the OECD’s principles for engaging with fragile states, a multi-layered approach is a flexible strategy grounded in realism and modesty. It enables the role of the state at various levels of governance to be developed over time as fragility decreases and countries move from disorder to order to safety and security. This approach has two primary objectives:

- To develop and strengthen the relationship between service providers and the users of those services in the marketplaces where they work, in the neighbourhoods where they live and on the roads they travel. It reinforces the already existing range of choice that users have in fragile states, while developing providers’ service delivery to make it more effective, fair, accessible, accountable and rights respecting.

- To strengthen governance, organisational structures and systems at the local, provincial and national levels in order to develop and extend the legitimacy and capacity of the state to formulate the necessary policies, regulatory frameworks, partnerships, licensing and minimum standards, thereby establishing the contours of an enabling environment for service delivery.

Box 1. Supporting the multi-layered approach to justice and security delivery

The multi-layered approach to justice and security proportions international assistance between and among:

- The state, at its various levels, as a minority provider of justice and security service delivery;
- The state, in its role of regulator, to establish the parameters for justice and security service delivery and ensure accountability of providers;
- Non-state justice and security service providers, given their position as the primary purveyors of day-to-day service delivery; and
- The users and recipients of justice and security services to increase their voice and hold providers accountable.
Short-term achievements/Long-term development

20. In fragile states there is often an urgent need to establish a basic sense of order. Only after order has been achieved can the wider issues of safety and security be addressed. This continuum from disorder to order is a vital, but an often overlooked, consideration. Sustainability has four important aspects:

- Human capital
- Financial
- Cultural appropriateness
- Institutional structures and systems

22. The sustainability of short-term responses is a vital, but an often overlooked, consideration. Sustainability is the essential starting point for justice and security delivery in fragile states.

23. Development programmes in the justice and security sector may often be designed without realistically considering the local capacity of each of these four factors. For example, a sustainable justice and security programme in Timor-Leste would have had to take into account the fact that there were only nine lawyers in the territory after the independence referendum. In Malawi, at the turn of the century, only nine of the country's magistrates had professional training. Similarly, in 2000 in Haiti, approximately 2% of the judges and 5% of their assistants were licensed attorneys and only one-third had any formal legal training. And in the recovering fragile state of Mozambique, as of 2000, only eight lawyers resided and worked outside either the national capital, Maputo, or the major provincial capital, Beira.

24. Financial sustainability is equally important and often dooms justice and security programmes over the long haul if not addressed at the outset of a programme. Although the military reform currently underway in Afghanistan has proved itself to be operationally successful, it is debatable whether the public revenues of the Afghan government can sustain it. The judicial reforms that Guatemala has been under-

25. Sustainability also refers to development that is culturally appropriate for the country in which it takes place. For justice and security development to be successful and sustainable, programmes need to address not “merely access to the institutions, but also... access to fair laws, procedures, affordable, implementable and appropriate remedies in terms of values” that are held by the recipients of those programmes. Accessible justice and security implies that what constitutes a crime, how the community thinks that crime should be handled (in terms of reparations, restorative justice and corporal punish-

26. Finally, sustainability pertains to the appropriateness of the institutional arrangements, systems, procedures and policies within and with which the individuals who deliver the public goods of justice and security work at the various levels of governance – national, provincial and local. It is not sufficient to train and equip judges, prosecutors, prison wardens and police officers. It is also necessary to house the actual service providers in effective and efficient institutions, whose operations are well planned, managed and evaluated. Justice, for example, cannot be provided without a reasonably managed court administration. In fragile states this issue of institutional and managerial sustainability may often be overlooked because of the urgency to establish a semblance of order. For example, the UN peace operation in Timor-Leste over the course of five years “provided uniforms for 3,000 officers, gave the basic training and equipped (them) to minimum standards. However, (the peace operations) were unable... to develop an appropriate Ministry of the Interior in addition to (not) establishing the internal systems and procedures that provide for the accountable and transparent management and administration of the police service”. The result was a police service without “a publicly articulated internal security policy, an up-to-date police service development plan, and lacking any sense of institutional identity.” Indeed, the general lack of an internal security policy is partially responsible for the proliferation of questionable paramilitary police units that, rather than providing security, are responsible for creating conditions of heightened insecurity and instability.
Box 2. Public-private partnership to deliver citizen security in Karachi, Pakistan

Beginning in 1989, the Citizen Police Liaison Committee (CPLC) has become an important component of policing in Karachi, the largest city in Pakistan. Rooted in the business community, and dependent largely on private donations and the volunteer labour of business people, it has taken on a core policing intelligence functions. The CPLC works very closely with the police and focuses on improving police performance through supportive engagement with their work. It has established a number of crime databases that are used operationally by the police, and manages them on a day-to-day basis. The organisation conducts crime analysis, plays an important role in the investigation of kidnap-nappings, and provides a range of police-related services to rich and poor alike. With offices in police stations and its headquarters in the office of the Governor of Sindh Province, the CPLC has become deeply integrated into the apparatus of government.

The CPLC is an example of the type of “hybrid” arrangement for the provision of public services that, we are beginning to realize, may be widespread where there is a breakdown of conventional governance arrangements. This we term “co-production”: the provision of public services through an institutionalised long-term relationship between state agencies and organised groups of citizens, where both make substantial resource contributions.

This approach offers lessons for donors operating in fragile states:

- The challenges of justice and security delivery in fragile states often require unorthodox solutions.
- Context is the most important factor in designing service delivery arrangements. The right approach has to be decided upon by the environment, the range of available actors, their legitimacy in the local contest, and their relationships.
- The private sector (business and non-governmental organisation) can provide finance, technology and technical skills that are often in short supply in police services. Their involvement can also increase public trust.
- The CPLC decided to adopt a co-operative attitude to working with the police, rather than confronting them publicly (e.g. on human rights). This approach seems sensible, given the institutional and political resistance of police to working with outside actors, and has produced results. It shows that a focus just on “amplifying client voice” in service delivery may not work in many fragile states.
- There is an important role for leadership, in the police, government and in the business community, in developing this approach and making it work.


30. Upon close examination, it is also evident that the fragile state does not necessarily resemble the Western state in the ways in which it is institutionalised or structured. Nor does it necessarily correspond to Western concepts of how a state functions, and the degree to which it interacts with civil society. Furthermore, the fragile state, particularly the post-colonial African state, has hardly at any point in time had a monopoly of legitimate force.

31. Many “of the states, which today are considered failed, have artificial and imposed borders, heterogeneous and divided populations and privatized and personalized structures, where traditional notions of kinship, religion and community matters more than modern ideas of citizenship and nationality”.

32. When seen from this perspective, it is a misnomer to advocate a “decentralisation” programme for a fragile state that has never “centralised” state service delivery of justice and security in the first place. Instead, a focus on assistance to strengthen state building and governance should be on creating the capacity to facilitate a multi-layered approach. It is important to assist the state in building its capacities to centralise particular functions and activities as they pertain to policy formulation, regulatory framework, licensing and the establishment of minimum standards. It may also be appropriate to support the state’s ability to engage in partnerships and networks with various non-state actors, though the fragile state’s participation need not necessarily be as a service provider. In fact, on pragmatic, practical and political grounds, it may be inappropriate for donors to support an extensive build-up of fragile state-provided justice and security, given that the development of effective, co-ordinated state service delivery may be a remote prospect. Nevertheless, even if the national state is not a majority provider of justice and security service, its role in establishing the parameters of service delivery and in ensuring the accountability of that service provision remains central.

33. Enhancing the fragile state’s policy, regulatory, licensing and partnership capabilities may be one way to balance state building with servicing local needs. A multi-layered approach acknowledges that the political leadership of the fragile state may insist upon a centralisation strategy, in that their primary objective may be political – the extension of state power and authority. Furthermore, for similar political reasons, the state leadership may resist donor efforts to work with and support non-state providers. By engaging with the political leadership on issues of minimum standards, networking and account-ability, donors may be able to address the state’s political imperatives as well as meet acute service delivery issues. This may be especially crucial at the provincial and local levels of governance. As state capacity is gradually developed and fragility decreases, the role of the state as a donor may be gradually increased.

34. This potential conflict between the political leadership of a fragile state wanting to centralise and expand state power, and the imperatives of local needs, further highlights the importance of not conflating local governance with national ownership. As pointed out earlier, multiple and competing local owners may exist. Without presuming which “owner” is paramount, a multi-layered approach seeks to bring the various stakeholders together – from parliamentarians, to the provincial and local levels of governance, to the varying levels of service providers, to civil society organisations, to neighbourhood groups and individuals – so that their differing needs can be addressed, even as it is acknowledged that they may not always necessarily be reconcilable.

35. One of the central questions in a fragile state that will be affected by the tensions within local ownership to choice of legal system(s) and the relative proportions and scope of the co-existing legal systems. There are four main types of legal systems: (1) civil law, (2) common law, (3) religious law, and (4) traditional/customary law. In many fragile state countries, three of the four may operate simultaneously, with common law or civil law being complemented by religious and traditional systems. In a multi-layered approach, the operative issue is how to relate the co-existing legal systems – for example, addressing their respective jurisdictions and rights of appeal in one system to another – rather than attempting to amalgamate or integrate them. The reason is that the short to medium term, it is unlikely for fragile states to possess the requisite resources or capabilities to rely on only one form of jurisprudence. A common law system, for instance, requires that parties to a legal claim be represented by legal professionals: that the state provide legal aid to those who cannot afford representation in criminal cases; and that the process be accessible in terms of “cost, distance, language, procedure, values and outcomes”. In a fragile state, these assumptions simply cannot be upheld. Similar issues pertain to a civil law system, with its conception of sufficient numbers of well-trained judges capable of being actively involved in evidence collection, investigation and examination. As a result, the most pragmatic and practical option is a multi-layered approach that seeks to weave a framework of accessible justice by recognising the validity and operation of differing forms of jurisprudence.

Accountability

36. Strengthening accountability is a fundamental objective for achieving effective service delivery. Accountability in security and justice sector reform is often conceived as primarily focusing on human rights, holding providers accountable for abuses and strengthening rights protection. From this perspective, donor assistance often concentrates on external oversight bodies, such as parliamentary commissions, complaints commissions and ombudsman offices. It also leads to institutional reform of internal mechanisms within the police, judiciary and prisons, such as disciplinary procedures and professional standards systems. Ensuring that security and justice providers not only respect, but are the principal defenders of, human rights is a key part of strengthening service delivery.

37. Accountability, however, is about much more than human rights, narrowly defined as protection from abuse. It is also about real, accessible justice and the actual provision of safety and security. Unfortu-
nately, “SSR initiatives [have too] often operate[d] and end[ed] up at a rather superficial level, having negligible direct effect on the actual security situation of the... (majority of the population).” A vigorous human rights programme, therefore, must recognise that accountable justice and security services have to be responsive to the needs of local communities, in a language and a cultural manner that they understand. An ineffective police service, for instance, is fundamentally unaccountable if disorder is allowed to persist. Even the best court system is inaccessible to local villagers if they cannot understand the language used in the court system, whether due to linguistic, technical and cultural reasons. Accountability, therefore, is not only about human rights abuses, but also an issue of the performance of a service, and the daily delivery of the public goods of safety, justice and security.

38. To increase accountability, the World Bank advocates the need to strengthen three relationships in the service delivery chain:• Between poor people and providers (increasing clients’ choice and participation); • Between poor people and policy makers (raising citizens’ voice through elections and information); and • Between providers and policy makers (rewarding effective delivery and penalising ineffective delivery).

39. For justice and security delivery in fragile states, investing in the “long route” to accountability by helping citizens hold policy makers to account is impractical and unlikely to lead to improvements in services (in the short- or medium-term) or to effectively address local needs. Accountability relationships between citizens and policy makers are weak in fragile states and will take time to strengthen. In the medium term, initiatives to strengthen the accountability relationships between policy makers and providers are important. These initiatives may bear fruit, if they are targeted to develop government capacity (at its varying levels): regulate service providers (state and non-state); formulate minimal standards of conduct, behaviour and performance; and establish licensing boards, auditing commissions, training programmes and parliamentary oversight committees. Building an effective executive ministry capable of exercising managerial control, strategic vision and oversight is an imperative. Some of these mechanisms will be applicable to the provision of security by private for-profit companies such as vetting and training requirements for company personnel, registration of firearms owned by the firm, and the exchange of information between company employees and police agencies. Furthermore, state capacity needs to be strengthened to enable the state’s police services to form partnerships and other collaborative relationships with neighbourhood security groups, trade associations, town crime prevention councils, etc. that provide day-to-day security in defined areas. Additional initiatives could focus on enhancing the relationships between state justice actors and their non-state counterparts, delineating the competencies of the various players, recording disputes and their adjudication, and establishing minimum standards of procedure so that the whole forms an overlapping network of accountability and service provision.

40. The area where initiatives are most likely to lead to short-term improvements in effective service delivery, however, is the “short route” to accountability. This accountability method calls for promoting the participation of the recipients of services in decision making at local levels, and increasing trust between local communities and their justice and security providers (irrespective of whether they are state or non-state actors). Consequently, channels are needed to enable local communities to exercise their rights to articulate demands for and participate in the provision of better service delivery performance.41

41. The key to this form of accountability is the responsiveness of the policy maker and service provider to local needs, with action to be taken to strengthen one or more of the following three areas:• Answerability (provide information and/or a decision); • Enforcement (strengthen achievement of service norms); and • Organisational change (change the way the service is delivered).

42. Responsiveness to local needs lies at the heart of strengthening the delivery of justice and security. The emphasis on “providing effective services to all members of society” should also be underscored. Often in fragile states, the provision of security and justice (by state and non-state providers) is skewed towards the powerful, wealthy, the urbanised and men. This undermines the legitimacy of service providers, because they may not be deemed representative of the broad base of society (for example an ethnically biased police force) or because the services they deliver disadvantage certain groups. Ensuring an equitable approach to service delivery based on local needs is therefore a vital objective.

III. Political Economy of the Justice and Security Sector

43. Justice and security are, by their nature and the impact of their delivery, different from other public goods for three reasons:• Without a minimal level of order, justice and security, no other public goods can be adequately delivered; • One of the primary roles of the state is to ensure a reasonable level of justice and security service delivery and, therefore, justice and security delivery defines the basic function of the state; and • The state may be a principal agent creating insecurity and injustice through its delivery of these public goods.

44. Consequently, the methods by which justice and security are and can be delivered may fundamentally differ from those of other public goods, such as sewage, health and water.

Security and justice providers as sources of insecurity and injustice

45. A fundamental difference between the delivery of justice and security and the delivery of other public goods is that very often, in fragile states, the actors providing security and justice – state and non-state – are themselves one of the primary sources of insecurity and injustice. The police, for example, may not always offer a good service, but they rarely do direct harm. However, the means by which justice and security are delivered or withheld by providers is often a matter of life and death.

46. Police, militaries and militia in fragile states often prey on local populations and may be major violators of human rights. “The relationship between the security sector and the population in... (fragile) contexts tends to be exploitative and predatory, in which individuals and groups are more victims than beneficiaries of underpaid and ill-governed security services.” The same can hold true with non-state actors, the May 2006 outbreak of violence in Somalia being a case in point. In some instances, such as in the Democratic Republic of Congo, the state justice and security sector may have been designed to function primarily as a means of exploitation. Courts and prosecutorial services may also offer impunity to the rich and powerful or be used as vehicles of oppression. Inequitable access to justice for minorities and vulnerable groups, including women and juveniles, exacerbates exclusion, insecurity and injustice, irrespective of whether the service provider in question is the state or a non-state actor.

47. A challenge for development assistance is to try and identify the reasons for the perpetration of insecurity and injustice. One common cause is the state’s lack of commitment to provide security and justice for all. For example, in many fragile states there is a marked tendency for the sector to perceive itself and be perceived as a means to preserve the ruling regime’s prerogatives. As the Kenya police now acknowledges, “the Kenya Police Force has in the past practised regime policing that appeared to focus substantial energy on sustaining the power of the political elite.” The result is that significant segments of the population distrust the sector’s institutions and view them as illegitimate.

48. In virtually all fragile states, even if the will to provide security and justice exists, state providers face overwhelming and (at least in the short to medium term) insurmountable problems. A lack of personnel, communication networks and transport may mean that it is impossible for many police services to deploy personnel to local security incidents, let alone have the skills and training to deal effectively with them once at the scene. The inability of the state to pay the sector’s personnel a living wage may facilitate a culture of corruption, which, in turn, produces insecurity and injustice. Desperately overcrowded prisons, weak or non-existent managerial systems, the lack of measurement indicators
with which to evaluate performance, untrained court administrators, the absence of trained personnel throughout large swathes of the country and the inability to enforce judicial decisions may all contribute to an insecure and unjust fragile state environment.

49. In many contexts, capacity deficits and lack of political will may reinforce one another. For instance, political pressure may result in the military drawing budgetary resources away from policing, so that the national police are deprived of the necessary capacities to maintain law and order, as happened in Peru during its recent attempts to reform the police.26 A lack of police resources can result, as in Guatemala, Honduras and Belize, in the military being asked to engage in domestic security, in support of state police services. In other situations, parliamentary committees may not possess the requisite oversight authority or staff capacity to exercise their democratic prerogatives. Additionally, state prosecutors, as in Yemen, may not possess the requisite legal power and/or capability to investigate incidents of alleged malfeasance committed by security services.

Social cohesion, insecurity and injustice

50. In almost every instance, fragile states are undergoing multiple transitions at the same time. The type of the transition may vary (political, modernisation, globalisation, urbanisation, AIDS, drought, etc.), but in virtually all circumstances, traditional forms of internal social cohesion are being fragmented and eroded; new arrangements may not yet have taken root.27 Insecurities and injustice may be acute in fragile states because of the splintering and dissolution of social cohesion that these transitions engender.28 Recent studies in the West suggest that a deterioration of the social fabric is directly associated with insecurity and injustice because of the deterioration of social capital and social efficacy.29 When this occurs, as it does in most fragile states, individuals and groups become increasingly less able to engage in productive collective action to protect and promote their public goods and interests and, as a result, their neighbourhoods typically descend into disorder, crime and violence.30

51. In some cases, where the method by which the state delivers its services contributes to rising rates of insecurity and injustice, reforming and strengthening service delivery may ameliorate the difficulties caused by a weakening in social cohesion. However, "comparative experience suggests that while the state is good at breaking down forms of local social control and cohesion it is notoriously bad at re-construing" societal ties.31 Development assistance, therefore, may have to look to non-state actors to redress the root causes of conflict and rebuild a fragile state's social fabric. By providing assistance to multiple layers of state and non-state justice and security providers, donors may support the reconstruction of the bonds that tie it. It is also important to note that complementary support may often have to be given to providers of other services (for example, education, health and livelihoods), as the issue of social cohesion extends far beyond the justice and security sector. This does not entail an expansion of SSR into other areas of development, such as youth employment, but highlights the benefit of "bundling" development assistance across different service areas to address underlying causes of insecurity.

Challenges and opportunities of working with different actors to deliver security and justice in fragile states

52. The question of who delivers justice and security services, and how, is deeply and inherently political, wholly dependent upon local contexts, institutional capacities, popular demands and leadership. It cannot be answered generically. Instead, it requires in-depth analysis of the fragile state, its capabilities, political terrain, regulatory and legal environment, and cultural legacies. The most appropriate developmental approach to the delivery of justice and security services under conditions of fragility may be one that recognises the presence of multiple providers whose services are layered to meet differing contingencies. This may not be the optimal solution, but does reflect actual realities. The emphasis given to strengthening the role of the state vis-à-vis non-state providers depends on the political context, the willingness of the government, the capacity of different institutions and the needs of local people. It is not a question of donors’ supporting the existence of parallel non-state structures and thereby strengthening state authorities, as there may often not be a state structure of effective provision. Rather, a multi-layered approach is an explicit recognition of “local ownership” as expressed through the day-to-day choices made by individuals, neighbourhoods and communities in their desire to live in safety, security and justice.

53. Experiences of supporting the delivery of security and justice by different actors in fragile states suggest a number of lessons for development agencies. This section examines the challenges and opportunities of working with state, non-state and international actors. It highlights each actor’s strengths and weak nesses and assesses them against the three dimensions of security and justice in fragile states set out in Part I.

a) State actors

54. Because justice and security are public goods, the state has an irreducible role in their delivery and accountability. This irreducible role is the core issue in the balance between state building, centralisation and local needs, and is pivotal in security and justice programming. The precise role the state does, can and should adopt varies from context to context. It may also differ within the sovereign variety of the state, with distinctions made, for instance, between urban and rural areas or between indigenous and other regions. What is applicable in one environment may be counterproductive in another for historical, political, economic, cultural and eminently practical reasons. The realistic and appropriate role of the state may also often vary over time. For example, there may be periods of political pressure may result in the military drawing budgetary resources away from policing, so that the state’s authority because it does not have control over parts of its terrain, but a strategy could be developed that seeks to increase this over time, as is currently being attempted in the Democratic Republic of Congo. At a very minimum, the irreducible role of the state in justice and security service delivery is fourfold:

- To monitor and regulate the delivery of justice and security;
- To ensure that public goods are equally accessible to all;
- To protect and preserve human rights, and;
- “To establish the contours of an enabling environment for” the provision of justice and security, even if it is to be delivered by non-state actors.32

55. To fulfil its obligations, the state may legislate minimum standards and rights respecting codes of conduct. It may also outsource their establishment to professional associations, as is often the situation, for example, with the creation of bar associations. The state may establish broad policy guidelines or strategic justice and security frameworks. It may determine, for instance, that serious crimes such as murder and rape must be referred to state courts, while all other alleged offences can be adjudicated in non-state systems. Or it may decree that crimes that would, upon conviction, warrant long periods of incarceration must be handled by state courts, with others being delegated to non-state purveyors of justice and security.

56. States may provide justice and security services directly or work in varying types of partnerships or co-operative arrangements with non-state actors. There is an important role for the state in regulating, licensing and monitoring non-state justice and security actors. It may establish networks among various actors, furthering the exchange of information. There is no one right method, nor one that is necessarily inappropriate. Invariably, the delivery of justice and security will mix and match approaches, with a variety of state and non-state service providers delivering the public goods of justice and security. To adapt the World Development Report, “no matter how daunting the problems of delivery may be, the public sector cannot walk away from [justice and security]. The challenge is to see how the government – in collaboration with the private sector, communities and outside partners – can meet this fundamental responsibility.”33

57. In fragile states, the challenge is especially acute, given local needs and states’ severe capacity deficits. It must be acknowledged that even the most narrowly circumscribed role of the state – monitoring and regulating non-state service delivery – may severely test state capacities and in many fragile states the state-provider relationship is “either problematic or inoperative.”34 Holding service providers accountable for the state’s rights and performance delivery must, however, remain part of the state’s responsibility. It is a central element of a multi-layered approach. In addition to maintaining budgetary and prosecutorial oversight, the state may most effectively concentrate on policy, legal and regulatory frameworks, laying the building blocks for later development and state building endeavours. Because of capacity deficits, establishing and collaborating relationships between the state and non-state providers is also crucial. Developing the appropriate

58. The question of who delivers justice and security services, and how, is deeply and inherently political, wholly dependent upon local contexts, institutional capacities, popular demands and leadership. It cannot be answered generically. Instead, it requires in-depth analysis of the fragile state, its capabilities, political terrain, regulatory and legal environment, and cultural legacies. The most appropriate developmental approach to the delivery of justice and security services under conditions of fragility may be one that recognises the presence of multiple providers whose services are layered to meet differing contingencies. This may not be the optimal solution, but does reflect actual realities. The emphasis given to strengthening the role of the state vis-à-vis non-state providers depends on the political context, the willingness of the government, the capacity of different institutions and the needs of local people. It is not a question of donors’ supporting the existence of parallel non-state structures and thereby strengthening state authorities, as there may often not be a state structure of effective provision. Rather, a multi-layered approach is an explicit recognition of “local ownership” as expressed through the day-to-day choices made by individuals, neighbourhoods and communities in their desire to live in safety, security and justice.

59. Recent studies in the West suggest that a deterioration of the social fabric is directly associated with insecurity and injustice, reforming and strengthening service delivery may ameliorate the difficulties caused by a weakening in social cohesion. However, “comparative experience suggests that while the state is good at breaking down forms of local social control and cohesion it is notoriously bad at re-construing” societal ties. Development assistance, therefore, may have to look to non-state actors to redress the root causes of conflict and rebuild a fragile state’s social fabric. By providing assistance to multiple layers of state and non-state justice and security providers, donors may support the reconstruction of the bonds that tie it. It is also important to note that complementary support may often have to be given to providers of other services (for example, education, health and livelihoods), as the issue of social cohesion extends far beyond the justice and security sector. This does not entail an expansion of SSR into other areas of development, such as youth employment, but highlights the benefit of “bundling” development assistance across different service areas to address underlying causes of insecurity.

60. Experiences of supporting the delivery of security and justice by different actors in fragile states suggest a number of lessons for development agencies. This section examines the challenges and opportunities of working with state, non-state and international actors. It highlights each actor’s strengths and weaknesses and assesses them against the three dimensions of security and justice in fragile states set out in Part I.

61. To fulfil its obligations, the state may legislate minimum standards and rights respecting codes of conduct. It may also outsource their establishment to professional associations, as is often the situation, for example, with the creation of bar associations. The state may establish broad policy guidelines or strategic justice and security frameworks. It may determine, for instance, that serious crimes such as murder and rape must be referred to state courts, while all other alleged offences can be adjudicated in non-state systems. Or it may decree that crimes that would, upon conviction, warrant long periods of incarceration must be handled by state courts, with others being delegated to non-state purveyors of justice and security.

62. States may provide justice and security services directly or work in varying types of partnerships or co-operative arrangements with non-state actors. There is an important role for the state in regulating, licensing and monitoring non-state justice and security actors. It may establish networks among various actors, furthering the exchange of information. There is no one right method, nor one that is necessarily inappropriate. Invariably, the delivery of justice and security will mix and match approaches, with a variety of state and non-state service providers delivering the public goods of justice and security. To adapt the World Development Report, “no matter how daunting the problems of delivery may be, the public sector cannot walk away from [justice and security]. The challenge is to see how the government – in collaboration with the private sector, communities and outside partners – can meet this fundamental responsibility.”

63. In fragile states, the challenge is especially acute, given local needs and states’ severe capacity deficits. It must be acknowledged that even the most narrowly circumscribed role of the state – monitoring and regulating non-state service delivery – may severely test state capacities and in many fragile states the state-provider relationship is “either problematic or inoperative.” Holding service providers accountable for the state’s rights and performance delivery must, however, remain part of the state’s responsibility. It is a central element of a multi-layered approach. In addition to maintaining budgetary and prosecutorial oversight, the state may most effectively concentrate on policy, legal and regulatory frameworks, laying the building blocks for later development and state building endeavours. Because of capacity deficits, establishing and collaborating relationships between the state and non-state providers is also crucial. Developing the appropriate
accountability and working relationships for recording, exchanging, collecting and analysing information among the multiple justice and security providers – and between providers and recipients – is vital in fragile states. With the state as the central player, this may also be one of the primary areas of donor assistance. It may also be the most effective way of building state capacity and legitimacy.

58. The capacity shortfalls in many fragile states are enormous and cannot be underestimated. Given current human resource staffing levels and capacity, fragile states are simply unable to provide adequate justice and security to the vast majority of their populations and it is unrealistic to expect them to be able to do so in the short to medium term. As already suggested above, the likelihood of being able to implement a Western model of judicial reform in Timor-Leste, Malawi, Haiti or Mozambique is severely curtailed because of dire human resource constraints. As the following table illustrates, using data from fragile and non-fragile states, these countries are not alone in their massive capacity deficits.56

Table 4.1 Numbers of lawyers/population in fragile states

<table>
<thead>
<tr>
<th>Country</th>
<th>Number of private lawyers</th>
<th>Size of population 2002 (millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Namibia</td>
<td>140</td>
<td>1.2</td>
</tr>
<tr>
<td>Kenya</td>
<td>Over 300</td>
<td>31.3</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>700 or more</td>
<td>13.0</td>
</tr>
<tr>
<td>Tanzania</td>
<td>120</td>
<td>35.2</td>
</tr>
<tr>
<td>Malawi</td>
<td>300</td>
<td>10.7</td>
</tr>
</tbody>
</table>

59. Estimates of the ratios of police to inhabitants of selected African countries, again using fragile and non-fragile state figures, only reaffirm the massive capacity shortfall:

- Uganda: 1:1,800
- Nigeria: 1:1,166
- Sierra Leone: 1:7,509

60. The shortfall in personnel is matched by comparable fragile state deficits in infrastructure, financial resources and human capital. This lack of capacity is important in a related way as well. A fragile state may voice political commitment to development, but it may be an open question whether (and to what degree) the political leadership is able to exercise real control over the state’s disparate components. Recognising that the state is not monolithic, it is often the case that governments that do pursue reforms run into problems arising from conflicts among ministries and agencies with different objectives and bases of power, the fear among officials in different units of government of losing personnel or budgetary resources, and from widespread inertia because no organization within government has overall coordinating responsibility for implementation of reforms or because they lack a sufficient number of “champions” within government to sustain the momentum.58

Short-term achievements – long-term development

61. In the long term, supporting the delivery of state justice and security may be the “first best” solution.56 However, even with the political commitment of the government, most fragile states have exceedingly limited resources and means to provide safety and justice to the majority of their citizens in the short and medium term. Economic and institutional sustainability issues only compound the daunting challenge. To attempt to rapidly create new justice and security services or grow existing ones is unlikely to meet local needs immediately, can result in the proliferation of corruption and human rights abuses, and may be counterproductive. A rapid expansion of services, for instance, was attempted with the initial policing efforts in El Salvador after the end of the civil war and subsequently necessitated a thorough overhaul, setting back police development by a number of years at the moment when crime and violence were growing exponentially. Similar results have recently occurred in Iraq with respect to the accelerated build-up of the Iraqi police and other security services, as significant percentages of newly commissioned police officers and those assigned to protect vital installations have been found to be illiterate, convicted criminals, and deeply implicated in corruption and violence.69

62. To strengthen recruitment and selection procedures takes time. Thorough professional training, particularly of police middle management, requires years, not weeks or months. Three- to six-week crash training programmes may prove inefficient and ineffective, particularly if illiteracy is an issue and court codes of procedure (criminal and civil), as well as administrative processes, are faulty or non-existent. Legal education is an even longer process. The practical question is not how many police personnel or judges pass through training programmes, but what has been absorbed, by whom, and what behaviours have been changed in the day-to-day delivery of justice and security. Initiatives to progressively develop the basic foundations of state capacity have to be balanced with support to other providers, to help meet immediate local needs and facilitate moving along the disorder to safety, security and justice continuum. It is precisely to address the varying needs that a multi-layered approach to justice and security service delivery is required.

63. Although the fragile state’s capacity is exceedingly limited, developmental assistance to multiple service providers serves a second purpose. It can foster the long-term legitimacy of the state by building its capacity to formulate policy; set minimum standards; and monitor, regulate, license and participate in partnerships and networks of non-state providers. Establishing regulatory power for the numerous justice and security providers is crucial and is a key element of any accountability mechanism. In Honduras in 2002, for example, the police had no functional ability to regulate the activities of private security companies with regard to their personnel, training programmes or weaponry utilised. In the short term, therefore, it may be productive to strengthen these strategic capabilities of the state. Of special interest may be managerial systems and capabilities, focusing on those that can measure and evaluate the performance of justice and security providers.

State building and centralisation of governance – responsiveness to local needs

64. Unquestionably, developing state functions and service delivery are the most convenient ways of establishing control over service provision in order to address, for instance, inequalities of access to justice and security. Building the capacities of ministries and parliaments may be productive under most circumstances, except when the government exhibits little commitment to reform and/or is engaged in severe human rights violations.

65. Enhanced state building and centralisation, however, is often achieved at the cost of meeting local needs, whether they pertain to crime reduction strategies, alternative sentencing methods or restorative justice. An excellent example of the trade-offs incurred is the unwritten history of bail reform in South Africa.63 To resolve a burdensome pre-trial detention issue, a new bail regime was established. Although the number of incarcerated declined, local needs went unaddressed and the result was that many of the alleged perpetrators were murdered upon release from jail by the new bail system. Local communities, believing the released detainees to be guilty, did not want them living in their neighbourhoods.

Rights accountability – performance accountability

66. There is no necessary trade-off between these two forms of accountability. In fragile states, however, there may be a question of efficacy in determining which approach produces the desired outcomes (the preservation and protection of human rights). Although perceived as necessary in the short term, particularly when there is a lack of state commitment to reform, the establishment of independent ombudsman offices and human rights commissions may prove to be financially unsustainable. The development of internal institutional mechanisms such as codes of conduct, professional standards, promotion systems and managerial accountability within the police, prisons and the judiciary may prove to be significantly more effective and cost effective in changing behaviours in the long term, though the human resources and capital within the institutions may be in decidedly short supply.

67. Because of structural and capacity deficits, as well as the politicisation typical of the fragile state’s justice and security sector, mechanisms to monitor abuses and enforce sanctions, if existent, are
often weak. Performance accountability is also often highly circumscribed, with clients distrustful of state providers. Consequently, the most productive method of enhancing accountability may be to encourage a multi-layered approach by maximising client/customer choice, participation and knowledge of their legal and human rights. The objective is to increase the frequency and strength of the relationship between the local service provider and the client, not only to make the performance more accountable, but to better preserve and protect human rights.

b) Non-state actors

68. “Non-state justice” refers to all systems of justice and security operating alongside formal state institutions “that exercise some form of… authority in providing safety, security and access to justice”. This includes “a range of traditional, customary, religious and informal mechanisms that deal with disputes and/or security matters”. Non-state justice may include systems that employ varying mechanisms to mediate, arbitrate and resolve conflicts through restorative and/or reparative justice procedures, including (but not limited to) traditional courts, village elder councils, market associations and religious hearings. Non-state security encompasses varying agencies and services that provide safety and security to individuals and groups in the places where they live and work that are not entirely incorporated within institutions of the state. Such organizations and groups may include: informal loosely organised groups; civic and trade associations; neighbourhood groups and crime prevention organisations; religious police; ethnic/clan police; political party security; and private for-profit security companies.

69. It should be also pointed out that in many fragile countries it is impossible to make clean and sharp distinctions between state and non-state justice and security systems. In many parts of Somalia, it is legal that if a murder case can be resolved through “customary clan methods”, the case will be removed from the formal court docket and the alleged perpetrator set free, even if he/she had been in custody. In Yemen, many traditional and religious procedures and processes are written into state law. Similar situations exist in Peru, Bolivia, Ecuador, Paraguay, Indonesia, Timor-Leste, Nepal, Sierra Leone, Rwanda, South Africa, Botswana, Malawi and Mozambique. Even when the state is not directly involved in the provision of justice and security, non-state systems may still be strongly influenced by or associated with elements of the state system, or semi-legitimated by the state through licensing, regulation, partnerships, collaborative relationships and/or the exchange of information. As a result, instead of a clean demarcation between state and non-state justice and security, a continuum of methods of resolving disputes and delivery safety exists.

70. As highlighted above, resource scarcity may explain the existence of non-state justice and security service providers, but it does not elucidate the tenacity and vibrancy of those systems. There are many reasons for the vitality and strength of non-state service delivery, including: greater effectiveness; the public’s greater physical access to non-state dispute resolution methods; the public’s ability to understand the language – linguistically, culturally, intellectually; the public’s greater trust in the transparency, legitimacy, efficacy and timeliness of decisions; lower transactional costs; the public’s belief in restitution and restorative justice rather than punishment and retribution; a higher degree of participation afforded in that the parties to a dispute may be able to choose their arbitrators and mediators; greater accountability; and a more holistic approach with a greater ability to resolve the complexity of issues surrounding an incident by examining the antecedents and addressing the root cause(s).

71. Consequently, “in many developing countries, customary systems operating outside of the state regime are often the dominant form of regulation and dispute resolution, covering up to 90% of the population in parts of Africa. In Sierra Leone, for example, approximately 85% of the population falls under the jurisdiction of customary law.” Similarly, the Ministry of Justice in Afghanistan estimates that “90% of Afghans rely on customary law due to a lack of ‘trust and confidence’ in the nation’s formal justice institutions as well as the justice institutions’ ‘physical absence and low capacity’.” Comparable estimates exist for Mozambique, Malawi, Lesotho, Somalia, Sudan, Yemen, Solomon Islands, Timor-Leste and Nepal. In Nigeria, for example, approximately “16 [different] types of informal policing structures [have been] established [by local] communities to deal with crime… in order to protect their neighbourhoods from criminal attacks; to provide speedy safety and security services which the formal police were unable to offer; and because they were closer to the people than the formal police.”

72. The prevalence and dominance of non-state justice and security systems does not imply that the fragile state is uninolved. As indicated earlier, a continuum exists along which state and non-state service providers are arrayed. As one scholar of African policing has written (an assertion which applies equally to justice systems in fragile states), “as people move about their daily business, or as the time of day changes, they may move from the sphere of one policing agency to which they would naturally look for protection, to another, or be faced at times with a choice of agency to be made in terms of personal experience, preference for mentality (surveillance or punishment), cost or communal status.”

73. In fact, for many citizens of fragile states their experience of justice and security service delivery is based on “what is available”, ‘what works best’ and ‘what can I afford’, more than issues of legal authority, mandate, and accountability.” From the perspective of the individual or group, it is an issue of “local ownership”, legitimacy, effectiveness, choice and diversity. From the perspective of development, it is an issue of governance and local ownership in the multiple layering of service providers, a continuum of state and non-state, which only at the extremes of the range can be readily delineated.

74. It is important to recognise, however, that there are potential challenges associated with non-state security and justice systems. For example, non-state systems may be: sources of insecurity and injustice; subject to corruption, abuse of power and manipulation by local elites; in non-compliance with international human rights standards, such as discrimination (especially against women) or inhuman and degrading punishments; unaccountable; and unable to maintain adequate records.

75. It is a fundamental mistake, however, to presume that these challenges are any more severe in the non-state systems than in the state one, without a thorough study of local contexts. More likely than not, the challenges of one are mirrored in the other. It is also erroneous to believe that development of the non-state system is more onerous and difficult than that of state justice and security service providers, without examining local political circumstances and capacities. A multi-layered approach, in fact, makes no generalised presumption that accountability and protection of human rights is best achieved through state systems.

76. In some instances, the activity of non-state systems may be significantly more human rights respecting. For example, vigilism and lynching appear to be more common in communities where, in the absence of effective state justice and security, non-state systems have fallen into disrepair. A study of rural Colombia suggests that mob justice is up to five times more likely in such environments. This may also be especially true in countries where the criminal code does not correspond to the beliefs of the local population. For example, the criminalization of customary responses to witchcraft in South Africa, and the fact that state courts refuse to recognize the existence of witchcraft, has arguably led to a form of vigilante justice based on the belief that the state sides with witches.” It may be the case

• Greater effectiveness;
• The public’s greater physical access to non-state dispute resolution methods;
• The public’s ability to understand the language – linguistically, culturally, intellectually;
• The public’s greater trust in the transparency, legitimacy, efficacy and timeliness of decisions;
• Lower transactional costs;
• The public’s belief in restitution and restorative justice rather than punishment and retribution;
• A higher degree of participation afforded in that the parties to a dispute may be able to choose their arbitrators and mediators;
• Greater accountability; and
that non-state systems, as they are closest to their clients, may be more amenable to the preservation of human rights and the delivery of an accountable service, for they more accurately reflect local beliefs and needs and are believed to be more legitimate.

Short-term achievements – long-term development

77. Supporting non-state justice and security systems may be a means of realising short-term gains in security and justice provision, as they exist in virtually all fragile states. These systems are often more resilient than state systems, enduring throughout conflicts and deteriorating environments. Despite recent events that highlight some of the inherent difficulties of working with non-state actors, Somalia is a case in point, for even after state collapse, the ensuing years of warfare eroded [but] did not destroy, the traditional, clan-based structures that had been used to manage problems and maintain law and order. There appears to have been a turnaround in recent years, with traditional (clan-based) and religious (Sharia) structures providing protection and social insurance, and increasingly being relied on to resolve disputes and create stability. In South-central Somalia, for instance, given the failure of the (transitional government) to perform such normal government functions as provision of security and justice, Sharia courts, which transcend clan divisions, have been revived. These courts, funded by businessmen and controlled by clan elders, are providing increased law and order...

78. In this sense, non-state systems may be the most productive vehicles for the reconstruction of social capital and social efficacy in the hope of rebuilding social cohesion. Furthermore, non-state justice and security provision may be bundled together with other social services to provide more comprehensive development outside the confines of the justice and security sector.

79. While non-state systems may be the most effective means of delivering justice and security in fragile states, it cannot be overlooked that, at the same time, there may be significant discrepancies between the methods and activities of non-state justice and security providers and international human rights covenants. However, rather than shun non-state systems, the multi-layered answer is to engage with the non-state system through the use of local actors to ameliorate conditions, procedures and results. The experience to date suggests that non-state actors that, although initially provide security, may over time develop into organisations that may perpetuate insecurity. The Sungusungu traditionally organized village groups, for example, effectively provided security against crime and violence in areas of Tanzania, but also engaged in beating of petty criminals and have been implicated in conducting witchcraft trials in which women were singled out and, in some instances, killed...

80. In line with the findings of the 2005 OECD survey of recipient countries, the issue is not whether to engage with non-state justice and security providers, but how, given there are few other viable methods of delivering service in fragile states. The Sungusungu are considered legitimate organisations by local people. They represent the values of the communities for whom they provide effective justice and security service. The Tanzanian state has attempted to improve the situation, but seems to have met with little success in increasing Sungusungu rights-respecting accountability and behaviour. It may be, then, that only a multi-layered approach that works to increase the capacity of other local community groups to raise legal and rights awareness might have a chance to increase accountability and improve the situation.

State building and centralisation of governance – responsiveness to local needs

81. Supporting non-state systems may be perceived to be the antithesis of state building and centralisation, but because they operate at the local level they can readily respond to local needs. It is likely that non-state systems are also more adaptable to the changing needs of the local populace and, thus, more capable of modification during periods of transition.

82. Assistance to non-state systems, however, ought to be balanced by the establishment of mechanisms to link them to state systems. The registering and recording of decisions reached in the non-state system through the use of local actors to ameliorate conditions, procedures and results. The relationship of non-state systems to state systems may protect the prerogatives of the local power elite to the detriment of vulnerable and excluded groups, including women. Private security firms, for instance, may be more accountable to the clients who pay for the service, but less accountable to those who may fall under the private companies’ exercise of power. What may be required is that the state establishes minimum standards of procedure to which non-state systems must adhere. Similarly, efforts may need to be undertaken to raise awareness of legal and human rights, and methods established for appealing decisions rendered in the non-state system.

c) International actors

85. International actors – government development agencies, international organisations, peace support operations, non-governmental organisations and private-sector companies – are playing increasingly significant roles in security and justice delivery in fragile states. The roles vary depending on the actor and the context. The lack of capacity in fragile states and the need to regain a semblance of order, as quickly as possible, mean that international actors have an active role to play. In many fragile states emerging from conflict, there is often a regional or UN-mandated peace support operation and international actors may be directly responsible for the delivery of many security and justice services. In contested fragile states, international actors can sometimes have the benefit of being viewed as relatively neutral actors. However, that may not always be the case and international actors are viewed as partisan figures that have sometimes been a party to the conflict themselves, as in Afghanistan, Iraq and Somalia.

Box 3. The role of international actors in security system reform in Solomon Islands

In 2003 the Australian government led a multilateral Regional Assistance Mission to Solomon Islands (RAMSI). The assistance mission was in response to a request from the newly elected Solomon Islands government for support in restoring the rule of law. Under the auspices of the Pacific Islands Forum (the regional organisation), more than 2000 police and soldiers from many member countries landed in Solomon Islands with the mandate to “reinforce and uphold the legitimate institutions and authorities in Solomon Islands, and insure respect for the Constitution and the implementation of laws.” RAMSI’s first goal was to re-establish law and order.

Prior to RAMSI, the Royal Solomon Islands Police had effectively disintegrated as an agency for enforcing the rule of law across Solomon Islands. The early phases of RAMSI therefore depended on the regional Participating Police Force, supported by military personal, playing an active role in restoring law and order throughout the country, providing a boost in law enforcement capabilities and re-establishing the trust of the people in the police force. The Solomon Islands government endorsed the priority given to law and order under RAMSI. Furthermore, the government agreed that the subsequent increase in law enforcement capabilities (delivered through the Participating Police Force) meant that increased donor support to the criminal justice and corrections systems was also required. In addition, corruption and politicisation of the Royal Solomon Islands Police had been strongly associated with state decline in Solomon Islands; therefore reform of the police force was a key entry point for Australia’s increased engagement in Solomon Islands.
Another key aspect in restoring security – and an important entry point - was the introduction of a systematic disarmament program, which included a comprehensive weapons amnesty (in late August 2003) coupled with the demobilization of “Special Constables” and their reintegration into society. Over 3,700 firearms have been removed from circulation in Solomon Islands.

With basic law and order largely restored in Solomon Islands, RAMSI has moved into the longer-term state-building phase. On the policing side, the emphasis on long-term reform is reflected in a transition from an active law enforcement role (with a strong operational focus) towards capacity development and sustainability. However in recognition that the security situation in the Solomon Islands will remain fragile for some time, the Australian government stands ready to deploy additional military and police capability to assist if law and order breaks down again. This preparedness to respond quickly was demonstrated during the post-election riots in Honiara in April 2006.

Given the integrated nature of the law and justice sector, support to policing is complemented by a comprehensive program of judicial and corrections strengthening. Attention is now focused on dealing with longer-term priorities and the re-establishment of an effective, accessible and sustainable law and justice system which renews and maintains public confidence.

This approach offers lessons for donors operating in fragile states:

- Restoring law and order is often the most pressing priority in fragile states.
- The transition from short-term crisis management to longer-term development is challenging and requires significant local capacity development.
- There are potential linkages between small arms control and police reform in fragile states.
- Having a clear lead donor provides considerable clarity and increases the possibilities for co-ordination and coherence.

The comprehensive make-up of RAMSI’s support to the security and justice sector in Solomon Islands addresses police, justice, prisons, economic governance and machinery of government in parallel. 86.

86. When international actors are responsible for justice and security delivery, it is crucial to distinguish between the establishment of law and order, and developmental activity.83 There is frequently a tension between the role international actors play in short-term crisis management and the longer-term development needs for building the capacity of local actors to provide sustainable justice and security. A fundamental problem that international actors face is that they are subject to political, reporting and accounting pressures in their home countries that have no relation to the fragile state environment in which they are operating. This, combined with the imperative of arresting insecurity, means that international actors often get frustrated by the pace of local reform initiatives and end up designing and implementing programmes themselves. The benefits of this approach, though, are invariably fleeting. Experience shows that investing time in involving local actors and building ownership pays dividends in the longer term.

87. Achieving local ownership is a process that often starts with ensuring effective consultation, participation and dialogue. Ownership may follow when stakeholders see evidence that they are being heard, and their views are reflected in consensus outcomes. “A process-oriented approach that respects and empowers local actors is more likely to yield good results than a product-oriented approach that undermines local actors”.84 For example, in the Solomon Islands under RAMSI, the active involvement of the Solomon Islands Prison Service in the recruitment of international advisors who have been tasked with assisting in capacity building of the Solomon Islands Prison System has helped increase local ownership and empowerment. This has been the case particularly for infrastructure development and procedural reforms. The same can be said for the recruitment process in the justice sector. Key stakeholders, including the Chief Justice, Attorney-General and the Permanent Secretary of the Ministry of Justice and Legal Affairs, are involved in recruitment panels for advisors. Provincial governors and magistrates. Solomon Islands government involvement in recruitment has also helped as a capacity-building exercise in itself, which has enabled officials to experience and apply good human resource management practices in the workplace.

88. International interventions in fragile states have significant potential to support peace building and conflict resolution. However, if poorly targeted, they can also exacerbate fragility. A conflict-sensitive approach to the delivery of justice and security is, therefore, vital in all fragile states. This requires a comprehensive assessment of the root causes of conflict and fragility, such as a lack of participation of disadvantaged social groups, human rights abuses and land tenure disputes, and then a targeted programme to address these issues.

Short-term achievements – long-term development

89. International actors may often be able to achieve quick and effective results in the aftermath of conflicts. Ensuring, however, that international actors play a mentoring role to local stakeholders and institutions and transfer their skills is fundamental to moving fragile states along the development continuum. Equally important is the effort to support the development of the enabling institutional framework, structures and systems, in which the skills transfer is to take place.85 In Kosovo, for instance, after five years of international intervention, there was still no functioning Ministry of Interior within the government. Furthermore, it was only after UNDP initiated a police management programme that the "procedures, processes and systems [came into being] which are the backbone of (a police agency’s) institutional administrative capacity in personnel, logistics, finance/budget, strategic management and procurement functions… (The UNDP programme) has also had some success in binding the KPS to the Ministry of Finance and the broader Government as well as in designing and implementing a transition strategy for a future Ministry of Interior."86

90. Progress in security and justice delivery in fragile states is often undermined by a lack of co-ordination among international actors. A recent report on SSR in the Democratic Republic of Congo highlights that “co-ordination remains problematic at best between donors who have diverging philosophies on the nature of these [specialised police] forces… The difference of approach was apparent during the management of street protests that followed postponement of the elections in July 2005, when police formed well armed and well trained units adopted a heavy-handed approach. Developing practical mechanisms for donor co-ordination is important to support service delivery and a key element in a multi-layered approach.

State building and centralisation of governance – responsiveness to local needs

91. International actors, particularly governments and international organisations, tend to work primarily with the national governments of fragile states on security and justice delivery, even though 80% or more of justice delivery is often conducted in the non-state arena. Although strengthening governance is a key component of a multi-layered strategy, such international assistance may have little effect on the delivery of services and meeting the real security and justice needs of local people. Such support may also misconstrue the nature of the fragile state in the false belief that the state once had monopoly control over coercive force and violence. In most fragile states, the issue is not a “recreation of a state” as understood in Western parlance; nor is it a question of supporting parallel non-state structures that undermine state authority and capacity, given that there is little state capacity in the first place. Rather the challenge is to facilitate the “birth” of the “enabling contours of a sustainable state”, where the state may never have exercised sovereign control over the entire country, possessed a monopoly of force, or delivered accessible justice and security to a majority of its citizens. In fact, in addition to giving birth to “the enabling contours of the state”, the main governance challenge may be how to invigorate local and provincial levels of government as a means of strengthening the accountability of service providers to meet local needs. In fragile states, this is not an issue of decentralisation, but of establishing governance systems at the local and provincial levels that may have never existed (or functioned), at a time when the political leadership of the fragile state may be seeking to centralise state power and authority.87

Rights accountability – performance accountability

92. The performance accountability of international actors is weak. Development actors are in theory account-
able to their own governments, funders or electorates but there is little oversight or accountability of their work. In the countries where they operate, there are often few means by which local institutions or people can hold them accountable for their performance, thereby creating a fundamental challenge, which lies outside the scope of this report. Similarly, the rights accountability mechanisms are not strong, but recent cases of peacekeepers investigated for allegations of abuses indicate that they do exist.

93. A key issue is how donor assistance can help foster greater accountability of justice and security providers (state and non-state) by “better matching of local preferences to service delivery”. As discussed above, in fragile states, despite the long-term presence of some kind of state apparatus, either in the form of colonial rule or an independent, though authoritarian, regime, local communities have often functioned according to their own, fundamentally stateless, structures, regardless of the paramountcy of the machinery controlled by the capital city. Considerably older than the national identity, such social structures have proved profoundly resilient and easily resist quick interventions to build new ‘democratic’ institutions to replace the ones that have previously collapsed. To avoid this scenario, and bridge the local-national gap, communities have to be integrated in the process of institution-building, where they live as well as at higher levels, in order to foster a sense of identification with the greater whole and a feeling of ownership of the alternative structure.

94. To achieve the accountability objective, one method of linking local non-state systems to state building processes may be through community-driven social funds, development initiatives that build local and provincial governance structures in conjunction with existing community, village and neighbourhood institutions. In Afghanistan this may mean working with local shuras; in Mozambique, a combination of village elders, elected councils and local administrative structures; in Indonesia, an extension of the Kecamatan Development Programme modified to the justice and security sector. In each and every fragile state, the non-state systems will be different and, therefore, so will the methods of establishing the appropriate governance structures at the local and provincial levels. Key elements common to all contexts though are support to vibrant community organisations and locally driven, demand-based planning.

95. There are a number of strategic choices in the development of a multi-layered approach to justice and security delivery in fragile states. A flexible approach is needed, but it is important to think and plan programmatically. Donors supporting the delivery of security and justice by multiple actors need to be aware of the basic strategic choices, and work with local partners to identify the approach most suited to the context. These choices need not (and often cannot and should not) be made at the start, but it is important to be aware of their existence. They include:

- Benign neglect or toleration (by the state and donors) of non-state systems until the state can take over service provision;
- Eventual incorporation of multiple service providers into a single system; and
- Evolution of a structured system of multiple and overlapping systems and jurisdictions.

96. Given the significant capacity constraints of the state, the first option fails to acknowledge the reality of justice and security provision in most fragile states and is, at best, a very long-term prospect. The second approach recognises the existence of alternative non-state providers, but in practice is often limited to recognising the right of traditional communities to use their own norms and dispute resolution mechanisms without examining how the formal and informal systems will work with or alongside one another. Implementation, therefore, often remains problematic. The most realistic and desirable goal in the circumstances, therefore, may often be a combination of the second and third options. The goal should be to position the state at the hub of a network of justice and security providers. The result may not be a single, unitary system, for there will be multiple and overlapping systems and jurisdictions. Nevertheless, the state would provide the linkages, partnerships and regulatory frameworks needed to ensure effective, equitable and accountable service provision. A realistic and considered assessment of the desirable and likely end point of assistance can help donors structure support towards that goal. A multi-layered approach is a more nuanced and realistic objective than simply “state building”, and may often be more effective at meeting local needs.

Selecting aid instruments to support a multi-layered approach

97. One of the challenges for donors in supporting a multi-layered approach to justice and security delivery in fragile states is how to channel resources and structure programming. The lack of state capacity and the need to support multiple providers mean that relying on traditional methods of channeling large-scale support primarily to the partner government may not be effective. The level of political support for a progressive approach in fragile state governments is another factor. As a working paper produced for DFID put it, “In countries where there is little political will to invest and account for pro-poor expenditure, programme aid instruments such as budget support will remain inappropriate.” This is particularly true in deteriorating or collapsed fragile states. In fragile states recovering from conflict with new regimes that are committed to enhancing service delivery, however, budget support either directly to the government or through a trust fund can bring benefits. But even in these circumstances, the need to support multiple layers of service provision means that budget support should not be the sole approach.

98. Social funds provide a valuable means of disbursing resources to multiple service providers and client groups. These funds generally involve the provision of block grants to communities to be spent on micro-projects selected by the community, but they can also be scaled up to a provincial, regional or national level. They enable a decentralised approach to service delivery that is often important in fragile states, increase local participation and respond to local needs. “They can be effective mechanisms for delivering small-scale [service delivery] infrastructure and because they are demand-driven can promote both allocative efficiency and sustainability.”

99. Social funds, such as the Kecamatan Development Programme in Indonesia, are used widely by the World Bank and have grown in popularity in many countries for the development of local infrastructure, education, health and water services. For example, the Yemen Social Fund for Development (SFD) is a public agency that has had a significant impact in a difficult environment. “The autonomous setup and a flexible, demand-driven approach to service delivery has allowed the SFD to successfully scale up its operations…evidence points to SFD’s success in reaching poor and disadvantaged groups.” Its financing rose from USD 80 million for the first phase starting in 1997 to USD 345 for the third phase starting in 2004.

100. The potential of social funds to support a multi-layered approach to justice and security delivery has not yet been exploited, though this is beginning to change. In Uganda, for instance, the Uganda Social Action Fund has established a pillar on conflict management and has targeted support to a range of community reconciliation and dispute resolution initiatives. SSR programmes in other countries currently in the planning phase are looking to extend the use of social funds for justice.

101. The relationship of social funds for justice with government structures is a key design issue. It will depend largely on the commitment of the government to pursue a multi-layered approach to service delivery, recognising the necessity of devolving authority to local communities and non-state actors. Various configurations and levels of government involvement are possible according to the local context. When sensitively designed, social funds for justice do not undermine the state by creating parallel structures, especially when effective state systems and service delivery structures have never existed. Rather they may provide a flexible means of strengthening a wide range of local actors in their provision of effective, legitimate and accountable service delivery, while simultaneously increasing state capacities by developing its position at the hub of this network of provision. As grants are often seen as coming from the government, they may also provide a means of enhancing the legitimacy of the state. There are clearly risks with any choice of aid instrument in fragile states, but social funds for justice can enable “a ‘venture capital’ approach…that acknowledges high risk, but high returns.”

IV. Practical Experiences of Justice and Security Delivery in Fragile States

102. This section reviews experiences of donors working to support justice and security delivery in three different types of fragile states identified by the OECD: countries where security and governance are deteriorating, countries (or parts of countries) where the state has collapsed, and countries recovering
from conflict. Recommendations are offered, based upon case studies, on ways in which a multi-layered approach could target donor support to strengthen service delivery in these different contexts. Some of these recommendations apply to all categories of fragile states. Taken together, the recommendations suggest ways to develop an enabling environment for service delivery in fragile states by targeting support to a range of service providers (state and non-state) and strengthening their accountability.

### Table 2

<table>
<thead>
<tr>
<th>Declining/Deteriorating</th>
<th>Collapsed</th>
<th>Recovering</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capacity and/or willingness to perform functions in decline (indicators falling). May have weak rule of law and authoritarian regimes. In some cases, donors may be unwilling to work with government because of human rights issues.</td>
<td>State no longer able to function in most of its territory, and little or no government for international actors to engage with. Chronic conflict likely.</td>
<td>Includes post conflict and early recovery – willingness may be low or high but capacity extremely weak. Risk of return to conflict in post-conflict transition high and focus will be on initial peace building. In early recovery, more evidence of willingness.</td>
</tr>
</tbody>
</table>

#### A) Deteriorating fragile states

103. Because of the downward spiral in which deteriorating countries find themselves, these fragile states pose a complex set of challenges for development donors in their support to justice and security provision. Deteriorating states exhibit low capacity and/or political willingness, which is often associated with an erosion of the state’s perceived legitimacy.107 “Channels of political expression, mechanisms of accountability, administrative capabilities” are all under-developed.108 Managerial control of justice and security is often weak or non-existent, while social cohesion is fragmenting and possesses little resiliency to the ongoing strife. The impact of deterioration in security and governance on excluded and vulnerable groups is particularly acute, with their access to justice and security decreasing proportionately more than it does for other groups.109

104. The populace’s reaction to a deteriorating environment in which justice and security service delivery markedly decreases includes a range of responses, such as:

- Increased use of non-state systems;
- Banding together to apply group pressure;
- Seeking assistance from influential third parties; and
- Abandonment of justice and security systems (state and non-state) for the seeking of redress.

105. These responses are compounded by the fact that in many deteriorating environments, state justice and security providers modify and lower the norms of legal procedures. The results also included a new law establishing the judiciary, the creation of a public defenders service and the establishment of a judicial training institute.110 Equally importantly, USAID assisted the El Salvadorian Supreme Court in resuming the “publication of laws and [a] digest of its opinions for the information of judges and the public.”111

106. A classic case of a deteriorating fragile state where political will was in short supply is Nepal, prior to the most recent democratisation efforts during early spring 2006. The country had been suffering a civil war and the state exercised control over only limited areas of the country, mainly urban centres.112 The police had “insufficient resources and coordination to properly conduct investigations, together with a weak monitoring of the investigation process”, all of which resulted in “low prosecution rates... creating a favourable environment for the widespread use of torture”.113 The attorney general’s offices had “a substantial backlog of cases and a high rate of failure”... and faced “constraints in jurisdiction and weak capacities to monitor/direct police investigation.”114 Allegations of human rights abuses by state security services had been spiralling upward with beatings and deaths recorded. These factors, coupled with a state of emergency declared by the King, resulted in a withdrawal or diminution of activity by many international development donors.115

### Recommendation 1: Stay engaged by focusing on long-term development building blocks and support to broad-based human rights activities

107. Donor risks are high in a deteriorating environment in which the fragile state exhibits little commitment to undertake justice and security sector development. Nevertheless, experience suggests that it is important to remain engaged with security and justice institutions, where possible. A multi-layered approach recommends a focus on:

- Non-coercive elements of the security system, such as state-delivered justice; and
- Activities of community organisations, non-governmental organisations, bar associations and independent lawyers groups engaged in the protection of human rights, the monitoring of allegations of abuses and the defence of victims.116

108. In deteriorating environments a significant range of activities can be conducted to promote the provision of state-delivered justice. USAID’s experience in El Salvador, during the civil war, is emblematic of how to develop the building blocks for enduring judicial reform. During the 1980s, USAID supported efforts to “introduce non-political research and public consultation to the formulation of legal policy and draft legislation on key themes such as criminal procedure and family law.”117 The results also included a new law establishing the judiciary, the creation of a public defenders service and the establishment of a judicial training institute.118 Equally importantly, USAID assisted the El Salvadorian Supreme Court in resuming the “publication of laws and [a] digest of its opinions for the information of judges and the public.”119

109. Additional judicial building block projects that can be initiated during periods of deterioration include the modernisation of court administration: the manner in which it is structured and organised, its procedures and its training programmes. To accompany new codes of procedures (civil and criminal), bench books and digests can be published and disseminated and integrative financial budgeting introduced. Prison reform can also be initiated during periods of deterioration in much the same way, with an emphasis, for instance, on juvenile law, as accorded in El Salvador. Other initiatives could include modernising prison law, strengthening the education of prison personnel and improving in-prison health facilities. All of these programmes are long-term projects that need not necessarily await a cessation of conflict, but each is a fundamental cornerstone upon which enduring and sustainable state justice can later be provided.

110. To supplement and complement the building block approach, a multi-layered strategy would also recommend extensive engagement with human rights activities. The donor community can support the work of community organisations, non-governmental organisations, bar associations and independent lawyers groups, engaged in protecting human rights, monitoring allegations of abuses and defending victims.120 The level and nature of human rights abuses are good indicators of a worsening security and justice situation. It is important to be able to record abuses because the instruments used to analyse human rights allegations may be converted, in time, to performance assessment tools once the political situation stabilises, thus, initiating the possibility of multiple forms of accountability oversight.

111. Donors can also support the creation of legal libraries, the establishment of legal clinics for lawyers to gain experience and the training of paralegals, justices of the peace and lay judges to work in local communities. Experience shows the benefits of supporting inclusive justice networks, bringing together various non-state actors (as USAID did in Central America) to strengthen legal awareness and advocacy, while initiating the process of formulating strategic frameworks and policy orientations that will be needed once the political situation solidifies and development can take place.

### Recommendation 2: Support non-state structures

112. In situations where direct support to the state is politically sensitive, a multi-layered approach advocates that donors, in addition to seeking ways to strengthen the state’s provision of justice and security, should also look creatively at the range of non-state justice and security systems that service local needs in direct and immediate ways. Approximately 90% of all Nepalese disputes appear to be addressed through non-state actors and mechanisms, even though these procedures are not legally recognised.121 The state systems have little presence outside urban centres, are considered illegitimate, and/or are perceived (in comparison to non-state systems) to be less effective, too expensive, unaccountable and non-responsive to local needs.122 As a UNDP-sponsored study concluded,
judicial remedy of disputes are not easy, quick and inexpensive because it is a slow and lengthy process with lots of bureaucratic hassles and in some of the cases it continued for decades. The scenario for rural people in this regard is further aggravated by the difficult accessibility to most of the district headquarters where the district courts are situated. As such, in most of the cases for the rural population of the country, the possibility of easy judicial remedy becomes more remote.108

113. In worsening conflict and human rights situations, non-state security and justice providers are the safety net at the community level and, perhaps, the only service delivery that addresses basic local needs. It is imperative, therefore, that the donor community support their activities.

Recommendation 3: Support women’s groups and women’s access to justice

114. Non-state justice and security systems often adapt and endure in deteriorating environments. As in the case of Nepal, some “informal providers of justice [have been] displaced by the conflict or [can] no longer function at the community level and, perhaps, the only service delivery that addresses basic local needs. It is imperative, therefore, that the donor community support their activities. Jamaica, for example, is a democratic, middle-income country with established governance structures, but its security situation has worsened significantly in recent years. Murder has risen from 232 in 1973 to 1139 in 2001 and up to a record 1,669 murders in 2005.109

Interestingly, a high percentage of these displaced providers are most likely to be found “in their absence women groups become increasingly active, taking up some of the functions of more traditional providers.”110 Research shows that “women’s groups and [non-governmental organisations] seem to have a particular resilience”111 and flexibility to cope with changing and deteriorating situations. In Guatemala and Somalia, women have been at the forefront of peace movements. It is also well known that, in the provision of micro-credits, women and women’s organisations are the most effective way not only of stimulating economic activity and growth, but of promoting social cohesion. The evidence, therefore, seems to support the case for donor assistance to these organisations as one of the primary vehicles in a multi-layered provision of justice.112 Paradoxically then, deteriorating environments may provide a unique opportunity for donors to strengthen women’s rights by supporting their participation in non-state justice systems.113

115. A broad range of programmes can be supported that raise legal awareness and promote legal rights. Local non-governmental organisations and other community groups have been utilised for the provision of paralegals, lay judges and/or justices who assist women to be the providers as well as recipients of enhanced justice. Donors have also supported local mediation and arbitration projects that have similar aims. Efforts can encourage the recording and registering of disputes addressed in the non-state justice system, as women appear more conscientious than men in keeping records, a crucial first step in an eventual linkage between non-state and state systems.114 With women as the core group, programmes can be bundled, addressing health, education and justice issues simultaneously.

Recommendation 4: Use political pressure and conditionality carefully while preparing for the future

116. In deteriorating contexts when the state is misusing the security sector, “high level [international] diplomacy and pressure... may be required”.115 Political engagement is vital to complement the multi-layered approach. It may be the case, however, that some forms of political conditionality are counter-productive because the fragile state government may have little incentive to co-operate and strengthen justice delivery. For example, in Nepal, donor assistance to bolster judicial independence had to be offered unconditionally because any preconditions would have hastened governmental withdrawal from development programmes, which would have only worsened the situation.116

117. It is also important that donors adopt a long-term perspective in deteriorating contexts and maintain assistance and engagement, because human capital development benefits do accrue over time. Throughout Latin America and Africa, a number of emerging leaders are individuals who have participated in donor-funded development programmes over the past 10 years. For instance, the Deputy Minister of Interior of Guatemala, in 2004, was a former non-governmental organisation leader whose organisation donors had supported. With the improving political situation, in her position as Deputy Minister, she has been able to apply the knowledge and experience she had gained.

Deteriorating states with political conditionality

118. There are contexts in which the state may be strong, but the justice and security sector is fragile and deteriorating, unable to deliver adequate service. Jamaica, for example is a democratic, middle-income country with established governance structures, but its security situation has worsened significantly in recent years. Murder has risen from 232 in 1973 to 1139 in 2001 and up to a record 1,669 murders in 2005.109 Violence occurs predominately in ‘garrison of communities’ where the state does not exert limited control. These communities are dominated by gangs led by ‘Dons’ that demand local support and are often aligned to rival political parties. The Government faces significant challenges to its law enforcement capacity in these communities, partly because the gangs are heavily armed but also because the Dons enjoy widespread public support (they are considered benefactors and often provide basic social services). This support is strengthened by public mistrust in the police force, which is linked to its failure to provide security and a perceived lack of accountability.”110

Recommendation 5: Support the development of a National Security Strategy

119. Supporting the development of a National Security Strategy is a good means of testing the government’s commitment to address security and justice issues. It can also provide a valuable framework to address security and justice issues, ensure the involvement of a wide range of government and non-state actors, and identify new roles for donors in support of their implementation. This approach can encourage the recording and registering of disputes addressed in the non-state justice system, as women appear more conscientious than men in keeping records, a crucial first step in an eventual linkage between non-state and state systems.114 With women as the core group, programmes can be bundled, addressing health, education and justice issues simultaneously.

120. In deteriorating environments where the government has the political will to address security and justice issues, it is important to target support to strengthen legitimacy in the eyes of local people. A key priority for international assistance in these contexts should be to build the capacity of security and justice providers to meet local needs. For example, USAID is supporting a community-based policing programme in Jamaica to help increase trust between the police and local communities, and strengthen accountability for service delivery. Programmes should target the root causes of crime and insecurity in deteriorating environments. This often requires linking initiatives to regain security with projects that increase access to social welfare and alternative livelihoods, and that strengthen the voice of communities in service delivery and planning processes. For example, DFID is supporting the Community Security Initiative led by the Ministry of National Security in Jamaica as a “Framework for action on revitalising security, social inclusion and the social contract.”114 This approach bundles the provision of different services together in target communities to try and undermine popular support for organised crime and demonstrate a “peace dividend” to local communities. In such circumstances, donors should align themselves with government initiatives and provide support directly to the ministries concerned.

Recommendation 7: Take an area-based approach

121. In many deteriorating environments, the fragmentation created by neighbourhood-related violence disrupts the natural radius of local economies and makes it difficult for government to provide services to citizens. For example, through “political and gang related activities the definition of ‘community’ in Jamaica has shrunk in some cases down to the level of city blocks. This makes it difficult for people to seek out services or employment as doing so may require them to transverse dangerous and invisible borders in urban areas.”114 This fragmentation highlights the need for an area-based approach that links support for peace building, security and livelihoods approaches across selected communities.

Recommendation 8: Support balanced representation

122. In many deteriorating contexts, unrepresentative and unbalanced justice and security agencies may be a root cause of insecurity. If the government demonstrates the political commitment to address this issue, then donors should provide assistance “to balance recruitment among different factions and even provide preferential treatment to members of groups who had been discriminated against or precluded from government positions in the past.”114 Public service reform invariably calls for a de-politicisation of the civil service, including the justice and security agencies; however, a deterministic approach where discrimination may be more appropriate. Such programmes are typical activities of post-conflict development and often written into peace accords, as in El Salvador, Bosnia and Herzegovina, Kosovo and Macedonia, but if the government demonstrates commitment they will pay dividends in deteriorating environments as well.
The experience of East Timor, immediately after the independence referendum and subsequent violence, and Somalia, illustrate this phenomenon well:

**Recommendation 2: Be realistic and modest and support a range of service providers**

1.24. The range and coverage of justice and security systems in collapsed states is often surprisingly high. According to a survey on the availability of justice systems in Somalia by the World Bank and the UNDP, community based justice systems carried out by clan/community elders were reported to be available in 75% of urban and 97.8% of rural and nomadic households, followed by council of elders (85% for urban and 94% of rural and nomadic households, as per a survey by the World Bank and the UNDP); and service delivery. The latter has been established both top-down by powerful political interests seeking to entrench control over particular towns and regions, and bottom-up by Somali religious leaders, businessmen and communities, attempting to establish basic security conditions for the normalisation of social life and the expansion of trade.**

1.25. A report on the situation in East Timor in 1999 after the brutal rampage following the vote for independence from Indonesia posits that,

"There is a general perception that these societies are characterised by 'vacuum of power'. Yet quite the opposite is the case – societies refer even more strongly to their 'traditional' authority structure, as this is what is left after the destruction of the state apparatus and the withdrawal of a government."**

1.26. The range and coverage of justice and security systems in collapsed states is often surprisingly high. According to a survey on the availability of justice systems in Somalia by the World Bank and the UNDP, community based justice systems carried out by clan/community elders were reported to be available by 94% of urban and 97.8% of rural and nomadic households, followed by council of elders (85% for urban and 86.4% for rural and nomadic) and Islamic Shari'a (47.8% of urban and 37.4% of rural and nomadic), only 9% of urban households and 25.6% of non-urban households reported availability of the (state) judiciary system."**

1.27. In Somalia, many of these different sources of law are contradictory or overlapping. Customary law discriminates against women; determination of primacy and jurisdiction between and among the different systems are contentious issues; and the choice of applicable law is biased in favour of the stronger party."** The systems in place have many faults, but they also all have their own strengths. Most importantly, they have functioned and provided a basic service for Somalis over the past decade in the absence of a state.

1.28. In Somalia, many of these different sources of law are contradictory or overlapping. Customary law discriminates against women; determination of primacy and jurisdiction between and among the different systems are contentious issues; and the choice of applicable law is biased in favour of the stronger party.** The systems in place have many faults, but they also all have their own strengths. Most importantly, they have functioned and provided a basic service for Somalis over the past decade in the absence of a state.

1.29. Such efforts may need to be highly localised, as was the case in southern Serbia with the establishment of an area-based, ethnically integrated security service. Development assistance included support for recruitment and selection, equipment, training and, most importantly, mentoring. A comparable attempt was made in 2001: the UN provided assistance to the state police service in Kisingani, Democ

1.30. The experiences of East Timor, immediately after the independence referendum and subsequent violence, and Somalia, illustrate this phenomenon well:

**Recommendation 2: Be realistic and modest and support a range of service providers**

1.31. International actors need to be realistic and modest about what is feasible and sustainable in collapsed states. Even in collapsed states, international intervention does not begin with a blank slate and ignoring the service delivery providers to whom the local population is loyal will lead to failure. As one Timor-

1.32. Attempts to impose a unitary justice system at the expense of all other justice providers, for example, are doomed or, worse, can unleash renewed conflict and violence. For example, in Somalia one commentator argues that, "efforts to force one [justice] system across all areas would undermine those systems that function locally, circumstances that could in turn create more conflict by undermining the structures that currently underpin local peace and security arrangements."** This is partially what happened when the UN peacekeeping missions (UNOSOM I and II) attempted the "top-down re-implementation of the 1962 criminal and penal laws [which] undermined local rule of law initiatives."**

1.33. Even with the best of political commitments, it takes decades to rebuild the most basic physical, human and infrastructure capacities for state-provided security and justice delivery in collapsed states. The situation in southern Sudan is stark, but illustrative. "There are presently approximately 5,000 police in Southern Sudan's five regions, while at least 38,000 are required according to the Chief of Police... There are presently 500 prison wardens... and an estimated 4,800 are required."** What applies to the police and prison is similarly applicable to legal education, the judiciary, court administration, and prosecutorial services. As the Head of the UNDP's Sudan Rule of Law Programme says, "only 22 of the 750 trained judges envisaged under the CPA [Comprehensive Peace Agreement] are in place, highlighting the need for establishing a paralegal training centre to fill the gap in the number of qualified professionals during the Interim Period."**

1.34. These huge numerical deficits begin to highlight the challenge given the dearth of training; the lack of infrastructure; the absence of institutional structures, systems and procedures; and the overwhelming capital costs required to enable the state sector to perform its assigned duties. "The judiciary has virtually no means of transportation or other essential resources necessary to administer justice, such as libraries, law books or even the text of the few laws promulgated by the SPLM [Sudan People's Liberation Movement]." The Multi-Donor Trust Fund is planning to support the building of 130 police stations across the south. However, even once these are established, it is unclear how much justice and security 130 police stations or 750 judges can provide in a territory as large as south Sudan. Modesty, realism and sustainability all suggest that a multi-layered approach is needed. The capacity of the government in the south should be developed, not as the sole service provider, but as the
37. The development and implementation of strategic plans face severe difficulties in collapsed states. It is highly unlikely that collapsed states possess the requisite capacity to participate fully in the design of those plans, let alone implement them. Ongoing political disputes may impede agreement on the substance of a plan, if not scuttle it altogether. These challenges, although acute, do not negate the necessity of laying out a development framework for the justice and security sector. The absence of an overall strategic framework to guide the SSR process in Afghanistan from an early stage when the country was emerging from state collapse has been identified as a reason why the process has been characterised as reactive.144

136. Given these problems, international actors will in most cases have to take the lead initially. "Planners have to determine which options are realistically achievable, with an emphasis on what is attainable given the strength of local paradigms, budgetary and time issues and political will."145 Importantly, planners will have to accept the overarching reality of fragile states: first, the government will be unable to meet service delivery needs for the foreseeable future and, second, alternative methods of justice and security provision will have to be utilised. Strategic frameworks, therefore, should anticipate the establishment of partnerships and networks between state and non-state actors and plan accordingly. Planners should balance their concentration on the state’s role in delivering a direct service with its function in establishing regulatory schemes and the overall contours of service delivery by state and non-state providers. To understand the non-state sphere, local stakeholders must be involved because international actors will not be able to comprehend the complexity of the actors or systems. The involvement of local actors in planning processes is vital to helping develop ownership and capacity.

Recommendation 4: Focus on addressing priority security issues that will breed confidence

137. It is often critical in collapsed states to identify priority issues at an early stage: addressing them will have high visibility and help create an enabling environment for wider service delivery efforts. In the Democratic Republic of Congo, for example, donors have focused on building the operational capacity of the police to provide security during forthcoming elections.146 This was a priority issue because if the elections were affected by riots and violence then the political transition would be seriously undermined. It also provides an opportunity for the police to demonstrate their worth to a doubtful population.

Recommendation 5: Develop “islands of dependability”

138. Even in collapsed states where there is ongoing armed conflict and no political commitment to ensure an effective and accountable justice and security sector, progress on service delivery is possible. A recent evaluation of a UNDP/International Rescue Committee rule of law project in Darfur, west Sudan highlights the advantages in justice and security sector service delivery programmes at establishing Justice and Confidence Centres in camps for internally displaced persons and nearby towns. Each one is staffed by 20-30 paralegals (women and men), drawn from the local community and provided with basic human rights training. They go out into their communities “helping people to resolve differences according to human rights principles, helping people to identify grievances and bring them to the appropriate place, including providing mediation”.147 The paralegals have had a significant ripple effect in their communities, empowering the internally displaced persons, raising awareness of human rights and increasing the responsiveness of law-enforcement agencies. This has helped to begin to develop a valuable accountability mechanism for service provision in a context where none existed. This approach follows what one analyst calls “a strategy of ‘islands of dependability’” that can provide a reliable service to a certain geographical location in the worst environments.148 Bundling services together in these centres provides a base level of delivery that can be scaled up to neighbouring areas.

Recommendation 6: Start small and scale up

139. Starting small and then scaling up is an important lesson identified for service delivery in fragile states. Developing partnerships with non-governmental organisations can be a useful means by which donors can help test approaches through pilot projects (which can then be rolled out if successful). For example, in the East Democratic Republic of Congo, DFID is funding two international non-governmental organisations that are working with communities, supporting the establishment of a mobile court and training magistrates to provide transitional justice.149 Providing services through this mechanism can be less high profile and risky for donors when working on sensitive issues, and enable innovative approaches to be tested before committing large sums of money.

Recommendation 7: Provide incentives to attract experienced national and international staff

140. A fundamental issue is the challenge of finding experienced and able personnel (both national and international) to work on security and justice delivery programmes in fragile states. The quality and availability of personnel is considered to be one of the most important factors in the success of service delivery programmes, more important than the amount of financial resources. Incentives (financial or career development) should be provided to try and attract good staff. Personnel shortages are widespread in different fragile states. In Uganda, the government has great difficulty in getting government officials, magistrates and law enforcement officers to work in the conflict-affected north.150 In Iraq, when the security situation was at its worst before the creation of the new government, “manning [sic] for the CPA [Coalition Provisional Authority] was a particular problem. It hovered just above 50 per cent of authorized levels at best, and the US Government had no way of directing the civilian personnel with the right skills to deploy to Iraq. As a result, the entire effort was undertaken almost entirely with people who were in country for too short a time, working outside of their areas of expertise and often at levels of responsibility far above what they were accustomed to.”151

c) Recovering states

141. The recovering category is, perhaps, the one in which the development community has the most experience. A recovering state is one in which the political situation has sufficiently stabilised so that

Where transitional or interim governments have yet to be legitimised through elections, donors cannot count on political ownership or commitment. In such cases, donors can still work with state sector institutions and act as sponsors to support short-term service delivery outcomes.

Short-term confidence-building measures buy time to allow a more in-depth understanding of constraints and opportunities for longer-term reform programmes and institutional support.

Understanding historical developments (e.g. policies to encourage soldiers to live off local populations so as to discourage coups, or the extractive purpose of the security and justice sectors) illuminates the complexity and challenges in setting service provision reform objectives. For OECD governments, this requires whole-of-government (diplomatic, defence and development) assessment and analysis.

Recommendation 3: Develop an overall strategy for justice and security development

135. Given these problems, international actors will in most cases have to take the lead initially. “Planners have to determine which options are realistically achievable, with an emphasis on what is attainable given the strength of local paradigms, budgetary and time issues and political will.”145 Importantly, planners will have to accept the overarching reality of fragile states: first, the government will be unable to meet service delivery needs for the foreseeable future and, second, alternative methods of justice and security provision will have to be utilised. Strategic frameworks, therefore, should anticipate the establishment of partnerships and networks between state and non-state actors and plan accordingly. Planners should balance their concentration on the state's role in delivering a direct service with its function in establishing regulatory schemes and the overall contours of service delivery by state and non-state providers. To understand the non-state sphere, local stakeholders must be involved because international actors will not be able to comprehend the complexity of the actors or systems. The involvement of local actors in planning processes is vital to helping develop ownership and capacity.

Planners should balance their concentration on the state's role in delivering a direct service with its function in establishing regulatory schemes and the overall contours of service delivery by state and non-state providers. To understand the non-state sphere, local stakeholders must be involved because international actors will not be able to comprehend the complexity of the actors or systems. The involvement of local actors in planning processes is vital to helping develop ownership and capacity.

These approaches offer lessons for donors operating in fragile states:

- Operational capacity development can be structured around specific but strategic tasks (e.g. policing for election security) which can bolster support from a doubtful public and provide confidence for planning for later reform. This results-based approach may be preferable to setting unrealistic and over-ambitious reform objectives that, if unsuccessful, can undermine both local reformers and the case for future help from outside.

- The importance of institutional sustainability must be balanced with strategies that respond to the imperatives of service provision. Sponsoring operational police and justice service performance (e.g. to deliver a credible outcome of trials) can build confidence in the workings of the system and is a short-term priority for donors.

- Where transitional or interim governments have yet to be legitimised through elections, donors cannot count on political ownership or commitment. In such cases, donors can still work with state sector institutions and act as sponsors to support short-term service delivery outcomes.

- Short-term confidence-building measures buy time to allow a more in-depth understanding of constraints and opportunities for longer-term reform programmes and institutional support.

- Understanding historical developments (e.g. policies to encourage soldiers to live off local populations so as to discourage coups, or the extractive purpose of the security and justice sectors) illuminates the complexity and challenges in setting service provision reform objectives. For OECD governments, this requires whole-of-government (diplomatic, defence and development) assessment and analysis.

Recommendation 5: Develop “islands of dependability”

138. Even in collapsed states where there is ongoing armed conflict and no political commitment to ensure an effective and accountable justice and security sector, progress on service delivery is possible. A recent evaluation of a UNDP/International Rescue Committee rule of law project in Darfur, west Sudan highlights the advantages in justice and security sector service delivery programmes at establishing Justice and Confidence Centres in camps for internally displaced persons and nearby towns. Each one is staffed by 20-30 paralegals (women and men), drawn from the local community and provided with basic human rights training. They go out into their communities “helping people to resolve differences according to human rights principles, helping people to identify grievances and bring them to the appropriate place, including providing mediation”.147 The paralegals have had a significant ripple effect in their communities, empowering the internally displaced persons, raising awareness of human rights and increasing the responsiveness of law-enforcement agencies. This has helped to begin to develop a valuable accountability mechanism for service provision in a context where none existed. This approach follows what one analyst calls “a strategy of ‘islands of dependability’” that can provide a reliable service to a certain geographic location in the worst environments.148 Bundling services together in these centres provides a base level of delivery that can be scaled up to neighbouring areas.

Recommendation 6: Start small and scale up

139. Starting small and then scaling up is an important lesson identified for service delivery in fragile states. Developing partnerships with non-governmental organisations can be a useful means by which donors can help test approaches through pilot projects (which can then be rolled out if successful). For example, in the East Democratic Republic of Congo, DFID is funding two international non-governmental organisations that are working with communities, supporting the establishment of a mobile court and training magistrates to provide transitional justice.149 Providing services through this mechanism can be less high profile and risky for donors when working on sensitive issues, and enable innovative approaches to be tested before committing large sums of money.

Recommendation 7: Provide incentives to attract experienced national and international staff

140. A fundamental issue is the challenge of finding experienced and able personnel (both national and international) to work on security and justice delivery programmes in fragile states. The quality and availability of personnel is considered to be one of the most important factors in the success of service delivery programmes, more important than the amount of financial resources. Incentives (financial or career development) should be provided to try and attract good staff. Personnel shortages are widespread in different fragile states. In Uganda, the government has great difficulty in getting government officials, magistrates and law enforcement officers to work in the conflict-affected north.150 In Iraq, when the security situation was at its worst before the creation of the new government, “manning [sic] for the CPA [Coalition Provisional Authority] was a particular problem. It hovered just above 50 per cent of authorized levels at best, and the US Government had no way of directing the civilian personnel with the right skills to deploy to Iraq. As a result, the entire effort was undertaken almost entirely with people who were in country for too short a time, working outside of their areas of expertise and often at levels of responsibility far above what they were accustomed to.”151
“a government is in place and basic state functions are being re-established.” The government may be transitional, having assumed power after a peace accord and prior to national elections, but it has a degree of legitimacy and the political leadership exhibits the will to lead the country out of crisis. In other cases, elections have taken place, but it should not be presumed that the elections have conferred full legitimacy on the government. There may continue to be elements within the country for whom the government may be less than legitimate, as was the case in Bosnia and Herzegovina despite numerous local, cantonal, entity and national elections. With regard to the recovering state’s capacity, “the performance of government is extremely weak in terms of policy development and implementation,” but these states generally demonstrate a limited but growing ability to deliver on their commitments. Social cohesion remains debilitated and distrust may be rampant, but the country is on an upward, albeit slow, trajectory towards development.

142. It is generally recognised that there is a “window of opportunity” after the signing of a peace agreement. International actors need to act quickly to provide support to the delivery of security and justice. Nearly half of all post-conflict states slip back into conflict within five years of the signing of a peace agreement and a failure to provide security and justice is often a key factor in the resumption of violence. Preventing the slide back to violence requires rapid and sustained donor support.

143. The list of countries that qualify as recovering fragile states is long, ranging from Guatemala and El Salvador to Peru, from Bosnia and Herzegovina to Albania, from Solomon Islands to Timor-Leste, and, in Africa, from Mozambique to Sierra Leone and Angola. The range of service delivery development activities suitable for donor support is equally long and there are many successful examples, including, among others:

- Strategic national security dialogues and policy frameworks (Uganda);
- National security councils (Sierra Leone);
- Non-governmental organisation security policy networking (Central America);
- Community-based policing (Albania, Kenya, Nicaragua); and
- Judicial reform, court administration, alternative dispute resolution mechanisms, houses of justice (Latin America).

144. However, there are also a number of lessons identified about strategies to avoid in fragile states that are recovering from conflict. Important recommendations for donors include:

Recommendation 1: Focus on financial sustainability

145. Ensuring that initiatives to strengthen justice and security delivery are sustainable is a key challenge for donors. Given the degree of insecurity that exists within Afghanistan, significant levels of reform aid have been directed to the development of the Afghan military. “In the first nine months of 2005, more than 1,200 people were killed in factional and insurgent violence.” Nevertheless, the establishment of the Afghanistan National Army (ANA) “is widely viewed as a ‘success story’… displaying a high degree of discipline, professionalism and combat effectiveness.”

146. The underlying challenge, however, is that the ANA is unaffordable as currently constituted. Setting aside monies required to fund the Afghan police services, the recurrent costs for the ANA in fiscal year 2004/2005 were US$171 million. This was equivalent to roughly 25 per cent of the Afghan government’s entire operating budget of US$721 million and 57 per cent of the country’s domestic revenues of roughly US$300 million for 2004/2005. If the ANA reached its force ceiling of 70,000 troops, expenditures for salaries alone would total US$107 million. Adding costs associated to equipment and logistics, the recurrent budget of the ANA could reach upwards of US$290 million, a prohibitively high figure. Even if state revenues were to increase substantially over the coming decade, the government would be hard-pressed to underwrite a force of this size, and international largesse will not fill the resultant funding gap.

147. According to the World Bank, international assistance to the ANA and Afghan police services was not matched by comparable development of public administration reforms, salary levels were not co-ordinated with those of other civil servants and decisions on financial matters took place apparently haphazardly, without consultation and with little consideration of medium-term fiscal affordability. Strategic national security and policy framework planning was limited and Afghan reform concentrated too heavily on “train and equip initiatives”, all of which only further compounds the sector’s financial unsustainability.

148. As part of all strategic and policy framework planning (and even in the absence of such planning), justice and security service delivery assistance should forecast the costs to the fragile state of sustaining development programmes over a three- to five-year period, correlating those costs to expected state revenues. High levels of expenditure on security are understandable in the immediate post-conflict period, but they are most likely not sustainable over time. Unless a multi-layered approach is utilised, donors may be only postponing inevitable problems and new forms of insecurity when down sizing occurs.

Recommendation 2: Focus on managerial sustainability by strengthening management capacity

149. Donors frequently engage in wide-scale training programmes for justice and security providers in recovering contexts, but these are most often ineffective unless embedded in efforts to strengthen management capacity. The Guatemalan Peace Accords were signed in 1996, launching the country’s recovery from civil war. One of the primary challenges to Guatemala’s sustainable service delivery has been the paucity of managerial development. Police personnel are rotated annually, if not more frequently. There is no legislation defining a police officer’s career development or promotion possibilities and similarly no clear demarcation of the role of educators and trainers in the police academy. Some 70-80% of all detentions appear to be for misdemeanour crimes, suggesting a fundamental mismanagement of resources, planning and tactics, indicating that whatever police performance measurement metrics may be employed are inadequate and/or inappropriate.

150. More telling, three sets of statistics stand out. First, “it is alleged that more than a thousand officers – perhaps up to five thousand, as elsewhere seems to an outside observer, that number seems to an outside observer – have been provided with varying types of investigative training, whereas less than 14 of them currently serve as police investigators” or in comparable positions. Second, “while up to 145 police officers were given ‘train the trainers’ courses in community policing, none of these officers are now assigned to the Police Academy.” Lastly, it has been “claimed that the Guatemalan police [are] given only 45 minutes of ‘use of force and firearms’ training and virtually all of it [is] conceptual rather than practical.”

In addition, “US Embassy personnel openly acknowledged that middle management capacity is ‘zero’ while senior management capabilities are ‘almost zero’.” It was also asserted, ‘the police couldn’t care less’ about managerial issues despite almost three years of dedicated internationally-provided managerial training.”

151. In the absence of sufficient state police management and technical capacity, one approach is to involve the private sector. The CPLC in Karachi, Pakistan is a hybrid organisation involving local business leaders. It plays an important role in information collection, collation and analysis so that policing operations can be made more effective. The CPLC has had a significant impact on improving policing procedures, enhancing monitoring of police performance, setting standards, developing accountability mechanisms and providing access to justice for the poor. One analyst describes the CPLC as a “co-production organisation” that provides public services, through an institutionalised, long term relationship between state agencies and organised groups of citizens, where both make substantial resource contributions... The sharing of core state authority with non-state actors evolved as a response to a crisis of governance. The solution may not be ideal from every perspective, but it may be the best available in situations of crisis where government agencies are unable fully to perform core roles.
Recommendation 3: Work with non-state justice systems

152. One of the reasons for providing assistance to non-state systems in recovering fragile states is the simple fact that over 80% of all disputes may be resolved by such providers and that local populations will continue to adhere to them, such as the Mayan in Guatemala. In Burundi, “while this country did not suffer state collapse, the formal justice system is malfunctioning to the extent that the informal system has become the de facto court of first instance for the vast majority of the population.”

153. One key area for development assistance to non-state justice systems in recovering states can be supporting the resolution of land tenure disputes. Clashes over land rights, along with wrangling over other scarce resources, are often one of the major causes of conflict. In Timor-Leste an innovative programme, linking together the state with non-state conflict resolution mechanisms, is being adopted to address land tenure issues. The first step is to map who owns what parcels of land and under what arrangements, given the likelihood that different types of ownership covenants exist not only for the land itself, but what lies on and beneath it. The agency that conducts the mapping exercise should be a state organisation, seen to provide objective data to all parties neutrally. However, this state organisation will, most likely, not possess either the national capacity to resolve disputes or the legitimacy to do so. “The preference throughout Timor-Leste is for local dispute resolution mechanisms where possible... [because they are] perceived as cheaper, quicker, fairer, more accessible, easier to understand, less corrupt, and more supportive of reconciliation between disputants than the court system.”

Fragile states may need to pass legislation authorising the establishment of such a land tenure dispute resolution mechanism, a law that could be the model for linking state actors with non-state justice and security providers.

154. There are, however, weaknesses in the Timor-Leste approach for recovering fragile states. “Local systems are weak in the area of women’s rights” and “Timorese disputants value access to a forum of forums for matters that resist resolution at the local level.”

Mechanisms may need to be established by which disputes at one level can be applied to higher levels, which may include an application to state systems. Rights of vulnerable and excluded groups need to be protected through varying kinds of legal awareness, advocacy and education programming.

155. Many of these admitted weaknesses can be addressed by examining how the state and non-state systems interact with one another. It is known, for example, that in Mozambique one of the actual functions of the police is to mediate and arbitrate disputes, including criminal ones, often in conjunction with traditional local leaders. If this is one of their acknowledged and accepted functions, it may be appropriate to establish minimal standards and procedures by which they carry out their activities rather than to allow them to engage in such activities without guidance.

Recommendation 4: Support transitional justice as part of overall capacity building of national justice systems

156. Support to transitional justice mechanisms is important in countries recovering from conflict. This is another area where non-state systems can play a role, as shown in Rwanda, where the Gacaca courts set up to deal with genocide cases have demonstrated how “the indigenous system has been successfully adapted to dealing with one of the serious obstacles to achieving healing in a post-conflict society.”

157. However, in some countries emerging from conflict, substantial donor funds have gone to supporting international or hybrid tribunals with “significant resources devoted to the prosecution of a small number of individuals with only modest leftover contributions to local judicial capacity.” It is important that support to transitional justice bodies is placed in the context of overall judicial development and capacity building, particularly with regard to the delivery of justice by state providers. The UN Mission in Burundi has developed an innovative programme “which links and sequences funding for a hybrid tribunal to an initial period of local judicial capacity building.” This provides an interesting potential model for donor support to justice delivery in recovering fragile states.

Recommendation 5: Integrate security and justice issues into national development frameworks

158. National development frameworks (for example, Poverty Reduction Strategy Papers or Transitional Results Matrices) provide an important opportunity to stimulate a more inclusive public debate on security issues in post-conflict societies and shift public policy towards a greater focus on service delivery. Including security and justice issues in these frameworks can help ensure that they are established as a development priority in national government and donor planning and budgeting.

159. In Uganda’s Poverty Eradication Action Programme and Sierra Leone’s Poverty Reduction Strategy Paper there is a specific pillar on security issues. However, security and justice delivery can also be addressed within the framework of governance. There is often a pillar on governance in national development frameworks, while there may be sensitivity to the inclusion of a pillar on security issues.

160. Experience in post-conflict countries shows that national development frameworks provide a means to address comprehensively a wide range of issues that are important for strengthening justice and security delivery including: the disarmament, demobilisation and reintegration of ex-combatants; security sector reform; small-arms control; and the provision of alternative livelihoods. It is therefore vital to involve all relevant government actors in security and development planning, including ministries of finance, defence and interior, as well as wider stakeholders including parliamentarians, non-state justice and security providers, and civil-society organisations.

Recommendation 6: Develop effective donor co-ordination mechanisms

161. A large number of international actors are often involved in providing support to justice and security delivery in countries emerging from conflict. This presents significant challenges of co-ordination. As one report puts it, “from the perspective of multilateral peacebuilding efforts, ‘herding cats’ is therefore an apt metaphor for the work involved in post-conflict security management.” A key challenge is to develop an effective division of labour, while establishing common standards in areas such as training and ensuring that the important linkages between different justice and security delivery initiatives are made. As the draft OECD Implementation Framework states, it is important to ensure that dividing roles and responsibilities does not lead to a “stove-piped” approach to SSR, as has been seen in Afghanistan. The Bonn agreement established five pillars for SSR-related issues, each with a lead donor. But this approach failed to take into account linkages between sectors and undermined an integrated approach. It has also failed to recognise the importance of local ownership in ensuring sustainability. It is vital that all donors provide support within the context of an overall strategy and that a donor co-ordination group meets regularly to discuss and assess progress in the different areas.

Notes:
Additional Resources

The following are recommended resources for further information on SSR programming that have helped inform this section:


25. DFID (2005), Why We Need to Work More Effectively in Fragile States, DFID, London.


35. Institute for Development Studies (2005), Signposts to More Effective States: Responding to Governance Challenges in Developing Countries, Institute for Development Studies, Brighton.


44. Leader, Nicholas and Peter Colosimo (2005), Aid Instruments in Fragile States, PRDE Working Paper 5, DFID, London.


57. OECD (2005c), Paris Declaration on Aid Effectiveness, OECD, Paris.


70. Safeearth, SEESAC and UNDP (2003), Philosophy and Principles of Community-based Policing, SEESAC, Belgrade.


89. Slovenia, Christopher, Joel Miller, Monica Thornton and Jennifer Trone (2005), Supporting Security, Justice, and Development: Lessons for a New Era, Vera Institute of Justice, Nair, New York.


100. USAID (2005a), Fragile States Strategy, USAID, Washington D.C.

101. USAID (2005b), Reflections on Community-Based Policing Programming in Guatemala, USAID, Washington D.C.


Notes:
and/or weak governance. This comprises mainly those countries ranked in the fourth and fifth quintile of the World Bank’s Country Policy and Institutional Assessment.

Non-state systems, therefore, would include traditional courts, mediation processes, civic and trade organisations, neighbourhood groups, ethnic/clan police etc. See Nathan, p. 11.

They need the capacity to design, manage and implement the reforms adequately. Capacity here refers to people with the requisite knowledge, expertise and skills and to material resources, including funds and equipment. Governments in low income countries, fragile states and war-torn societies generally lack the necessary capacity. See Nathan, p. 11.

The types of traditional, customary, village, and conflict resolution non-state justice systems are innumerable. Alternative dispute resolution, justices of the peace, paralegals, lay judges and traditional mechanisms also fall into this category. For examples of the latter types of systems in Peru and Colombia, see Faundez.

The typical local context is where justice is provided by local leaders and community members, and crime prevention panels. See Hessbruegge and García, pp. 29-30. Sedra (2006). Stone et al. (2005), p. 20. The OECD draft IF-SSR also critiques the “comprehensive” approach and advocates taking a practical, problem-solving approach that focuses on the most important constraints are likely to be important, and the highest level of leadership endorsement should be sought in all cases. But the potential for real policy ownership may vary across sectors or individual countries. For an explanation of some of the terms used, such as “informal justice” and “legal pluralism”, see Schärf (2003) p. 1-3. It is inappropriate to label non-state systems as customary or traditional because the systems multiply over time, evolving in different circumstances. It is also inappropriate to label one system as more informal than any that may be codified and rule of procedure, even if they may not be official. Finally, it is important to recognize that the issue is not one of public versus private security and justice. In many fragile states, public state policing is security or fragmented command. The emerging international (SSR) research indicates, for instance, that citizens can interact with the justice system in such a way that the police cannot be seen as public, even though they are public institutions. This suggests that the primary claim to justice is not easy to establish in the justice system. See Faundez et al., p. 5.


For an explanation of some of the terms used, such as “informal justice” and “legal pluralism”, see Schärf (2003) p. 1-3. It is inappropriate to label non-state systems as customary or traditional because the systems multiply over time, evolving in different circumstances. It is also inappropriate to label one system as more informal than any that may be codified and rule of procedure, even if they may not be official. Finally, it is important to recognize that the issue is not one of public versus private security and justice. In many fragile states, public state policing is security or fragmented command. The emerging international (SSR) research indicates, for instance, that citizens can interact with the justice system in such a way that the police cannot be seen as public, even though they are public institutions. This suggests that the primary claim to justice is not easy to establish in the justice system. See Faundez et al., p. 5.
indicated that in 19 out of 30 countries examined, “local governments control less than 5% of public expenditures.” See Social Development Notes, p. 2.

The ability to generate their own revenues and/or to have the mechanisms in place by which such revenues can be transferred to them from national/federal coffers. In Africa, a recent study has indicated that in 19 out of 30 countries examined, “local governments control less than 5% of public expenditures.” See Social Development Notes, p. 2.

One of the principal lessons learned in decentralization programmes is the importance that local levels of governance have over the delivery of social services. This is particularly true given that local levels of governance also control less than 5% of public expenditures.

The local government’s ability to generate their own revenues and/or to have the mechanisms in place by which such revenues can be transferred to them from national/federal coffers. In Africa, a recent study has indicated that in 19 out of 30 countries examined, “local governments control less than 5% of public expenditures.” See Social Development Notes, p. 2.

One of the principal lessons learned in decentralization programmes is the importance that local levels of governance have over the delivery of social services. This is particularly true given that local levels of governance also control less than 5% of public expenditures. See Social Development Notes, p. 2.