



# WORLD DEVELOPMENT REPORT 2011

BACKGROUND PAPER

## CRIMINAL JUSTICE

SECURITY AND JUSTICE THEMATIC PAPER

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## **Introduction**

Strengthening the rule of law is widely regarded – among traditional donors, multilateral institutions, and a growing number of middle income and fragile states – as a necessary precondition for sustainable peace, poverty alleviation, and development. Crime and violence deter investment and lower employment, undermine social institutions, and divert resources through direct and indirect costs, all of which hinder development. It is likely to disproportionately affect poor and marginalized populations by limiting access to basic services.

According to the United Nations, the rule of law is “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.”<sup>i</sup> This definition is not universally accepted, however; several middle income countries and emerging economies have enjoyed peace and prosperity without the political liberalism inherent in the aforementioned definition. In the latter model, “the law exists not to limit the state but to serve its power.”<sup>ii</sup> Common to both models is an emphasis on the role of formal state institutions in upholding the law.

The formal criminal justice system is seen in many environments as failing to deliver justice. Most states experiencing fragility do not have the capacity to effectively prevent crime, enforce laws, or peacefully resolve disputes across the whole of their territories. State institutions – particularly police and courts – may be difficult for communities to access due to their minimal presence or weak capabilities (e.g., lack of skills, infrastructure (including court houses and jails), and equipment), due to unfamiliar or poorly understood legal codes and procedures (possibly complicated by linguistic or cultural differences), or due to ethnic, religious, or gender bias.

There is another powerful deterrent for communities to seek redress through state criminal justice institutions: they are frequently a primary instrument for the government and elites to maintain power and control through the perpetration of injustice. This occurs both in societies suffering from “not enough state” (Afghanistan, Haiti, Papua New Guinea) and those with “too much state” (Zimbabwe, Myanmar).<sup>iii</sup> Politicization of the police, judiciary, and correctional facilities has led to arbitrariness, discrimination, predation, and abuse in numerous environments; the criminal justice sector is accountable to and serves the needs of the ruling elite rather than the public.

Yet, even if the formal criminal justice system were more accessible, fair, representative, and transparent, many communities – particularly rural poor – would prefer the informal system, which is usually community-based and seeks reconciliation or restorative justice rather than punishment. Across large parts of rural sub-Saharan Africa, for instance, traditional authorities and customary mechanisms remain the primary vehicle for conflict resolution (on issues as varied as land disputes, family disputes, and inheritance issues). In addition, several African states have (to varying degrees of success) incorporated customary law alongside modern legal systems. Thus, there is a tension between the preponderance of external and internal interventions aimed at strengthening or reforming formal *criminal* justice institutions, and the type of justice and institutions that much of the public may prefer.

The informal system, however, is alone insufficient to handle the pressing justice requirements of fragile states, not least for preventing and responding to inter-communal conflict, to serious organized and cross-border crime, and to public corruption and other “white collar” crime.

Rather than focusing exclusively on state institutions – or blindly rushing to support informal systems, “justice reform must involve the public and be based on an understanding of the demand for justice services, rather than merely projecting needs based on existing justice system statistics that may not reflect the actual demand for services of this type.”<sup>iv</sup>

### **The WDR Framework**

The following sections examine the criminal justice sector in the context of the WDR framework, which, drawing on existing research on the causes of violence, is based on **stresses, capabilities, and expectations**.

#### **1. Stresses/Conflict Risks**

The law enforcement and criminal justice sector represents a critical source of stress, whether through omission – the inability to effectively prevent or minimize crime and violence – or commission or collusion.

In societies marked by ethnic, political, or religious division – especially where these boundaries coincide with geography and where the government is predominantly controlled by one group (whether majority rule, as in Sri Lanka, or minority, as in Mindanao, Philippines) – those out of power tend to lack access to the formal criminal justice system, be underrepresented among its personnel (police, prosecutors, judges), and/or are discriminated against in its actions and decisions. Different cultural norms, legal procedures, and language barriers within the formal justice system further limit the accessibility to – or desirability of – different social groups and communities. As a result, communities may actively contest the authority of the state to make and enforce law.

Economic factors, including direct costs (court fees, legal representation, fines), time, and availability of transportation – pose a further impediment to accessing the formal justice system. In Sierra Leone, for instance, costs are too high for all but the most wealthy citizens. Even the cost of customary courts is often still too high for most people, with limits on fees and fines unenforced and unwritten, for example.<sup>v</sup>

Conflict and state policies limiting the legitimacy and/or jurisdiction of informal institutions has also undermined their effectiveness. In many countries, customary institutions have at least some legal recognition and standing – including Bolivia and Nicaragua, South Africa and Sierra Leone, Timor-Leste and Papua New Guinea. Other security and justice providers (like market or taxi associations) have no statutory authority. Customary, community-based justice institutions, like *shuras* and *jjirgas* in Afghanistan and Pakistan, have been captured by warlords or aligned with parties to conflict, limiting the independence and public legitimacy of their decisions. In most developing countries, however, sources of law rarely include customary law, generating conflicts of law between inherited “modern,” often post-colonial, and customary systems.

Coercion by state security services, criminal groups, or insurgents for either personal or group gain is a common source of stress. Where weapons are freely available and there is little rule of law, identities are extremely fluid (and often multiple) between citizen, gang, militia, police, and military. In many instances – “sobels”<sup>vi</sup> in Sierra Leone and “narco-captured” officials in Mexico – the distinction between these categories has broken down so far as to become meaningless to affected communities. This poses a fundamental challenge to DDR programs that tend to focus narrowly on those defined as soldiers, and links to broader discussions around community security and arms control. Particularly in authoritarian regimes, criminal justice institutions are often above the law, reinforcing predation, abuse, and corruption through impunity. Competitors for the spoils of power may turn to violence.

Rising levels of corruption, especially public corruption, of internal (Afghanistan’s narcotics trade) or external (Latin American organized crime in West Africa) origin can have a devastating impact on the performance of law enforcement and justice institutions, on the incidence of criminality, on the local economy, and on public confidence in the state. To poorly paid, poorly equipped, or poorly respected officials in the lower ranks of government, cooperation may supplement meager incomes or may simply be a matter of avoiding the alternative: death. But while tainting lower ranking personnel, corruption rarely flourishes without the complicity of high-level government officials. In Mexico, for example, increased political competition since the defeat of the PRI has upset long-standing state-syndicate accommodations, generating new conflicts between organized criminal groups and federal and state governments in some areas.<sup>vii</sup> In Guinea Bissau, the drug trade has flourished under protection from senior members of the country’s armed forces and high-ranking politicians.<sup>viii</sup>

The economic costs of crime and violence for the state and society include not only rising costs within the criminal justice sector (more police, more prisons), but in health care, lost earnings, private security, and decreased competitiveness. It has been estimated that Latin America during the 1990s lost up to 14 percent of its GDP to crime and violence, for example.<sup>ix</sup> Criminal trafficking in otherwise “licit” goods, like cigarettes, alcohol, vehicles and consumer goods, denies tax revenues to the government, further affecting provision of services. Guinea-Bissau and Guinea, meanwhile, have experienced sudden increases in foreign direct investment that cannot be explained by the licit economy.<sup>x</sup> In poverty-affected countries, the incentive for collusion has significant distortionary effects on the local economy, fueling the cycle of crime and violence. Organized criminal groups can provide lucrative revenue streams to existing insurgent groups, while elsewhere – as in Mali and Niger, it is insurgent groups that have sought to capture and control illegal trafficking.

“Bad neighborhoods” lead to regional spill over of conflict and crime in neighboring countries, including the availability of weapons, trafficking and related social harms (e.g., from increased drug addiction), displacement on populations and access to justice, among other dimensions. In response to pressure, cross-border criminal activity – especially drug trafficking –has demonstrated an ability to move around within a country or to another country in the same market rather than being sharply diminished.<sup>xi</sup>

The absence of state institutions in large parts of the developing world, both urban and rural, constitutes an important stress, as it provides political space for alternative forms of authority, including warlords, rebel groups, criminal gangs, and terrorist organizations, to operate.

Occasionally, rather than producing anarchy, these actors have provided policing, justice, and other basic services to local populations under their control. As in Somaliland and Puntland, they may even develop complex bureaucracies that approximate the absent state.<sup>xii</sup> Such groups may still pose a conflict stress by engaging in violence and coercion within and/or outside of their area of control, or by engaging in economic activities that are destabilizing to neighboring regions – e.g., production of methamphetamines by the United Wa State Army rebel group in Myanmar. Other groups – the RUF, the LRA – do not establish alternative government structures, leaving populations under the control with limited recourse.

Finally, in circumstances of extreme institutional weakness, particularly in post-conflict, war to peace transition, where countries have experienced high levels of destruction of infrastructure, outmigration, and loss of human life (including technical cadres), rebuilding effective justice and security capacity is challenging for two reasons. First, on a technical level, the amount of time required to not just train or replace a judges, lawyers, investigators, and managers, but also to acquire experience is years under the best of circumstances.<sup>xiii</sup> Second, as Carothers notes, “honestly facing the underlying political constraints on reform tends to entail accepting greatly reduced expectations about what aid is capable of achieving—[a] difficulty for donors, especially in this era of heightened pressure to show results.”<sup>xiv</sup>

## **2. Capabilities to Respond**

Following the framework of the WDR, this paper examines the short term and medium/long-term interventions in the area of justice that are undertaken by local, national, regional, and international actors to address stresses leading to violence.

Where violence exists within relatively functional sovereign states – Brazil, Mexico, Nigeria, Pakistan, South Africa – there may be limited points of external engagement due to state sovereignty. The type and purpose of external engagement can influence government receptiveness. Southern governments may be more amenable to cooperation from other Southern governments; examples of South-South cooperation include between Brazil and South Africa on policing; or organized crime/money laundering combating initiatives in Southern Africa (including South Africa). Unwanted external interference can be counter-productive, if not destabilizing. The strength of the state is an important determinant for the extent of external intervention and for national control over its design (compare, for example, engagement in Serbia with that in Bosnia-Herzegovina and Kosovo). However, where there is resistance from the state, it may be possible for donors and civil society organizations to develop entry points. In Albania, for example, small arms and light weapons (SALW) control initiatives were expanded to encompass community safety, then to broader security and justice reform.<sup>xv</sup> UNDP’s “Support to Security Sector Reform” program was built on the success of a popular, earlier small arms collection and control program that offered collective incentives through community-based development projects. Facing diminished political support, after five years, the SALW collection program was broadened into the SSR program, drawing on UNDP’s established network of contacts for a new purpose. The new program is focused on strengthening police capacity against organized crime, trafficking and corruption, as well as on improving the image of the police and its relationship with the public through greater transparency and accountability.<sup>xvi</sup>

There is a wide range of activities undertaken by local, national, regional, and international actors to try to improve the effectiveness of the criminal justice in violence- and organized

crime-affected contexts.<sup>xvii</sup> Nonetheless, despite this large toolbox of short and long-term external responses – e.g., vetting, hybrid courts, legal reform, police and judicial training – external activities in practice have often been donor-driven, under (or unevenly) financed, poorly coordinated, unsustainable, and/or fallen short of their intended results.<sup>xviii</sup>

Moreover, there is a tension between *institution-oriented* approaches (revising laws, training police and judges, building infrastructure, providing material support) and *process-oriented* initiatives, including those aimed at improving working relationships among criminal justice institutions, between oversight institutions (ministries, parliament, police boards) and service providers, or between formal and informal systems; as well as fostering responsive, accountable relationships between police and the public. Internal and external interventions overwhelmingly appear to focus on the former at the expense of the latter.

### A. Short-term (Emergency and Quick Impact) Measures

Emergency, criminal justice efforts are frequently taken to control escalating crime, to regain (or maintain) public confidence, or, particularly in post-conflict environments, to mitigate spoilers. Yet, apart from emergency measures, there are efforts that have demonstrated short-term impact on what may be, in fact, endemic cases of violence and crime.

External efforts tend to focus on quick-impact means of mitigating shortcomings in the formal, state criminal justice system; efforts that have not always proven effective or sustainable (e.g., in DR Congo, Haiti, and Timor-Leste). However, efforts to facilitate local access to justice, particularly “locally appropriate” justice, and to promote responsive, accountable policing have demonstrated effective and sustainable results in many contexts across Latin America, Africa, and Asia.

- **Local-National Efforts:**

Examples of relatively effective local and/or national efforts to meet immediate criminal justice needs include:

**In policing:** The effectiveness of different measures depends, in part, on the goal – whether interventions are aimed at overcoming legacies of police abuse through increased local accountability, or at controlling or preventing crime and violence.

For the former, among the more effective local and national efforts are those that promote community-level accountability by (a) initiating **community policing** (including establishment of regular **public-police forums**, improving **customer service within police stations**, establishing **community oversight mechanisms**). Where practiced successfully, it has enabled communities to convey their concerns to authorities, to assist in finding solutions, to improve public relations with the police and, importantly, to build trust and confidence, including in conflict- and crime-affected communities.<sup>xix</sup> Progress in instituting community-based policing faces many hurdles, however, not least the willingness of the police to embrace a service orientation and of the public to accept this role. (b) **Public-private partnerships** have increased demand for quality policing, creating a service-orientation among police, including in São Paulo and Nairobi, as “business leaders can help keep these kinds of reforms on track, forming a sort of pressure group to demand professional service from the police, regardless of who is in government.”<sup>xx</sup>(c)

**Extending police and justice presence to under-served areas.** Police are often too few in number, concentrated in population centers and thinly distributed across territory – usually with too limited resources. Extending an *effective and credible* police and justice presence out of major urban areas (or into city slums) is a challenge in many contexts, hindering the ability of state institutions to prevent crime and deliver justice. Infrastructure is often lacking. Moreover, extension of ineffective or predatory police may undermine state legitimacy. Reintroduction of security and justice, however, must also be accompanied by civil authorities. In Sierra Leone, election of paramount chiefs – a position of customary local authority recognized by the state, was a key step in reestablishing civil authority. District recovery committees, comprised of paramount chiefs, the Sierra Leone police, former combatants, property owners, and other community stakeholders provided a platform for rebuilding district infrastructure and providing basic services with the support of civil affairs officers from the then-deployed peace operation, UNAMSIL.<sup>xxi</sup>

As there are also often insufficient numbers of qualified judges and other judicial personnel to process detainees or to adjudicate cases. Victims have limited access to district or provincial courts. **Mobile courts** have been successfully used to provide quick and effective supplementary capacity to address priority justice needs (e.g., to address criminal cases, to review pretrial detention, to serve a public information capacity). In DR Congo, a system of mobile military courts has successfully prosecuted security personnel for sexual violence.<sup>xxii</sup> As a model of service provision, mobile courts may also help address the absence of state-provided justice services in non-conflict, historically neglected regions, and provide a longer-term solution beyond interim service provision.

Other measures to promote accountability for the police have included: legislative provision for and establishment of an **ombudsmen**, empowered to independently investigate complaints of improper or criminal conduct by police; **citizen-based police complaint/review boards**, likewise empowered, and **human rights cells** established within police stations to investigate allegations of improper police conduct.

**In justice provision:** Interventions that facilitate access to the local-level, formal justice system have demonstrated positive results, including **reducing fees, allowing legal self-representation** for certain cases, and **training community-based paralegals** (with oversight from lawyers, community boards, or courts) to provide legal assistance,<sup>xxiii</sup> as well as by providing **alternative dispute resolution mechanisms**, including mediation and arbitration. (Increasing access to the informal or non-statutory justice system is addressed below.) In the area of corruption and public legitimacy, **publicizing disciplinary proceedings against corrupt officials** can signal to the public and to other civil servants that such action is not condoned, provided that such actions are seen as genuine rather than politically motivated.

**In corrections:** Short-term interventions include (i) **pre-trial detention/case management committees** to address overcrowding and/or illegal detention, which can be undertaken regardless of the condition of infrastructure or status of legal provisions. No less important, but requiring infrastructure (if via temporary facilities) is the **separation of pretrial detainees** from convicted criminals, and providing **separate facilities for men, women, and children**.

Improved community-police trust can increase the likelihood of community members providing information to law enforcement investigations, as well as support for police action – even in

communities that have previously refused cooperation with the police.<sup>xxiv</sup> But community policing and crime prevention approaches are not appropriate responses to all forms of crime and violence, for example organized crime and drug trafficking.<sup>xxv</sup>

Indeed, short-term efforts to halt cross-border flows of weapons, drugs, and cash (money-laundering) have proven extremely difficult, even for states with relatively strong capabilities (e.g., US-Mexico). For many countries, the extreme disproportion of revenue generated by criminal groups relative to budget allocations for policing, let alone for counter-narcotics and counter-organized crime,<sup>xxvi</sup> as well as the rapidly evolving use of technology to by criminal groups to stay one step ahead of law enforcement poses a significant obstacle.

Different **sectoral and cross-sectoral approaches** to preventing and addressing crime and violence have emerged, particularly in the context of urban violence. The former include criminal justice, public health, conflict transformation, and human rights; the latter community-driven development and citizen security.<sup>xxvii</sup> There are drawbacks to sectoral approach that is overly focused on criminal justice – on law enforcement and punishment – as simply increasing the size or resources available to weak or ineffective security and justice institutions is ineffective – not least because such interventions are rarely holistic. As Mexico demonstrates, a overly security-oriented approach can actually escalate violence, with negative short-term consequences for public safety. There, escalating drug violence has claimed the lives of more than 28,000 civilians since the government initiated its offensive against drug cartels, forcing it to acknowledge in August 2010 that the strategy was not working. Generally, investments in **crime prevention**, rather than control or repression, have proven more cost-effective – but tend to be more medium- to long-term in impact.<sup>xxviii</sup> A study of the cost-effectiveness of violence prevention programs in Brazil found that the secondary (targeting high risk groups; e.g., reintegration of street children, training for parents of at-risk youth, homicide control, anti-violence/drug programs for youth) and tertiary (targeting victims and offenders, including alternative sentencing) programs evaluated were more cost effective than the police control program in terms of the number of serious crimes prevented versus program cost.<sup>xxix</sup>

**Non-state/local policing and justice.**<sup>xxx</sup> The proper place of informal justice institutions alongside those of the state is among the major issues facing national, regional, and global actors seeking to support rule of law generally and criminal justice specifically. According to the OECD, some 80 percent of the population of fragile states relies on the non-state sector for provision of security and justice.<sup>xxxi</sup> The issue cuts to the heart of how to assist conflict- and crime-affected states. Assistance which focuses exclusively on these institutions is insufficient. Moreover, the cost of formal institutions may be unsustainable once foreign assistance declines and international advisors are withdrawn. As Dinnen et al. note in Papua New Guinea and the Solomon Islands, neither are likely to be able to operate or extend formal state justice systems without permanent external assistance.<sup>xxxii</sup> Yet, in spite of rhetorical adherence among donors to “the importance of local context and capacity,” programs remain overwhelmingly western and Weberian in approach.<sup>xxxiii</sup> This is in stark contrast to the reality of security and justice service delivery on the ground in most post-conflict, post-colonial states. As Scheye observes,

“Attempts to implement a justice and security statebuilding agenda grounded upon a Western regarding of the state are inherently fraught and prone to ineffectiveness given that basic Western governance concepts such as the separation of powers, civil society, monopoly control over the means of

violence, and the distinction between criminal and civil law may not be readily comprehensible in or applicable and transferable to a fragile, post-colonial context, given its different histories, structures, and norms.”<sup>xxxiv</sup>

Proponents of supporting the development of non-state policing argue that, rather than viewing such support as a threat to state authority or as an entry point for legal pluralism (which, in fact, already exists in many locales), it is instead a pragmatic, locally-understood, context-appropriate, more sustainable, means of improving individual security.<sup>xxxv</sup> This is not to argue that non-state security and justice is not highly context-specific. In some cases, as in Sierra Leone, it is not only the means to which the majority of people has best access, but may be their preference, as well.<sup>xxxvi</sup>

But, importantly, non-state institutions are not *always* the public’s first choice – nor should support exclusively focus on these mechanisms. In Nepal, for example, ninety percent of the population favors state security provision, rather than informal provision, in spite of shortcomings, *viz.* limited presence, ineffectiveness, corruption, and poor professionalism.<sup>xxxvii</sup> The establishment of police posts builds public confidence, but whether this confidence will be sustained will quickly depend on police effectiveness.

- **International Efforts**

Short-term international efforts generally fall into one of two categories: providing financial and technical assistance to local/national initiatives, like those identified above, or more direct interventions that, for reasons of sovereignty, are most often only conducted in the context of an international (or regional) peace operation. Such interventions are not necessarily sustainable, nor meant to be, but rather are intended to curb immediate forms of violence and to build confidence. Often, these early activities provide an entry point for broader institutional reforms aimed at establishing or strengthening longer-term solutions.

Where national government does not have the capacity to project its authority across the entire country, police and broader rule of law components of peacekeeping missions have played an important function not only in providing interim security and justice services. Here, principle tools wielded in the past have included ***executive policing/justice***, which can both extend state authority where absent and provide an impartial police presence linked to the criminal justice sector.<sup>xxxviii</sup> (It could be more selectively/narrowly focused on priority areas (e.g., anti-corruption, counter-narcotics, trafficking, and organized crime, or for sexual violence). ***Hybrid courts*** have been established – as in Kosovo and Timor – to address serious and organized crime. The presence of internationals can reinforce public perceptions that the court will be independent and fair (provided the right balance of nationals to internationals can be struck), but the arrangement has often been one of political necessity (both domestic and internationally), rather than strategy.<sup>xxxix</sup>

Other short-term measures including ***legal system monitoring***; establishment of ***coordination mechanisms*** between key national institutions (e.g., Ministries of Justice, Offices of Attorneys General, and Supreme Courts); ***witness/informant protection***; ***emergency legal training***; quick impact infrastructure rehabilitation and provision of materiel (e.g., ***“quick start” packages***); and ***vetting*** (albeit having faced legal and other challenges in Bosnia and Timor-Leste). External

donor support to *alternative dispute resolution* within a state-institution framework – restorative justice, mediation, arbitration, is also growing.

There are innovative examples of hybrid justice arrangements *without* executive authority, such as the ***International Commission Against Impunity in Guatemala (CICIG)***, established to support the prosecutor’s office and national police to help investigate and bring to trial cases involving illegal security groups. CICIG set up a special prosecutors office and identified and trained a corps of 20 national police assigned to the prosecutors office; the rest of the Guatemalan National Civilian Police (PNC), including the organized crime unit, and much of the justice and correctional system is regarded as deeply infiltrated. CICIG has initiated criminal proceedings, the first in Guatemala’s history, to remove corrupt officials from justice sector institutions.<sup>xi</sup> The Commission provides a potential model for integrating an international response to endemic, high-level corruption and criminality, within national institutions.

## **B. Medium- to long-term**

- **Local-National efforts**

Importantly, the five medium to long-term initiatives identified here refer not to prioritization and sequencing, but to the timeframe required to see improvement; the longer the delay in their commencement, in theory the longer until they bear results: First, ***reform of the national legal framework*** (e.g., modernization of the police act, adopting anti-corruption and anti-organized crime legislation, criminal and penal code reform. Incorporating ***restorative justice*** principles – e.g., allowing for compensation to victims instead of penal sanctions – through alternative dispute mechanisms, both formal and, where relevant, customary may be an appropriate mode of legal reform where retributive justice is at odds with local norms and customs, or exacts a high social cost. Ceding more jurisdiction to the customary system would legally recognize institutions that, in many locales, are already publically used and accepted. As experience from Liberia suggests, a uniform system of law does not always best serve the aim of ending historical discrimination, but customary law may be ineffective where “litigants are not members of the same community, or... when they are ethnically or religiously diverse. Egregious cases, considered beyond social repair, are likewise poor candidates for customary resolution.”<sup>xii</sup> Other key reforms include: ***decentralization of highly centralized authority*** within the police service (albeit while maintaining a unified national structure), though this entails higher costs than a centralized system; ***improving gender, ethnic, linguistic, religious representation*** among security and justice professionals; increase ***legal aid assistance***; (vi) ***bolstering witness/informant protection*** (as in Mexico and Colombia); (re)establishment of ***legal professional associations***; and ***vetting and review of appointment processes***, which may be a precondition for deeper reforms.

***“Problem-solving policing,”*** in which patrol officers, often working together with designated community problem-solving groups, are empowered to proactively identify and address the root causes of crimes occurring in “hot spots.” Across Latin America, (Brazil, Colombia, El Salvador), what has been described as a ***“public health approach”*** to addressing and preventing violence<sup>xliii</sup> has been taken by combining data collection on incidents with a multi-sectoral approach beyond law-enforcement, including working with at-risk-adolescents and youth, providing life skill and employment programs, conflict resolution training, and penal/juvenile justice reform. The establishment of ***crime and violence observatories***, as in Colombia and Jamaica,<sup>xliiii</sup> have enabled

under-staffed and under-resourced police services to identify “hot spots,” to better analyze crime data, and to better design and monitor the impact of interventions. Similarly, **public safety initiatives**—like that in Bogota, where homicide rates were reduced more than 50 percent from 1994-2000—combine the public health approach with increased investment in the criminal justice system, including crime and violence observatories, supporting Ministries of Home Affairs, community interventions, and corrections reform.

Joint “organized crime task forces” have proven successful at *coordinating* investigations by different agencies (e.g., police, customs, revenue, prosecutors) at national and subnational levels – an approach also applied to counter-terrorism. Where organized crime is deeply rooted, social inequalities prevalent, and corruption accepted by political elite, strictly criminal justice approaches to anti-corruption – legislation and enforcement – have limited capacity to reduce the scope of the problem. In Medellin, Colombia, **reversal of organized crime** was possible through a combination of law enforcement and “reordering of civic and political culture,”<sup>xliv</sup> where the latter has included promoting active civil society, public accountability, and reclamation of public space.

- **International efforts**

Rather than covering the extensive medium- to long-term external interventions, this section highlights several under-attended to areas that have nonetheless demonstrated significant impacts on improving the capabilities of the criminal justice sector in fragile environments.

First, external technical assistance, including mentoring and training has insufficiently addressed **management capacity** of criminal justice institutions – from police and courts administrators, to ministries. Core skills like human resource and financial management may require an entry point, but have led to organizational streamlining and cost-savings, as well as to increased professionalism and anti-corruption, as in Serbia.<sup>xlv</sup>

Second, legal reform assistance – police and detention reform acts, criminal and procedural codes, recruitment laws – is important, but more attention has been placed on the outcome, than on the process. External interventions have tended to focus on revising past laws, but not on developing **indigenous law-making and oversight capacity**. Here, common challenges include: the individually-driven, technical manner in which capacity building is undertaken, without sufficient regard to informal norms and practices, high-turnover among legislators, and, especially for interim/transitional parliaments in post-conflict environments, high levels of inexperience and often low levels of educational attainment. In Liberia, for example, few legislators “have previous legislative experience and some have educational deficits that prevent full comprehension of print material. The quality of parliamentary debate is low and ill-informed.”<sup>xlvi</sup> Investing in institutionalized law-making expertise in the form of **professional committee staff** can provide expertise from which legislators can draw and learn. It also provides continuity of expertise that remains even when MPs are shuffled or not reelected. They can also develop contacts with executive agencies, facilitating legislative-executive relations. Supporting **access to basic legal information, including model laws** is also critical, but limited.<sup>xlvii</sup>

**Corrections system reform** has been the most neglected rule of law sector. In post-conflict countries, correctional facilities are often damaged; detainees and prisoners end up in overcrowded prisons, police holding cells, or make-shift facilities without adequate separation

of men, women and children, or pretrial detainees from convicted criminals, nor facilities – like health clinics, private visitation areas, or access to legal materials – necessary for long-term internment. Few prisons systems in fragile states are set up to provide for social rehabilitation – e.g., by providing life-skills and employment training. As a bare minimum, the restoration of prisons can have a positive impact on public confidence, as it may alleviate overcrowding or transferal to more hospitable conditions, as was the case in Kosovo, following the rehabilitation of the central prison in 2000. Overcrowding in prisons, however, is frequently a symptom of problems elsewhere in the criminal justice system – an example of why a ***multi-institutional approach to criminal justice*** reform is necessary.

Experience in Haiti, among other locations, has demonstrated that sustainable progress in one dimension of the justice sector is contingent upon reform across the others – the police, prosecutors, public defenders, judiciaries, court administrators, prisons and ministry leadership must be linked in an integrated approach. Despite early UN success in recruiting, training, and mentoring the new Haitian National Police, its integrity and professionalism were gradually undermined by the absence of equivalent progress in the judiciary and correctional system. Senior police commanders, moreover, were subjected to intense pressure by politicians and political elite, highlighting the risks of technical reform without concomitant political reform. By the deployment of MINUSTAH in 2004, most past progress had been lost.<sup>xlviii</sup> By contrast, the strategy in El Salvador following the 1992 peace accords focused on the police, judiciary, and prison service, and included efforts to improve coordination among the three. The country continues to face significant challenges, but has improved.<sup>xlix</sup>

Other forward-looking interventions include: strengthening law enforcement capability (inc. criminal investigation), adjudicatory capability, legal education through mentoring and training; (iii) legal education and training (e.g., in the status and implementation of law); (iv) home ministry, intelligence, and corrections reforms (including depoliticization of organizational structures); (v) support to civil society, (not just human rights groups, but security/justice-oriented institutions, which are important for regional linkages, too, as in the Balkans); (vi) essential justice infrastructure development; and (vii) support to witness protection.

### **C. Regional and Global Approaches and Mechanisms**

Illegal trafficking is a major obstacle to criminal justice reform in a variety of contexts. Conflict has made small arms readily available beyond borders, subjecting entire regions to crime and insecurity. Transnational threats require regional and international responses, in addition to the local and national level capabilities described above.

The nexus between (i) natural resource management and illegal trafficking and (ii) the criminal justice sector works in both directions. First, revenue from illegal trafficking activities is a primary means of corrupting/capturing state criminal justice institutions. Similarly, illegal weapons are used against in criminal activities, as well as against law enforcement officials, including as a means of coercion. Second, the criminal justice system most often the lead means of combating illegal criminal activity, its perpetrators, and beneficiaries. Border management often falls institutionally within the national policing structure, albeit as a distinct, specialized branch.

International and regional organizations lack the analytical and operational capabilities necessary to understand and, thus, respond effectively to the linkages between organized crime, conflict, and corruption. Responses are largely criminal justice-related: legislative and law enforcement. But, “even where international organizations do identify criminal networks, they have few tools at their disposal to fight them, and little leverage over national law-enforcement tools.”<sup>i</sup>

- **Regional**

**Standardized legal regimes** are an important starting point for coordinated action. In addition to a robust international legal framework, for example, on counter-narcotics, corruption, organized crime, and human trafficking, regional and sub-regional organizations and groups (esp. in Africa and Latin America) have also promoted both binding and non-binding conventions and protocols. Ratification, however, does not signal compliance. The **African Peer Review Mechanism** assesses base-line compliance among its participants with the Declaration on Democracy, Political, Economic and Corporate Governance, including on judicial independence. However, only a handful of countries have undertaken the review, in some cases tightly controlling the process and results. Further, countries have often failed to implement recommendations made through the review process.

**Regional task forces** on crime and security, as in the Caribbean, have undertaken regional-level analysis of major causes of crime and recommended remedial interventions, including coordination and cooperation in intelligence sharing. **Law enforcement cooperation agreements**, like the West African Police Chiefs Committee (WAPCCO), the Southern African Regional Police Chiefs Committee (SARPCCO), and the Association of Caribbean Commissioners of Police (ACCP), have strengthened police cooperation, though effectiveness is contingent both on ministerial support and improved operational arrangements. Examples of south-south experience sharing and learning on security and judicial reform and oversight also exist: civil society groups like the African Security Sector Network have facilitated dialogue among parliamentary committee members from Ghana and Liberia, for instance.<sup>ii</sup>

- **International**

A number of policy initiatives have been developed over the past ten years in response to the linkage between corruption, conflict, and resources.<sup>iii</sup> The **Extractive Industry Transparency Initiative** (EITI), for example, is an international mechanism involving governments, industry, and civil society to improve the transparency of oil, gas, mining revenues. It seeks to build accountability into the management of payments to government, though does not address the allocation of extraction rights. Other policy frameworks include the IMF Guide on Resource Revenue Transparency and the Natural Resource Charter. To address the role of resource exploitation in fueling the war in the DR Congo, the UN Mission in DR Congo (MONUC) has begun **monitoring and inspecting trade in natural resources** in eastern DRC, in cooperation with government counterparts; also centralizing mineral trading and bringing greater government oversight via establishment of trading centers.<sup>iiii</sup>

Under the recently established **West African Coast Initiative**, four UN missions in the region (UNOCI, UNIPSIL, UNMIL, and UNIOGBIS) have partnered with the Department of Political Affairs’ UN Office in West Africa, Interpol, UNODC, and ECOWAS in an effort to limit the

corrosive influence of organized and transnational crime through “international mentoring [of national police], regional coordination, and local ownership.”<sup>liv</sup>

Nonetheless, there are risks associated with external efforts that, by default, seek to disrupt or criminalize illicit economies. In post-conflict environments like West Africa, for example, such measures may be destabilizing, due to the practice by pre-conflict regimes of integrating their control over criminality with their overall strategy of political control.<sup>lv</sup> Reno suggests that those involved in illicit markets are adept at manipulating external measures to suit their own self-interest.<sup>lvi</sup> Where corruption is accepted by political elite, as is increasingly the case in Afghanistan, anti-corruption legislation and enforcement have limited capacity to reduce the scope of the problem. Moreover, “ill-governed states are intractable to most practicable interventions; the activity is more easily moved around-within the country or to another country in the same market – than sharply diminished.”<sup>lvii</sup> Nonetheless, there may be symbolic value in expanding efforts, since corruption arrests, if publicly perceived as genuine rather than politically motivated, do signal the non-acquiescence of government to corruption.<sup>lviii</sup>

Drug enforcement is still predominantly a bilateral undertaking between supplier or transit nations and either the US or European partners, focused on interdiction and supply reduction. **Cross-border policing and extradition**, as between Mexico and the US, has enable law enforcement officials to break up narcotics trafficking-related criminal organizations and gangs with operations on both sides of the border. Corrupting enforcement agents is inseparable from high-profit organized criminal activity, especially drug trafficking – as demonstrated by Afghanistan, Colombia, Mexico, Guinea Bissau, and elsewhere. For this reason, anti-corruption initiatives can reinforce anti-narcotics enforcement, but the contrary less true, as increased enforcement pressure increases the opportunity (and financial incentive) for corrupt enforcement officials to ignore or protect illegal activity.<sup>lix</sup>

Although not criminal justice *per se*, the international **anti-piracy effort** off the coast of Somalia (and, increasingly further afield) bears mention. There (as in the Straits of Malacca), piracy endangers international shipping routes and has provoked multinational response. UN Security Council Resolution 1838 (2008) called on nations with naval vessels and military aircraft in the area to repress piracy. Joining naval patrols from a growing number of nations, the European Union launched its first maritime operation, “Operation Atalanta.”<sup>lix</sup>

### 3. Gaps in International Supplementary Capacity

Research by the World Banks and OSI suggests a number of gaps and “imbalances” common in donor support to criminal justice. The study cites lack of clarity and agreement among donors on goals; top-down, supply-side, acontextual planning; lack of strategic prioritization and sequencing; inattention to government commitment; insufficient coordination; failure to learn lessons; repetition of others’ failures by newcomers; avoidance of complexity in favor of expediency or visibility; and inadequate monitoring and evaluation. Prisons and traditional justice mechanisms have been neglected (though attention to the both is now increasing). IFIs and many development donors are restricted from supporting police reform, despite this being an obvious priority for rule of law.<sup>lxi</sup>

**Understanding of Local Context.** International engagement often misses the political and political economy dimensions of security and justice provision, and is overwhelmingly focusing

on sector-specific technical experts – police officers, prison officials, border guards – who can provide advice, training and mentoring, as well as conduct assessments and reporting. In part, this is driven by the need to “do something” and its corollary, the need to be seen doing something.

Missing are those who are involved in the overarching political dimensions of the process, coordination, system-wide monitoring and evaluation – and who also bring awareness of the local context and its implications for implementation strategy.<sup>lxii</sup> Dinnen has noted that Australian support to the criminal justice sector in Papua New Guinea and the Solomon Islands, for example, “risk[s] being undermined by the strength and resilience of the informal mores and practices of dispute resolution prevailing at local levels, many of which conflict with state notions of law and order.”<sup>lxiii</sup> Australian experience has indicated the importance of context-specific knowledge (sociocultural, linguistic) in building policing that is both sustainable and appropriate, including engagement with non-state actors.<sup>lxiv</sup> The lesson is equally valid for other donors and multilateral institutions. In this regard, donors have generally failed to support, strengthen, and utilize ***Southern capacity***. As security and justice assistance to crime and violence affected countries has become more common, the pool of experience within these countries has also grown, holding the potential for significantly greater south-south learning.

***Funding gaps and disequilibria.*** The criminal justice sector is chronically underfunded by donors; sub-sectors like corrections, even more so.<sup>lxv</sup> Analysis of funding gaps is hampered by lack of data; there is no single source for identifying how much donor assistance is allocated for criminal justice reform worldwide.<sup>52</sup> The OECD database is regarded as the most comprehensive data source. Disaggregating data is complicated, however, by the fact that criminal justice often is reported by donors under multiple program areas. OSI notes that in a DFID’s report on aid spending, the word justice does not even appear, despite justice being a major aspect of its portfolio.<sup>56</sup>

The types of reform pushed by donors, has left countries with unsustainable salary and equipment maintenance costs. In Afghanistan, an extreme case, given the police role in US counter-insurgency strategy, recurrent costs for the national security forces (police and army) are estimated at \$10 billion/year; in 2009, the IMF estimated the *licit* 2007-2008 GDP of Afghanistan at \$12 billion.<sup>lxvi</sup> In Sierra Leone, the UK provided £20m between 2001-2005. Even with 50 percent of its budget supported by donors, Sierra Leone is struggling to cover recurrent costs, while donor commitments have fallen far short of need.<sup>lxvii</sup>

A joint World Bank-Open Society Institute study identifies several additional issues. First, “absolute expenditures are not always relevant as some activities cost more than others, and some of the most important ones may cost donors very little.” Sectoral government expenditure tends to be disproportionately on police, which cost more than courts, prosecutors, or public defense; courts more than prosecutors.<sup>lxviii</sup> The study also notes that it is usually prisons, public defense, prosecution, and police, that face under-runs, but that domestic public attention to the latter two drives government allocation at the expense of the former two.

***Measuring Results and Outcomes.*** Early international interventions often demonstrate concrete, positive results – police reform in Haiti and Bosnia, for instance – but are rarely sustained, without long-term results that matter to recipient populations. There is no agreed upon framework for measuring progress in the criminal justice reform, either across donors or

discreet areas of focus (e.g., comprehensive measure of justice sector reform, as opposed to benchmarks and indicators for police reform, judicial reform.) Broad indicators that are applicable across countries are necessary for comparative analysis and to monitor the status of implementing international norms, but not internationally-agreed upon set of indicators yet exists (though the UN is currently piloting a Rule of Law Indicators Project in Liberia and Haiti.) At the same time, there is a risk that indicators that are broad enough to fulfill this criteria will not sufficiently capture local context and needs.<sup>lxix</sup> Jones et al. identify a number of “outcomes” – the consequences of efforts, international, regional, national, or local, to reconstruct internal security, including: (i) crime rates (including homicides and violent crime); (ii) other crime indicators (e.g., drug production, trafficking); (iii) incidence of political violence; (iv) number of casualties, and (v) public perceptions of security, rule of law, and corruption.<sup>lxx</sup> They acknowledge, however, that there be significant methodological hurdles in terms of the absence of reliable data (due to poorly or no functioning government) and causality.<sup>lxxi</sup>

There is considerable skepticism about quantitative metrics, in fact. According to Meharg, metric-based progress reporting “tend[s] either to measure internal project progress...or more vaguely, to measure external progress according to the perceived impact of a project.”<sup>lxxii</sup> Dinnen et al. echo this in their review of Australian policing interventions in the Asia Pacific, noting, “Numerical indicators such as the number of officers completing training and the number of planning workshops held were useful for assessing the output of advisors...However, such activities did little to demonstrate the actual impact or outcome of such activities, an issue further complicated by the limited availability of benchmark data.”<sup>lxxiii</sup>

Metric-based performance indicators have resulted in more institutional receptiveness to monitoring, where the political willingness to do so exists. The creation of the South African Police Service provided an opportunity to establish and track progress towards performance indicators that had several weaknesses (too many indicators, lack of capacity for analysis, weak feedback mechanism), but which helped inculcate a culture of performance measurement within the SAPS.<sup>lxxiv</sup>

## 5. Expectations

The WDR posits that public expectations *in the legitimacy of government actions are essential for any sustained success*. With respect to the criminal justice system, several dimensions bear highlighting:

First, there is a clear link between public confidence in the ability of the justice system to prevent and fairly and effectively resolve criminality. Vigilante or extrajudicial justice, as well as blood feuds, and retaliatory violence are often responses to the absence of effective remedy, leading to escalation into violence.

Second, police are often the public face of the state – particularly in rural areas. Police behavior is a critical first step towards encouraging trust in the state. Overcoming a legacy of low public trust in the police is a gradual process, easily undermined.<sup>lxxv</sup> International efforts to extend state authority in response to fragility can be destabilizing when the government is seen as the source of social problems, rather than the solution.

Third, in post-settlement environments, public optimism that recovery is “on the right track” has been correlated to improvements in law and order.<sup>lxxvi</sup> Conversely, pessimism has been correlated not just to deteriorations in law and order, but to lack of progress.<sup>lxxvii</sup> Yet, public expectations for improvements in their personal security and for reform of government institutions are usually high. Sustaining this optimism is more difficult, however, as there is often a gap between expectations and the ability of state – or international – institutions to match expectations. Actions that have undermined confidence and legitimacy frequently stem from poorly conceived conceptualization or implementation of the mechanisms described above. In Sierra Leone, for instance, post settlement, the existing police force was maintained despite its past legacy of abuse during and prior to the war. No vetting mechanism was put in place, though both a complaints mechanisms and internal investigations department were established.

Fourth, there is a risk that reform initiatives, whether local or international, will raise expectations that do not translate into dramatic reductions in crime, improvements in safety, reductions in discrimination. This impacts not only internal state legitimacy, but that of external actors as well. Yet, there have been occasions – Kosovo, DR Congo – where exigent action and under-attention to corrections by peacekeepers, for example has resulted in violation of international standards. Repeated, failed interventions – in Haiti, in Timor-Leste – influence the receptiveness of the government and public to new rounds of reform.

## **6. Principle Recommendations**

### **A. Addressing Legitimacy, Reinforcing Capabilities**

- *Interventions designed to strengthen the performance of local state law enforcement and justice institutions should focus beyond just criminal justice to encompass a broader range of local justice requirements, including mediation and conflict resolution, property and family dispute resolution.*
- *Where informal linkages between state justice systems and “non-state” providers already exist or where there are opportunities to do so, interventions should seek to incorporate these relationships into legislation and procedures, while reinforcing local accountability mechanisms and capabilities for problem-solving.*

### **B. Addressing Corruption, Organized, and Transnational Crime**

- *To counter organize and cross-border crime and associated violence, strengthening criminal justice legislation and enforcement is necessary, but not sufficient. Multi-sectoral, longer-time horizon interventions – creating opportunities for civil society, promoting local accountability, transforming public space, addressing disparities and at-risk youth – are required.*

## **Endnotes**

<sup>i</sup> United Nations, Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies,” S/2004/616, August 2004.

<sup>ii</sup> Thomas Carothers, “The Rule of Law Revival,” in Carothers (ed.), *Promoting the Rule of Law Abroad: In Search of Knowledge*, (Washington, DC: Carnegie Endowment for International Peace, 2006).

<sup>iii</sup> The notion of “how much state” is enough, or rather what role and functions the state should serve vis-à-vis other forms of formal and informal authority is a growing debate with respect to internal and external “statebuilding” interventions – an issue raised in this paper in the context of what Scheye (2010) refers to as “second state” and “non-state” security and justice providers.

<sup>iv</sup> Jan Perlin and Michelle India, “Towards a New Consensus on Justice Reform: Mapping the Criminal Justice Sector,” Open Society Justice Initiative, July 2008, p. 26. Emphasis added.

<sup>v</sup> Pamela Dale, “Barriers to Justice in Sierra Leone,” *Justice for the Poor*, Vol. 1 (4), World Bank: September 2007.

<sup>vi</sup> I.e., “Soldiers by day, rebels by night.”

<sup>vii</sup> Woodrow Wilson International Center for Scholars, “Combating Organized Crime in Mexico and Latin America,” March 2009, conference summary at [http://wilsoncenter.org/index.cfm?fuseaction=news.item&news\\_id=514334](http://wilsoncenter.org/index.cfm?fuseaction=news.item&news_id=514334)

<sup>viii</sup> International Crisis Group, “Guinea-Bissau: In Need of a State,” Crisis Group Africa Report No. 142, July 2007, p. 22, [http://www.crisisgroup.org/~media/Files/africa/west-africa/guinea-bissau/Guinea-Bissau%20In%20Need%20of%20a%20State.pdf](http://www.crisisgroup.org/~/media/Files/africa/west-africa/guinea-bissau/Guinea-Bissau%20In%20Need%20of%20a%20State.pdf).

<sup>ix</sup> The World Bank, “Urban Crime and Violence in LAC: Status Report on Activities,” 2008, p. 3.

<sup>x</sup> UNODC, “Transnational Trafficking and the Rule of Law in West Africa: A Threat Assessment,” July 2009, p. 69.

<sup>xi</sup> Jonathan Caulkins, Mark Kleiman, and Jonathan Kulick, “Drug Production and Trafficking, Counterdrug Policies, and Security and Governance in Afghanistan, Center on International Cooperation, March 2010.

<sup>xii</sup> Zachariah Mampilly, “Stationary Bandits: Understanding Rebel Governance,” Doctoral Dissertation, UCLA 2007, on file with the author.

<sup>xiii</sup> For example, to become a judge, one typically first has to train and practice as a lawyer – a minimum of five years in the British education system.

<sup>xiv</sup> Thomas Carothers, “The Elusive Synthesis,” *Journal of Democracy*, 21 (4) October 2010, p. 23.

<sup>xv</sup> For an overview, see UNDP’s “Support to Security Sector Reform – SSSR” Project, <http://www.undp.org.al/index.php?page=projects/project&id=38>

<sup>xvi</sup> BICC, “You Have Removed the Devil from our Door: An Assessment of the UNDP Small Arms and Light Weapons Control (SALWC) project in Albania.” <http://intra.undp.org.al/ext/elib/download/?id=505&name=BICC%20FINAL%20REPORT%20SALWC%20Evaluation%2Epdf>

<sup>xvii</sup> In this section, focuses narrowly on the *credibility* of the state criminal justice system, rather than on (i) technical processes to improve its effectiveness – e.g., working level coordination meetings among criminal justice institutions, or macro-level legitimacy issues, e.g., whether the criminal justice support in question is being delivered under a UNSC mandate.

<sup>xviii</sup> Linn Hammergren, “Balanced Justice and Donor Programs: Lessons from Three Regions of the World,” Open Society Justice Initiative, via [http://www.soros.org/initiatives/justice/focus/criminal\\_justice/articles\\_publications/publications/justice\\_20081124/justice\\_20081124b.pdf](http://www.soros.org/initiatives/justice/focus/criminal_justice/articles_publications/publications/justice_20081124/justice_20081124b.pdf)

<sup>xix</sup> In post-war Sierra Leone, for example, 85 percent of the urban population believed that police behavior had improved since the end of the war, according to a 2004 perception survey. Bruce Baker, “The African post-conflict policing agenda in Sierra Leone,” *Conflict, Security, and Development*, Vol. 6(1) pp: 25-49.

<sup>xx</sup> Chitra Bhanu and Christopher Stone, “Public Private Partnerships for Police Reform,” Vera Institute of Justice, p. 4.

<sup>xxi</sup> Mark Malan and Sarah Meek, “Extension of Government Authority and National Recovery,” in Malan et al., *Sierra Leone: Building the Road to Recovery*, Institute for Strategic Studies, 2003, via <http://www.iss.co.za/pgcontent.php?UID=1537>.

<sup>xxii</sup> See, for example, American Bar Association, “DRC’s Mobile Courts Strike a Blow Against Rape and Related Crimes,” November 2009, [http://www.abanet.org/rol/news/news\\_drc\\_mobile\\_courts\\_strike\\_blow%20against\\_crimes\\_1109.shtml](http://www.abanet.org/rol/news/news_drc_mobile_courts_strike_blow%20against_crimes_1109.shtml).

<sup>xxiii</sup> In Nicaragua, crime has reportedly fallen by ten percent in areas where a paralegal program is run. Quintanilla, 2004, cited in Eric Scheye, “State-Provided Service, Contracting Out, and Non-State Networks: Justice and Security as Public and Private Goods and Services,” OECD, 2009. Via [www.oecd.org/dataoecd/43/8/43599221.pdf](http://www.oecd.org/dataoecd/43/8/43599221.pdf)

<sup>xxiv</sup> OSCE, Good Practices in Building Police-Public Partnerships, 2008, p. 33.

<sup>xxv</sup> UN Office on Drugs and Crime and The World Bank, “Crime, Violence, and Development: Trends, Costs, and Policy Options in the Caribbean,” Report No. 37820, March 2007, pp. 149-150, via [www.unodc.org/pdf/world%20bank%20C&V%20Report.pdf](http://www.unodc.org/pdf/world%20bank%20C&V%20Report.pdf)

- <sup>xxvi</sup> According to Douglas Farah, illegal drug revenue exceeds counternarcotics budgets in Latin America 50-to-1. Woodrow Wilson International Center for Scholars, op cit.
- <sup>xxvii</sup> World Bank and UNODC, "Crime Violence and Development: Trends, Costs, and Policy Options in the Caribbean," Report No. 37820, March 2007, pp. 141-142.
- <sup>xxviii</sup> World Bank, "Crime, Violence and Economic Development in Brazil: Elements for Effective Public Policy," Report No. 36525, June 2006.
- <sup>xxix</sup> Eric Scheye notes that "From Timor-Leste to southern Sudan, Jamaica to Nepal, non-state/local justice and security networks are associated, however obscurely/tenuously, with state systems, often in 'law' and, more often, 'in practice.' It is as inaccurate, therefore, hermetically to characterize one set of justice and safety providers 'state' and the other 'non-state,' when they overlap." Scheye (2009) op cit., p. 11.
- <sup>xxx</sup> OECD, "Enhancing Security and Justice Service Delivery," OECD, 2007, via [www.oecd.org/dac/conflict/publications/servicedelivery](http://www.oecd.org/dac/conflict/publications/servicedelivery)
- <sup>xxxi</sup> Sinclair Dinnen, Abby McLeod, and Gordon Peake, "Police-Building in Weak States: Australian Approaches in Papua New Guinea and Solomon Islands," in Gordon Peake, Eric Scheye, and Alice Hills, eds., "Managing Insecurity: Field Experiences of Security Sector Reform," A special issue of *Civil Wars*, Vol. 8(2), p. 104.
- <sup>xxxii</sup> Bryn Hughes, "Moving beyond rethinking the 'state of the state': To the challenge of reshaping international contributions to peace operations," draft on file with author, p. 6.
- <sup>xxxiii</sup> Eric Scheye, "Pragmatic Realism in Justice and Security Development," Clingendael Institute, July 2009, p. ii.
- <sup>xxxiv</sup> See for example Bruce Baker, "The African post-conflict policing agenda in Sierra Leone," *Conflict, Security & Development*, 6(1).
- <sup>xxxv</sup> Baker, op cit., p. 38.
- <sup>xxxvi</sup> Interdisciplinary Analysis and Saferworld, "On track for improved security? A survey tracking changing perceptions of public safety, security and justice provision in Nepal," pp. v, 5, via [http://www.saferworld.org.uk/images/pubdocs/On\\_track\\_for\\_improved\\_security\\_English\\_2009.pdf](http://www.saferworld.org.uk/images/pubdocs/On_track_for_improved_security_English_2009.pdf). According to the study, the Nepali police are regarded as the most effective institution for protecting people from crime, despite the fact that (i) 46 percent of Nepalis surveyed do not have police posts in their municipality, (ii) public trust in and respect for the police is not high (due to corruption, partially, rudeness), and (iii) 78 percent of those polled believe the police are unreliable at bringing criminals to justice. (p. 3)
- <sup>xxxvii</sup> UN operations in Port-au-Prince, for instance, successfully targeted criminal gangs, enabling the Haitian government to assert its authority across the capital.
- <sup>xxxviii</sup> According to Stromseth, "they may, for instance, enjoy greater legitimacy among affected local populations than either international prosecutions far away, or domestic prosecutions before the justice system of limited means for credibility. International participation and resources can help ensure that the participation can give citizens of the country most affected a greater stake and sense of ownership." Jane Stromseth, David Wippman, and Rosa Brooks, *Can Might Make Rights?: Building the Rule of Law After Military Interventions*, (New York: Cambridge University Press, 2007 ed.), p. 275.
- <sup>xxxix</sup> CICIG, "Two Years of Work: Our Commitment is to Justice," via <http://cicig.org/index.php?page=two-years-of-work>; Andrew Hudson and Alexandra Taylor, "A New Model for International Criminal Justice? Guatemala's Commission against Impunity," *J Int Criminal Justice*, via <http://jici.oxfordjournals.org/cgi/reprint/mqg003v1.pdf?ijkey=MQI9MfQ1lz3tQ87&keytype=ref>
- <sup>xl</sup> Deborah Isser, Stephan Lubkemann, Saah N'Tow, "Looking for Justice: Liberian Experiences with and Perceptions of Local Justice Options," USIP, 2009.
- <sup>xli</sup> This involves four steps: "defining the problem and collecting reliable data, identifying causes and risk factors for violent behavior, developing and implementing interventions, and analyzing and evaluating the effectiveness of violence prevention interventions." UNODC and World Bank, op cit., p. 142.
- <sup>xlii</sup> See for example [www.vpajamaica.com/crimeobv/CRIME%20OBSERVATORY%20PROJECT.pdf](http://www.vpajamaica.com/crimeobv/CRIME%20OBSERVATORY%20PROJECT.pdf)
- <sup>xliiii</sup> Woodrow Wilson Center, op cit.
- <sup>xliiii</sup> Mark Downes, "Police Reform in Serbia: Towards the Creation of a Modern and Accountable Police Service," OSCE, January 2004. See, in particular, chapter six.
- <sup>xliiii</sup> Henriette von Kaltenborn-Stachau, "The Missing Link: Fostering Positive Citizen-State Relations in Post-Conflict Environments," The World Bank Communication for Governance and Accountability Program, 2008, pp. 77-78.
- <sup>xliiii</sup> Jake Sherman, Strengthening Security Sector Governance in West Africa, Center on International Cooperation, March 2009, via [http://www.cic.nyu.edu/peace\\_ssr/docs/SSR\\_W.Africa.pdf](http://www.cic.nyu.edu/peace_ssr/docs/SSR_W.Africa.pdf)
- <sup>xliiii</sup> Stromseth, p. 215.
- <sup>xliiii</sup> OECD/DAC, "Handbook on Security System Reform," (Paris: OECD, 2007), p. 195.

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- <sup>i</sup> International Peace Institute, "Transnational Organized Crime," Blue Book No. 2, (New York: IPI, 2009), p. 4.
- <sup>ii</sup> Thomas Jaye, "Liberia: Parliamentary Oversight and Lessons Learned from Internationalized Security Sector Reform," Center on International Cooperation, March 2009, p. 13. Via [http://www.cic.nyu.edu/peacebuilding/docs/Liberia\\_SSR.pdf](http://www.cic.nyu.edu/peacebuilding/docs/Liberia_SSR.pdf)
- <sup>iii</sup> See for example, Philippe Le Billon, Jake Sherman, and Marcia Hartwell, "Regulating Resource Flows to Civil Wars: A review and analysis of current policies & legal instruments," International Peace Academy Policy Paper, October 2002; Global Witness, "Lessons UNLearned," 2010.
- <sup>iiii</sup> Global Witness, "Lessons UNLearned," January 2010.
- <sup>lv</sup> Paraphrasing comments of the former UN Police Advisor at the WACI launch ceremony, New York, July 8, 2009.
- <sup>lv</sup> William Reno, "Understanding Criminality in West African Conflicts," *International Peacekeeping*, Vol. 16 (1), pp. 47-61.
- <sup>lvi</sup> Ibid.
- <sup>lvii</sup> In Thailand and Pakistan, for instance, drug-crop cultivation has been reduced, but both have moved up the value chain to become transit points for refined opiates. In Afghanistan and Myanmar, the national government has little control over territory where drug production is greatest, complicating enforcement. Kaulkins et al., op cit.
- <sup>lviii</sup> Ibid.
- <sup>lix</sup> Ibid.
- <sup>lx</sup> See EU NAVFOR Somalia, via <http://www.consilium.europa.eu/showPage.aspx?id=1518&lang=en>.
- <sup>lxi</sup> Lynn Hammergren, "Balanced Justice and Donor Programs: Lessons from Three Regions of the World., pp. 1-2.
- <sup>lxii</sup> Mark Sedra, "Narrowing the Policy-Practice Divide," draft paper for the e-conference, *The Future of SSR*, p. 11.
- <sup>lxiii</sup> Dinnen et al., op cit. p. 104.
- <sup>lxiv</sup> Ibid.
- <sup>lxv</sup> Stromseth, p. 62. As Stromseth et al. note, "Many past rule of law efforts have suffered from being underresourced relative to their actual needs, [but] even underresourced programs have huge price tags."
- <sup>lxvi</sup> Sources for: planned size of ANSF, ANA, ANP; ultimate recurrent cost (internal USG documents place it at \$11 bn/year); current Afghan GDP (most recent IMF report on Afghanistan on the Afgh page of the IMF website).
- <sup>lxvii</sup> Baker, op cit., pp. 41-42.
- <sup>lxviii</sup> The Council of Europe (CEPEJ, 2005 and 2006) found that "the annual expenditures on courts, prosecution, and legal aid by 46 European countries never reach more than 0.5 percent of the GDP, except for two countries (Bosnia and Herzegovina at 1.2 percent and Moldova at 2.3 percent). Data currently being processed by the World Bank place many Latin American court budgets (exclusive of prosecution and defense) between 0.5 and 0.8 percent of GDP.14 While the Guatemalan judiciary's 0.23 percent is lower, it still stands up well against the European averages." Cited in Hammergren, pp. 13-14.
- <sup>lxix</sup> OSI, "Towards a New Consensus on Access to Justice," Summary of Brussels Workshop, 29-30 April 2008.
- <sup>lxx</sup> Seth Jones, Andrew Rathmell, and Jeremy Wilson, "Establishing Law and Order after Conflict," RAND Corporation, 2005, p. 24.
- <sup>lxxi</sup> Dinnen et al. echo this in their review of Australian policing interventions in the Asia Pacific, noting, "Measuring the impact of specific programme initiatives, or, indeed, the project as a whole, is difficult. Numerical indicators such as the number of officers completing training and the number of planning workshops held were useful for assessing the output of advisors...However, such activities did little to demonstrate the actual impact or outcome of such activities, an issue further complicated by the limited availability of benchmark data." See Dinnen, et al. op cit., p. 93.
- <sup>lxxii</sup> Sarah Meharg, *Measuring What Matters in Peace Operations and Crisis Management*, (Montreal and Kingston: McGill-Queen's University Press, 2009), p.
- <sup>lxxiii</sup> Dinnen, McLeod, and Peake in Peake, Scheye, Hills, p. 93
- <sup>lxxiv</sup> OECD DAC Handbook on Security Sector Reform, pp. 80-81.
- <sup>lxxv</sup> For example, by lack of progress elsewhere in the justice system; unrealistic community expectations relative to police capacity – especially in rural areas; rotation of police, preventing relationship-building and stretching human and financial resources; low poor morale, in part due to low wages; resistance to change by government and police services; poor oversight and lack of accountability, including on use of firearms and detention; and failure to link police reform to public reliance on traditional justice mechanisms
- <sup>lxxvi</sup> Notably, improved perceptions of security have also been observed without actual improvement, according to initial findings of an ongoing evaluation of the National Solidarity Program in Afghanistan.
- <sup>lxxvii</sup> Interdisciplinary Analysis and Saferworld, op cit.