

## CSDG Policy Studies

The Future of Security and Justice for the Poor:  
A 'Blue Sky' Think-Piece

By 'Funmi Olonisakin with Eka Ikpe and Paschal Badong

Prepared for the UK Department for  
International Development (DFID)

CSDG

CONFLICT, SECURITY & DEVELOPMENT GROUP

## About this report

This paper examines three key challenges that continue to plague international efforts to support the provision of security and justice in developing countries, particularly to poor and marginalized communities. Firstly, trends across a number of target countries suggest that while donor-supported programmes on security and justice have undoubtedly achieved some successes, their overall impact on the poor is marginal. Secondly, the diversity among the poor is such that policies that target this group as a whole are invariably skewed against particular sub-groups. Thirdly, and related to the first two factors, there is no mechanism for assessing the impact of collective donor/international support for security and justice provision to the poor. This paper offers new thinking about how to more effectively meet these challenges in ways that will make a difference in the lives of poor people.

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## **Abbreviations**

<b>DFID</b>	Department for International Development
<b>DRC</b>	Democratic Republic of the Congo
<b>HMG</b>	Her Majesty's Government

## Executive summary

This paper examines some of the challenges that continue to plague international efforts to support the provision of security and justice in developing countries, particularly to poor and marginalized communities. Firstly, trends across a number of target countries suggest that while donor-supported programmes on security and justice have undoubtedly achieved some successes, their overall impact on the poor is marginal. Secondly, the diversity among the poor is such that policies that target this group as a whole are invariably skewed against particular sub-groups. Thirdly, and related to the first two factors, there is no mechanism for assessing the impact of collective donor/international support for security and justice provision to the poor.

Addressing these challenges makes sense for a variety of reasons, not least because of the need to multiply the effect of donor support for security and justice provision and thus bring about a qualitative shift in the lives of the poor. Failure to address them risks compounding the threats that conflict and fragile environments pose for the international community. Threats of armed violence in these settings remain real, even if there is a noticeable decline in large-scale armed conflict globally. There is a real possibility of lingering low-intensity conflict, with limited state control over the means of violence, including the supply of weapons and the actors that control it. This is a clear challenge for peace-building and overall development efforts.

This paper examines the gaps in current approaches to the provision of security and justice and offers new thinking and approaches that can make a difference in the lives of poor people in the target environments. It concludes that if donor support for security and justice is to truly transform the lives of ordinary people, particularly in poor, marginalized communities in fragile environments, the Department for International Development (DFID), Her Majesty's Government (HMG) and the international donor community will need to address the following gaps:

- There is a tendency to strategically deal with supply-side issues relating to justice and security provision by the state. While the state remains the main framework for international engagement, focusing on it alone implies less focus on the demand side – on non-state sources where the poor go to access justice and security. Informal security and justice systems need to be included in policy approaches to security and justice, and should be backed by better and more systematic linkages to state-led processes.
- There is inadequate linkage between security and justice on the ground – DFID often leans toward the justice sector as a whole and ventures only

into policing when it comes to issues of security. This has implications for linking justice and security, given the reality that security extends beyond the police to the military and other paramilitary groups. The military remain involved in the lives of civilians and their role is part of the problem that needs to be addressed to improve security provision, especially to the poorest.

- There does not appear to be an effective nuancing of justice and security provision to particular groups of poor.
- There is no systematic engagement with regional or continental bodies, which form the locus for norm setting and the convening of state actors. Remediating this is vital in light of the direction in which the world is moving in terms of approaches to common security, regional markets and political harmonization.
- More work is needed to understand the context – specifically the political economy – of target environments and, more importantly, to allow this to inform strategic decisions and actions. Recipient country nationals and a wider range of actors at all levels should be engaged in this process.
- Serious gaps remain in state-led security and justice structures and processes. There could be better focus on structural reforms and more effort to expand the constituencies of actors in target countries. Beyond the normal state structures, other political actors (e.g. parliament and political parties) and structures (e.g. local government) require greater recognition in this regard.

### ***Recommendations***

The paper offers the following recommendations:

*To DFID:*

- Consider security and justice as a core aspect of development assistance. Mainstreaming security and justice into wider development programming rather than narrowly as a conflict issue offers a better opportunity to achieve an impact on the lives of the poor in the long term.
- Place greater emphasis on linking security and justice in central planning and on the ground through engagement on wider security issues beyond policing and systematic engagement with other parts of HMG that have the required expertise to deal with such wider security issues.
- Gain better knowledge and understanding of the state of security and justice in fragile settings, particularly informal systems of security and justice.
- Provide leadership within HMG in monitoring assistance for the provision of security and justice to the poor and assessing its overall impact on the poor.

*To HMG:*

- Align approaches to security and justice across the board in order to take into account informal systems that legitimately provide security for the poor in fragile states.
- Better align support for security and justice across the relevant sectors in order to serve the needs of poor and marginalized communities.
- Engage with state actors in fragile environments in order to achieve policy change that takes an inclusive approach to the provision and governance of security and justice systems.
- Work with the donor community and other parts of the international community to develop an appropriate framework for measuring and monitoring the impact of assistance with security and justice provision to the poor.

*To the international community:*

- Develop a common understanding of and approach to the provision of security and justice to the poor, including targeting the informal systems that the poor turn to at present.
- Improve the co-ordination of available international assistance for the provision of security and justice in fragile settings.
- Conduct regular monitoring of security and justice provision and assessment of its impact on poor communities.
- Assign responsibility to key actor(s) for collective monitoring and regular reporting on all aspects of the provision of security and justice to the poor.

## 1. Introduction

In the last few years, thinking, policy and programming on the provision of security and justice to the poor in the developing world has recorded tangible progress in several areas. Among other things, these include, firstly, a growing recognition that security and justice are two sides of the same coin and, as such, de-linking one from the other limits the effectiveness of international assistance and overall support for peace-building and state-building initiatives. Secondly, in a number of post-conflict settings, DFID, HMG and international engagement with security and justice processes has contributed significantly to institutional reform and provided the much-needed core that underpins conflict prevention efforts.

This paper takes this good news for granted, however, and instead focuses on the challenges that plague international efforts to support security and justice provision and make it difficult to make a real difference to the lives of poor and marginalized communities. These challenges are as follows. Firstly, trends across a number of target countries suggest that while donor-supported programmes on security and justice have no doubt achieved some successes, their overall impact on the poor is marginal. Secondly, the diversity of the groups that make up the poor means that policies that target the poor as a whole are invariably skewed against particular sub-groups. Thirdly, and related to these two factors, there is no mechanism for assessing the impact of collective donor/international support for security and justice provision to the poor.

Addressing these challenges makes sense for a variety of reasons, not least because of the need to multiply the effect of donor support for security and justice provision and thus make a qualitative improvement to the lives of the poor. Crucially, there is a need to avoid stagnation or diminishing returns in the effectiveness of donor efforts. Failure to address these challenges risks compounding the threats that conflict and fragile environments pose for the international community. Threats of armed violence in these settings remain real, even if there is a noticeable decline in large-scale armed conflict globally. Fragile environments hold a real possibility of lingering low-intensity conflict, with limited state control over the means of violence, including the supply of weapons and the actors that control it. This is a clear challenge for peace-building and overall development efforts.

This paper examines the gaps in current approaches to the provision of security and justice and offers new thinking and approaches that can make a difference to the lives of poor people in the target environments. In this regard, security and justice is defined broadly as access to 'a minimum level

of private and public safety and law and order'.<sup>1</sup> The discussion in this paper therefore encompasses issues relating to a number of policy areas, including security sector reform; safety, security and access to justice; the rule of law; armed violence reduction; and small arms and light weapons. The rest of the paper is structured as follows:

- Section 2:** Emerging trends: outcomes of donor support for security and justice provision to the poor
- Section 3:** The developing country context: effect of security and justice provision to the poor
- Section 4:** Reviewing the strategic direction of security and justice for the poor
- Section 5:** Envisioning the future direction of security and justice: what to do differently and how to do it
- Section 6:** Conclusions and recommendations

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<sup>1</sup> Ismail & Hendrickson, *What Is the Case for a Security and Justice Focus in Development Assistance Programming?*

## **2. Emerging trends: outcomes of donor support for security and justice provision to the poor**

Two broad trends apparent in the approaches to security and justice provision give some indication of its marginal impact on the poor. Firstly, the security and justice systems being supported through donor assistance – mostly state focused – do not visibly respond to the needs of the vast majority of the people due to a range of factors discussed in section 3 of this paper. Secondly, many of the poor and marginalized communities in the countries targeted for donor support subsist on the margins of these structures and have come to rely on alternative security and justice systems.

### **2.1 The failure of state provision of security and justice to reach the majority of the poor**

The security and justice needs of the poor are not the priority of the state in many fragile environments. Experiences across regions indicate that many poor communities are simply abandoned to non-state security and justice systems: Afghanistan, Bangladesh, Jamaica, Nigeria and Uganda are a few examples. Jamaica exemplifies this challenge. The state's low prioritization of the security and justice needs of the poor is manifested in its failure to provide responsible and accountable policing to people living in poor inner-city communities. This has not only created a vacuum easily filled by gangs, but, more importantly, has forced parts of the affected communities to seek services from these gangs.<sup>2</sup> Typically, citizens do not have confidence that state institutions will protect them and provide them with access to justice. And, in many cases, the patterns of excessive use of force against citizens, including extra-judicial killings, mean that citizens see state security providers, particularly the police, as a force to be feared rather than as a protector of the people. The failure of the state to hold law enforcement and public officials accountable when they violate citizens' rights further compounds this problem. Such injustice and prejudice are reinforced by official government attitudes that tolerate the stereotypes and social exclusion that arise from such a situation.<sup>3</sup>

In many cities in the developing world, the lack of effective public security and the use of private commercial security by those who can afford it mean that crime and insecurity invariably shift to poor and low-income areas. Such groups depend on informal security arrangements such as vigilantes, neighbourhood watches and other security systems that have no links to the state.<sup>4</sup> In Sierra Leone, justice and security shortfalls, as well as poor people's

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<sup>2</sup> Amnesty International, *'Let Them Kill Each Other'*.

<sup>3</sup> Ibid.

<sup>4</sup> Isima, *'Demilitarisation, Non-State Actors and Public Security in Africa'*.

negative perception of the justice system, have led to the formation of community-level self-help patrols involving young people.<sup>5</sup> In Indonesia, a survey by the Asia Foundation in 2001 found that 86 per cent of poor people, who mostly lived in rural areas, preferred using alternative informal systems like the *adat* and *musyawarah* mechanisms to resolve disputes instead of the formal state system.

## **2.2 Informal systems as legitimate providers of security and justice to the poor**

The sheer numbers and magnitude of the reach of alternative – i.e. non-state and local – security and justice systems across the developing world are further evidence of the state's incapacity and/or failure to respond to the security and justice needs of its citizens. Systems catering to the poor, particularly those who cannot afford to purchase private security, are found across the developing world. These systems are largely recognized as legitimate actors in these communities, even if they too do not always provide equitable access or demonstrate respect for the rights of all community members. The cross-regional nature of this pattern underscores the need to pay closer attention to this development rather than relegate many of these activities (particularly those dealing with security and safety) to the realm of criminality.

Senegal, for example, is widely regarded as politically stable, with a low crime rate. The police in the country are, however, seen as corrupt and inept, such that the wealthy turn to the privatized, commercialized market for security. Poor people, on the other hand, rely on traditional, informal methods of security such as neighbourhood watches and vigilantes for safety and security. Paradoxically, vigilante groups are thought to account for most of the country's (low) murder rates – suspected criminals are sometimes mobbed to death by the vigilantes.<sup>6</sup> In Swaziland, the increase in crime and the state's inability to protect its citizens have led ordinary people to seek justice and security from non-state actors. While the wealthy are able to afford the services of commercial private security companies, the poor and marginalized, who form about 70 per cent of the population, rely on unpaid volunteers, the so-called community police groups, to provide security.<sup>7</sup> This has further segregated the rich from the poor. In Nigeria, there are quasi-state actors like the Hisbah, a religious security organization that operates in Kano, northern Nigeria, and the Bakassi Boys operating in south-eastern Nigeria. Others are vigilante neighbourhood security groups like the Oduaa People's

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<sup>5</sup> Ismail & Hendrickson, *What Is the Case for a Security and Justice Focus in Development Assistance Programming?*, 7.

<sup>6</sup> O'Brien, 'The Dynamics of Private Security in Senegal'.

<sup>7</sup> Hamilton, 'Security for All?'. The community police were formed in response to failure of the state to protect the rural population from crime, especially cattle rustling. In general, they do not hand over their suspects to the police, but investigate and pass judgement themselves, and their methods sometimes violate human rights.

Congress in western Nigeria, and irregular forces and militants in the Niger Delta.<sup>8</sup>

Furthermore, most public and private security institutions are urban focused, while a majority of the poor live in rural areas and are thus excluded from the benefits of policing. They are therefore forced to depend on other community-based security arrangements, usually with no links to the state. Where links have been established with the state, they have either been in response to crises, like the collaboration between the Kamajors and the state against the Revolutionary United Front in Sierra Leone during the civil war, or they have been state-sponsored arrangements like the Hisbah in Kano. However, although the Hisbah was established by the Kano State government to oversee observance of the tenets of sharia law, the group has since been accused of being overzealous and acting arbitrarily. This is argued to be the result of both state support and the politicization of religion.

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<sup>8</sup> Ibeanu & Momoh, *State Responsiveness to Public Security Needs*.

### **3. The developing country context: the effect of security and justice provision to the poor**

Any attempt to assess or add value to donor support for security and justice provision to the poor requires an intimate understanding of the context in which such provision takes place in the developing world. Analysts and policymakers alike have sought to understand this context, not least those within DFID and HMG. But this has not led to a comprehensive review of approaches to the subject. While it is difficult, if not impossible, to generalize among diverse contexts, common strands can be identified that present a consistent story line about what does or does not work well in the developing world, particularly in terms of impact on the poor. This section focuses more on the latter – i.e. on what does not work well for ordinary people. In order to identify gaps and areas for improvement, the aim here is to take a closer look at the overall terrain in target countries beyond state-led security and justice institutions in order to explain where and how poor people fall beneath the radar of not only state actors, but also their development partners. This section examines the obvious inconsistencies in the narratives of poor people about security and justice provision in relation to the narratives of the state. It then examines gaps in the structures for delivering security and justice.

#### **3.1 Narratives of the poor vis-à-vis justice and security provision actors**

The emerging narratives of the poor and the marginalized in the target environments about the nature of their security and justice needs and the sources of provision of these needs are mostly at odds with the state's or regime's pattern of provision of justice and security. In the broadest sense, security in much of the developing world, and especially in Africa, is about protection against local crime and personal security; protection of land, property and livestock; access to justice, such as raising bail or paying fines; the resolution of community disputes; and access to public services.<sup>9</sup> Security and justice are no doubt of fundamental concern to poor, vulnerable and marginalized people, who suffer most in conflict situations. Yet poor people tend to gravitate toward informal systems of security and justice and rely less on state systems, which are supposed to protect and be accessible to all citizens.

Various explanations have been offered for the reliance among poor people on informal systems. Among other things, poor people find the formal systems to be expensive, slow and difficult to access, with police and prosecutors often biased towards powerful elite interests. The informal

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<sup>9</sup> DFID, 'Non-state Justice and Security Systems'; Penal Reform International, *Access to Justice in Sub-Saharan Africa*.

systems are also sometimes plagued by local power imbalances, and when this is the case, some poor people do not seek redress, as a result of which disputes sometimes escalate into violence.<sup>10</sup> Additionally, poor communities, particularly in urban areas, often live on the social margins of 'illegality' in terms of the illegal acquisition of housing, non-payment of taxation, etc. As a result, they are unable or unwilling to approach formal state institutions to seek security and justice, in order to avoid drawing attention to themselves. They therefore tend to rely on informal systems. In Alexandria, Egypt, for instance, about 68 per cent of the city's population live in squatter settlements built informally in violation of building regulations. This makes squatters vulnerable to police action and exploitation.<sup>11</sup> Although generally regarded as quick, some non-formal justice systems sometimes incorporate highly developed systems of rules and can be very formal in their procedures, such as *shalish* in Bangladesh.<sup>12</sup>

In many developing countries, informal systems are the primary means of providing justice and security to the poor and are the accepted norm in many communities. Approximately 80 per cent of disputes in Malawi, 85 per cent in Sierra Leone and 70 per cent in Bangladesh are settled through informal systems.<sup>13</sup> The existence of numerous informal, non-state justice systems in most of the developing world suggests that formal justice systems are inaccessible to the majority of ordinary people; or, where they are available, they are not effective at delivering justice to them for various reasons. The most frequently cited reasons include accessibility, speed, delivery of culturally relevant solutions and affordability. Additionally, as indicated, the poor are inhibited from seeking justice from formal institutions, given that the lives of many (particularly in urban areas) are characterized by some form of illegality. Thus, they do not willingly seek redress in formal institutions, but when they do come into contact with these institutions, it is often because they are defendants in criminal cases.<sup>14</sup> Furthermore, they are less likely to be able to protect themselves and more likely to be victims of police violence and brutality.

There is a noticeable pattern in which state officials are at best indifferent to or at worst hostile toward efforts aimed at delivering security and justice to the poor. Some lawyers, judges and state officials, for example, remain hostile to efforts aimed at reforming and improving non-state justice systems, because this is a potential threat to their incomes and social standing. In Peru, night watch patrols have attracted negative attention from politicians because of their popularity and success at controlling crime. This resulted in legislation that subordinated them to local police and judicial authorities, and prevented them from administering justice. Some members have been jailed for encroaching on the functions of the police and judiciary.

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<sup>10</sup> World Bank, *Village Justice in Indonesia*.

<sup>11</sup> Anderson, 'Access to Justice and Legal Process'.

<sup>12</sup> Wojkowska, *Doing Justice*.

<sup>13</sup> Ibid.

<sup>14</sup> VanRooy, *Bringing Justice to the Poor*.

Overall, state actors tend to be more hostile to informal security systems than they are to informal justice systems, perceiving a greater level of threat from the former. This is understandable, given that such systems can be seen as undermining the monopoly of the use of force by the state. This is arguably more sensitive than de-monopolizing justice provision, especially because there have been long-standing established and accepted systems of non-state provision of justice in religious and customary law, co-existing with statutory processes.

### **3.2 Why state structures fail to deliver security and justice to the majority of the poor**

If we accept the common notion that the provision of security and justice should be a public good, because, at a minimum, states are supposed to ensure the security and safety of their citizens and provide them with fair access to justice, then it is legitimate to ask: To whom do justice and security institutions provide protection and service, if not to the collective? In reality, the institutions intended to provide security and justice are poorly formed and have progressively become less efficient, in part as a result of structural flaws in their formation. This includes, among other factors, colonial roots and evolution that has seen the marketization of access to these systems.

#### **3.2.1 Security and justice systems are not intended to serve the poor**

Justice and security institutions in the developing world, particularly in Africa, are a legacy of the colonial past. In the colonial period, these institutions had provisions and mechanisms in place to protect the colonial power structures, some of which remained in place after independence. The ruling elite in most cases maintained these systems to protect and serve their interests. Also, security legislation remains largely unchanged from colonial times. The Nigerian Police Act of 1943<sup>15</sup> has effectively meant that the police in Nigeria are a pseudo-colonial force, confirmed in this role by successive military regimes. It has proven difficult to adapt this legislation to deal with the challenges of democratic transition. The same is true for Kenya, where policing also borrows much from the colonial system and 'lacks a truly independent police service commission or independent civilian oversight mechanism';<sup>16</sup> and for Ghana, where it is still based on the Colonial Act of 1930;<sup>17</sup> and India, which relies on the 1861 Colonial Police Act.<sup>18</sup> This is more pronounced with militarized regimes like that of the Democratic Republic of the Congo (DRC),<sup>19</sup> which captures the security apparatus to protect itself, thus narrowing the elite group even further.

Other examples of continued reliance on colonial laws include the suspension of fundamental rights provisions under a state of emergency in

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<sup>15</sup> *Leadership*, 'Why I Want Police Act Repealed'.

<sup>16</sup> Edwards, 'Policing Conflict'.

<sup>17</sup> Ghana Police Service website.

<sup>18</sup> Corrie, 'Providing an Enabling Environment'.

<sup>19</sup> DFID, *Final Report*.

Zambia and the immunity of the executive from legal accountability in Kenya.<sup>20</sup> These outdated provisions are still maintained in the statutes in many of these countries to protect the ruling elite and the powerful. They are not intended to protect ordinary people, let alone the poorest among them; nor were these laws designed for this purpose. They were designed largely to protect property, provide power to administrators and put down social unrest.

It is thus logical that poor people will continue to be denied access to justice and protection by the state until such legal frameworks – and, indeed, the systems of justice in their entirety – are reformed. The same reasons account in part for the absence of security and/or defence policies in many of these countries. The absence of a framework that articulates a collective vision of security that has been derived through a process of consultation with citizens is quite often an indication of a systemic crisis, particularly in countries where there are no recognizable systems of security and justice from which the majority benefits.

### *3.2.2 The market approach to security and justice further alienates the poor*

Similarly, the free market discourse that followed the structural adjustment period – otherwise known as the lost decade – has seen the prominence of market-determined access to security and justice, following reduced investment across the board, including in state institutions. In most of the developing world, the extent to which people are able to access the formal security and justice system is influenced by their social and economic status, such that in countries like Indonesia, it is still difficult for poor and marginalized people to access formal state institutions of justice and security.<sup>21</sup> In countries like the Nigeria, South Africa and the Philippines, the inability of the state to provide effective public security has resulted in the wealthier in society seeking protection through the market, while the poor are left to haphazard and informal security arrangements that have no connection to the state.

In cases where connections between informal security actors and the state system have existed, they developed as an emergency elite response to crisis, like the collaboration between the state and the Kamajor militias in Sierra Leone against the Revolutionary United Front in that country's civil war.<sup>22</sup> In Rwanda, informal voluntary crime groups exist at the local level and provide the lowest form of local security government. They are responsible for law enforcement and dispute resolution, and supervise local militias called local defence forces.<sup>23</sup> Additionally, some informal systems contain elements of state involvement; e.g. in some East African countries, state-sponsored arrangements exist that are usually sector specific. Examples are the land distribution tribunals in Kenya, which are staffed by appointed elders, and

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<sup>20</sup> Decker, Sage and Stefanova, *Law or Justice*.

<sup>21</sup> Zen and Mahyuni, *Legal Empowerment of the Poor*.

<sup>22</sup> Isima, 'Demilitarisation, Non-State Actors and Public Security in Africa'.

<sup>23</sup> Baker, 'Post-War Policing by Communities in Sierra Leone, Liberia, Rwanda'.

the land tribunals in Uganda, where customary authorities like clan leaders are called upon to act as mediators.<sup>24</sup>

The structures of courts in most developing countries are reactionary and driven by social forces and thus they tend to commence proceedings only when they have been petitioned. Although they are state organs, they are designed to be operated by social and market forces and thus reflect the agenda of the elite or those in power.<sup>25</sup> Consequently, apart from criminal matters, most litigations involve businesses and the propertied class as litigants, and the poor are often excluded (except as defendants in criminal cases) and have little pressure to exert to reshape legal procedures in ways that will benefit them. Additionally, the usual slowness and lengthy duration of court proceedings effectively deny justice to the poor, who tend to go to court when they are at risk of destitution and their fundamental means of livelihoods are at stake. The rich, on the other hand, can afford to await long-delayed outcomes. Furthermore, the formal justice system is built on the currency of access that draws from having attained some level of formal education, including the ability to read and write English.

The poor are further excluded from justice by the high costs associated with accessing justice in the state-run justice system, including the ability to post bail. For the sub-group of female-headed households, which constitute much of the poor, the problem is even more complicated, because, for example, in many cases, although women can legally post bail, in practice they are denied the right to do so.<sup>26</sup> Additionally, transaction costs of securing rights, e.g. land ownership rights, are high, particularly in a context of poorly defined property rights. Thus, among the poor, differentiation sees women even worse off in terms of access to justice and security.<sup>27</sup> The rich, on the other hand, can sometimes afford to opt out of the state's lack of provision of justice by paying for alternative access to the formal system.<sup>28</sup>

Overall, the state justice system is broadly divorced from other customary systems, which are the main domain within which the poorest people operate. In terms of physical location, there is the 'urbanization of justice', because formal institutions, including courts, remain mostly located in the non-rural areas, not least because they are tied to the availability of infrastructure (physical and social) that is often lacking in the rural sector and part of a broader rural/urban challenge. This does not, however, preclude the exclusion of the urban poor for some of the reasons cited earlier.

### **3.3 Parallel systems, elite struggles and lingering low-intensity conflict**

In reality, state security and justice systems are seen as the private property of state elites and accessible only by a privileged few. This means that the provision of justice and security is invariably embedded in structures of

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<sup>24</sup> Nyamu-Musembi, *Review of Experience*.

<sup>25</sup> Anderson, 'Access to Justice and Legal Process'.

<sup>26</sup> Akiyode-Afolabi, *Democracy, Women's Rights and Sharia Law in Nigeria*.

<sup>27</sup> Uganda, *The Justice, Law and Order Sector Programme*.

<sup>28</sup> Tshehla, *South Africa*.

power and privilege far removed from the safety and security of ordinary people.

In much of Africa, for example, two parallel security and justice systems operate under the facade of a collective governance arrangement: the state system, which largely caters to the needs and interests of the ruling elite and its network of partners and cronies; and an informal system, to where those without access to the state structures retreat. The private, largely regulated, provision of security operates in line with the state system and is accessed largely by the elite. In these environments, there is a distinct disconnection between the elite and ordinary people, such that the points at which the lives of the two connect has shrunk significantly. This disconnection is most evident when one examines the points of intersection in their daily lives – economically, socially and politically.

Poor communities are in large part disconnected from much of the activities of the formal state system with very few exceptions, one being where the poor are targeted by state security forces. In general, the poor operate on the margins of the state and provide for their own safety, subsistence and local services. These include, among other things, communal security decision-making and security provision; petty and small-scale trading, including markets for farm produce and the provision of market security; and entertainment, including music, the arts and sports. This is in addition to the limited access to state services. The question then arises as to where the elite (including formal state actors) meet and interact with the poor, underprivileged and marginalized. The prominent points of intersection include:

- religious associations, including mosques, churches and activities where issues involved in their interaction might include indoctrination and patronage politics;
- community associations, where extended network of family and friends also advance patronage;
- the Internet, where youth access a cross-section of networks, which might include hacking into elite systems;
- informal trade, e.g. at public markets (where decision-making elite might not often be present);
- highways and borders, where insecurity (crime, road blocks, protection, trafficking) prevails;
- social events – funerals and weddings, entertainment – sports and the arts;
- banking (where interaction is at a minimum because most poor people do not access banks, except through micro-credit systems);
- electioneering campaigns and rallies, which are among the few occasions when the political elite seek out poor communities, making maximum use of the patronage system; and

- households, where domestic staff serving the better off tend to be from the poorest sectors of society.

Educational and health systems are not included in this list because, more often than not, the privileged opt for private education (at home and abroad) and private health services.

The 'privileged few' is, however, a dynamic grouping, and is not just made up of the rich. Even among the latter, access to power and influence is not a forgone conclusion, as recent post-election struggles within the court systems in sub-Saharan Africa have shown. This reinforces the fact that we are dealing with flawed systems in any case, and, as such, the argument cannot simply be about providing access, but also about addressing *what* we are providing access to. This raises the additional question of whether we can address the poor in isolation from the broader context of justice and security.

The gaps in the overall security and justice framework invariably provide space for elite struggles, which sometimes degenerate into armed violence and create an environment of widespread insecurity in which arms proliferation and crime of various shades thrive. Popular narratives about the root causes of armed conflict tend to focus (and rightly so) on issues of grievance among excluded groups (not precluding elite groups) and less on the struggles among the elite. Africa's recent armed conflicts have, however, been driven largely by elite struggles for power, which found ready fuel in deep-seated grievance among the poor and marginalized. The armed conflicts in Liberia, Sierra Leone, Côte d'Ivoire and the DRC, among others, were hardly the result of people's movements for change. These experiences revealed several patterns. One obvious one was that in which underlying conflicts and grievances were manipulated by elite groups to serve their own selfish interests, further marginalizing the powerless and voiceless poor (e.g. Liberia and the DRC).

The apparent resolution of some of these conflicts by no means signifies an end to this pattern. Indeed, the threat of low-intensity conflicts remains real in many fragile contexts (i.e. in states not experiencing large-scale armed conflict) in which violent conflicts are contained within specific locales and do not pose an obvious threat to international peace and security, but do not create a space for normal development to continue. The elite continue to dominate these settings, preying on the narratives of poor and marginalized groups, as well as the systems of security and justice, which offer these elite refuge. All too often, vulnerable youth in poor communities are recruited as political party thugs during elections and their vigilantes become hired guns when the elite splinter and attempt to settle scores. The escalation of such patterns has served to compound conflict resolution efforts, as seen in Nigeria's Niger Delta region.

Addressing these challenges requires a comprehensive approach to security and justice in ways that take the following into account:

- a) gaps in state-led and formal systems;

- b) the reality of environments in which the vast majority of people rely on security and justice systems that operate on the margins of the state and are governed by processes removed from the view of the state;
- c) the (armed) violence produced at the points of intersection between the two systems referred to above; and
- d) the structures that produced the conditions in points (a), (b) and (c), above.

## 4. Reviewing the strategic direction of security and justice for the poor

Given the nature of the context described above, international development actors, not least DFID and HMG, must grapple with several questions. This section and the next are concerned with two of these questions: firstly, what accounts for the marginal impact of donor support for security and justice on the lives of the poor; and, secondly, how can donor support in this area help to radically transform the lives of the poor for the better?

### 4.1 *The state remains the main focus of strategic engagement*

A number of factors explain the limited impact of donor support on the reform of security and justice systems. The first relates to the policy framework that guides donor engagement on security and justice provision. To be sure, policy targets the poor, and development has remained a central goal of DFID support for security and justice in fragile settings. But state institutions have been the central focus of donor engagement, when the reality on the ground is that the vast majority of poor people remain disconnected from and are invisible to the state. In specific contexts, programmatic interventions by DFID have targeted the informal systems, even if the state has been the only focus of strategic engagement.

The failure to engage with non-state security providers has increasingly occupied the attention of analysts and policy actors.<sup>29</sup> On the justice front, efforts are being made to broaden access to state justice systems, e.g. support to mobile courts in Bangladesh and the DRC, and increased focus on women, including, for example, support for the interpreting of Sharia law in northern Nigeria,<sup>30</sup> where some codifying reflects a limited foray into non-state security and justice provision. However, there are fears that this static codification may undermine the nuancing that is a natural part of traditional systems and allows for adaptation, which could become lost in codification.<sup>31</sup>

With few exceptions (e.g. those relating to community policing<sup>32</sup>), the same level of engagement cannot be seen in donor support for access to non-state security provision. This is understandable, given the fear of being seen as demonopolizing the use of force by the state. This is arguably more sensitive than demonopolizing justice provision, which is based on long-standing, accepted, established systems of non-state provision of justice in

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<sup>29</sup> Baker and Scheye, *Supporting State and Non-state Provision of Security and Justice*; UNDP, 'Access to Justice'.

<sup>30</sup> Centre for Islamic Legal Studies, *Promoting Women's Rights*.

<sup>31</sup> DFID, 'Non-state Justice and Security Systems'.

<sup>32</sup> An example is the Security, Justice and Growth programme in Nigeria, which was an innovative approach to connect the local systems of security and justice to community policing.

religious and customary law. It is, of course, very delicate to engage with non-state actors in security (in particular) and justice vis-à-vis the state, which is why this needs to be done in collaboration with the state.

Targeting a radical shifting in programming patterns is important, but insufficient. Such programmes are easily frustrated by unwilling and disinterested political elite. Since the existing systems have been structured to benefit the elite, they can easily frustrate programmes that would result in their loss of benefits. The case of state officials and politicians in Peru subordinating the activities of community night watch patrols to local police and judicial authorities is an example of this. In Jamaica, although several initiatives to reform the law enforcement agencies have been commissioned, implementation has been challenging. Such programmes are thus easily forgotten, while the failure of the government to hold accountable law enforcement and public officials who engage in human rights abuses and corrupt dealings with gang leaders<sup>33</sup> points to deliberate measures by the elite to frustrate radical shifts in these institutions.

Donor engagement with non-state security and justice systems tends to occur at the country level as part of programmatic intervention and not necessarily as part of a strategic framework. If non-state actors are to form part of a comprehensive picture of security and justice reforms, it is important that this is reflected in overall policy approaches by donor and recipient governments. In this regard, much of the work to be done is at the political level and will include, among other things, exercising a measure of leverage on recipient governments, as well as engaging other donors and international actors in order to persuade them to adopt a different approach. Overall, evidence suggests that political engagement with recipient governments and elite systems does not maximize the leverage of donor institutions.

#### ***4.2 Co-ordination gaps among donors: failing to maximize multiplier potential***

There are not yet sufficient strategic linkages among actors that can generate a multiplier effect, and there is significant room for innovation among donor countries to engage a greater and new constituency of actors. This means going beyond the regular ministry of justice, prisons, military and police service. Remaining focused on these state institutions reflects a narrow perception of security and justice in fragile settings, and these institutions are often oversubscribed. The changes being put forward here will also imply effort by donors to better link non-state and state actors. Specifically, the sphere of engagement needs to broaden beyond civil society actors and state governments. Important new actors and allies could be those operating at the lowest political sub-divisions, including at the local government level, who are very often ignored and left to their own devices. Yet such actors operate in closer proximity to poor communities in general at the ground level and, by virtue of this, operate in close proximity to the security and justice systems that respond to the needs of these communities. In addition, parliamentarians

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<sup>33</sup> Amnesty International, *'Let Them Kill Each Other'*.

and political parties are also an underused resource. Similarly, regional actors – most especially regional organizations – are key constituencies for long-term engagement and for generating multiplier effects through norm setting.

Security and justice comprise a relatively new area of work for the donor community, which continues to learn lessons often based on anecdotal evidence. The lack of co-ordinated approach, however, continues to be a major challenge, which invariably minimizes the benefits of assistance to the poor. A co-ordinated approach is required, not just from donors, but also from all actors engaged in target countries. Such coherence is not immediately apparent in ongoing security and justice work in Afghanistan, Bangladesh and the DRC. This supports the need for the creation of a critical mass of change champions who can share experiences and encourage one another. Other challenges to be noted have been donor politics, with tensions over which donors are to lead programmes and projects that address security and justice provision in high-profile settings that are prone to violent extremism.<sup>34</sup> Donor co-ordination has also been a challenge in Bangladesh, as support for the justice sector has been ‘projectized’, with no basis for donor and government interaction.<sup>35</sup> Similarly, donor co-ordination challenges have surfaced in the DRC, where there is a lack of coherent advice to the country’s leadership, particular on security sector reform, although the area of justice has fared much better.<sup>36</sup>

For an effective multilateral framework to exist, firstly there has to be clarity on objectives, based on the domestic systems’ own realities and pre-existing reform processes. There should also be as clear a time line as possible defining when particular objectives, both long term and short term, are expected to be achieved. Additionally, clear sequencing is important to ease the process of multilateral engagement, where, as part of a central plan, countries can be allocated specific aspects to support. Engaging partner countries in the sub-region of the recipient country should continue to be a priority.

#### **4.3 Disaggregating the poor on issues of security and justice, and nuancing approaches**

As indicated earlier in this paper, ‘the poor’ is a diverse grouping and, as such, should be disaggregated. The security needs of poor communities in rural and urban communities, women, and young and old people might vary slightly, depending on the context. This is a strategic issue – a constant that should not be dealt with in an ad hoc manner.

If greater progress is to be achieved, it is particularly important that there should be space to sufficiently nuance approaches on the basis of particular contexts. Immediate post-conflict settings have different dynamics, as do different religious contexts and different regions. However, sometimes all of

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<sup>34</sup> Piron, *Back to Office Report*; Heinrich Böll Foundation, ‘Is Europe Willing and Able to Stabilise Afghanistan?’.

<sup>35</sup> DFID, *DFID Bangladesh Safety and Justice Design Mission Report*.

<sup>36</sup> Ibid.

these factors exist within a single country's boundaries and should be addressed accordingly, e.g. Nigeria and, to a lesser degree, the DRC.

#### **4.4 Framework for measuring the impact of assistance on security and justice provision**

At the moment it is difficult to judge with any degree of accuracy the full impact of the policy and programmatic interventions in this area (not least by the UK government) on the lives of the poor. Security and justice is a relatively new area of work for the UK and other bilateral and multilateral actors, and there is not yet a comprehensive framework for assessing the impact of assistance with security and justice reform on the lives of ordinary people. This will require a collectively agreed set of outcomes, as well as a set of indicators that will make it possible to measure impact in the long run. But much of the work that needs to be done requires significant political action, not only as part of the groundwork for a new strategic direction, but also as part of a continuous process of monitoring and influence building with key national and international actors. Ultimately, a global monitoring regime that is supervised at the highest political levels might be a more effective way to ensure a continuous process of engagement across the board.<sup>37</sup>

#### **4.5 Achieving a positive change in the lives of the poor: the main gaps to be addressed**

If donor support for security and justice is to truly transform the lives of ordinary people, particularly those in poor, marginalized communities in fragile environments, DFID, HMG and the international donor community will have to address gaps in the following areas:

- There is inadequate linkage between security and justice on the ground. DFID often leans toward the justice sector as a whole and ventures only into policing when it comes to issues of security. This has implications for linking justice and security, given the reality that the provision of security goes beyond the police to the military and other paramilitary groups. Additionally, in most fragile states, the military are very involved in the lives of civilians and their role is part of the problem that needs to be addressed to improve security provision, especially to the poorest parts of society. DFID and the rest of HMG will need to find solutions to this apparent disconnect.
- There is a tendency to strategically deal with supply-side issues relating to justice and security provision by the state. This is understandable, as working with the state is supposed to promote sustainability, and, in any case, the state remains the main framework for international engagement. The institutions of the state are globally recognizable and it is relatively easier to universally interpret security and justice through this prism. However, focusing on the state alone implies less focus on the demand

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<sup>37</sup> It will be useful to see whether the forthcoming Saferworld study will come up with a set of standards that will be relevant in this regard.

side. This in turn implies less focus on the non-state sources where the poor go to access justice and security. Invariably, the reform of security and justice systems in fragile states tends to focus on formal structures, and far less on informal ones. Informal security systems therefore need to be included in policy approaches to security and justice; and this should be backed by better and more systematic linkages to state-led processes.

- There does not appear to be an effective nuancing of justice and security provision to particular groups of poor people.
- There is no systematic engagement with regional or continental bodies that form the locus for norm setting and the convening of state actors. This is vital in the light of the direction in which the world is moving in terms of approaches to common security systems, regional markets and some attempts at political harmonization. Particularly important here is the role that regional organizations in Africa have played in trying to facilitate security and, in some cases, transitional justice in many fragile states, including Sudan, Liberia, Sierra Leone, Guinea, Guinea-Bissau and Zimbabwe.
- More work is needed to understand the political economy of target environments and, more importantly, to allow this to inform strategic decisions and actions that are taken. Recipient country nationals and a wider range of actors at all levels should be engaged in this process.
- Serious gaps remain in state-led security and justice structures and processes. There could be better focus on structural reforms and more effort to expand the constituencies of actors in target countries. Other political actors (e.g. parliament and political parties) and structures (e.g. local government) should be given greater recognition in this regard.

## **5. Envisioning the future direction of security and justice: what to do differently and how to do it**

This section proposes a new strategic direction to address some of the gaps discussed in section 4, above, and generate greater effectiveness in dealing with the contexts described in section 3.

### ***5.1 Policy approaches and strategic direction***

Any effort to achieve better overall impact of donor support to security and justice in ways that address the needs of the poor should include the following:

- better knowledge of fragile environments in terms of understanding the political economy of these environments; but, more importantly, the informal security and justice terrain and gaps in formal security and justice systems;
- political work to bring critical actors on board, including national elite, and other bilateral and multilateral actors;
- engaging informal security actors strategically and programmatically, particularly the system that legitimately delivers security and justice to poor communities;
- developing a system of monitoring security and justice provision to the poor at the strategic level, which includes, among other things, policies, interventions and channels of delivery of security and justice to the poor; and
- engagement with regional organizations and actors in order to make policy and strategy more consistent, but, most of all, to multiply the overall impact.

#### ***5.1.1 Measuring impact***

The following are some of the outcomes to be sought from a change in strategic direction:

- improvement in formal systems of security and justice;
- improved interaction and engagement between state and non-state systems;
- significant change in the attitude of the ruling elite, e.g. including their willingness to put in place inclusive policies, law reform, etc.;
- a refocusing of the role of security and justice institutions toward the citizens overall, rather than the elite;

- the provision of legitimate alternative sources of security and justice provision for the poor, with fair access for entire communities;
- a nuanced approach to security and justice provision to take into account the diversity among the poor; and
- regional norms on security and justice that are relevant to the needs of the people rather than elite groupings in the region, and a strengthening of those norms through their application and regular monitoring in partnership with global institutions.

#### *5.1.2 Potential indicators of success*

The following include some of the indicators that can serve as a guide for assessing the potential impact of support for security and justice provision and for measuring progress, particularly in terms of impact on the poor:

- the extent to which narratives of the poor are consistent with narratives of the state;
- the existence of new, legitimate security actors in security and justice outside the state and the degree of their linkage with state processes;
- the existence of new, inclusive policies and laws; and the degree of space for overall reform in the governance of security and justice;
- better access for the poor to formal security and justice systems; and
- better connection between informal security and justice systems.

## **6. Conclusions and recommendations**

### **6.1 Conclusions**

Fragile states continue to pose significant challenges to the international community, both in terms of potential threats to international security and the stalling of development, which will make the attainment of the Millennium Development Goals even more difficult. There can be no doubt that security and justice should be at the core of efforts to move those states toward stability and development. It is clear, however, that the ending of large-scale conflict in some settings is not a sufficient basis for moving into normal development. A period of sustained support for peace-building and state-building in ways that benefit those societies is crucial.

Beyond states that have experienced large-scale conflict, the vast majority of fragile settings continue to face the threat of low-intensity conflicts, which are a stumbling block for overall development efforts. The elite capture of the governance institutions in ways that divert focus away from the needs of citizens, particularly the poor, perhaps poses the greatest challenge to development efforts. Security and justice provision in this context is overwhelmingly geared toward supporting the needs of the elite, thus pushing the majority to seek alternative systems.

International actors providing support for security and justice in these settings will do well to recognize the challenges of this context; indeed, the success of their efforts depends on this. Poor communities will continue to be marginalized if donor efforts continue to target the same state institutions without linking them to the systems of justice and security that cater to the needs of poor people. It is important to avoid reinforcing systems that exclude the poor.

Certainly, the state framework for security and justice provision remains important, and engagement with the state continues to be the basis of all international engagement. It is important, however, to support non-state structures that provide for poor and marginalized communities where they are effective and viable, and to find avenues to link such systems to the state. Where such non-state structures are not viable, it is imperative that effective ways are found to integrate the poor into the state system, recognizing that this system continues to be weak in many cases and that it is oriented toward elite interests. Much political work will need to be done to achieve a reorientation of such state systems. Overall, fragile settings require structural, institutional and political changes in the long term if sustainable development is to be achieved.

## **6.2 Recommendations**

*To DFID:*

- Consider security and justice as a core aspect of development assistance. Mainstreaming security and justice into wider development programming rather than narrowly as a conflict issue offers a better opportunity to achieve an impact on the lives of the poor in the long term.
- Place greater emphasis on linking security and justice in central planning and on the ground through engagement on wider security issues beyond policing and systematic engagement with other parts of HMG that have the required expertise to deal with wider security issues.
- Gain better knowledge and understanding of the state of security and justice in fragile settings, particularly informal systems of security and justice.
- Provide leadership within HMG in monitoring assistance for the provision of security and justice to the poor and assessing its overall impact on the poor.

*To HMG:*

- Align approaches to security and justice across the board in order to take into account informal systems that legitimately provide security for the poor in fragile states.
- Better align support for security and justice across the relevant sectors in order to serve the needs of poor and marginalized communities.
- Engage with state actors in fragile environments in order to achieve policy change that takes an inclusive approach to the provision and governance of security and justice systems.
- Work with the donor community and other parts of the international community to develop an appropriate framework for measuring and monitoring the impact of assistance with security and justice provision to the poor.

*To the international community:*

- Develop a common understanding of and approach to the provision of security and justice to the poor, including targeting the informal systems that the poor turn to at present.
- Improve the co-ordination of available international assistance for the provision of security and justice in fragile settings.
- Conduct regular monitoring of security and justice provision and assessment of its impact on poor communities.
- Assign responsibility to key actor(s) for collective monitoring and regular reporting on all aspects of the provision of security and justice to the poor.

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