

Stabilisation Issues Note Security Sector and Rule of Law

Purpose

Issues Notes provide a short summary of what the Stabilisation Unit has learned to date and what we think is good practice. They have been developed in consultation with other government departments. They are aimed primarily at the Stabilisation Unit's own practitioners and consultants, and those of other UK Government departments. They are not HMG policy, and they draw on and amplify other UK Government policy and thinking on conflict. They should be read in conjunction with other Stabilisation Issues Notes.

Key Messages

- Stabilisation planning and implementation is about identifying and addressing the specific activities required to achieve political stability in countries emerging from conflict.
- Promoting the rule of law in stabilisation environments can help a state to increase its legitimacy, allow fair political negotiation and uphold the implementation of political agreements. The most urgent priority is often establishing law and order, meeting internal security needs and ensuring basic functioning of the criminal justice system.
- Security Sector Stabilisation activities enable essential and minimum security functions to be established and maintained to achieve stabilisation objectives. They are not the same as Security Sector Reform (SSR) in more benign environments, they should help create the conditions for SSR, when conditions permit.
- The urgency of meeting security needs has often led to quick fix approaches and a focus on personnel and single organisations, falling short of providing the kind of support that will achieve lasting security outcomes.
- This paper provides ten good practice principles for better impact:
 - Ensure civilian expertise feeds into planning
 - Access the appropriate range of skills
 - Reach a common understanding of the problem
 - Define and measure against outcomes, not inputs
 - Think about coordination early
 - Accept security is political, factor politics into your plans
 - Balance support to personnel with organisational development
 - Address the inter-dependencies between organisations
 - Encourage political consensus and strategic planning
 - Ensure quick wins not quick fixes.

*The UK Government's **Stabilisation Unit**: helping countries recover from violent conflict*

Introduction

1. Stabilisation is support to places emerging from violent conflict in order to:
 - Prevent or reduce violence
 - Protect people and key institutions
 - Promote political processes which lead to greater stability; and
 - Prepare for longer term development and non-violent politics.

Stabilisation usually requires external, joint military and civilian support, a focus on improving the legitimacy and capability of the state, and providing tangible benefits to the population to underpin confidence in the state and the political process¹.

2. Stabilisation planning and assessment adopts a critical path analysis to identify the necessary milestones to achieve a stable political outcome². Stabilisation activities can then be prioritised and sequenced to achieve these milestones. They will be very context specific.

3. This section describes what is different about rule of law, security sector stabilisation and justice sector activities in stabilisation environments and likely priorities.

Rule of law

4. The rule of law *'governs the relationship between institutions in a State, and between those institutions and the citizen. It enables individuals to hold their State to account for respecting their human rights..., helps to manage disputes between individuals..., [and] provides a predictable business and economic environment that helps protect property and livelihoods, so contributing to sustainable development.'*³ Promoting the rule of law is an FCO Strategic Priority and integral part of DFID policy on human rights and access to justice.

5. During conflict, the rule of law is often eroded. The capability, accountability and independence of state security institutions are likely to be weak. In stabilisation environments, rapidly improving a state's authority, competence and legitimacy is often important for the political process. It can help give it credibility, allow political negotiation to proceed with fairness and accountability and uphold the implementation of political agreements.

6. The priorities for rule of law interventions will depend on the specific characteristics, capabilities and challenges for the state concerned. Box 1 provides a list of likely priorities.

¹ UK Approach to Stabilisation Paper (forthcoming) <http://www.stabilisationunit.gov.uk/>

² Stabilisation Unit Stabilisation Planning Framework <http://www.stabilisationunit.gov.uk/>

³ FCO Strategic Priority 6 p.2

Box 1: Promoting the rule of law in stabilisation environments.

Likely priorities include

- Clarifying the applicable national legal framework, determining
 - What of pre-conflict law applies including informal codes and practices,
 - An appropriate legal framework for international transitional administration or emergency legislation.
 - What aspects of the legal framework will (and should) remain uncertain until a permanent political agreement or constitution and subsidiary legislation is in place.
- (Re) establishing government structures that enhance capability, accountability, judicial independence and oversight of the security sector.
- Ensuring that establishing law and order, meeting internal security needs and basic functioning of the criminal justice system is achieved in a way which protects and reinforces the rule of law. This covers both the actions of international military and peacekeeping forces (complying with international law and human rights standards) [see separate Issues Note] and indigenous security and justice organisations (under state control, conforming with international law, the national legal framework and human rights standards).
- Combating impunity with appropriate transitional justice mechanisms to discourage and prevent further human rights abuses.
- Over the medium term, ensuring basic functioning of civil and commercial justice systems to be able to address issues of secure and fair land access and tenure. This applies particularly if there are large informal settlements and returns of displaced populations generated by conflict.
- Depending on the length of time it takes to reach a permanent political solution, preparing a strong investment, financial and regulatory framework for the sector could also be stabilisation objectives.

Security and justice sectors⁴

7. Establishing law and order, performing security tasks to address internal security needs and basic functioning of the criminal justice system are often the most urgent priorities in stabilisation environments. Due to the nature of contemporary armed conflict, stabilisation environments are characterised by

- The proliferation of predatory armed groups, for whom war and criminal activity are a livelihood,
- The development of criminal networks, often with regional and international dimensions,
- The disappearance of the machinery of governance, and the emergence of security voids that open the way to competing forms of political authority⁵, and
- An increase in minor, opportunistic crime, including looting.

8. National security and justice institutions are often very weak, dysfunctional, deeply political and possibly sectarian, infiltrated or deserted. They may be partially or weakly under state control. The actors providing security and justice can be poorly resourced, corrupt or the perpetrators of human rights abuses, undermining human security and guilty

⁴ The security and justice sectors are closely connected and overlapping, but are not identical⁴. See Annex 1 for a full description of security and justice sector actors.

⁵ The Military Contribution to Security Sector Reform, Joint Doctrine Note 3/07, p.1-1.

of the crimes they are there to prevent⁶. Prisons often have inhumane conditions, such as overcrowding, widespread disease, ill-health and poor detention facilities.

9. Stabilisation activity has often focused on state ('formal') provision of security and justice. However, in countries affected by conflict, up to ninety per cent of security and justice service delivery is provided 'informally', by traditional and religious leaders⁷. Non-state systems often operate in some form throughout conflict and can play a critical role in the immediate aftermath.

Ten good practice principles

1. Ensure civilian expertise feeds into planning

10. In some stabilisation efforts more typical 'development' related skills, such as organisational and institutional development, have been weakly offered or integrated into planning. This has contributed to a range of weaknesses in planning and implementation, which in turn lead to disappointing outcomes. For example, training and equipping security personnel without adequate attention to management, incentives or discipline can lead to security forces remaining a source of insecurity and instability. Insufficient attention to what needs to be done and over-ambitious timeframes often result in uneven outcomes: improving police performance may increase arrests, but without assessing the capacity of courts and detention facilities, this can lead to untenable numbers in long term pre-trial detention.

11. Where the need for broader skill sets has been recognised they haven't been easy to source. There is an under-supply of good quality civilian security and justice sector expertise. Whilst government departments can offer relevant expertise, there is also a need to support private sector provision, and manage systems that allow ready access to such expertise, e.g. the Stabilisation Unit's Deployable Civilian Expert database and UK Government framework arrangements for work in conflict-affected environments (see <http://www.stabilisationunit.gov.uk/frameworkagreements.html>).

2. Access the appropriate skills

12. What are the necessary skill areas for work to support the rule of law, security and justice sectors? People with the right skills need to be around the table at the outset. These might include:

- Public financial management and governance skills to advise on fiscal sustainability, administrative management and structures of government;
- Behavioural and organisational change, without which planning for capacity building of operational police, army and prison functions is likely to fail to ensure long-term impact;
- Experience of sector-wide change programmes;
- Human rights knowledge, without which it will be difficult to assess the potential human rights impact of any activity or promote greater respect for human rights⁸;

⁶ See the accompanying Stabilisation Issues Note on Human Rights.

⁷ Enhancing Security and Justice Service Delivery, Governance, Peace and Security, OECD DAC, 2007, www.oecd.org/dac/conflict/publications/servicedelivery.

⁸ See also the Stabilisation Issues Note on Human Rights.

- Political analysis to understand the relationship between security-related developments and the political process and how things get done at a local level;
- Technical security-sector related skills including operational and tactical aspects of the military, police, prisons, customs, borders, intelligence and other specialist areas; and
- Legal advice to assess compliance of activities with international human rights standards and UK legal and policy commitments.

3. Reach a common understanding of the problem and objective

13. Support to the rule of law, Security Sector Stabilisation and the justice sector involves many different departments within HMG, the indigenous government, non-government organisations and international agencies. Effective support can only be achieved if these groups have a common understanding of the context and the problem. This can be achieved by bringing all the right people on board early for a joint assessment. This may feel time consuming, when time is short, but ultimately saves lots of time unravelling misunderstandings or differences in analysis of the problem.

14. Getting agreement on what the problem is also vital for developing a shared objective and unity of vision on the overall direction of engagement.

4. Define and measure against outcomes, not inputs

15. Once a common objective has been agreed, measures of effect need to be worked out. These must be outcome, not input, based, i.e. focused on achieving a security outcome, or resolving a particular problem. Building the capacity of a particular organisation may be a means to achieve the stated outcome.

16. The departure of international military forces may be based on parameters other than the delivery of outcomes. This should be considered early, when planning what support to provide, to achieve what outcomes and when. Any civilian mission remaining after international military drawdown is likely to have a very different set of resources.

17. Be realistic from the outset: some quick wins will be possible but organisational development takes years. It takes even longer in stabilisation environments, where the provision of security is fragmented and in flux, political commitment and state legitimacy are weak.

5. Think about coordination early

18. The coordination of activities is notoriously poor for the security and justice sectors: between military, police and other civilians, with indigenous governments and between international donor agencies. Coordination is important to avoid duplication, ensure that overall the utmost priorities are addressed and make the best use of the funding available. For example, international military forces often have very little funding for relief and development, and can benefit from collaborating early from those who do, e.g. by developing effective quick impact projects.

19. A range of different inter-agency models have been applied in the past. In the DRC a Security Sector 'Reform' ('SSR') Coordination Committee was established in Kinshasa

comprising of senior transitional government officials, member state Ambassadors and the representatives of relevant organisations. The SSR Coordination Committee reviewed the formulation of SSR policy, tracked progress in SSR, identified possible sources of support for training, equipment and other needs, and advised and assisted the transitional government in carrying out SSR activities⁹.

20. More learning from success and failure is required. Political space for strong leadership of a coordination process is important. This is cited as one of the factors contributing to the UK's coordination across security sector activities in Sierra Leone. Designated responsibility also needs to be backed up with strong technical capacity.

6. Accept security is political, factor politics into your plans

“The security sector is the most closely bound to ruling elites and power structures; it is all about power relations, and to seek to reform it in any meaningful way is inevitably political and profoundly threatening to the established domestic order”¹⁰.

21. Political competition is greater in stabilisation environments because the ‘established political order’ no longer exists. There may be an interim political agreement, but control over the access to power will be fought over more vigorously (even dangerously) until there is a permanent and enduring political solution. The Ministries of Interior and Defence provide access to the means to exert violence under the guise of state legitimacy, the Ministry of Justice to the means to condemn individuals to prison. Box 2 illustrates how this can play out into apparently technical domains of building capacity within the Ministry of Interior in Iraq.

Box 2: Politics and capacity building in the Ministry of Interior, Iraq

Post 2003, the Iraqi Ministry of Interior and its subordinate entities were the only central security apparatus over which Iraqi politicians could exercise influence and deploy state-sanctioned coercion. The structure of the Ministry was therefore designed to give key power-brokers – political parties (religiously and ethnically identified) – a share in the Ministry. This was intended to prevent the Ministry becoming the armed wing of any one party (potentially very politically dangerous).

In practice, the current Minister must share power with his (or her) deputies, a number of independent figures in the Ministry and a number of “shadow” networks of influence. It is often difficult for the Minister to push through personnel or other changes if they go against the interest of any of these parties. Many decisions are negotiated rather than directed and logical technocratic solutions can be doomed to fail. Attempts to restructure the Ministry to increase effectiveness have led to endless manoeuvrings involving both Iraqi and Coalition officials as each party is ultimately using their span of control to build up patronage networks, paramilitary and intelligence capabilities through official channels.

Source: Fixing Iraq's Internal Security Forces, Why is Reform of the Ministry of Interior so Hard? Andrew Rathmell, Center for Strategic and International Studies, November 2007.

22. The relationship between security forces, politics and local populations is most evident at the regional and local level. While military forces are to some extent insulated

⁹ <http://www.iss.co.za/Af/current/2005/050110DRC.pdf>

¹⁰ Security Sector Reform in the Arab Region, Challenges to Developing an Indigenous Agenda, Yezid Sayigh, Arab Reform Initiative, Thematic Papers no.2 December, 2007.

from society, police and justice sector organisations are more deeply embedded in local power relations. Organisational change is harder to achieve¹¹.

7. Balance support to personnel with organisational development

23. Security sector support has often been provided to recruit, vet, train and equip national security forces (the army and police in particular) or mentor commanders and police chiefs on a one to one basis. These inputs can be delivered quickly, are tangible, and in the case of mentoring, directly appreciated.

24. However, such support has often failed to deliver the intended improvements in security. Addressing personnel needs is only part of the picture. Structures and systems are also required to underpin any individual's capacity to perform well: pay (reasonable relative to the risks and reliably received), clear lines of authority, standards for performance, discipline, building and equipment maintenance, etc. Without these, even a talented Commander or Chief would struggle to do their job.

25. Institutional constraints on performance must also be addressed. These include administrative, financial and management capacity and needs for cultural and behavioural change. Adhering to principles 1 and 2 above will help. Accept that institutional change takes time to achieve a real impact – the earlier you start the better. Manage expectations about the pace of change.

8. Address the inter-dependencies between organisations

26. International support to the security and justice sectors in stabilisation contexts has often had an operational focus on one organisation, e.g. the army, police, judiciary or border guards. This can generate problems over time:

- Building the capacity of a frontline security force but neglecting the capacity of for example, detention facilities or court functioning can mean that facilities are overwhelmed and conditions rapidly deteriorate,
- Building and changing the rules and ways of working in one organisation without checking for consistency with the standards and ways of operating in another can damage essential cooperation, e.g. at the point where the police transfer detainees,
- Focusing on an organisation without situating it in its broader context can risk a distortion of its role towards local and immediate priorities rather than national priorities, e.g. too much of a focus on the internal security function of the police at the expense of their criminal justice and public safety function¹².
- Opportunities to inculcate a culture of accountability and oversight of the security and justice sectors may be missed, e.g. reporting to parliament, the Council of Ministers and the public. Attention to accountability and transparency can help create a culture of respect for the rule of law within security and justice institutions.

¹¹ Fixing Iraq's Internal Security Forces, Why is Reform of the Ministry of Interior so Hard? Andrew Rathmell, Center for Strategic and International Studies, November 2007.

¹²In most stabilisation environments, the police will be required to help achieve internal security (dealing with armed groups and other threats to the new state) and criminal justice and public safety (preventing and responding to actions that break the law, in conjunction with courts, prisons, etc.). Not all police units or agencies necessarily have to perform both of these functions. The internal security threat may be localised (for example, southern/eastern Afghanistan or northern Uganda) or more complex (as in Iraq). Decisions about the different role that a national army, and different agencies within the police should play, can only take place on a national level where a balance can be maintained between urgent security threats and the need to retain a majority capability in criminal justice and public safety.

27. It is important that support is outcome-based, focusing on multiple organisations and their interaction where necessary. A GTZ project to promote the rule of law in Afghanistan (2003-8) has worked with the Afghan Ministry of Justice, the Supreme Court and police to support the planning and implementation of their justice reform efforts whilst ensuring coordination between the three organisations¹³.

9. Encourage political consensus and strategic planning

28. One of the key challenges in stabilisation environments is that national strategies or consensus on needs and priorities for the security and justice sectors are very unlikely to exist. It is then difficult to assess the implications of planned activities and make the most of the resources invested. An informed judgement has to be good enough in the short term but a national strategy is essential in the longer-term.

29. The process of developing a strategy will not be easy: politicians are jockeying for power - not in the business of achieving consensus; Ministries may lack basic capacity for developing and coordinating policy; the attention of Ministers and senior officials of the Interior, Defence and Justice Ministries will be drawn to the operational aspects of the job, and the presence of international military forces and commanders can complicate and potentially undermine indigenous decision-making processes.

30. Whilst recognising that it might take years for a strategy to be developed, support can be provided in the following ways:

- Encouraging the evolution of political consensus at any and every opportunity whilst not distracting from the overall political process (see Box 3).

Box 3: Building political consensus and making use of entry points in Sri Lanka and Nepal

GTZ and the Centre for Conflict Studies and Conflict Transformation (<http://www.gtz.de/en/weltweit/asien-pazifik/sri-lanka/12391.htm>) managed to build political consensus and local ownership in Sri Lanka. It aimed to build capacity for peace promotion processes among government officials, members of opposition parties, the Liberation Tigers of Tamil Eelam (LTTE) and other Tamil and Muslim stakeholders. The project was geared towards affecting the mindset and attitudes of those involved in order to positively and directly affect policy making and create a political will for change. It succeeded in bringing on board previously hostile persons and institutions.

The 2005 elections in the Democratic Republic of Congo generated urgent security imperatives that were met in ways that prepared the ground for longer-term reform. Rapid provision of equipment and training to the police enabled them to provide a basic minimum of security for the elections, which in turn increased public confidence in the police as a part of Government. In parallel, plans were put in place for post-election reforms which aimed to build on the relative successes of the election assistance.

A similar approach has been taken in Nepal where technical assistance and the convening of security institutions to discuss election security and public safety created a platform for public debate on future security sector reforms. The process has brought together the major parties in the conflict to discuss security requirements.

¹³ Promoting the Rule of Law in Afghanistan
<http://www.gtz.de/en/weltweit/europa-kaukasus-zentralasien/17058.htm>

- Enabling national government Ministers and heads of armed forces to lead or participate in policy decisions (depending on the division of responsibility between national and international authorities).
- Raising questions about future roles and resource issues with Ministers and senior officials when opportunities arise, e.g. new initiatives such as recruitment and training programmes.
- Promoting coordinated approaches, by raising questions and supporting light-weight coordination structures, and making linkages to broader public finance and administration issues across the rest of government.
- Offering basic support to establish policy making capacity: identifying offices and equipment, recruiting suitable individuals from within and beyond the current workforce, defining systems of collating reporting information and preparing policy briefing for Ministers (e.g. high level strategic planning units).

10. Ensure quick wins not quick fixes

31. The urgency of the need to reduce violence and achieve law and order or counter insurgency often creates a pressure to do 'something' yesterday. In the past this has led to quick fix initiatives, some of which have had a limited or negative impact over the longer term. For example, in Afghanistan the creation of the Afghan National Auxiliary Police, and in Iraq, the creation of the Facilities Protection Force, were both undertaken without plans for their future integration or financing as part of a national force¹⁴.

32. Quick wins, which bring immediate and neutral or positive long term benefit can be achieved. The secret is to avoid rushing in without considering what exists already, what the long-term implications might be and how they can be addressed. Possible issues to consider are:

- The fiscal and administrative sustainability of proposed changes, e.g. to force or staff size and structure (from current and pre-conflict). Over the past 5 years in Iraq, the Ministry of Interior staff roll has increased from 60,000 to 'what could grow to upwards of 500,000' employees¹⁵. Will there be money and capacity to pay them in the future? Is such a large budget desirable? What is a reasonable force and staff size for the job required?
- The impact of proposed changes on prospects for consolidating civilian oversight and maintaining authority e.g. consistency of doctrine, fragmentation of structures or the adequacy of training and vetting.
- The potential impact of changes to roles and responsibilities on the overall style of service delivery and political system. For example, drawing the main focus of police forces away from criminal justice and public safety to counter-insurgency or normalising the use of the national army as an internal security force can encourage the development of a military state, as a military approach becomes 'normal'.

33. The easiest quick wins are likely to be those that address key bottlenecks, such as the provision of security for judges, the provision of defence counsel by NGOs, or those that have superficial appeal but do no harm e.g. renovation of essential infrastructure including court buildings and prisons. Even so, it's important that new standards of provision can be maintained.

¹⁴ http://www.boell.de/en/05_world/5182.html

¹⁵ Andrew Rathmell, Fixing Iraq's Internal Security Forces: Why is Reform of the Ministry of Interior so Hard? p.3, PCR Project Special Briefing:Nov:2007

Security Sector Stabilisation activities

34. Security Sector Stabilisation (SSS) describes the range of activities that enable essential and minimum security functions to be established and maintained to achieve stabilisation objectives and support an inclusive political settlement. The activities will be different in each context reflecting priorities identified during assessment of the critical path to stabilisation (see Box 4 and 5).

Box 4: Likely Security Sector Stabilisation activities

Immediate activities might include any of the following:

- Establishing tactical, operational and policy level coordination mechanisms between military and civilian, international and national stakeholders.
- Avoiding any breakdown in law and order following military/violent activity including the protection of vital government infrastructure, such as the looting in Baghdad which included removal of furniture and equipment from government ministries.
- Conducting security or peacekeeping patrols. This may not be for all, but in locations where it is necessary to establish an interim security presence.
- Helping to re-establish law and order through appropriate indigenous providers including local police forces and non-state traditional or religious leaders.
- Localised kinetic operations to remove armed/hostile groups and allow the imposition of government authority under a national/international mandate.
- Gathering intelligence and analysis on hostile forces/armed groups/other security threats.
- Taking measures to improve border security and prevent the transfer of small arms and light weapons e.g. Lebanon/Syria Border – Lebanese Common Border Force.
- Getting ministry staff back to work, ensuring salaries are paid.
- Re-establishing administrative capacity to manage resources, pay salaries and equip security forces, prison officers, judges and court administrators (Iraq and Afghanistan)
- Re-establishing management and policy capacity to support democratic oversight of security forces.
- Encouraging indigenous political dialogue on the management of existing security forces: roles, responsibilities, doctrine, legal framework, developing, disbanding or vetting processes.
- Addressing the bottlenecks to a functioning criminal justice system: getting courts functioning, renovating court houses, providing security for judges, ensuring the flow of basic equipment, awareness of the legal framework, small modifications to roles and responsibilities to improve coordination between police, courts and prisons, etc.
- Providing security for essential infrastructure: water, health or electricity.
- Renovating and maintaining essential police stations and prison buildings, and building capacity to manage, maintain and protect this infrastructure.

The priorities will change as the political and peace building processes move forward. Medium-term priorities could include:

- Assessing trends in detainee numbers, prison capacity and conditions and taking necessary further action to limit any deterioration in conditions, including mechanisms for human rights monitoring.
- Implementing decisions on force structure and composition, particularly dealing with personnel that have committed human rights abuses, have strong political affiliations, or are unfit for duty e.g. vetting, recruiting, training, disbanding or retrenching.
- Managing issues relating to former adversarial groups and militias in conjunction with political efforts. In the longer-term, preparations for Disarmament, Demobilisation and Reintegration (DDR) may be required where there is adequate political support and sufficient economic recovery¹.
- Implementing weapons control measures or amnesties to reduce the flow of small arms.
- Improving the performance of the police/other frontline army or criminal justice personnel and concerns about human rights abuses by the same Officers.
- Increasing the effectiveness of indigenous intelligence agencies.
- Putting in place mechanisms to provide support to traditional security and justice systems.

35. It is more realistic to aim to address a few absolute priorities that relate directly to supporting the political process, than to expect to address everything. In Somalia, critical path analysis identified the need to ensure (only) 'good enough' security in Mogadishu, only legitimate Transitional Federal Government counter-terrorist activity and unimpeded humanitarian relief in order to sustain an incipient political process¹⁶.

36. Security Sector Stabilisation operations are likely to require concurrent activities across time and geographical space: multinational peace support or stability operations, localised ground offensives or counter-insurgency operations, and support to build the capacity of national security forces, their administrative, management and oversight mechanisms. Multinational and national forces may be working independently, alongside each other or in integrated units.

37. Security Sector Stabilisation (SSS) activities are very different from Security Sector Reform (SSR)¹⁷. SSR refers to a comprehensive set of activities taking place under strong national political leadership, owned by a broad set of indigenous stakeholders and operating within a framework of democratic accountability. These conditions are very unlikely to exist in stabilisation environments. However, SSS and rule of law activities can help lay the foundations for SSR by promoting political consensus, building capacity for civilian oversight and adopting a sector-wide approach.

Box 5: Justice sector priority activities

A number of the above SSS activities relate both to the security and justice sectors, particularly those related to criminal justice. There may be other justice sector priority activities, including:

- Maximising local input into the clarification of the legal framework and drafting of new laws, working with the Law Commission or equivalent.
- Establishing or re-establishing the independence of the judiciary, ensuring it has its own administrative resources, clarifying respective roles of the judiciary, Ministry of Justice and other legal professions and establishing due process for appointment of the Chief Judge.
- Assessing the need for and establishing transitional justice mechanisms: prosecutions, reparations, truth and reconciliation commissions, etc.
- Improving the capacity and (political) independence of the appropriate legal bodies (the Bar Association, Prosecutors, Legal Aid provision, and paralegals).
- Addressing issues around access to land and property.
- Ensuring a functioning civil and commercial justice system.

38. The international community's approach to security sector activities has often been dominated by the military with weak and poorly integrated civilian expertise. It has involved quick fixes, meeting the pressure to do 'something' without achieving the hoped for impact in terms of better security outcomes. Mostly it has failed to recognise that frontline activities are only a part of a much broader picture of organisations, institutions and politics and just how difficult and slow it is to build capacity in these organisations.

¹⁶ Somalia Critical Path Analysis, HMG, 2007.

¹⁷ The Joint Doctrine Note The Military Contribution to Security Sector Reform defines it as '*the reform of security institutions to enable them to play an effective, legitimate and accountable role in providing external and internal security for their citizens under the control of a legitimate state authority*'. (p.1-2). The OECD DAC uses the terminology of Security System Reform (SSR) defined as '*to increase partner countries' ability to meet the range of security needs within their societies in a manner that is consistent with democratic norms and sound principles of governance, transparency and the rule of law*', DAC Guidelines on Security System Reform and Governance, 2004.

Decisions and dilemmas: Assessing the legitimacy of those we work with

39. It may sometimes be very unclear whether the state security and justice structures with which we would like enter partnership are more part of the problem or part of the solution. In particular, if state institutions are accused of committing human rights abuses through their security services, how should we respond? A judgment will need to be made in these cases about whether our support is plausibly likely to lead to better governance and practice in the sector, or colludes with unacceptable behaviour. It is a question currently being discussed in the context of Somalia, where international support to the police force of the Transitional Government is questioned by some observers on the grounds that the police behaves like other actors in the armed conflict. For the UK this is likely to be both a technical and political question.

40. Engagement with informal security groups, or militia, is often another dilemma. Whilst these groups are often unregulated, they can play an important role in the security and justice system, and cannot be ignored. Rwanda's Local Defence Force, for example, played an important practical role in local security after the 1994 genocide, but was criticized as being outside the remit of state authorities.

41. Initially, it may be necessary to engage with Non-state Justice and Security Systems (NSJS)¹⁸ if they can help achieve personal security and tackle local crime. As noted above, in conflict-affected environments, around ninety per cent of security and justice provision may be by NSJS. Tribal and religious leaders may also help promote reconciliation and peace building, through re-establishing normal social bonds and negotiation processes. This has been vital especially at sites of significant ethnic clashes such as Western Bhar el Ghazal, Jonglei and the Upper Nile in Sudan¹⁹.

42. Decisions will have to be taken quickly about which security and justice providers to work with. There is unlikely to be a government strategy that addresses the relationship between state and non-state provision. There is a risk, just as with state institutions, that NSJS are associated with corruption and the abuse of power, non-compliance with international human rights standards, such as discrimination or inhuman and degrading punishments, and a lack of accountability²⁰. It is important that where non-state actors are doing a reasonable job the provision is enhanced rather than undermined, but without negatively impacting on local power relations and creating further tension.

43. Assessment and appraisal of NSJS is difficult and can raise expectations. Key questions to consider include:

- What security outcomes are required and where?
- Who is currently, has previously, or could provide it? How are they part of local or national structures of power and governance?

1. ¹⁸ Non-state justice and security systems (NSJS) refer to all systems that exercise some form of non-state authority in providing safety, security and access to justice. This includes a range of 'traditional', 'customary', 'primary', 'religious' or 'informal' mechanisms that deal with disputes and/or security matters¹⁸. There is often no separation between NSJS systems and local governance structures: a person who exercises judicial authority through a non-state justice system may also have executive authority over the same property of territory.

¹⁹ Draft Keynote Cranfield CSSM Case Study Series Post-Conflict Reconstruction of the Justice Sector in Sudan: 2007.

²⁰ Enhancing Security and Justice Service Delivery, Governance, Peace and Security, OECD DAC, 2007, www.oecd.org/dac/conflict/publications/servicedelivery.

- Who uses the system? For what type of security concerns or disputes?
- Who controls the system? What is the source of their authority? To whom are they accountable? What are the possible implications of enhancing their authority?
- What legal/regulatory framework do they operate in? What rules and laws are applied (state, customary or religious)?
- Do both norms and practice comply with international human rights standards? Is there evidence of discrimination or bias e.g. against women and children?
- How are the system's activities financed?
- How are decisions enforced? By whom? Are they respected?
- How does the NSJS affect the state's provision? What is the relationship between state and non-state (funding sources, personnel, normative framework and enforcement mechanisms)?
- Is there or what might be the long-term strategy for non-state provision?
- What kind of support is most appropriate (direct support, capacity building, human rights monitoring, awareness-raising)? Who is it best provided by? (military, donors or civil society organisations)?

44. Mechanisms should be instituted to mitigate any potential negative impacts and monitor the effect of any support provided. Similar questions and mechanisms need to be put in place for new initiatives such as neighbourhood security committees.

45. In the medium term, NSJS may also be important for resolving issues around the administration of justice, protection and restitution of land, property and livestock. In these areas NSJS can be more effective and accessible, fairer, quicker and cheaper than state provision.

46. In the medium term, international missions are likely to establish justice sector programmes. These need to balance effort between providers to reflect local realities. In southern Sudan, DFID has proposed a 'multi-layered approach' to justice and security support involving:

- Support to the state as a minority, but progressively developing, provider of justice and security service delivery;
- Support to the state to establish the parameters and regulations by which justice and security is delivered and by which providers will be held accountable;
- Support to non-state justice and security service providers, as the primary purveyors of day-to-day service delivery and
- Support to the users of justice and security services to help them increase their participation in the service they receive, thereby, hold their providers accountable²¹.

²¹ The Multi-Layered Approach: Supporting Local Justice and Security Systems in southern Sudan, DFID and OECD, Enhancing Security and Justice Service Delivery, 2007.

Resources and further information

General Stabilisation Planning Documents

UK Approach to Stabilisation (forthcoming paper), <http://www.stabilisationunit.gov.uk/>
Stabilisation Planning/Assessment Framework, <http://www.stabilisationunit.gov.uk/>
Critical Path Guidance, <http://www.stabilisationunit.gov.uk/>
Stabilisation Issues Notes Human Rights, Disarmament, Demobilisation and Reintegration, Economic Recovery and Political Processes, <http://www.stabilisationunit.gov.uk/>
Assessment Tools – Governance and Conflict
Military Approach to Peacekeeping Operations

Key HMG Resources on Security Sector and Rule of Law

UK Joint Doctrine Note on the Military Contribution to Security Sector Reform
FCO Conflict Toolbox: International Policing, Building the Rule of Law in Post-Conflict Situations: Prison Reform, Transitional Justice – Amnesties, Truth Commissions, Vetting and Lustration, Housing, Land and Property Issues in Post-Conflict Situations.
DFID Explanatory Note on Security and Access to Justice for the Poor, April 2007
DFID Guidance on Non-State Security and Justice Systems, 2004.
Governance and Social Development Resource Centre: a DFID managed resource.

HMG contact points

FCO Conflict Group: leads on policy for security sector and rule of law support in conflict and post-conflict environments and policy towards transitional justice mechanisms, housing, land and property issues.

DFID Security and Justice Team (CHASE): can provide some policy and programme assistance to HMG country teams, either directly or by referring them to other sources of expertise.

Stabilisation Unit: State Building and Service Delivery Team can provide security and justice advice to any HMG department operating or planning for stabilisation environments. The Assessment and Planning Team offers advice on tools and approaches to achieve effective joined up or comprehensive HMG planning and management of stabilisation operations.

Security Sector Defence Advisory Team: can provide advice on all aspects of the project cycle for Security Sector Reform interventions in benign environments.

Training

- GFN SSR (offers web-based resource, training and other facilities, focusing mainly on Security Sector Reform but are developing resources on Security Sector Stabilisation in conjunction with the Stabilisation Unit). <http://www.ssrnetwork.net/>
- New HMG Rule of Law course under development by the HMG Justice Assistance Network (likely to include specific component on rule of law activities in stabilisation environments).

Recommended reading – security sector and rule of law

- OECD DAC Enhancing Security and Justice Service Delivery 2007 (lessons learnt on security and justice service delivery in fragile states).

- OECD DAC Handbook on SSR: Supporting Security and Justice, 2007
<http://www.oecd.org/dac/conflict/if-ssr> and Policy Guidelines:
<http://www.oecd.org/dataoecd/8/39/31785288.pdf>
- OHCHR 'Rule of Law Tools for Post-Conflict Countries', including vetting, mapping, monitoring legal systems and prosecution initiatives
http://www.undp.org/bcpr/we_do/trans_justice.shtml or
<http://www.ohchr.org/english/about/publications/>
- Report of the UN Secretary-General, 'The rule of law and transitional justice in conflict and post-conflict societies' (S/2004/616) 23 August 2004.
<http://daccessdds.un.org/doc/UNDOC/GEN/NO4/395/29/PDF/NO439529.pdf?OpenElement>
- World Bank report: Samuels, K 'Rule of Law Reform in Post-Conflict Countries – Operational Initiatives and Lessons Learnt' (World Bank, 2006).
- Transition to a Just Order – the Swedish Folke Bernadotte Academy has published a range of publications on this theme including a policy report and practitioners guide:
http://www.folkebernadotteacademy.se/roach/The_Transition_to_a_Just_Order.do?pageld=235

ANNEX 1

Annex 1: Scope of the security and justice sectors

The security sector refers to

- Core security actors (armed forces, police/gendarmerie, borders and customs, and intelligence and security services, immigration);
- Management and oversight bodies (e.g. President, Council of Ministers, National Security Council/Cabinet, Ministry of Finance, Ministry of Defence, Ministry of Interior, Ministry of justice, Ministry of Social Development/Women's Affairs, Minister of Local Government, Parliamentary Committees, Audit bodies, Constitution and Legal Frameworks, civil society);
- Non-statutory security forces (e.g. private security companies, private militia, neighbourhood watches, community safety groups); and
- Criminal justice actors: police service, prosecutions, criminal courts, prison service, defence lawyers, community based sentences, victim support units

The justice sector refers to

- Criminal justice organisations above
- Management and oversight bodies above
- Law Reform Commission, Judiciary/Magistracy, Civil/Commercial Courts, Mediation/Arbitration, Land Registry, Property Claims Commissions, Human Rights Commission/Ombudspersons, Legal Aid bodies, Parliament (law-making)
- Transitional justice
- Non-statutory justice organisations: Bar Association, Court Users Committees, Paralegals, Traditional Rulers, and Religious Leaders.