

Rule of Law and Security Sector Reform *A pragmatic approach to addressing the security and justice spectrum*

Improving justice and security in post-conflict and fragile settings has been taken up by both Security Sector Reform (SSR) and Rule of Law (RoL) Reform. In October 2011, The UN Secretary General issued a report on *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* underlining the importance of finding an effective way to streamline RoL Reform and SSR efforts:

“Admittedly, greater efforts are needed to ensure a unified approach to the rule of law, address gaps in evidence-based programming and integrate security sector reform into the wider rule of law framework.” (UNSG report, 2011, p. 3 §4).

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Despite strong complementarity between SSR and RoL reform, the two programmes tend to exist uneasily alongside each other. Examples of this can be seen among the different bodies within the European Union (the Commission and the Council Secretariat), the United Nations (Department of Peacekeeping Operations and United Nations Development Program, amongst others), and within national donor administrations. All are confronted with the challenge of aligning SSR and RoL Reform programmes to address complex problems; yet, cooperation remains slow and desultory. Actors can have the tendency to assert the relevance of one reform programme over the other rather than align their unique contributions to address local needs.

The authors will elaborate upon the existing problems for alignment and explore realistic opportunities for coordination, hereby seeking to promote a pragmatic discussion on how RoL Reform and SSR are inter-linked, complementary and potentially reinforcing at the practical level.

Issues and Corollaries of Segregation

The well-worn debate between SSR and RoL Reform is characterised by conceptual differences that seem

to be reinforced by institutional structures as well as underlying political complexities. Competitive territorialism is often the result, regularly leading to the divvying up of bureaucratically determined areas of competency in order to designate which actor should lead an intervention.

While the impasse is not new, this practice is drawing increasing scrutiny and derision. Below are examples of how the partition of RoL Reform and SSR is manifested and perpetuated in practice.

1. *Funding restrictions.* Funds are often earmarked for particular issues, and can explicitly exclude certain components of justice or security reform. Defence reform activities, in particular, often cannot be underwritten by funds allotted for development. In some cases, vying for limited funding encourages actors from either programme to assert their exclusive mandate. This can incite actors to prioritise asserting their role and relevance over finding avenues for cooperation.
2. *Conceptual Divergences.* SSR’s explicit focus on redressing sectors and state institutions highlights its practical nature. RoL, on the other hand, is discussed both as an ideal condition of society, as well as a collection of reform activities. Neglecting this distinction between concept and practice can

spur debates where proponents of SSR and RoL talk at cross-purposes, seemingly unable to agree on benchmarks by which to measure progress or success. This creates obstacles to effectively working with the many linkages between SSR and RoL Reform identified in the conceptual elaboration of each programme.

3. *Different working cultures.* SSR is often carried out by practitioners focused on a specific sector (e.g., the military, border guards or the police), or oriented towards governance actors at relevant ministries. RoL Reform, by contrast, is often implemented by legal practitioners and also NGOs working on bottom-up security and justice activities. These groups have very different working cultures, temporal outlooks, and perspectives on what constitutes positive change.
4. *The “specialization trap”.* Even if programming specialists see the complementarity and added values of RoL and SSR, experts implementing activities tend to be sectoral specialists. At the field level, this often means the system is broken down into its constituent parts. However, building an integrated security and justice system is inherently more complex than supporting the development of individual sectors. Many sector specialists take for granted (or, indeed, fail to recognise) what is needed to initiate and maintain the linkages between what they do and the activities or goals in other sectors.

Foundations for Complementarity

SSR and RoL Reform programmes both help to (re-)construct a responsible, accountable and effective state that guarantees people’s safety, in alignment with international standards. In both enterprises, the five end goals of the “Rule of Law” (the state is subjugated to the law; equality before the law; law and order; efficient and predictable justice; human rights protection)¹ play an important role. In post-conflict and fragile settings, the relationships between these end goals are often tenuous. For example, improving law and order by strengthening the police may put constraints on the efficient delivery of justice, as judicial and correction facilities are overwhelmed with the influx of captured suspects. Thus, justice and

security programming needs to be better synchronized and more adaptive to the various stages of transition. Doing so often extends beyond the competencies of a single organisational actor and therefore requires a joined up approach. Although this need has been iterated at the conceptual level, it has proven difficult to operationalise.

Operationalising a joined-up approach requires actors to become cognisant of and responsive to the practical linkages and tensions between end goals. The strains and opportunities that emerge between the different RoL ends make reform in fragile settings more of a balancing act than a weight-lifting exercise; subtle shifts and adjustments are more important than tackling everything all at once. In a similar vein, “holistic” or “comprehensive” approaches do not necessarily require simultaneous or uniform advancement on all fronts. Rather, requirements include flexibility, thorough understanding of linkages between sectors, and efficient responses to the local situation throughout various stages of transition.

The links between SSR and RoL Reform programmes

In Figure 1, the various components of security and justice are visualised as lying on a spectrum, stretching from the ‘kinetic’ kinds of security to transitional justice and legal codes. SSR and RoL Reform each address some aspects of this spectrum that the other does not. Thus, each has certain comparative advantages, while their competencies can also overlap. Collectively, however, RoL Reform and SSR cover the broader range of issues along the security and justice spectrum.

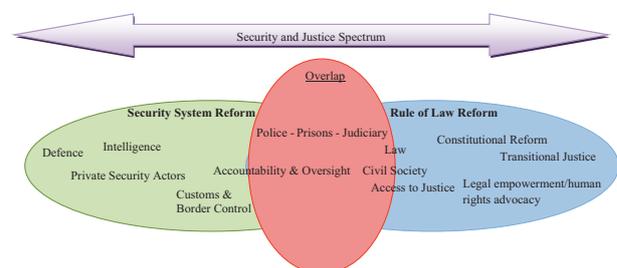


Figure 1: SSR and RoL Reform on the Security and Justice Spectrum

Figure 1 focuses on actors and activities. In practice, all of these can be addressed, in tandem or in a sequenced way, depending on what the circumstances demand or allow. It is crucial to continually focus on how the impacts of activities from each programme are liable to affect one another. Understanding the

¹ Kleinfeld – Belton, R., (2005). *Competing Definitions of the Rule of Law. Implications for Practitioners.* Carnegie Papers, Rule of Law Series: No. 55. pp. 7 -15.

entire spectrum helps to clarify this. For instance, defence reform often requires legal reform and can involve elements of transitional justice. The fact that these two aspects lie on opposite ends of this schematic spectrum makes their linkage no less significant for effective programming. Similarly, although RoL Reform does not typically focus on the defence or intelligence sector, its work on constitutional reform and governance can affect these institutions mandates. In turn, transitional justice, civil administration, and refugee-return all depend on the capacities and management of the intelligence and border services. These and other linkages are clearly pertinent to planning reform programmes, as well as implementing and overseeing their progress.

Taking the justice and security spectrum as a starting point for programming helps to assure that the menu for engagement options is widened beyond the limits of each label (RoL or SSR). Yet, areas of overlap can potentially exacerbate duplication or territoriality. Programmers should assess this area of the spectrum for coordination opportunities. As such, Figure 1 gives a visual representation of both the necessity of and opportunities for harmonization of RoL Reform and SSR.

Capitalising on coexisting SSR and RoL Reform programmes

At the programme level, SSR or RoL Reform may have a different added value or different risks. Recognising this can alert programmers to opportunities for strengthening synchronisation.

Avoiding duplication and gaps

Many different donors and actors are keen to be involved in fragile situation assistance, and recipient governments often have a ‘take all the assistance you can get’ approach. This can invite a hotchpotch of reform actors into a single intervention context. Given that RoL Reform and SSR can address overlapping issues, the risk of duplication increases, especially if the different security and justice actors do not always communicate well. For example, both SSR and RoL Reform projects often focus on police, judiciary and prison reform (the ‘justice triad’). Both types of programming can be essential for increasing populations’ access to and perceptions of security and justice. Yet two coexisting programmes operating in isolation risks inconsistency, confusion, and redundancy.

Rigidly sticking to one label or the other also amplifies the risk of gaps. For example, RoL Reform programmes

exclude work on the defence sector. However, in many post-conflict and fragile states the military greatly influences or actually plays a key role in the maintenance of domestic law and order. In turn, SSR in practice often is less focused on the justice sector, which can lead to critical fissures between criminal investigation officers and public prosecutors. Thus, selecting one specific label risks excluding crucial elements of the spectrum, potentially making programmes less effective.

Promoting flexibility and expansion

Much could be gained from a more flexible and opportunistic use of both types of programmes. In particular, the added value areas of each programme type provide a wider range of entry points to initiate activities. For example, transitional justice promotion can initiate progress in vetting members of security forces and introducing new standards of competency, thereby opening the way for further reform. Similarly, reform can address specific problems such as violent crime, illegal trafficking, or extortion activities, opening entry points to issue focused reform within the defence, intelligence & security, or customs sector. These same issues are also likely to provide entry points for RoL Reform activities involving justice programmes or anti-corruption measures. To coordinate on such issues, and capitalise on the broader range of available entry points, SSR and RoL Reform programmers and implementers must have a comprehensive understanding of how various aspects of the security and justice spectrum interlink at the implementation level.

The overlap areas can also be beneficial in political terms. For example, if ‘SSR’ is too sensitive a label to use in a context where police reform is highly needed, RoL Reform may be more politically acceptable. Political dynamics may also influence the designation of lead actors. Some governments may wish to engage with military actors, whereas others would rather steer clear of them. In some cases it might be best to go through an actor with longstanding local relations, whereas in other cases an actor with a history of engagement may be seen as ‘tainted’. Having the option to use either label, and the associated actors, opens avenues for reform.

The pragmatic way forward

Referring to the entire security and justice spectrum, rather than a specific programme label, can help programmers identify a broader range of entry points in a particular context. New options for reform may

also be revealed since crucial or unexpected areas are less likely to be overlooked. Although one programme label may be applied initially, continuous programming should evolve according to local developments in the overall security and justice spectrum. In this sense, programmes should consider when it may be appropriate to phase in new activities, and phase out activities in areas where a satisfactory level of stability has been reached. This should encourage RoL Reform and SSR actors to work together on sequencing their interventions to reinforce one another, rather than competing for particular “territories” of reform.

Pragmatic programming starts from a detailed analysis of the local context’s security and justice spectrum. In many post-conflict settings, the situation requires careful attention to ensure that programme sequencing is in step with the country’s transition process. In practice, a country’s particular stage of transition will strongly influence which reform activities are appropriate or accepted. As pointed out by Kleinfeld (2005) “In working RoL systems, the five elements of the rule of law support one another. In nascent or poorly functioning systems, the five elements can and do undermine one another.” For example, in fragile peacekeeping settings, predictability of law enforcement and adjudication may need to be prioritised before progressive legislative reforms aligning local laws with international standards.

Using the context as guidance also allows for reform to be an evolutionary process, in which specific actors phase their support in and out, or choose not to engage, according to the developing situation. This may also mean jointly planning the transfer of responsibilities from one actor to the other. Crisis management actors, such as EU Common Security and Defence Policy Missions or UN peacekeeping missions, could gradually step aside, allowing more attention for longer-term development programmes managed by the European Commission or the UNDP. Preparing for such transitions, and foreseeing them as a benchmark of progress, could diminish competition between agencies and provide concrete opportunities for joint planning and assessment. This approach accommodates and promotes the benefits of the unique added values of RoL Reform and SSR actors.

Recommendations for more effective programmes

The bureaucratic and rigid divisions of competence, which currently characterise the relationship between

RoL Reform and SSR actors, are both obstructive and unnecessary. Like the proverbial man with a hammer to whom everything appears a nail, implementing either SSR or RoL Reform may be interpreted according to the donors’ tools and expectations rather than the context’s issues or local needs. It is therefore suggested to apply a more pragmatic approach.

The first step to enhancing coherence between RoL Reform and SSR is to recognise that elements of the security and justice spectrum are interdependent. This underscores the need for improved joint planning and coordination and, in particular, clearer incentives and opportunities for programme leaders and practitioners to be pragmatic and open to collaboration. This is a key requirement for which concrete opportunities exist.

The second step is to recognise that the relations between the different security and justice sectors are fluid: new tensions and linkages between the different elements will emerge as reform progresses and the context dynamics evolve. Each local context and stage of transition must guide what is available and feasible. Moreover, programme implementation and the roles of actors must adapt as reform processes unfold. This requires continuous and holistic context analysis, conducted jointly and followed up by adaptive planning and implementation. Doing so will help ensure that reforms can progressively expand in an evolutionary fashion, as the benefits of reform and/or adjacent issues hampering effectiveness become apparent.

The third step is to ensure flexibility. This refers to the use of labels, funding mechanisms that allow for cross-spectrum funding, as well as designating which actor should assist in undertaking what tasks. The latter needs to be determined based on both required expertise as well as political acumen. However, as a reform process unfolds, focus areas – and hence involved actors – are likely to change. Sequencing, phasing in and out, and ensuring follow-up between different actors as the transition process evolves are therefore key capacities for donors to build.

All of this underscores the need to engage in every context afresh. Interventions should be guided by an evaluation of which actor is best suited to address issues and opportunities in a given context and at a particular stage of transition. Given that these are mutable factors – per context, but also as time progresses – effective programming requires ongoing consultation, adjustment, and evolutionary programming.

The following can be recommended:

- I. Operate with a clear understanding of the programming implications of the linkages between justice and security aspects and actors
 - Donor governments or multilateral organisations should consider sponsoring joint trainings for the wider swath of justice and security actors to promote stronger understandings of the security and justice linkages and ways to operationalise this in programming. The European Commission's ENTRi platform, the Folke Bernadotte Academy, or DCAF's ISSAT are examples of programmes that could develop such trainings.
 - Donor organisations should consider forming joint security and justice expertise groups with a programming guidance role. The UN's Interagency Security Sector Reform Task Force is an example of such an expertise group.
 - Donors should become more serious in convening and funding joint context analysis exercises (including scenario exercises, fact finding missions, strategic reviews, monitoring and evaluation efforts) among different organisational bodies or departments. Joint analysis should become standard practice for new engagements.

- II. Operate with the understanding that the justice and security landscape is dynamic
 - Planning and implementation would benefit from designating or transferring lead actor responsibilities per stage of the reform process, based on a joint context analysis. Donors should ensure that this analysis involves all relevant implementing actors to focus instruments, capacity and timelines.
 - Monitoring and evaluation experts should develop tools that could prompt the phasing in and out of different programmes, responding to changes in the local context.
 - Implementers within different departments or bodies should create shared programme tracking documents that help to assess the impact of changes in a particular context. Such tracking instruments should consistently inform all relevant actors about a programme's progress and eventual sequencing of activities. The action fiches used by the EU Rule of Law Mission in Kosovo (EULEX) provide an example.
 - Experts on the overall justice and security spectrum should be based in the field and tasked with identifying and dealing with emerging linkages, tensions, and overlaps.

- III. Ensure financial and programming flexibility to adjust to a dynamic context
 - Donors should build on the experience of flexible support and funding mechanisms that are able to address evolutionary programming. Lessons can be learned from examples such as the Stability Fund in the Netherlands, the Conflict Prevention Pool in the United Kingdom, or funds related to START in Canada.

ABOUT ...

The Clingendael Conflict Research Unit

The Netherlands Institute of International Relations 'Clingendael' is a training and research organization on international affairs. The Conflict Research Unit (CRU) is a specialized team, focusing on conflict-related issues in developing countries.

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