

**Pragmatic Realism in Justice and Security Development:
Supporting Improvement in the Performance of
Non-State/Local Justice and Security Networks**

Eric Scheye

Netherlands Institute of International Relations

'Clingendael'

Conflict Research Unit

July 2009



Desktop publishing: *Fadime Koç*

Netherlands Institute of
International Relations
'Clingendael'
Clingendael 7
2597 VH The Hague
P.O. Box 93080
2509 AB The Hague
Phone number: +31 (0)703245384
Fax number: +31(0)70 3282002
Email: cru-info@clingendael.nl
Website: <http://www.clingendael.nl/cru>

© Netherlands Institute of International Relations *Clingendael*. All rights reserved. No part of this book may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of the copyright holders. *Clingendael* Institute, P.O. Box 93080, 2509 AB The Hague, The Netherlands.

Content

- CONTENT..... I**
- EXECUTIVE SUMMARY II**
- 1. INTRODUCTION: SETTING THE CONTEXT 1**
- 2. THE MULTI-LAYERED, POST-COLONIAL STATE AND ITS EXISTING
RELATIONSHIPS BETWEEN NON-STATE/LOCAL JUSTICE AND
SECURITY NETWORKS..... 7**
 - A. THE MIXED/HYBRID STRUCTURE OF THE POST-COLONIAL STATE..... 7
 - B. EXISTING RELATIONSHIPS BETWEEN THE POST-COLONIAL STATE AND NON-
STATE/LOCAL JUSTICE AND SECURITY NETWORKS..... 11
 - C. HOW TO DECIDE WHO TO SUPPORT 14
- 3. SUPPORTING NON-STATE/LOCAL JUSTICE AND SECURITY
NETWORKS IN THE SHORT- TO INTERMEDIATE-TERM..... 17**
 - A. EFFECTIVENESS, COST-EFFICIENCY FOSTERING ECONOMIC DEVELOPMENT,
ACCESSIBILITY, LEGITIMACY AND PREFERENCE..... 17
 - B. ACCOUNTABILITY, INSTRUMENTALIZATION, HUMAN RIGHTS, AND PROTECTION
OF VULNERABLE POPULATIONS 22
 - C. SOCIAL EFFICACY AND CAPITAL 27
- 4. LEGAL PLURALISM AND LOCAL OWNERSHIP 33**
- 5. UNCERTAINTIES AND CHALLENGES IN SUPPORTING NON-
STATE/LOCAL JUSTICE AND SECURITY NETWORKS 39**
- BIBLIOGRAPHY..... 44**

Executive Summary

This report reviews and outlines many of the important conceptual and policy challenges and opportunities for donors to support the strengthening of the performance of non-state/local justice and security networks. Given the poor track record of the current statebuilding approach, the report argues that donor-supported justice and security programming ought to adopt a pragmatic realism approach. In addition to supporting the ability of state institutions to deliver accountable services, a pragmatic realism approach would proportion a significant percentage of its assistance, in the short- to intermediate-term, to improving the performance of non-state/local justice and security networks and building more effective and accountable links and relationships between the fragile and post-conflict state and the local networks. The key to determining what defines a ‘significant percentage’ of donor support is donor sensitivity and understanding of the multi-layered politics, societies, and dynamic balances of power that characterize most fragile, post-colonial states.

The legitimacy and resilience of the multi-layered post-colonial state depends upon the interlocking relationships between its different layers of authority -- state and non-state. These differing polities, of which non-state/local justice and security networks comprise a considerable percentage, are the warp and weft of politics in the post-colonial state. Attempts to implement a justice and security statebuilding agenda grounded upon a Western reading of the state are inherently fraught and prone to ineffectiveness, given that basic Western governance concepts such as the separation of powers, civil society, monopoly control over the means of violence, and the distinction between criminal and civil law may not be readily comprehensible in or applicable and transferable to a fragile, post-colonial context, given its different histories, structures, and norms.

Instead, a pragmatic realism approach recognizes that each of the different polities in the post-colonial state deliver a range of public goods and services, including those of justice and safety. Moreover, this approach acknowledges that the multi-layered nature of the post-colonial state defines the terms of governance; the survival functions of the state; what expectations societal elements have of the state; and the degree of resiliency the state possesses in addressing, fulfilling, and being accountable to local needs. In addition, the approach recognizes that legal pluralism -- the existence of multiple legitimate normative and juridical orders that co-exist within one socio-political space -- characterizes these states. It is for these reasons that donor assistance for justice and security development must, itself, be multi-layered, weaving the long-term statebuilding objective into the existing legitimate post-colonial system of governance. In practical terms, in the short- to intermediate-term, in order to support the existing minimally competent state, it means working with and within the flexibilities and nuances of the 'second state' -- the layers of governance defined by the relationship between and among non-state networks and the state.

Beyond the fact that non-state/local justice and security networks provide the majority of justice and security in fragile and post-conflict environments, other reasons why donors need to support them include amongst others: the legitimacy and accessibility of such networks -- in terms of distance, cost, language and culture; their efficiency; the speed with which disputes can be effectively resolved; and their ability to enforce the resolutions of disputes. Because they are more trusted and accessible, they are, often, more effective in delivering security and justice to the population of a state than many state agencies, factors that should not and cannot be overlooked in donor support efforts.

One of the risks in supporting non-state/local justice and security networks is that some of their practices may contravene human rights standards and principles. The underlying pragmatic and programmatic issue, however, is not the brute fact of human rights violations perpetuated by non-state/local justice and security networks. Rather the first question is whether non-state/local justice and security networks are worse offenders than their state counterparts; second, whether the networks are more or less amenable to improving their performance; and, third, how, most effectively, to remedy the violations.

There is little empirical evidence to suggest that non-state actors are more prone to committing human rights violations than state institutions. The evidence that does exist suggests that non-state/local justice and security networks are malleable, open to improvement and learning. In fact, non-state/local justice and security networks, if provided appropriate support that respects local norms and cultural values, have proved themselves adaptable to changing circumstances; no more susceptible to elite instrumentalization than their state counterparts; and capable of protecting the rights of vulnerable groups, such as women and girls. The pragmatic realism approach, therefore, offers a way to address violations by non-state/local justice and security networks by proportioning assistance to strengthening these networks' performance and to state institutions to foster their links with the networks to increase their accountability.

It is also important to recognize that if proportional support were to be withheld from non-state/local justice and security networks, donors would be contravening the doctrine of 'local ownership,' given the expressed will of the preponderance of the citizenry and residents of many, if not most, fragile and post-conflict states to avail themselves of the networks' services. Finally, improving the performance of non-state/local justice and security networks, as institutions of the 'second state' in their delivery of public goods, could rebound to the benefit of individual and group social efficacy and capital, as well as the resilience of the post-colonial state's multi-layered governance structure.

The pragmatic realism approach, however, does not propose to support local/non-state justice and security networks indiscriminately. The human rights violations committed by some networks or armed non-state groups may be so pervasive and atrocious that donors cannot support them. Some networks or armed groups may also be involved in a range of illegal activities that puts them beyond the pale of donor engagement. At the same time, donors need to remain flexible. For example, in some cases, it may be acceptable and productive to work with these actors when the partner state has itself engaged in a peace and reconciliation process with them. Although there are methodologies that can help donors decide which groups to support based upon their structural relationships, the decision to engage with these networks is ultimately the donor's political judgment, a choice that ought to be grounded in the realities of the local context and the donor's national interests.

One of the challenges of the pragmatic realism approach is that, under the best of circumstances, donors possess only an incomplete and partial

understanding of the politics and dynamics of balances of power of the partner country. While invariably the case, this is especially true in the multi-layered post-colonial state, where the governance structures of most fragile states are even more foreign to Western eyes and ears. The pragmatic realism approach acknowledges the challenge given that many non-state/local justice and security networks are small and will be unknown to Western practitioners; the cost (labor and time) of identifying them is burdensome; and the likelihood of donors gaining access (physically, linguistically, and culturally) to them may be low. The relationships between and among the networks will also be opaque and their political relationships with the state and state agencies difficult for even the most politically astute outsider to decipher. Given these hurdles, it would appear that western justice and security practitioners -- whether from Western governments or from international NGOs -- may not be the most effective personnel with which to implement the non-state/local justice and security network component of a pragmatic realism policy. Local civil society organizations and NGOs, however, are well situated to implement a policy of pragmatic realism. These local organizations possess the requisite knowledge of local mores and beliefs, understand the complexities of the multi-layered post-colonial state, and are conversant with how to navigate the choices made by its residents and citizens in obtaining local services in a world of legal pluralism.

It should be noted that implementation through NGOs and local civil society organizations, a good number of which may be non-state/local justice and security networks themselves, is a difficult undertaking. First, the capacity of these implementing organizations is limited and donors will have to backstop their activities substantively and organizationally. Second, as the number of justice and service providers in the multi-layered post-colonial state is high, the number of implementing partners may be commensurately large as well. While this may pose a challenge administratively, it remains the correct approach in that a pragmatic realism strategy aims to improve service delivery in order to address concrete local needs and raise the social efficacy and capital of individuals and their groups, who by definition reside and work in particular neighborhoods, marketplaces, and villages.

A further challenge will be the need for donors to accept a higher degree of risk and unpredictability than what they may be accustomed to carrying. With their inherently limited knowledge, donors have little option but to accept working with less 'safe' implementing partners and beneficiaries than in the past, if they want to support the strengthening of justice and security service delivery in the short- to intermediate-term.

There will be unintended consequences, but that is endemic to development initiatives. To address the issue, donor staff, rather than merely providing technical know-how, should be prepared to step-in and mitigate such unintended consequences. This requires on the part of donor staff greater flexibility, political acumen, sensitivity to political changes in balances of power, and tolerance of higher levels of ambiguity and uncertainty in their day-to-day work than has customarily been associated with development personnel, who have typically concentrated, first and foremost, on their substantive and technical expertise. Additionally, donor staff will need to be skilled in the art of negotiation because partner governments, wary of donors working with non-state/local justice and security networks, might require convincing that a proportional pragmatic realism approach is the road by which state capacities can be enhanced over the long-term.

The funding mechanisms to implement the pragmatic realism approach ought to be based upon the implementing local partner's ability to deliver tangible services. Instead of allocating hefty sums of monies to individual beneficiaries, a pragmatic realism program 'spreads the wealth,' distributing small amounts to a large number of recipients -- civil society groups, NGOs, and non-state/local justice and security networks. The logic is that a small amount of assistance goes a long way at the local level, particularly as donor support is geared toward improving service delivery, which has its multiplier effect on social efficacy and capital.

There are different options that donors can use to manage this 'justice and security venture capital fund'. Working with partner governments, donors may be able to establish a justice and security equivalent to the 'social development funds' that have proliferated in community-driven development programmes in the multi-layered post-colonial world. In some countries, there may be large national NGOs that donors can work with, but that may be more the exception to the rule rather than the rule. In other cases, donor support can be channelled through large INGOs, those that have experience and knowledge of the partner country, who, in turn, will funnel the monies downward to local implementing civil society organizations and NGOs.

1. Introduction: Setting the Context¹

Current development policy emphasises the centrality of the state and its powers to achieve sustainable peace and development.² UN statesman, Lakhdar Brahimi has stated that “statebuilding is unapologetically... the central objective of any peace operation” and “all international” efforts should “serve that objective” (Brahimi, 2007: 4). Similarly, a 2008 OECD report claims “that state building is the central objective of international engagement in fragile states” (OECD, 2008: 7) and a DFID paper concludes that “development is... premised on engagement with states” (Whaites, 2008: 3).

Under the best circumstances, supporting the development of a democratic and capable state in fragile and post-conflict scenarios is a painstaking process, plagued by delay and persistent setbacks, best evaluated only after a decade or more of effort.³ With regard to justice and security, one of “the ‘constitutive’ domains of state-building” (Fritz and Menocal, 2007: 5), there is an acute need ‘to invest’ in the state’s institutional capacities. Building capital infrastructure; developing administrative and budgetary processes; improving personnel selection, recruitment, and career development procedures; initiating basic training programmes; revitalizing academies and teaching facilities; undertaking comprehensive legal revisions and policy modernization are essential activities for donors to support as part of the statebuilding agenda.

Unfortunately, the results of justice and security development efforts have “not [been] especially encouraging” (Call and Cousens, 2007: 8-9). Notwithstanding notable exceptions, an internal UN Rule of Law assessment acknowledged that “the international community has invested massive resources in promoting democracy and the rule of law in post-conflict and post-authoritarian states... [but] the appropriateness

¹ This report was written with the support of the staff of the Conflict Research Unit, Clingendael Institute, in particular Maria Derks. It has been written as part of a larger research project conducted under a subsidy agreement between the Dutch Ministry of Foreign Affairs and the Clingendael Conflict Research Unit.

² “Various writings on the subject of state failure tend to use interchangeably the words ‘weak’, ‘fragile’, ‘failing’, ‘failed’ and ‘collapsed’. These terms in practice describe a continuum, with fragile states at one end and failed/collapsed states at the other,” Monika François and Inder Sud, *Development Policy Review*, 2006, 24 (2): 143. See also, Nicole Ball, Eric Scheye, and Luc van de Goor, *From Project to Programme: Effective Programming for Security and Justice*. (Hague: Clingendael Institute, 2007)

³ For a discussion of some of the difficulties of international actors engaging in statebuilding, see *Development and Change* 33 (5) (2002).

and effectiveness of past efforts to strengthen the rule of law are discouraging” (Benomar, 2007: 1).⁴ World Bank studies in 2005 and 2006 have argued that

“the numerous rule of law assistance programs in post-conflict or fragile countries have so far resulted in few lasting consequences. Some individual programs have had a modicum of success..., but even then most have not built institutions that might outlast the donor presence...” (Samuels, 2006: 15; see also, Decker, Sage, and Stefanova, 2005: 1, Shaw, 2000: 11).

Justice and security programs have been critiqued for being unsustainable⁵ because they concentrate on institution building. This approach “often translates into projects and programmes that focus on constructing and repairing court houses, supplying technical equipment, drafting of new laws..., training programs for lawyers, judges and prosecutors on the new laws..., supporting human rights commissions, bar associations, and police and prosecutorial offices” (Sannerholm, 2007: 6). This state capacity building focus, implicitly, assumes that “the rule of law can be developed and implemented separately from, and counter to, the political process” (Chandler, 2006: 170), even though it is recognized that politics and state-society relations are central to effective statebuilding, an equitable distribution of public goods, and better service delivery.⁶ An

“excessive focus on formal institutions and their capacities... [also runs] the risk of sidelining both sub-state authorities and broader state-society relations. Yet, traditional and local authorities may be key channels for

⁴ See also Jane Stromseth, David Wippman and Rosa Brooks *Can Might Make Rights? Building the Rule of Law after Military Interventions* (Cambridge University Press: Cambridge, 2006); Kaysie Studdard and Agnès Hurwitz ‘Rule of Law Programs in Peace Operations’, *International Peace Academy Policy Paper* (2005); United States Institute for Peace ‘Establishing the Rule of Law in Afghanistan’ *Special Report No 117* (2004); Scott N. Carlson ‘Legal and Judicial Rule of Law Work in Multi-Dimensional Peacekeeping Operations: Lessons Learned Study’ *UN Peacekeeping Best Practice Section* (2006); Reyko Huang ‘Securing the Rule of Law: Assessing International Strategies for Post-Conflict Criminal Justice’ *International Peace Academy Policy Paper* (2005).

⁵ Afghanistan is an example of unsustainable programming. Statebuilding initiatives have overwhelmed the government with, at any one time, 120 pieces of legislation awaiting parliamentary deliberation and the Minister of Finance spending 60 percent of his time coordinating donors, ‘Chairman’s Summary: Senior Level Forum on Development Effectiveness in Fragile States’ (OECD Paper DAC/CHAIR 3. Paris, 2005.)

⁶ DFID argues that effective development is based upon understanding that competing elites have systematically forged their “political power” and the “underlying political settlement” to promote “their interests or beliefs” (DFID, 2008: 4). OECD, on the other hand, understands politics as “the dynamic... process through which citizens’ expectations of the state and state expectations of citizens are reconciled and brought into equilibrium with the state’s capacity to deliver services” (OECD, 2008: 7).

public service delivery as well as critical actors in re-establishing post-war stability and social reconciliation” (Call and Cousens, 2007: 9).

This latter claim is supported by another 2005 World Bank study, which reported that of “the 78 assessments of legal and justice systems undertaken by the Bank since 1994, many mention the prevalence of traditional justice in the countries looked at, but *none* explore the systems in detail or examine links between local level systems and state regimes” (Chirayath, Sage and Woolcock, 2005: 3). The slighting of “the contributions of indigenous institutions -- such as self-help associations, churches, NGOs, and other grassroots organizations -- alienates citizens from the rebuilding of their states and undermines democratic accountability” (Englebert & Tull, 2008: 128). It also calls into question adherence to ‘local ownership’ strictures. In summary,

the weaknesses of the current statebuilding approach suggest that it is time to implement a new approach, one that, being pragmatically realistic, balances long-term and short-term development by proportioning donor support between developing a minimally competent state and improving the performance of the providers currently deliver the preponderance of the public goods and services of justice and safety.

Justice and security programs have paid insufficient attention to non-state/local justice and security networks⁷ even though these networks deliver the majority of justice and security in these environments and are, often, considered more legitimate, trusted, effective, accountable, and cost-efficient than their state counterparts.⁸ The evidence also indicates

⁷ For purposes of this report, non-state/local justice providers include customary courts, village councils, market/trade associations and religious courts; when providing safety and security, they may include loosely-organized community groups; civic/trade associations; neighborhood patrols and crime prevention organizations; religious police; customary police; political party security; local militias, commercial security companies, and warlords accompanied by their enforcers.

⁸ A consensus exists within the development community that non-state/local justice and security networks are the majority providers of justice and safety in fragile and post-conflict states; see E. Alemika and I. Chukwuma, “*A Report on Poor Peoples’ Perceptions and Priorities on Safety, Security and Informal Policing in 27 Focal States in Nigeria.*” Center for Law Enforcement Education, Lagos, 2004; Bruce Baker and Eric Scheye, *Multi-Layered Justice and Security Service Delivery in Post-Conflict and Fragile States, Conflict, Security & Development*. Vol. 7, No. 4 (2007), pp. 503-528; Leila Chirayath, Caroline Sage and Michael Woolcock (2005), “*Customary Law and Policy Reform: Engaging with the Plurality of Justice Systems*”, prepared as a background paper for the World Development Report 2006; Julio Faundez, “*Non-State Justice Systems in Latin America. Case Studies: Peru and Colombia*”, workshop held at the Overseas Development Institute on 6-7 March 2003. Draft paper, Institute for Development Studies, University of Sussex; OECD, *Enhancing the Delivery of Justice and Security*. (Paris: OECD, 2007); Penal Reform International, *Access to Justice in Sub-Saharan Africa: The Role of Traditional and Informal Justice Systems*, 2000; Wilfred Schärf. (2003), “*Non-State Justice Systems in Southern Africa: How Should Governments*

that these networks are indispensable for the short- and intermediate-term delivery of justice and safety. The donor challenge, therefore, is, first, to accept the positive obligation to support the improvement of the performance of non-state/local justice and security networks and, second, to design mechanisms and implement methods to do so that coincide with long-term objectives.⁹

This is not to imply that, in fragile environments, all donor-supported justice and security development initiatives ought to underwrite the improvement of the performance of non-state/local justice and security networks. Nor does it suggest that all networks are suitable for development support. A minimally competent state is crucial for sustainable peace and an equitable distribution of public goods. Pragmatic realism means, in the long-term, to strengthen the capacities of the state to deliver justice and safety through its institutions and to monitor, regulate, and audit service delivery by all providers, state and non-state. In the short- to intermediate-term, the policy advocates

*proportioning donor assistance to improve the performance of non-state/local justice and security networks and to strengthen states in building more effective and accountable links to these local networks.*¹⁰

Following the programmatic framework laid out in *From Project to Program: Effective Programming for Security and Justice* (Clingendael, 2007), this report acknowledges that supporting justice and security development implies “working in an environment where political uncertainty and ambiguity is an everyday reality” (p. 29), especially in balancing short- to intermediate needs with long-term objectives. The weighing of time scales and goals implies that donors constantly need “to calibrate the balance of power among national stakeholders and the requirements of local ownership across a spectrum of actors” (p. 26). Any security and justice development program will affect the balance of power, and therefore is engaged in politics. Consequently,

Respond?, workshop held at the Overseas Development Institute on 6-7 March. Draft paper, Institute for Development Studies, University of Sussex.

⁹ A 2004 DFID policy note heralded the importance of non-state/local justice and security networks, *Non-state Justice and Security Systems* (DFID, London, 2004). OECD in 2007 with an analysis of justice and security service delivery in fragile states (*Enhancing the Delivery of Justice and Security in Fragile States*. OECD: Paris, 2007). In the last three years, donor-supported efforts have explored the vitality of non-state/local justice networks in southern Sudan, Timor-Leste, Afghanistan, Nicaragua, and elsewhere.

¹⁰ See OECD/DAC (2007), *Enhancing the Delivery of Justice and Security in Fragile States*. p. 7.

the political assessment and calibration of the balance of power amongst the different actors is the key to what defines a 'significant percentage' of donor support to non-state/local justice and security networks.

While there are conceptual challenges in supporting non-state/local justice and security networks, there are no *a priori* answers how to proportion support between state agencies and these networks, when to proportion assistance, which networks to support, or which to shun. These are political judgments that require in-depth knowledge of the particular context and its dynamic balances of power. On the other hand, some of the means by which donors can and ought to support the strengthening of these networks -- by working through local civil society organizations and, in some cases, international NGOs; by establishing justice and security 'venture capital' funding instruments similar to those of community-driven development initiatives -- are becoming increasingly clear.

As the first step of a three-phase project, this report is "an overview of the most important issues," outlining "the conceptual and policy challenges and opportunities" for donors to address in order to support the strengthening of the performance of non-state/local justice and security networks. In detailing donor challenges and opportunities, this report also recommends how such support can be channeled. The second phase of the project -- to be launched in Spring 2009 -- will "provide an overview of lessons learned as regards the operational and programmatic challenges and opportunities" for supporting non-state/local justice and security networks.¹¹ The final phase of the project will, then, "build on the outcomes of phases 1 and 2, focussing on the application of lessons learned and on SSR programme design and implementation" in a number of cases.¹²

Divided into four sections, the report's first section describes the multi-layered structure of the post-colonial state and its potential resilience. Explicating the relationships between the state agencies and non-state/local justice and security networks, the section advocates a policy of pragmatic realism. Cognizant of the deficiencies and deficits of the fragile state, the second part lays out the reasons why donor support to strengthen the performance of these networks is indispensable in the short- to intermediate-term. The third part outlines the ramifications of

¹¹ CRU (2008) *Project Proposal Non-State/Local Justice Networks and Security Sector Reform*.

¹² *Idem*, 2008.

legal pluralism and the local ownership doctrine for the proportioning of donor assistance. Particular attention is paid to the tensions of applying a Western understanding of human rights to the post-colonial state. The final section discusses how to support non-state/local justice and security networks, highlighting the challenges a pragmatic realism approach will need to surmount.

2. The Multi-Layered, Post-Colonial State and its Existing Relationships between Non-State/Local Justice and Security Networks

a. The Mixed/Hybrid Structure of the Post-Colonial State

One reason for the insufficient focus on non-state/local justice and security networks is a misunderstanding of the multi-layered nature and authority of the post-colonial state. The structure of the post-colonial state has long been studied, particularly, though not exclusively, in the context of sub-Saharan Africa.¹³ However, comparable patterns and characteristics occur around the world, in, for example, Somalia, Afghanistan, Pakistan, Bangladesh, Nepal, the Solomon Islands, Fiji, and Timor-Leste.¹⁴ In Andean and Central American countries, similar structures exist, particularly in Bolivia, Peru, Guatemala, and Nicaragua where significant populations of indigenous peoples live.

The vast majority of the 40 fragile and conflict-affected environments are in post-colonial states.¹⁵ In these environments, attempts to implement a statebuilding agenda grounded upon a Western reading of the state are fraught and prone to ineffectiveness, given that the basic Western governance concept of state monopoly over the means of violence may not be applicable. For example, in much of Africa, there

¹³ See Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, (Princeton University Press, Princeton, 1996); Pierre Englebert, *State Legitimacy and Development in Africa*, (Lynne Rienner, Boulder and London, 2000); and Jeffrey Herbst, *States and Power in Africa: Comparative Lessons in Authority and Control*, 2000, (Princeton University Press, Princeton, 2000). In non-African studies, issues of legal pluralism come to the fore rather than analyses of state authority.

¹⁴ Menzies, 2007; C. Graydon, 'Local justice systems in Timor-Leste: Washed up, or watch this space?', *Development Bulletin*, no. 68, (2005), pp. 66-70; see also Minneh Kane, J. Oloka-Onyango, and Abdul Tejan-Cole, *Reassessing Customary Law Systems as a Vehicle for Providing Equitable Access to Justice for the Poor*. Arusha Conference, "New Frontiers of Social Policy" – December 12-15, 2005.

¹⁵ Using OECD/DAC criteria for fragile states.

“has hardly [been] ...any point in time [when the state] had a monopoly of legitimate force... [The] security sector has... typically manifested both formal and informal tracks. Even in states which are ostensibly stable, statutory institutions have been unable to provide security to all categories of its citizens at affordable levels, with supplementary roles being played by an array of traditional security actors.... The westphalian assumption that monopoly over the means of legitimate coercion lies with the state and its institutions meets a veritable challenge in the face of the wide support and legitimacy enjoyed by non state security institutions” (Ebo, 2007: 10-11).

Furthermore, many post-colonial states never established “effective institutions... [but] have more often been instruments of predation and extraction... [and] state failure is less an objective condition than a permanent mode of political operation” (Englebert and Tull, 2008: 110). As a result, state agencies have not been the primary vehicle for distributing public goods. That role is taken by non-state systems and institutions, which, together, effectively function as a ‘second state’.

As importantly, distinctions between public and private, state and civil society,¹⁶ public and private goods, which define the Western state, may be blurred, if not “largely absent.”¹⁷ In sub-Saharan Africa, “the evidence is overwhelming that most... collapsed states at no point in the postcolonial era remotely resembled the ideal type of the modern Western polity,” with a separation of power between the executive, legislative, and judicial authorities (Englebert and Tull, 2008: 111).¹⁸

¹⁶ Civil society, as understood in Western parlance, does not exist in fragile, post-colonial state (Thomas Carothers. ‘The End of the Transition Paradigm’, *Journal of Democracy*, January 2002). For explication of civil society in Western and post-colonial states, see, Séverine Bellina, et. al. *The Legitimacy of the State in Fragile Situations*. In an unpublished OECD/DAC draft (January 2009), it is argued that “modern states are based on... [the separation of] state and society... and here, the distinction between the public and the private is central: A private sphere (society), consisting of social and economic relations is constituted by, yet separated from, the state. States in fragile situations are often characterized... by a lack of clear distinction between the public and the private... and a lack of constructive relations between the two realms. As a result the public sphere... is generally weak [which]... exacerbates state fragility” (p. 6).

¹⁷ See Louise Andersen, What to Do? *The Dilemma of International Engagement in Fragile States*, In Louise Andersen, Bjorn Moller and, Finn Stepputat, (eds.) *Fragile States and Insecure People? Violence, Security and Statehood in the Twenty-First Century*. (New York: Palgrave MacMillan, 2007). See also, Christopher S. Clapham, ed., *Private Patronage and Public Power: Political Clientelism in the Modern State* (London: F. Pinter, 1982); Peter M. Lewis, “Political Transition and the Dilemma of Civil Society in Africa,” *Journal of International Affairs*, Vol. 46, No. 1 (Summer 1992), pp. 31–54; and Richard Sandbrook, “Patrons, Clients, and Factions: Explaining Conflict in Africa,” in Peter Lewis, ed., *Africa: Dilemmas of Development and Change* (Boulder, Colo.: Westview, 1998), pp. 64–83.

¹⁸ See Robert Rotberg, ed. *When States Fail: Causes and Consequences*. (Princeton, Princeton University Press, 2003); Lisa Anderson, “Antiquated before They Can Ossify: States That Fail

The same can be claimed for situations of state fragility or failure that have occurred or are occurring in Afghanistan, Pakistan, Nepal, Nicaragua, and Bolivia, amongst others.

Consequently, the post-colonial state has been described as a mixed/hybrid form of government.¹⁹ In a mixed/hybrid system there are “overlapping layers of formal and informal spheres of power...” with clientelistic and neo-patrimonial underpinnings (Chabal, 2006: 1).²⁰ In practical terms, “the processes and institutions freely associated with Western experiences of democracy may... co-exist with social and political relations and practices which may continue much as before,” based upon “indigenous mechanisms of socio-legal and political organisation” (Roberts, 2008: 71, 79). The legal pluralism that grounds and links the disparate elements of the post-colonial system mingles “constitutionally defined [Western] democratic-representative principles... [with] customary rules of ethnically-based... institutions... either by informal acceptance or legal recognition and constitutional integration” (Düsing, 2002: 281). Post-colonial states, therefore, are multi-layered, with alternate levels of governance forming a ‘second state’ alongside the formal one.

Contrary to the OECD’s current assertion that, “in fragile states, the linkages between state and non-state institutions tend... to be problematic, [characterized by] rivalry rather than [co-operative relations]” (OECD, 2008: 38), what is salient in these multi-layered systems “is not the antagonistic conflict between constituent elements but [rather the] systemic balance and linkage between the sovereign state authority and the ‘second state’ through constitutional dispensations, which define specific modes of incorporation” (Düsing, 2002: 36). Afghanistan may be a good case in point of how such a balance of power between state authorities within a tribal non-state constellation can be roughly maintained over time, if not unduly disturbed by outside

before They Form,” *Journal of International Affairs*, Vol. 58, No. 1 (Fall 2004), pp. 1–16; Herbst, *States and Power in Africa*.

¹⁹ See Richard Sklar, *The African Frontier for Political Science*, 1993, in Robert H. Bates, V.Y. Mudimbe, and Jean O’Barr ed., *Africa and the Disciplines: The Contributions of Research in Africa to the Social Sciences and Humanities*, University of Chicago Press, pp. 83–110; see also Catherine Boone, 2003, *Political Topographies of the African State: Territorial Authority and Institutional Choice*, Cambridge University Press, Cambridge; Peter P. Ekeh, Colonialism and the Two Publics in Africa: A Theoretical Statement, *Comparative Studies in Society and History* 17, 1 (January 1975): 91–112.

²⁰ See Robert Jackson and Carl G. Rosberg. *Personal Rule in Black Africa: Prince, Autocrat, Prophet, Tyrant*. (Berkeley: University of California Press, 1982); Michael Bratton and Nicolas van de Walle. *Democratic Experiments in Africa, Regime Transitions in Comparative Perspective*, (Cambridge, Cambridge University Press, 1997).

influences.²¹ Conversely, state failure in Afghanistan may be partially attributed to misguided attempts by outsiders, without adequate knowledge of the political and balance of power, to recruit Afghan partners and engage in statebuilding exercises to augment central state power.²²

The fragile state derives much of its legitimacy from how it blends the other systems of the multi-layered structure, given that the institutions of the ‘second state’ are imbued with authority and represent the interests of those to whom they provide public goods and services.²³ These secondary polities relieve “the state of part of the administrative burden of extending [its] authority and delivery benefits to a large and scattered population” (Bratton, 1989: 429).²⁴ In other words,

the interlocking relationships between the differing layers of authority are the warp and weft of politics and the political context of the post-colonial state, defining the concepts and terms of governance, such as separation of powers and civil society; the structure of the state; the survival functions of the state; what expectations societal elements have of the state; and the degree of resiliency the state possesses.

²¹ See Ali Jalali, Rebuilding Afghanistan’s National Army, *Parameters*, Autumn 2002: 72-86; Barnett Rubin, Lineages of the State in Afghanistan. *Asian Survey*, 28 (11): 1188-1209 (1998); Barnett Rubin, Political Elites in Afghanistan: Rentier State Building, Rentier State Wrecking. *International Journal of Middle East Studies*, 24 (1): 77-99; Hazem Beblawi, The Rentier State in the Arab World in Giacomo Luciani (ed.) *The Arab State*. (London: Routledge, 1990).

²² It has been argued that international efforts in Afghanistan have attempted to create “one of the most highly centralized states in the world,” Andrew Wilder and Sarah Lister. State-building at the Subnational Level in Afghanistan: A Missed Opportunity, in: Wolfgang F. Danspeckgruber and Robert Finn (eds.). *Building State and Security in Afghanistan*. (Princeton: LISD & WWS, Princeton University, 2007), 86; see also, Amin Saikal. Afghanistan’s Weak State and Strong Society, in: Simon Chesterman, Michael Ignatieff and Ramesh Thakur (eds.). *Making States Work: State Failure and the Crisis of Governance*. (Tokyo: United Nations University, 2005); Susanne Schmeidl. Civil Society and State-Building in Afghanistan, in *Building State and Security in Afghanistan*, 104-129

²³ Bratton, 1989, p. 429; see: Pierre Englebert, 2000, *State Legitimacy and Development in Africa* (Boulder and London: Lynne Rienner, 2000); Richard Sklar, The Premise of Mixed Government In African Political Studies, in Olufemi Vaughan, ed., *Indigenous Political Structures and Governance in Africa* (Ibadan, Nigeria: Sefer Books Ltd., 2003), p. 6.

²⁴ See Ronald Kassimir, 'Producing Local Politics: Governance, Representation, and Non-State Organizations in Africa,' in, Thomas Callaghy, Ronald Kassimir, and Robert Latham, eds., *Intervention & Transnationalism in Africa: Global-Local Networks of Power*, (Cambridge, Cambridge University Press, 2001); Olufemi Vaughan, *Nigerian Chiefs* (Rochester, N.Y.: The University of Rochester Press, 2000); Christiaan Keulder, *Traditional Leaders and Local Government in Africa* (Pretoria: Human Sciences Research Council, 1998); Oladimeji Aborisade, ed., *Local Government and the Traditional Rulers in Nigeria* (Ile-Ife: University of Ife Press, 1985); John A. A. Ayoade and Adigun A. B. Agbaje, eds., *African Traditional Political Thought and Institutions* (Lagos: Centre for Black and African Arts and Civilization, 1989); E. Adriaan B. van Rouveroy van Nieuwall and Donald Ray, eds., *Journal of Legal Pluralism and Unofficial Law*, nos. 37-38 (1996); and E. Adriaan B. van Rouveroy van Nieuwall and Rijk van Dijk, eds., *African Chieftaincy in a New Socio-Political Landscape* (Hamburg: Lit verlag, 1999).

These interlocking relationships lie at the heart of successful development. To overlook or ignore them is a recipe for failure in the short- and long-run. The long-term statebuilding challenge, therefore, is much more than establishing a nascent separation of powers between the three branches of state government or strengthening civil society organizations as a counterweight to state prerogatives. Pragmatic realism needs to weave long-term statebuilding into the existing legitimate multi-layered post-colonial system of governance. It is for this reason that donor assistance must, itself, be multi-layered.

Interestingly, the dynamics of a multi-layered structure may have the potential to establish and maintain resilient and responsive states.²⁵ Contemporary research on resilience stresses the importance of an organizations and organizational structures that have numerous and independent centers in order to foster the possibility for local solutions and institutions to emerge and develop (Berkes and Folke, 1998). A multi-layered state, then, with its overlapping polities, may be better suited than the state-centric Western model to address the realities of the post-colonial scenario.

By mixing and matching the differing polities, jurisprudences, values, and beliefs with which it is constructed, the mixed/hybrid structure of the post-colonial state may not be a sign of weakness, but rather of strength, more flexible and supple in addressing and being accountable and responsive to local needs.

If governance arrangements can be established to further bind together the differing polities of the multi-layered state, these countries may become more stable and resilient.

b. Existing Relationships between the Post-Colonial State and Non-State/Local Justice and Security Networks

As we have seen, justice and safety are delivered by state agencies and non-state/local justice and security networks. The networks are part of the 'second state', legitimate polities representing the needs and interests of those to whom they provide public goods and services. Furthermore, many of these networks may also distribute public goods and services other than justice and safety, such as healthcare, education, and economic opportunities. At the same time, these networks are associational groups, part and parcel of civil society.

²⁵ See Michael Barnett. Building a Republican Peace: Stabilizing States After War. *International Security*, 30 (4), 2006, pp. 87-112.

Consequently, the distinction between service providers is, often, tenuous and blurred.²⁶ While it is a misnomer to label one set of justice and safety providers ‘state’ and the other ‘non-state,’ it is equally mistaken to conflate the two. In many, if not most, fragile and post-conflict countries significant elements of the state’s delivery of justice and safety have, in fact, been privatized, due to corruption or to varying ‘fees for services’ schemes. It is naïve, for example, to characterize the Zimbabwean or Guatemalan police service, not to mention the Yemeni judiciary, as being primarily public agencies.²⁷ Simultaneously, from Nicaragua to Afghanistan to Indonesia, from Yemen to Bangladesh to South Africa, non-state/local justice and security networks have been incorporated, however ambiguously, into the state system, often in ‘law’ and, more frequently, ‘in practice.’ The activities of these networks may be strongly influenced by or faintly associated with elements of the official state system. In a number of cases, such as in Jamaica and Nigeria, armed non-state groups have been established and sponsored by state actors. Given these confounding and symbiotic relationships, it may be preferable to conceive of the provision of justice and safety as taking place along a continuum, with most of the service delivery occurring somewhere in the middle of the spectrum between the opposing poles of ‘state’ and ‘non-state’ or ‘state’ and ‘civil society’ service provision.

Determining where along the continuum any individual state or non-state provider is located is a difficult exercise, requiring knowledge of the local terrain, the dynamic balances of power, and cultural norms. For example, a Somali, Solomon Island, and/or indigenous Bolivian judge may legally render a decision and sentence upon a criminal, which mingles elements of state, religious, and tribal law. When doing so, it is unclear which of the three legal systems predominates, let alone which role the judge is playing -- state judge, religious leader, or tribal elder.

²⁶ OECD/DAC, *Enhancing the Delivery of Justice and Security in Fragile States*. See also, Leah Wambura Kimathi, ‘Non-State Institutions as a Basis of State Reconstruction: The Case of Justice Systems in Africa’ (paper prepared for Codesria’s 11th General Assembly, Maputo, December 2005); Raja Devasish Roy, ‘Challenges for Juridical Pluralism and Customary Laws of Indigenous Peoples: The Case of the Chittagong Hill Tracts, Bangladesh’, *Arizona Journal of International & Comparative Law* 21, No. 1 (2004).

²⁷ What may, in fact, be occurring in many fragile and post-conflict countries is that elements of the state have effectively privatized themselves. Instead of providing a public good and service, these state agencies -- or parts thereof -- deliver a private good and service to those who can afford to pay for it provision. It is believed that this phenomenon is quite prevalent and organized. If this were to be the case, as presumed, it adds a significant new stratum of service provider to the multi-layered model. For a discussion of the multiple layers of service delivery see Eric Scheye. *State-Provided Service, Contracting Out, and Non-State Networks: Justice and Security as Public and Private Goods and Services* (OECD: forthcoming).

The situation is similarly ambiguous when fines imposed and collected by customary courts are transferred to state coffers or when religious and tribal judges are on the state payroll in their capacity as sitting customary court judges. A blending of roles also occurs when a police officer, wearing his/her uniform, testifies before or carries out the judgment of a customary court. Similar blurring occurs when a uniformed police officer works for a market and/or trade association, enforcing their 'private' rules and regulations. In all of these cases, it is challenging to distinguish whether the officer is acting in an official state capacity, as a representative of the customary court or religious police, or as an adjunct of a civil society organization or trade association. Most likely,

the actor is engaged in multiple roles simultaneously and the ability to distinguish between and among Western categories of governance, which may not be thoroughly applicable in a post-colonial environment, is less relevant than the actual provision of the service, its effectiveness, and the susceptibility of the actor to improve his/her service delivery.

This blending of the roles also pertains to the merging of governance functions. The blurring of judicial and quasi-executive functions of a state-certified judge exercising power as a religious leader and tribal chief of a legitimate polity within the multi-layered system renders the Western notion of separation of powers problematic. There is no doubt that these situations pose risks with regard to questions of accountability. While the long-term statebuilding objective may be to enliven the state, the short- to intermediate-term challenge is to help improve the delivery of justice and safety to all residents and citizens of the state. These are not contradictory goals. Immediate, tangible improvements in justice and safety in the neighborhoods, markets, and roads of fragile states cannot be accomplished by prematurely imposing a governance structure that strictly distinguishes between state and non-state actors, systems, and functions. As the track record of the current statebuilding model has shown, that approach is ineffective and unsustainable. Worse, rigid distinctions may destabilize a country unleashing conflict. This occurred, for instance, in the case of land tenure in Cambodia, where "the application of [Western] rule of law principles and practices... increased rural impoverishment, violent conflict, dispossession, and corrupt constabulary intervention" (Roberts, 2008: 73).

With an understanding of the political and dynamic balances of power, donor-supported programs can navigate the fluid and mutable boundaries and interfaces that exist between state agencies and non-

state/local justice and security networks; reinforce the multi-layered system's strength and resilience; and strengthen the delivery of justice and security. In Timor-Leste, the most effective and equitable resolution of land tenure and ownership disputes seems to be one that combines state and village elder dispute resolution mechanisms, with all the attendant challenges and risks associated with the lack of a clear separation of powers and tenuous differentiation between state and civil society actors. It is an approach that acknowledges that the village elders were, most likely, originally responsible for the executive decision to distribute use of the land and, therefore, their active involvement is necessary to adjudicate disputes that have arisen.²⁸ Similarly, in southern Sudan, resiliency and responsiveness lies in the delegation of cases by official state courts to mixed tribal/ethnic courts -- despite the absence of proper legal authority -- where 'political' considerations are paramount when claimants come from different tribes or the conflict is between an 'Arab' and an 'African.'²⁹ A pragmatic program would support a flexible expansion of state courts' legal authority to delegate cases down to customary courts, when politically advisable to do so. Simultaneously, to ensure that the program was proportional, donors should support mechanisms by which complainants whose cases had been delegated could appeal the customary court decision back into the state system. Therefore,

donor-supported initiatives ought to take pragmatic advantage of the flexibility of the legal pluralism of the multi-layered state, to offer greater conflict and dispute resolution choices and alternatives not only to its residents and citizens, but to state institutions, as well, thereby contributing to societal and state resilience and responsiveness.

c. How to decide who to support

The pragmatic realism approach does not suggest that every non-state actor is suitable for support. There are networks that lie outside the realm of the acceptable, those that have committed atrocities or are engaged in other criminal activities, including various Taliban groups in Afghanistan and Pakistan; selected Somali, Congolese, and Sudanese warlords, militias, and/or religious councils; some Sunni and Shia militias and tribes in Iraq; parts of the Lord's Resistance Army; and elements of

²⁸ USAID, *A Law on Land Rights and Title Restitution and A Legal Framework for Land Dispute Mediation* (Washington, D.C., 2004); USAID, *A Legal Framework for Land Dispute Mediation* (Washington, D.C., 2004).

²⁹ Baker and Scheye, (International Peacekeeping, forthcoming, 2009).

the FARC and Colombian paramilitaries in Colombia most tainted with drug trafficking and hostage taking.

It should be noted, however, that many of these groups are engaged in conflict with the governments of their countries. As these conflicts play out, the political leadership and communities of the affected states may enter into negotiations and dialogue with such individuals and groups, as has happened and is happening in Colombia, Pakistan, Uganda, Iraq, Burundi and Afghanistan. In the case of Timor-Leste, for example, the country's President, acting within his legal prerogatives, has strongly supported a process of reconciliation with those who may have committed human rights violations in 1999 and 2006, despite the clamor of international human rights activists. Even though direct international support may not be forthcoming, some donors may believe it important to support such dialogues and national reconciliation endeavors or perceive it vital to their 'national interest' to do so.

Donor engagement with these non-state actors grounded upon human rights, therefore, may be only one amongst many criteria for deciding whether or not to support the particular actor. There are, probably, "no satisfying answers to" and certainly no *a priori* solutions to the question of whether to engage the networks established by armed non-state actors (Schneckener, 2006: 36). In the middle of the civil strife of Afghanistan, Iraq, and DRC, for example, it is an open question whether and how to work with a local tribal leader or warlord and his local justice and security network. The same applies to the armed groups operating in the Nigerian Delta. For each donor, the answer may lie in how that leader and his network can be utilized in the prosecution and resolution of the civil strife.

There are, at least, two existent methodologies designed to help donors make the political decision of whether to engage with armed non-state actors. The first seeks to classify and plot the position of an armed non-state group within the structure of the multi-layered governance system.³⁰ Based upon the group's dynamics and activities, the methodology employs a conflict management derived matrix whose various axes include such characteristics as greed vs. grievance, territorial vs. non-territorial aspirations, criminal gang vs. mercenaries, etc. The second methodology suggests differences in the structure of their previous and existing political connections and relationships defines whether a non-

³⁰ Schneckener, *Fragile Statehood, Armed Non-State Actors and Security Governance*, 2006.

state armed group is a ‘protector’ or ‘predator’ organization.³¹ “The behavior of protector militias is contingent upon the presence of social space that is insulated from interference from capital-based patronage networks,” but integrated into local institutions, their politicians, and community norms (Reno, 2007: 118). Predatory groups, in contrast, have close links to capital-based patronage structures. The argument further claims that protector groups and their networks “are heirs of state builders everywhere,” (Reno, 2007: 119), intimating that such networks could and should be recipients of assistance.

As the two methodologies use differing techniques, it is advisable to use both so as to locate non-state armed groups within the webs of the post-colonial state. Combining the techniques may give donors a more subtle analysis of the dynamic balances of power in which justice and security development may occur. Nevertheless, the combined tool is no substitute for a donor’s political judgment of whether to support strengthening a non-state/local justice and security network. Nothing supplants that political judgment, for “context-specific, flexible arrangements in dealing with armed non-state actors will always be necessary” (Schneckener, 2006: 36).

³¹ See William Reno. Protectors and Predators: Why There is a Difference among West African Militias. In Louise Andersen, Bjorn Moller and, Finn Stepputat, (eds.) *Fragile States and Insecure People? Violence, Security and Statehood in the Twenty-First Century*. (New York: Palgrave MacMillian, 2007). See also William Reno, Bottom-Up Statebuilding? In Charles Call with Vanessa Wyeth. (eds.) *Building States to Build Peace*. Boulder, CO.: Lynne Rienner Publishers, 2008).

3. Supporting Non-state/local Justice and Security Networks in the Short- to Intermediate-Term

a. Effectiveness, Cost-Efficiency Fostering Economic Development, Accessibility, Legitimacy and Preference

By definition, fragile states lack the capacity and/or willingness to deliver justice and safety to a majority of its citizens and residents effectively, efficiently, and accountably.³² They are unable effectively to construct and manage their checks and balances mechanisms. Given severe financial; human resource;³³ administrative; and capital and legal infrastructure deficits and inadequacies, which have, among other consequences, inhibited the establishment of a separation of powers,³⁴ these countries are unable and/or unwilling to provide many public goods in a timely and effective manner and this condition can be expected to continue for the intermediate-, if not long-term, period. The poor track record of the statebuilding approach provides little confidence that the situation of the fragile state will improve.

Consequently, it is time for a new approach, one that this report has characterized as pragmatic realism. This report, however, does not suggest that support to non-state/local justice and security networks is a panacea. Nor does it claim that justice and security programming support ought to bypass the state. A minimally competent state is

³² The fragile state is not only fragile because of a lack of ‘capacity,’ but it is fragile because of legitimacy deficits as well. Rephrased, “fragility refers to lack of capacity, defined as not only organizational, institutional and financial capacity but *also* the existence of common norms, rules and regulations that are recognized and shared by both the state and the people. This is a critical issue: state fragility can stem both from lack of financial, technical and human capacity and from lack of legitimacy, both preventing the making of the state as a robust institution” (Séverine Bellina, et. al. *The Legitimacy of the State in Fragile Situations*. Unpublished draft prepared for the OECD/DAC, INCAF, January 2009: 8).

³³ According to the *Challenges of Capacity Development, Towards Sustainable Reforms of Caribbean Justice Sectors Volume I: Policy Document*, May 2000, most Haitian judges and their assistants lacked the education required for their posts. Only 8% of judges and 5% of their assistants were licensed attorneys, while two thirds did not have any formal legal training, their only training being ‘on the job.’

³⁴ See Baker and Scheye, *International Peacekeeping*, (forthcoming, 2009), “As of winter 2007..., the penal code and criminal procedure code were still in draft form. The fate of the lowest three levels of courts – Payam, Boma, and Chiefs courts... – remained legally and operationally unsettled. There was no functioning university law faculty; no law library; no judicial training centre; no official government gazette through which legislation becomes law; no Bar Association; no legal aid; little court administration; and few competent defence counsels or a public defence service.”

essential, one that “at least [regulates] alternative sources of authority and service delivery,” a daunting task in and of itself (Call, 2008: 365). However, because of the characteristics of fragile states, the short- to intermediate-term support for local/non-state justice and security networks -- improving their performance and linking them more firmly into the state system -- should be seen as the foundation upon which long-term statebuilding initiatives proceed.

Citizens and residents of fragile states choose to patronize non-state/local justice and security networks because they may be the only providers of justice and safety in the local area and because they are, often, more effective and efficient providers than their state counterparts. In Tanzania, these networks have contributed to a reduction of crime (Bisimba, 2002: 92). In some areas of the Philippines, a state-sponsored “local justice system (for lower order disputes) has gained public acceptance, increased access to justice and ‘unclogged’ state court dockets” (Franco, 2008: 1864). Even in a conflict-affected country, such as Burundi, these networks have been shown to be effective and efficient in addressing hard-core issues, such as land disputes.

“The informal system should be encouraged since it is the most accessible to the parties to a dispute [and]... the swiftness of the procedure... The *bashingantahe*³⁵ generally know... the origin of the disputes they are called upon to settle, and thus it is easy to establish facts.... [W]ithout the *bashingantahe*, the courts would be overwhelmed by disputes that would stifle their normal functioning. Several cases are conclusively settled by the *bashingantahe* without any later referral to the courts. The informal system is also perceived in a positive light in that the services are, in principle, free of charge. The *bashingantahe* are in general of use to the courts during the process of implementing judgments, particularly for land cases.” (Dexter, 2005: 21; see also CARE, 2002: 22).

The effectiveness and efficiency of non-state/local justice and security networks may also relate to their ability to promote economic development. In Colombia, a study suggests that “the *effects of formal civil court proceedings on households’ net worth* is sometimes negative and always below the levels of positive impact that households enjoy from the

³⁵ The *bashingantahe* are elders who have been given authority by their communities because of their perceived wisdom and ability to settle disputes (see A. Ntabona. Suggestions to Escape from Ethnic Totalitarianism. *Au Coeur de l'Afrique*, No 1 1995).

use of informal mechanisms” (Buscaglia, 2001: 10, emphasis in the original). Thus,

non-state/local justice and security networks are often more effective and efficient than their state counterparts in delivering justice and security and in fostering economic development.

There are a number of reasons why these network may be more effective and efficient, as evidenced by the following examples:

“Where road infrastructure is poor or transportation is missing, people have to walk sometimes for days in order to reach the nearest district court as it is in the case in Ethiopia. Legal services are also often non-existent in rural areas. In Sierra Leone, a population of approximately five million people boasts only 125 lawyers, 95 percent of whom are based in the capital Freetown... [In] Sierra Leone, [there is only a] single legal aid organization in the country, the Lawyers Center for Legal Assistance, [which] serves only Freetown and the city of Makeni. In Ecuador, as of 2002 there were only thirty-four public defenders for the whole country. The three and a half million population in Quito and Guayaquil was served only by four public defenders.” (Decker, Sage and Stefanova, 2005: 15-17).

The same is true in Yemen, Nepal, Timor-Leste, Liberia, Guatemala, and many other countries, with the result that large percentages of the population lack access to state-provided justice.

In states such as the Philippines, Bangladesh, and Nigeria, the justice and security challenge is comparable. In Indonesia, “in most cases, access to the legal process is beyond reach. The public, the poor and marginalized people in particular, are frequently unable to access their right to justice within the formal legal structure” (Indonesian Legal Aid Foundation, 2007: 4). The police “are overstretched, understaffed and under-resourced. Anecdotal evidence... confirms assertions made in national reports on police financing that up to 70% of police funds/resources come from extra-budgetary sources. Lack of operational and capital investment resources places severe constraints on the overall performance of the police” (Nordic Consulting group, 2004: iii). The number of police officers is also, often, inadequate, “ranging from 574 to 4,060 citizens per police officer in [one province], to a range of 789 to

6,118” in another (Ibid: ii). Under such circumstances, state-provided justice and security is largely non-existent.

When a state justice and security system does exist, it is often too costly.

“For example, in Brazil, processing costs for labor disputes are reported to be ten times higher than the value of the case. The cost of litigation proceedings is often compounded by the requirement that parties be represented by lawyers. In Ecuador... *pro se* representation is not permitted regardless of whether parties can afford legal services. In Honduras, legal fees to obtain a monthly alimony of 100 *lempiras* in a child support case could amount to as much as 2000 *lempiras* – the equivalent of almost two years of alimony” (Decker, Sage and Stefanova, 2005: 16-17).

Frequently, it is easier and cheaper to file cases in non-state/local justice systems. In Tanzania, for example, no case can be thrown out of local systems for the inability of the complainant to pay court costs, however defined (Bisimba, 2002: 92).

In addition, state delivered justice and safety is often intellectually, linguistically, and culturally inaccessible.³⁶ Individuals and groups cannot actualize their rights if the values, norms, and beliefs embedded in the donor-supported justice and security programme are largely indecipherable to them. This is more than a human rights issue. According to the World Bank, accessibility requires service delivery that coincides and is compatible with the norms, values, cultural legacies, and written/spoken language(s) of the people who are to receive the public goods.³⁷ One of the primary reasons for the vitality of non-state/local justice and security networks is that “most citizens regard the official organizations as imposed, irrelevant, and different in forms and procedures from the citizens’ traditional outlooks, convictions, practices, and beliefs” (Okafo, 2007: 13).

In the Great Lakes region of Africa, it is alleged that the “manner in which the laws and procedures are practiced in formal court systems as well as the languages used are incomprehensible to most poor communities and therefore, in many ways, irrelevant to their needs”

³⁶ See Roy (2004), p. 134; Tanja Hohe and Rod Nixon. *Reconciling Justice: 'Traditional Law and State Judiciary in East Timor*. (United States Institution of Peace: Washington, DC., 2003).

³⁷ World Bank, *World Development Report*, 2006.

(Nabudere, 2002: 1). Similar inaccessibility exists in Indonesia, where “poor people often experience injustice because of an institutional reliance on formal dispute resolution procedures which are plagued by the use of an inaccessible language” (Indonesian Legal Aid Foundation, 2007: 5). In Guatemala, Bolivia, Peru, and Afghanistan because of the number of languages spoken in the rural areas of these countries, “it is unlikely that a state judicial system will immediately be able to accommodate such linguistic diversity” (Senier, 2006: 4). In Timor-Leste, the state court system uses a language, imposed upon the country by its own political elite and supported by the UN, which only a tiny minority of the populace speaks, let alone can read. The result is a highly dysfunctional system with a backlog of thousands of cases.

Not only are non-state/local security and justice networks more accessible than their state counterparts, they are also more trusted and legitimate, the preferred method of service delivery. In Afghanistan, “a recent survey showed that in 85% of cases, people prefer to take their problems to a village or tribal council, local notables, or a cleric, while only 15% would bring a dispute into the formal system” (USIP, 2004: 4). In southern Sudan, UNDP found that customary courts are not only more trusted than state ones, but perceived to be more transparent and accountable too (UNDP, Southern Sudan, 2006). In Nigeria, a survey indicated that in four federal states “a total of 16 types of informal policing structures [have been identified] that were established... to deal with crime” (Alemika and Chukwuma, 2004: 6) because of the effective absence of state institutions.³⁸ In two of the four states these local systems were the population’s preferred choice of delivery *vis-à-vis* state service providers, 88.9 and 62.5 per cent of the time.³⁹ Even in a state where only 38.1 per cent of the population availed themselves of the services of the networks, 94.7 per cent of the population approved of and supported their compatriots using those services.⁴⁰ Finally, in Timor-Leste, studies have consistently indicated that more than 80-90 percent of the respondents believe their local networks to be fairer and more trustworthy than state systems (Asia Foundation, 2004 and 2008). What is most interesting in the Timorese case is that evidence that police officers themselves are of the same opinion (Asia Foundation, 2008).

³⁸ Alemika and Chukwuma, *A Report on Poor Peoples’ Perceptions and Priorities on Safety, Security and Informal Policing in 12 Focal States in Nigeria*, Lagos: Center for Law Enforcement Education, 2004. See also Alemika and Chukwuma, *Non-State Policing Systems in Nigeria: a mapping study of informal policing systems in seven states in Nigeria and Abuja*, Lagos: CLEEN Foundation, 2008.

³⁹ Ibid.

⁴⁰ Ibid.

Thus,

non-state/local justice and security networks are more efficient and effective than state systems because they are, first, financially, physically, linguistically, and culturally accessible; second, more expeditious in resolving disputes; and, third, more legitimate and accepted in that their decisions are more enforced than those handed down by state systems.

b. Accountability, Instrumentalization, Human Rights, and Protection of Vulnerable Populations

Support to non-state/local justice and security networks is not a cure-all and augmenting the abilities of states to authorize and regulate service delivery and establish appropriate standards remains an important statebuilding objective in the short-, intermediate-, and long-term. Therefore it is imperative for justice and security development programs to assist states in strengthening the architecture and performance of their accountability system(s).

Given the deficits that plague fragile states, strengthening their accountability mechanisms is a daunting challenge,⁴¹ though acknowledgement of the difficulty of the task does not obviate donors' responsibility to support efforts to strengthen it. Accountability pertains to the state's internal accountability systems and the various checks and balances/separation of powers mechanisms within the state justice and security sector -- constitutions, legal codes, and administrative regulations; Ministry of Interior internal affairs units and police professional standards; judicial and prosecutorial codes of conduct and promotion mechanisms; court administration modernization; budgeting and cost accounting strengthening; Parliamentary oversight improvements; etc. In proportioning donor assistance, these projects are worthy of consideration, but the benefits of this category of justice and security programming are long-term, at best.

⁴¹ Accountability refers to "the responsiveness of the policy maker and service provider to local needs. This entails answerability (providing information and/or a decision), enforcement (strengthening achievement of service norms) and organisational change (changing the way the service is delivered)" (Baker and Scheye, 2007: 508). Accountability is also "primarily, about holding values concerning how the relationship is to be conducted between [service provider and customer]... Only in a secondary sense does accountability mean the institution of structures and processes to facilitate this" interaction (Baker and Scheye, 2007: 518-19). See also, A. Goetz, and Jenkins, R., 2005. Reinventing Accountability: Making Democracy Work for Human Development. (Houndmill: Palgrave Macmillan, 2005).

Accountability also refers to the ability of the state to enhance its existing relationships with non-state/local justice and security networks and better regulate and monitor their performance. This state capacity is crucial because the networks are, often, critiqued as being unaccountable and readily ‘instrumentalized’ by political elites to further their power and privileges. The allegation is also lodged that the networks are not conducive to protecting the rights of vulnerable populations, including women’s rights. Because these criticisms have merit, the state has an obligation to establish performance standards and mechanisms, which, among others, can exchange information and set baseline indicators; to audit and provide appropriate training to the networks when those audits indicate weaknesses in human rights protection, due process provisions, and the networks’ own accountability systems; to improve the consistency of rulings within a network and across comparable networks in different geographic areas; to establish clear and known mechanisms for claimants to appeal judicial decisions of the networks; etc. For the purposes of this report, when proportioning development assistance, donors should consider these activities as part of their short- to intermediate-term support packages, as they have a greater likelihood of producing immediate, effective and sustainable results given the realities of the multi-layered post-colonial state.

The reason for advocating this latter category of donor programming is straightforward. The criticisms lodged against the structure and operations of non-state/local justice and security networks are equally applicable and compelling with regard to state providers. Given the deficits in state provided services, it is a mistake to assume, without valid and reliable empirical data, that the challenges encountered by the networks are any different or more severe.⁴² For example, in the Philippines, it is accepted that the networks are elite biased. Studies also indicate that comparable endemic faults plague the state, which years of judicial reform have not been able to overcome (Franco, 2008: 1870). Additionally, it is incorrect to assume that the operations of the networks are necessarily and inherently more difficult to develop than those of their state counterparts. It is more reasonable to presume that the difficulties confronted by the two systems are comparable and that only a

⁴² It also be noted that DFID’s statebuilding model assumes that “the structures of the state are determined by an underlying political settlement; the forging of a common understanding, usually among elites, that their interests or beliefs are served by a particular way of organising political power” (DFID, 2008: 4). Consequently, DFID approach unabashedly accepts that politics is interest-driven, conflictual, competitive, and, at its core, a perpetual quest for control, which implies that any and all governance structures -- state and non-state -- are implicitly and explicitly instrumentalized. In fact, DFID describes statebuilding as endless “cumulative struggles for *domination*” (DFID, 2008: 5, emphasis added).

thorough analysis of local political realities, cultural values, and capacities can determine which of the systems is more resistant to change and development.⁴³

Without question, networks are susceptible to elite manipulation. In Tanzania, the networks “were mainly used as instruments of political control” (Nabudere, 2002: 30). Deficits in the networks are plentiful, such as “few written records of decisions, evidence of discrimination, limited jurisdiction, etc., but all also exist in the state courts” (Nabudere, 2002: 33). Despite acknowledged shortcomings, the populace remains favourably disposed to their networks because of the access to justice and safety they provide, which their state systems have been unable to supply. This persistent loyalty for service from their local networks suggests the possibility, if not likelihood, that these networks’ accessibility -- being more ‘locally owned and ‘people-centred’ and better reflecting local beliefs and values than their state counterparts -- may make them amenable to improvement. Their susceptibility to enhancement may increase further if and when the networks’ customers and clients were to voice their desire for change and strengthening of service provision. To develop that demand from below, donor-supported accountability initiatives could engage in community development and social efficacy programming with the networks’ customers as a means of generating greater local community voice and, thereby, higher levels of network accountability, as outlined below.

Part of the argument that non-state/local justice and security networks are instrumentalized, benefiting the prerogatives of elites, is that vulnerable demographic groups and minorities may be more adversely affected by the activities of the networks than majority populations. Again, there is substance to this claim and attention needs to be paid to it. However, the remedy called for is, often, greater decentralization of state agencies and their services in the belief that decentralization, in and of itself, undermines and erodes elite capture. Unfortunately, this may not be the case. A 2005 World Bank study suggests that, while decentralization can “strengthen the political power of lower tiers of government vis-à-vis the center, it has also increased the possibility of political capture within these lower tiers” (Ahmad & Devarajan, 2005: 2). As a result “decentralization needs to be viewed in the context of broader political institutions that have large implications for service

⁴³ For an extended discussion of how accountability functions within non-state/local justice and security networks, ranging from private security and military companies to trade associations and market groups to neighborhood crime prevention groups and customary courts, see Baker and Scheye, 2007.

delivery” (Ahmad & Devarajan, 2005: 18). Furthermore, the study concludes that there is little evidence that increased local level democracy strengthens the provision of local public services. One of the reasons is political market imperfections and elite capture, the very shortcoming decentralization was intended to overcome. The “evidence suggests that the mere creation of locally elected governments does not ensure that citizens will hold local representatives responsible for public services” (Ahmad & Devarajan, 2005: 14). In post-conflict societies, “polarized voters are... less able to hold politicians accountable for their overall performance in office in making services work” because voting tends to be identity based (Ahmad & Devarajan, 2005: 15). As a result, the evidence suggests that decentralization can cause “greater capture and clientelism at local levels” (Ahmad & Devarajan, 2005: 16).

Another critique of non-state/local justice networks is their proclivity to violate human rights and to fail to protect the rights of vulnerable groups, such as women. That the networks perpetrate such violations and do not protect vulnerable populations is undeniable. However, in addressing the question whether to support non-state/local justice and security networks, the issue is, once again, not the violations themselves, but, first, if these networks are worse offenders than their state counterparts; second, whether they are more or less amenable to improving their performance; and, third, how to remedy the violations and lack of protection.

Again, there appears to be little evidence to suggest that the networks are any worse human rights violators than their state colleagues. Armed militias have committed gross violations during periods of civil strife, but it is difficult to describe them as non-state/local justice and security networks or to ascribe a categorical difference in the level or degree of their behavior and actions compared to those of state actors. On the contrary, Colombian evidence suggests that the existence and authority of these networks may reduce the level of one type of human rights violations -- vigilantism. When comparing three districts that did not have a functioning state justice system, two of which had active and effective networks, the data indicated that mob justice and lynching was five and a half times more likely to occur in the one district where both state *and* non-state/local justice networks were absent than in the two districts where networks continued to function.⁴⁴ In Burundi there is evidence that shows networks promoting human rights and protecting

⁴⁴Buscaglia, Edgardo (1996), "Justice and the Strengthening of Democracy", Paper Presented before the USAID sponsored Conference on Justice and Democracy. Quito, Ecuador, August 7-9, 1996.

lives. During acute phases of civil strife and violence in Burundi, the *bashingantahe* who

“had access to the people of the community... were able to have a positive impact. Even in face of personal risk, there are reports of how some *bashingantahe* tried to assume their role of protecting persecuted neighbours. In many cases, they rescued persons from the hands of killers and cooperated with fellow *bashingantahe* as much as possible to stop the looting and killing.... There were many instances of *bashingantahe* returning looted goods. The study revealed that the *ubushingantahe* ideal also inspired, in some cases, the actions of the women, youth, and administrative and military authorities who took risks to save people who were in danger” (Dexter, 2005: 16).

Evidence also exists that suggests that these networks can be developed to become more accountable to and amenable to protecting the rights of vulnerable groups, such as women’s. In Kenya, an initiative was launched to work with and convince the village elders that inheritance rights had to be modified so that the children of deceased fathers could gain access to and ownership of familial land through their mothers. What was required was an alteration by the affected networks in their handling of inheritance rights, without compelling the widows to marry their brother-in-laws in order to maintain the dead man’s lineage. In a number of cases, “with the support of the elders... it was agreed to install the widows legally as *trustees of the communal land*” (Chopra, 2007: 3). In other words,

non-state/local justice and security networks suffer from the same weaknesses as their state counterparts when it comes to elite capture and the likelihood of abuses. At the same time, they are malleable and adaptable to changing circumstances and can be developed to be more conducive to protect the rights of vulnerable groups, such as women’s rights, while at the same time respecting local norms and cultural values.

In fact, there are instances where women’s groups have been shown to be the most resilient of civil society organizations, able to survive and flourish in post-conflict environments.⁴⁵ According to studies of Nepal,

⁴⁵ Nepalese research indicates that “women’s groups and NGOs seem to have a particular resilience” above and beyond that of other organizations to cope with a rapidly changing

when even non-state/local justice and security networks had difficulty operating in a deteriorating environment, “women’s groups become increasingly active, taking up some of the functions of more traditional [non-state] providers” (UNDP, 2005: 73). A similar phenomenon seems to have taken place in Burundi, when women were assimilated into the role of “*bashingantahe*, where the men were absent” (Dexter, 2005: 16). Paradoxically then, donors may have an exceptional opportunity -- and, therefore, a positive responsibility -- to promote women’s rights by supporting women’s groups in their efforts, progressively, to transform non-state/local justice and security networks.

c. Social Efficacy and Capital

Current practices of community-driven development, as well as theories of social efficacy⁴⁶ and capital⁴⁷ echo the call for donors to support the improvement of non-state/local justice and security networks. There are, at least, four reasons for this confluence. First, sustainable development is primarily about support for individuals, neighborhoods, and communities so that they can address their own problems. Second, crime, justice, and development are, often, local issues, largely dependent upon the peculiarities of an individual’s and group’s immediate neighborhoods and communities, which will be, at best, opaque to outsiders. Third, a correlation has been established between neighbourhoods and communities with low rates of social efficacy and capital and correspondingly high rates of violence, crime, and poverty.⁴⁸

environment (see UNDP, *Access to Justice during Armed Conflict in Nepal: Obstacles to Access Justice and Responses to them in a Context of Conflict*, 2005, unpublished study; see also a case study in which women and a local NGO were the main actors in a resolution of a dispute over water use, see Upreti (2000), *Resource-Use Negotiation as an Alternate Strategy for Sustainable Water-Resource Management: Experience from Nepal*, *Journal of Agricultural Education and Extension*, vol. 7, 1, pp. 11-20.

⁴⁶ For a definition of social efficacy, see R. Sampson. ‘The Neighborhood Context of Well-Being’. *Perspectives in Biology and Medicine* 46(3), 2003, pp.S53–S64; and R. Sampson. ‘Neighbourhood and Community: Collective Efficacy and Community Safety’. *New Economy* 11(2), 2004. “*Collective efficacy* captures the link between cohesion – especially working trust – and shared expectations for action. Just as self-efficacy is situated rather than general (one has self-efficacy relative to a particular task), a neighbourhood’s efficacy exists relative to specific tasks such as maintaining public order” (Sampson, 2004, p. 108). For data that indicates that collective efficacy directly predicts lower rates of violence, see, Ralph Sampson, Ralph, S. Raudenbush, and R. Earls. ‘Neighbourhoods and Violent Crime: A multilevel study of collective efficacy’ *Science*. 277, 1997.

⁴⁷ For a review of the social capital literature, see Christiaan Grootaert, “Social Capital: The Missing Link?” Chapter 6 in *Expanding the Measure of Wealth—Indicators of Environmentally Sustainable Development*, (Washington, DC: World Bank., 1997); A. Portes, “Social Capital: Its Origins and Applications in Modern Sociology.” *Annual Review of Sociology* (24), 1998, pp. 1-24; and M. Woolcock, “Social Capital and Economic Development: Toward a Theoretical Synthesis and Policy Framework.” *Theory and Society* 27(2), 1998, 151-208.

⁴⁸ Across the board, poverty has negative effects on social capital (Scott, p. 160). The higher a family’s social capital, the greater their children’s likely socio-economic achievements. Evidence also exists the lower the level of social capital, the more likely it is for that neighborhood to have

Those with low rates of social efficacy and capital tend to be vulnerable and marginalized populations. Those demographic segments that lack or have a circumscribed voice in shaping their own economic and social futures also face difficulties in obtaining adequate redress through state judicial and security systems. Fourth, in the short- to intermediate-term, state agencies face difficulties in producing positive results at the local level and, more importantly, have not proved effective in raising social efficacy and capital.

The objective of community-driven development is “to build social capital and empower... [those who lack voice] through innovative strategies such as participatory planning, implementation and management of local development activities. Villagers are provided with... opportunities to access information, express voice and influence local governance. This may lead to improved self reliance where they will be better able to devise ways to improve their own welfare” (World Bank, 2005: 11), which, coincidentally, is an apt definition of community policing.⁴⁹ Development programs have successfully strengthened social efficacy and capital when they have been

“built on local institutions, using local idioms to construct their ‘developmental placentas’. Small-scale communities already have the dense network of ties of cooperation necessary for this purpose, and the trick is to adapt their particular strengths to contribute to development goals... [Successful programs have been] creative in *tapping into existing local institutional structures*, and setting their norms of reciprocity, co-operation and trust to work to achieve development goals” (Gupta, 2000: 17).⁵⁰

higher rates of crime and disorder (see, Hagen, J. *Structural Criminology*, Piscataway, N.J.: Rutgers University Press, 1989).

⁴⁹ These objectives coincide with those of the legal empowerment movement, see Mary McClymont and Stephen Golub, eds. *Many Roads to Justice: The Law-Related Work of the Ford Foundation Grantees Around the World* (New York: Ford Foundation, 2000).

⁴⁹ See also, DFID, *States in Development*, pp. 11-13.

⁵⁰ It is important to note the importance of strengthening individuals **and** their local institutional structures, rather than just one or the other. “The value and uses of social capital depend on the institutional environment” (Sobel, p. 147). According to research, “the capacity for sustained collective action is conditioned mainly by the presence of established institutions and organizations that may be appropriated in the service of emergent action. High rates of individual participation and dense personal ties may well be related to this kind of infrastructure, but conceptually, they are not the same thing... it would seem that high rates of individual participation are an outgrowth of the existing organizational structure, not the reverse. In the same way, we see emergent collective action more as a product of extant institutions and organizations (or, more accurately, specified processes that take place within them) than of the levels of individual participation that attach to these structures” (Sampson, 679).

In the multi-layered state, the existing local institutions are the polities of local governance. These local polities include non-state/local justice and security networks, with and through which individuals' norms of reciprocity, co-operation, and trust can be strengthened. In other words,

given the dynamics of how social efficacy and capital function, supporting local groups and NGOs to strengthen the performance of non-state/local justice and security networks may engender a virtuous circle, whereby one type of donor-supported assistance (implementing justice and security development through local groups and NGOs) reinforces the benefits fostered by another (community-driven development) and vice versa.

In the post-colonial state, this virtuous circle may frequently reappear. Emphasizing the “strengthening [of] social cohesion and social capital,...[community-driven initiatives] can contribute significantly to social stability and more peaceful forms of interaction, building the critical foundation for community reconstruction” by “engaging community members in interaction with each other and with local institutions” (World Bank, Community-Driven Development in Conflict, 8-9). Similarly, the Asian Development Bank believes that these types of programs

“could be an innovative solution... where formal local governance and/or local markets are absent or dysfunctional due to post-conflict... situations, or to remoteness, exclusion, and other factors. It works well in programs or projects that focus on local-level infrastructure and service delivery such as roads, irrigation, and water supply and sanitation, local governance reforms, micro-enterprise development, and common property resources management” (Asian Development Bank, 2007: 1-2).

Despite their differences, what has proven to be effective for water, sanitation, economic development, and local governance may be replicable for justice and security development.

For example, one of the lessons learned of community-driven development, enhancing the skills of local leaders, some of whom may be those in charge of the non-state/local justice networks, seems to have been adopted in some justice development programming in Timor-

Leste.⁵¹ To increase access to justice, local leaders have been “trained to be able to provide information and legal guidance, education and assistance to members of their communities” (Low, 2007: 7). As many of these leaders were village chiefs and hamlet leaders, embedded within their networks, their “major activity... is mediation of civil disputes between community members and conflict resolution within the community” (Low, 2007: 13). Another successful method is to assist in building intermediate associations that link local organisations within their regions.⁵² This can be accomplished by bringing network leaders together so that they establish relationships with one another.⁵³ It can also be accomplished by building the social efficacy and capital of intermediaries who bridge the state and non-state worlds and can help knit the two systems together.⁵⁴ This is precisely the approach of the paralegal, legal empowerment movement, and community-driven development movements. In all cases,

“grassroots workers [are given] the flexibility... giving them the scope to *multi-task* such that they could meet client needs more effectively... A key aspect of grassroots workers' jobs in all these case studies was that they were expected not merely to deliver a specific service, but to act as *brokers* between the community and the wider world. Being more in touch with state facilities as well as those of the outside world, they were expected to help their clients expand their access to resources and help them negotiate their way through unfamiliar procedures. This is very important to people deprived of information, and in the absence of adequate state outreach they are forced to depend for such services on exploitative patrons and middlemen” (Gupta et al., 2000: 19).

⁵¹ Anirudh Krishna, Understanding, Measuring and Utilizing Social Capital: Clarifying Concepts and Presenting a Field Application from India. (Washington, DC. International Food Policy Research Institute, 2006). See also Jonathan Fox, How Does Civil Society Thicken? The Political Construction of Social Capital in Rural Mexico In *State-Society Synergy: Government and Social Capital in Development*, edited by Peter Evans. University of California Press/University of California International and Area Studies Digital Collection, Volume 94, 1997, pp. 119-147.

⁵² According to a World Bank study in Kenya, one of the effective ways of strengthening social efficacy and social capital is to build intermediate associations that can link local organisations within regions, see M. K. Gugerty and M. Kremer, “Does Development Assistance Help Build Social Capital?” World Bank Social Capital Initiative Working Paper No. 20, 2000. See also Fox, *How Does Civil Society Thicken?*, where it is argued that “regional organizations are especially important for representing the interests of dispersed and oppressed groups for three main reasons: overcoming locally confined solidarities, representative bargaining power, and access to information” (p. 125).

⁵³ See USAID, *The Multilayered Approach*, 2007.

⁵⁴ See M. Foley and B. Edwards, Social Capital and the Political Economy of our Discontent. *American Behavioral Scientist*, 40, No. 5, 1997, p. 672

One of the keys to this approach is found in studies that suggest that the state does “not have many obvious levers for creating many forms of social capital” (Fukuyama, 2000: 15).⁵⁵ Increasing the local provision of public goods, however, has been shown to be effective in strengthening social capital.⁵⁶ In the post-colonial state, the politics of the ‘second state’, a significant percentage of which are non-state/local justice and security networks, are the systems and institutions by which a broad range of public goods are delivered. Consequently,

improving the performance of non-state/local justice and security networks, as institutions of the ‘second state’ in their delivery of public goods, could rebound to the benefit of individual and group social efficacy and capital, as well as the resilience of the multi-layered governance structure.

The same logic applies to crime and violence reduction, an endeavour that fragile states have generally been unable to accomplish. According to one justice and security scholar,

“the most effective means of controlling and preventing crime in the longer term is the one least open to the state: the reestablishment of effective means of community and social control, [which calls for] the establishment of effective local systems of democracy through which people can exercise their rights and express their grievances as well as the support of institutions such as churches, schools, sport and youth activities which assist in the building of stronger and more *cohesive* communities” (Shaw, 2000: 12).

In the multi-layered state, the local systems of democracy and the local civil society organizations through which individuals and groups exercise their rights will, most often, be non-state/local justice and security networks or those organizations tied to them.

More narrowly, evidence exists that justice and security development concentrating on strengthening individual and group social efficacy and

⁵⁵ See also Grootaert and Bastelaer, 2001, who argue that an increase local service delivery is often associated with elevated levels of social efficacy capital, but while the state can provide an enabling environment, “the analysis... does not indicate that policymakers can easily affect the level of social capital” (Grootaert and Bastelaer, 2001: 13).

⁵⁶ See S. Pargal, M. Huq, and D. Gilligan, “Social Capital in Solid Waste Management: Evidence from Dhaka, Bangladesh,” World Bank Social Capital Initiative Working Paper No. 16, 1999.

capital can be effective and sustainable.⁵⁷ It has also been claimed that community policing programs cannot succeed “without social capital building within and among the citizenry, the police, and other public and private sector organizations” (Pino, 2001: 201).⁵⁸ When individuals believe that they live in a cohesive neighborhood, in which their actions can be effective, they are more likely to promote safety and security (Wells, 2006: 527). At the same time, evidence indicates that citizen involvement is related to the neighborhood belief in the effectiveness of their community groups (Wells, 2006: 535), such as their non-state/local justice and security networks. Thus neighbourhoods can control the level of crime and disorder through “the structure of networks that integrate residents into the primary and secondary groups of the community, and of those that link the area as a whole to the broader social, economic and political institutions of the city” (Bursik, 1999: 85).

⁵⁷ The social capital and efficacy approach has been conducted to reduce conflict in the Ferghana region of Central Asia; the Putumayo area of South America (Colombia, Brasil, Ecuador, Venezuela); and where Liberia, Sierra Leone, and Guinea come together (Armstrong, pp. 97-98).

⁵⁸ In Latin America, successful community policing initiatives are those that have high levels of social capital and efficacy or those that are able to improve the social efficacy and capital scores of their beneficiaries, see Mark Ungar and Desmond Arias, “Community Policing and Latin America’s Citizen Security Crisis,” *Comparative Politics*, (forthcoming 2009).

4. Legal Pluralism and Local Ownership

As already suggested, legal pluralism prospers in the multi-layered state.⁵⁹ Legal pluralism may define a fragile state because these states are characterized by ambiguous, vague, and blurred boundaries between different categories of laws and rules (Andersen, Engberg-Pedersen & Stepputat, 2008: 23-24).

Defined as “the coexistence of different normative [and juridical] orders within one socio-political space” (Von Benda Beckmann as quoted in Menzies, 2007: 4), legal pluralism exists in such countries as Indonesia, India, Afghanistan, the Philippines, and Yemen.⁶⁰ In parts of Bangladesh, the legal pluralism “is reflected through such matters as the co-existence of traditional and state courts, based upon different traditions of justice, litigation procedure, penal and reform systems, restitution and compensation processes, and so forth” (Roy, 2004: 127). In Latin America the constitutions of Nicaragua, Colombia, Peru, Bolivia, Ecuador, Venezuela “include the recognition of the jurisdictional or justice-related functions of indigenous community and/or peasant authorities according to their customary law, or their own norms and procedures, within the territorial sphere of indigenous or peasant peoples or communities” (Fajardo, 2004: 34). Consequently, justice and security support programming has little alternative but to address the interfaces, cleavages, and contradictions between these legitimate legal orders.

All forms of jurisprudence, including human rights, embody cultural values and beliefs residing “in the minds of the citizens of a country” (Carothers, 2006: 20). Consequently, one of the principal issues confronting donors is the tension between the norms embedded in international human rights conventions and those propagated within non-state/local justice and security networks. This is a conceptual and operational, normative and practical challenge. Under international human rights conventions and western law, “the perpetrator is accused

⁵⁹ For a typology of different kinds of legal pluralism, see Franz von Benda-Beckmann, (2005) “Citizens, Strangers and Indigenous Peoples: Conceptual Politics and Legal Pluralism,” in Kuppe & Potz (eds), *Law & Anthropology: International Yearbook for Legal Anthropology*, 2005.

⁶⁰ In Asia, there are varying degrees of pluralism with regard to “formal state-recognition of indigenous peoples’ customary resource rights, in particular, and of their juridical rights and systems” (Roy, 2004: 154). “Among the strongest forms of such recognition are those in the Philippines, India (especially Mizoram), and Sabah and Sarawak – states of East Malaysia” (Roy, 2004: 154).

by the state, and the prosecutor acts on behalf of the population... [The] victim becomes a pure witness” (Hohe, 2003: 346). This juridical perspective is, often, incomprehensible and considered fundamentally unjust to those whose allegiance adheres to non-state/local justice and security networks. They may not understand “why the accused persons ‘go scot-free’ when they do not directly compensate the affected parties for the damage done to them. Instead, the state, which in some cases is alien to them, is compensated for crimes committed against individuals” (Nabudere, 2002: 2). This is more than a perception of the fragile state as predatory and illegitimate. It drives to the heart of jurisprudence as a normative system of beliefs.

Similarly, definitions of what constitutes a “crime or misconduct [are] often different” between legal orders (Hohe, 2003: 345-46). Ideas of punishment and imprisonment may also differ widely between legal orders. In Timor-Leste, for instance,

“the notion of being provided with free accommodation and three meals a day with no work requirement, albeit with the loss of liberty and separation from community, is sometimes considered a privilege, not punishment. This perspective is magnified where a spousal violence perpetrator is incarcerated which often has the effect of removing all means of support for the victim and dependent children, a plight considered a far worse punishment than imprisonment... Local justice leaders and victims alike expressed the view that reporting one’s husband to the police for spousal violence was akin to filing for a divorce as it left little prospect of reconciliation between the parties and again left the woman and her dependents at risk of abandonment, again perverting the point of punishing the perpetrator” (Graydon, 2005: 33).

These challenges are more than tensions between beliefs in coercive and restorative justice or between individual and communal justice. The tensions between the norms of international human rights and those of non-state/local justice and security networks are “not of legal systems but of paradigms. Notions of human rights, for example,... are intrinsically deriving out of western understanding and the fundamental principles of western society” (Hohe, 2003: 347). They reflect differences in basic values, with the concept of rights which adhere to the individual and are, primarily, designed to protect him/her from the invasiveness of the state,

poised against duties, intended to confer on the collective and/or individual the responsibility to engage in defined behaviours.⁶¹ The fundamental western distinction, for instance, between criminal and civil justice may not exist in other societies, as human rights conventions are implicitly “based on ethical principles connected with the economic structure of private property... [autonomous individuality,] and the private appropriation of wealth... [The] logic behind this form of justice is...alien to a...communal society based on kinship systems” (Nabudere, 2002: 2).

This is not an argument against international human rights conventions or one designed to undermine donor adherence to them in the programming they underwrite. Nor is it a relativistic argument, insisting that all principles, norms, and beliefs are irredeemably contextual. Instead, the argument recognises the importance and positive obligation of bringing “international human rights concepts into concrete dialogue with... [other] traditions of justice” (Luutu, 2002: 50). To do so, the challenge for donors is comparable to that faced by the citizens and residents of the post-colonial mixed/hybrid states, namely how to “negotiate plural legal contexts in order to claim rights and ‘get justice’” in the short-, intermediate-, and long-term (Franco, 2008: 1862).

Legal pluralism requires justice and security development to engage in a political balancing act of how most effectively to proportion support for the sustainable delivery of the public goods people want in ways they understand in the short-, intermediate-, and long-term. There are no right or wrong answers. Pragmatically realistic justice and security programming requires donors to make considered choices dependent upon a pragmatic and realistic understanding of the politics and the balances of power within the multi-layered, post-colonial state.

⁶¹ See Hohe and Nixon (2003), pp. 22-24; see also Jan Arno Hessbruegge and Carlos Fredy Ochoa García, *Mayan Law in Post-Conflict Guatemala*. The crux of the issue is the accepted proposition that “human rights are contextual (cultural) constructs, which are bound by particular value systems” (Luutu: 45). The challenge is further complicated in that the values espoused by non-state/local justice and security networks may themselves be enshrined as universal human rights. The Universal Declaration of Human Rights recognizes the entitlement of cultural rights to ‘everyone as a member of society’ and the ‘freedom to participate in the cultural life of the community.’ This implies that non-state/local justice and security networks as “indigenous institutions of governance... may very well be protected as cultural rights” (Juma, p. 71). The African Charter on Human and Peoples Rights (Banjul Charter) states that African jurisprudence ought to take “‘into consideration the virtues of their historical tradition and the values of African civilisation... [to] characterize their reflection on the concept of human and Peoples rights’” (quoted in Juma: 81). The language of the Charter is crucial as individual ‘human’ and ‘Peoples rights’ are not distinguished as separate and disparate legal categories, but rather fused together in a single concept of ‘rights.’

The issue is not whether to support non-state/local justice and security networks, but how to work with them slowly and gradually to incorporate international human rights conventions into the practice of these networks. The challenge of legal pluralism is similar to the conundrum faced when justice and security programming seeks to improve the short- to intermediate-term situation of vulnerable groups and to do so is compelled to work with non-state/local justice and security networks despite their transgressions of those groups' human rights.

“Instead of succumbing to the [human rights] violations perpetrated by local justice networks by ignoring the vital and legitimate services they perform, it is reasonable to adopt the strategy of the head of the Southern Sudan Human Rights Commission, who, when questioned about the [human rights] challenge, stated, ‘We have no problem with strengthening traditional chiefs *as they are now*. It would help us if there were a program because it would give us access; once they have our support, there will be greater success in changing them. We need to give them an opportunity for eye openers later... I would be very happy if the chiefs get the power” (emphasis added, USAID, 2007: 9).

The southern Sudanese Human Rights Commissioner's plea for support for traditional chiefs as they are now, given the legal pluralism of a multi-layered, post-colonial state, is also an implicit call for donors to honor, more consistently, one of the cornerstones of development policy, the 'local ownership' doctrine. This plea particularly applies to the challenge of non-state/local justice and security networks, for “if local ownership is to make sense in any given project, its meaning resides in the different perceptions, beliefs, opinions and actions of national stakeholders rather than in the minds, eyes and reports of international actors” (Scheye, 2008: 60).

Locally owned justice and security programs are those “initiated by local actors” rather than ones that solicit “local support for [their] donor programmes and projects” (Nathan, 2007: 4).⁶² It is also important to

⁶² See Hannah Reich, *'Local Ownership' in Conflict Transformation Projects Partnership, Participation or Patronage?* Berghof Occasional Paper, No. 27 (Berlin: Berghof Research Center for Constructive Conflict Management, September 2006), where it is argued that local ownership “means that local actors have the final decisive power over a project's process and outcome” (p. 15). It should also be noted that the concept of 'local ownership' is a contested term, see Reich, who argues that “vague and undefined” and its “concrete meaning ... is barely discussed”

recognize that “the overarching goal [of local ownership] is national... rather than government ownership” (Nathan, 2007: 5). Local ownership is vital, first, as the means by which the possibility of effective justice and safety service delivery can be ensured.⁶³ Second, adhering to its principles furthers development’s democratization project.⁶⁴ The central programming question is local ownership ‘by whom and for whom.’⁶⁵ This is an explicitly political issue, driving to the heart of a country’s dynamic balance of power, given that there are four categories of local owners:

- National government⁶⁶ and elite
- Local government and elite
- Justice and security service providers and
- Customers of the public good delivered⁶⁷ (Scheye, 2008: 63-64).

To complicate the issue, the category of justice and security providers is further subdivided to include all providers: state as well as non-state/local justice and security networks. Given this multiplicity of owners, it is implausible and idealistic to believe that each of these owners will agree on how to proceed with justice and security development. It is also

(p.6). See also Timothy Donais, ‘Empowerment or Imposition? Dilemmas of Local Ownership in Post-conflict Peacebuilding Processes’ (paper presented at International Studies Association 48th Annual Convention, Chicago, 2007).

⁶³ See Hansen and Wiharta, “local ownership is acknowledged as central to effective and sustainable peacebuilding” (p. 3). See also Nathan, who notes that on a very practical level, SSR in the absence of local ownership is bound to fail (p. 3).

⁶⁴ “SSR is a democratic project and a democratizing project” (Nathan, 2007: 9). The democratizing project refers to good governance *and* increasing the correspondence between the delivery of public goods and the needs of those receiving the goods. Justice and security development is meant to be a people-centered, locally-owned programme promoting 1) democratization, 2) good governance, and 3) improved service delivery. Little consensus exists as to the ranking of these three priorities, when they conflict. One scholar remarked that “the relative weight given to the provision of physical security versus more democratic control over decision-making in the security sector” may be “the most important” policy disagreement, M. Brzoska, *Development Donors and the Concept of Security Sector Reform*. Centre for the Democratic Control of Armed Forces Occasional Paper 4, Geneva. 2003: 23).

⁶⁵ See Scheye and Peake, 2005: 238. As one recent critic points out, “this is a crucial question for local ownership,” one entirely bound up in politics and power (Reich, 2006: 9). A Dutch colonel working in Afghanistan on a provincial reconstruction team said at a meeting in a justice and security development meeting in The Hague in March 2008, most Afghan actors consider donor programming as a means of consolidating or acquiring power, rather than as a good in and of itself.

⁶⁶ The national government refers to all the state institutions and agencies of the justice and security sector.

⁶⁷ For different ways of defining ‘local owners,’ see Ball, Scheye, and Van de Goor. *Effective Programming* (Hague: Clingendael, 2008), who suggest that the owners are national political stakeholders; local justice networks and non-state service providers; local citizens, residents, communities, neighbourhoods, and external actors with their own national interests and security objectives (p. 4). See also Hansen and Wiharta, *Transition to a Just Order*, 5-6, who suggest that local owners “can be grouped into three categories: 1) the population in its various organised and unorganised forms, that is the citizen, civil society and the business community; 2) the authorities, that is the political leadership, the civil service and local government mechanisms; and 3) actors in the justice and security sector.”

unlikely that they will concur on whom the other potential owners may be, which only further reinforces the political nature of the issue.

For justice and security programming, the importance of accepting non-state/local justice networks as a 'local owner' is to highlight that these networks are, as discussed above, the *preferred* service provider for those to whom the public goods of justice and safety are to be delivered.⁶⁸

*If non-state/local justice and security networks were to be excluded from receiving their proportional share of justice and security assistance, justice and security development would be contravening not only a fundamental principle of 'local ownership,' but the expressed will of the preponderance of the citizenry and residents of many, if not most, fragile and post-conflict states.*⁶⁹

⁶⁸ See Bruce Baker, *Multi-choice Policing in Uganda*. Policing and Society 15(1) 2005, 19–41.

⁶⁹ As indicated in Dominique Wisler and Ihekwoaba D. Onwudiwe, Community Policing: A Comparative View. International Police Executive Symposium, Working Paper, No. 6, 2007, non-state/local justice networks "often enjoy high levels of popularity in local communities they police informally" (p. 9); see also Kate Meagher, 2006. *Hijacking civil society: the inside story of the Bakassi Boys vigilante group of south eastern Nigeria*, The Journal of Modern African Studies, Volume 45 Issue 01, 2006, pp 89-115; Nonso Okerafoezeke, *Traditional social control in an ethnic society: law enforcement in a Nigerian community*, Police Practice and Research, 4:1, 2006, pp. 21 – 33.

5. Uncertainties and Challenges in Supporting Non-State/Local Justice and Security Networks

So far this report has detailed a policy of pragmatic realism for proportioning donor assistance in justice and security development, a significant percentage of which would underwrite support to improve the performance of non-state/local justice and security networks. This section of the report, outlining the roles that donor governments, international NGOs, and local civil society actors can play, suggests how such a policy can be implemented. By offering a path ahead, this section also details a number of the challenges that lie ahead, most of which pertain to the inherent risks and uncertainties of engaging in justice and security development.

In *From Project to Program: Effective Programming for Security and Justice* (Clingendael, 2007), it was argued that the “everyday reality” of justice and security programming in fragile states is dominated by “political uncertainty and ambiguity” (Clingendael, 2007: 29). It was also argued that it is highly unlikely and idealistic to believe that a consensus can be reached between and among the various justice and security actors on how to proceed with justice and security development. The report went on to assert that, in order to support effective programming, donors need, “delicately [and constantly,] to calibrate the balance of power among national stakeholders and... across a spectrum of actors.” (Clingendael, 2007: 26). Finally, it was suggested that the best donors can achieve is an incomplete and partial understanding of the reigning politics and dynamic balances of power, even as political comprehension is deemed crucial for effective justice and security programming.

Unfortunately, the realities of the multi-layered state accentuate these uncertainties. The governance structures of the post-colonial state are foreign to Western eyes and ears. Conceptually, Western practitioners are accustomed to clear separation of powers, sharp distinctions in the roles and functions of the purveyors of justice and security service delivery, clean definitions of monopoly control over the means of violence, civil society, and what constitutes criminal and civil law. Such clarity, however, does not exist in the fragile state. Operationally, justice

and safety in the post-colonial state are delivered by a myriad of providers, state and non-state/local networks. Many of the networks are small, providing service to a neighborhood, within a marketplace, along an identifiable stretch of road. Most of these networks will be unknown to Western practitioners; the cost (labor and time) of identifying them burdensome; and the likelihood of donors gaining access (physically, linguistically, and culturally) to them low. Those that wield power within these networks may be wary of outsiders, if for no other reason than a lack of exposure. Mutual confidence can be established, but the process will be onerous and prohibitive under the best of circumstances with plentiful staff on the ground and ample budgets. Regrettably, neither condition exists. Furthermore, the relationships between and among the networks will be opaque and their associations with the state and state agencies difficult for the most politically astute outsider to decipher. Their political relationships will be yet denser and more obscure. As a result, in the multi-layered state, the political uncertainties that the report on *From Project to Program: Effective Programming for Security and Justice* (Clingendael, 2007) enumerated are intensified. Simultaneously, the need to grasp the partner country's dynamic balances of power have been compounded, for supporting non-state/local justice and security networks significantly increases the political choices and judgments which donors will have to reach, particularly with respect to armed non-state groups.

These challenges are profound. To believe otherwise is naïve. To do nothing, however, is unpalatable. Fragile states require long-term statebuilding, yet adopting a policy of pragmatic realism is the most viable short- to intermediate-term means of reaching that goal. The approach -- short- and intermediate-term proportional support and long-term statebuilding -- is essential in order to address and hopefully prevent the potential global repercussions that can ripple from out of fragile, failed, and collapsed states.

Yet, given the challenges, it would appear that western justice and security practitioners -- whether from Western governments or from international NGOs -- may not be the most effective personnel with which to implement the non-state/local justice and security network component of a pragmatic realism policy. Local civil society organizations and NGO's, however, are. And, as argued above, community-driven development and the legal empowerment movement programs are currently being implemented by local civil society organizations and NGO's. Furthermore, contemporary theories of social efficacy and capital advocate the use of local institutions, civil society

organizations, and NGO's as the primary method of implementing development programs so that virtuous circles can be activated. To engage these arguments -- as well as the advice of the southern Sudanese Human Rights Commissioner, who urged that those most suitable of implementing a pragmatic realism approach are those who can work with the non-state/local justice and security networks "as they are now" --

requires implementation primarily by local civil society organizations and NGO's, who possess the requisite knowledge of local mores and beliefs, understand the complexities of the post-colonial state, and are conversant with how to navigate the choices made by its residents and citizens in obtaining local services from the myriad systems that deliver the public goods of justice and safety in a world of legal pluralism.

Implementing a policy of pragmatic realism through local civil society organizations, a good number of which may be non-state/local justice and security networks and NGOs, is a challenging undertaking. First, the capacity of these implementing organizations is most likely low and donors will have to backstop their activities substantively and organizationally. Second, as the number of justice and service providers is high, the number of implementing partners may be commensurately large as well. While this may pose a challenge administratively, it remains the correct approach in that a pragmatic realism strategy aims to improve service delivery in order to address concrete local needs and raise the social efficacy and capital of individuals and their groups, who by definition reside and work in particular neighborhoods, marketplaces, and villages.

A deeper challenge will be the need for donors to accept a higher degree of risk and unpredictability than they may be accustomed to carry. With limited knowledge, donors will not be able to assess, in the ways they may have in the past, the reliability and productivity of the civil society organizations (including the networks), the NGOs through whom justice and security programs will be implemented, or the networks whose performance is to be enhanced. Accepting the obligation to work with the networks also means accepting working with less 'safe' implementing partners and beneficiaries than in the past. The emphasis, therefore, shifts to managing risk and quickly addressing unintended consequences rather than minimizing risk at the outset.

All of this implies that donor personnel will need to undertake activities for which they may not have had responsibility previously, as had been

argued in *From Project to Program: Effective Programming for Security and Justice* (Clingendael, 2007). Instead of primarily advising and mentoring state employees in their functions as police officers or prosecutors, the role of international practitioners would significantly shift to providing support to the activities of local civil society organizations and NGOs. Much of this work would entail assisting in community organization initiatives rather than in direct justice and security activities. An additional challenge will be to assist local community organizations in their social efficacy and capital programming. All of this may require an increase in the number of staff, but, in time, many ought to be nationals of the partner country, thereby, lowering total programmatic costs.

Donor personnel, however, must retain political and managerial responsibility for their programs. It is crucial to have staff on the ground to guarantee political leadership and a ‘whole of government approach.’ This may require donor staff with political acumen, greater sensitivities to political changes in balances of power, and tolerance of high levels of ambiguity and uncertainty in their day-to-day work than has customarily been associated with development personnel who have primarily concentrated on their substantive and technical expertise. Additionally, the skill set called for by a pragmatic realism approach emphasizes the “ability to keep competing parties and actors at the negotiating table, even if their differences appear to be seemingly irreconcilable” (Clingendael, 2007: iii). The need for donor personnel to be able to negotiate is especially acute, given that partner governments may be wary of donors working with non-state/local justice and security networks and it will be incumbent upon donors to convince partner governments that a proportional pragmatic realism approach is the road by which their state capacities are enhanced over the long-term.

Regarding funding a pragmatic realism approach, the parallelism between community-driven and justice and security development suggests a method by which donors can finance the proportional component of a program. As with the community-driven development and legal empowerment programs, the overall objective is

to establish a funding mechanism that provides support for those organizations -- non-state/local justice and security networks, civil society groups, and local NGO's -- that deliver tangible services. Instead of allocating hefty sums to individual beneficiaries, community-driven programs distribute small amounts to large numbers of recipients. The logic is that a small

amount of assistance goes a long way at the local level, particularly when geared toward improving service delivery, which has its multiplier effect on social efficacy and capital.

Non-state/local justice and security networks may not need significant amounts of aid to improve their services and local civil society groups and NGO's, working with the networks, cannot productively absorb vast sums. The objective should be to 'spread the wealth' in order to stimulate numerous local initiatives, seeding plentiful experiments to take root. Given the complexities of the post-colonial world, the ability to forecast which local civil society organization or NGO will prove effective and efficient is limited. Many will have no track record. Their lack of previous experience may be no indicator of their ability to work effectively to strengthen the performance of a non-state/local justice and security network. The risks are small, yet the rewards may be great as this approach has the potential to improve local service delivery, increase social efficacy, and assist in kick-starting economic development.

There are different institutional options that donors can use to oversee this 'justice and security venture capital fund'. Working with partner governments, donors may be able to establish a justice and security equivalent to the 'social development funds' that have proliferated in the multi-layered post-colonial world. In some countries, there may be large national NGO's that could be engaged with, but that may be more the exception to the rule rather than the rule. Another alternative may be to channel donor support through large INGO's, those that have experience and knowledge of the partner country, who, in turn, will funnel the monies downward to local civil society organizations and NGO's. It may be the case that these INGO's do not have direct experience in justice and security development. While technical/substantive justice and security expertise can be readily acquired with donor support, the ability to negotiate the shoals of the multi-layered post-colonial state cannot.

Bibliography

Aborisade, O. (ed). (1985). *Local Government and the Traditional Rulers in Nigeria*. Ile-Ife: University of Ife Press

Ahmad, J. and Devarajan. S, (2005). *Decentralization and Service Delivery*, Policy Research Working Paper no. 3603, Washington D.C.: World Bank

Alemika, E. & Chukwuma, I. (2008). *Non-State Policing Systems in Nigeria: a mapping study of informal policing systems in seven states in Nigeria and Abuja*. Lagos: CLEEN Foundation

Alemika, E. & Chukwuma, I. (2004) *A Report on Poor Peoples' Perceptions and Priorities on Safety, Security and Informal Policing in 12 Focal States in Nigeria*. Center for Law Enforcement Education, Lagos

Andersen, L. (2007). What to Do? The Dilemma of International Engagement in Fragile States. In L. Andersen, B. Moller & F. Stepputat (eds.) *Fragile States and Insecure People? Violence, Security and Statehood in the Twenty-First Century*. New York: Palgrave Macmillan, 2007

Anderson, L. (2004). Antiquated before They Can Ossify: States That Fail before They Form. *Journal of International Affairs*, 58(1), 1-16

Armstrong, A. & Barnett R. "The Great Lakes and South Central Asia." In S. Chesterman, et. al. (eds.). *Making States Work: State Failure and the Crisis of Governance*. Tokyo: United Nations Press: 79-101.

Asia Foundation (2008). A Survey of Community-Police Perceptions: Timor-Leste in 2008. From: <http://asiafoundation.org/publications/pdf/513>

Asia Foundation (2004). Law and Justice in East Timor: A Survey of Citizen Awareness and Attitudes Regarding Law and Justice in East Timor. From: <http://asiafoundation.org/resources/pdfs/easttimorlawsurvey.pdf>

Asian Development Bank. (2007). *Supporting Community-Driven Development in Developing Member Countries*. Project Number: 40305. From: <http://www.adb.org/Documents/TARs/REG/40305-REG-TAR.pdf>

Ayoade, J.A.A. & Agbaje, A.A.B. (eds.). (1989). *African Traditional Political Thought and Institutions*. Lagos: Centre for Black and African Arts and Civilization

- Baker, B. & Scheye, E. (2009). Access to Justice in a Post-conflict State: Donor-supported Multi-dimensional Peacekeeping in southern Sudan. *International Peacekeeping*. 16, (2), 171-185.
- Baker, B. & Scheye, E. (2007). Multi-Layered Justice and Security Service Delivery in Post-Conflict and Fragile States. *Conflict, Security & Development*. 7 (4), 503-528
- Baker, B. (2005). Multi-choice Policing in Uganda.' *Policing and Society*, 15(1), 19-41
- Ball, N., Scheye, E. & Van de Goor, L. (2007). *From Project to Programme: Effective Programming for Security and Justice*. The Hague: Clingendael Institute
- Barnett, M. (2006). Building a Republican Peace: Stabilizing States After War. *International Security*, 30 (4), 87-112
- Beblawi, H. (1990). The Rentier State in the Arab World. In Luciani, G. (ed.). *The Arab State*. London: Routledge
- Bellina, et. al. (2009). *The Legitimacy of the State in Fragile Situations*. Unpublished draft prepared for the OECD/DAC, INCAF (January 2009)
- Benomar, J. (2007). *Rule of Law Assistance: Lessons Learned from International Experience*. Rule of Law Unit, Office of the Deputy Secretary-General, United Nations.
- Berkes, F., & Folke, C. (1998). Linking social and ecological systems for resilience and sustainability. In: F. Berkes, C. Folke & J. Colding (eds.). *Linking social and ecological systems: management practices and social mechanisms for building resilience*. Cambridge, UK: Cambridge University Press, 1-25
- Bisimba, K. (2002). Perspectives on Tanzania's Non-Formal Systems of Justice. *East African Journal of Peace and Human Rights*, 8(1), 83-96
- Boone, C. (2003). *Political Topographies of the African State: Territorial Authority and Institutional Choice*. Cambridge: Cambridge University Press
- Brahimi, L. (2007). *State-building in Crisis and Post-conflict Countries*. Paper presented at 7th Global , Forum on Reinventing Government, Building Trust in Government, 26-29 June 2007, Vienna, Austria. From: <http://unpan1.un.org/intradoc/groups/public/documents/UN/UNPAN026896.pdf>

Bratton, M. & Van de Walle, N. (1997). *Democratic Experiments in Africa, Regime Transitions in Comparative Perspective*. Cambridge: Cambridge University Press.

Bratton, Michael (1989). Beyond the State: Civil Society and Associational Life in Africa. *World Politics*, (41) 3

Brzoska, M. (2003). *Development Donors and the Concept of Security Sector Reform. Centre for the Democratic Control of Armed Forces Occasional Paper 4*. Geneva: Geneva Centre for the Democratic Control of Armed Forces

Bursik, R.J. (1999). Informal Control of Crime through Neighborhood Networks. *Sociological Focus* 32(1), 85-97

Buscaglia, E. (2001). *Investigating the Links Between Access to Justice and Governance Factors: An Objective Indicators' Approach*. From: <http://www.pogar.org/publications/other/unodc/justice-gov-factors-01e.pdf>

Buscaglia, E. (1996), *Justice and the Strengthening of Democracy*. Paper Presented before the USAID sponsored Conference on Justice and Democracy. Quito, Ecuador, August 7-9, 1996

Call, C.T. & Wyeth, V. (2008). (eds.). *Building States to Build Peace*. Boulder, CO: Lynne Rienner

Call, C.T. & Cousens, E.M. (2007). *Ending Wars and Building Peace*. Coping With Crisis Working Paper Series. From: http://www.ipacademy.org/asset/file/151/CWC_Working_Paper_ENDING_WARS_CCEC.pdf

CARE. (2002). *Evaluation Rurale Participative, Projet: Protection de l'Environnement dans les provinces Karusi et Gitega*.

Carlson, S.N. (2006). Legal and Judicial Rule of Law Work in Multi-Dimensional Peacekeeping Operations: Lessons Learned Study. *UN Peacekeeping Best Practice Section*.

Carothers, T. (2002). The End of the Transition Paradigm. *Journal of Democracy*, 13(1), 5-21

Carothers, Thomas (2006) In Search of Knowledge. In T. Carothers. *Promoting the Rule of Law Abroad: In Search of Knowledge*. Washington DC: Carnegie Endowment for International Peace.

Chabal, P. (2006) *Summary Report, States and Societies: Why is State Formation so Difficult?* London: Overseas Development Institute Workshop, London, 1 March. From: www.odi.org.uk/events/states_06/1stMar/notes_long.pdf

Chandler, D. (2006) *Empire in Denial: the Politics of State- Building*. Pluto, London.

Chirayath, L., Sage, C. & Woolcock, M. (2005). *Customary Law and Policy Reform: Engaging with the Plurality of Justice Systems*. Washington D.C.: World Bank. From: http://siteresources.worldbank.org/INTWDR2006/Resources/477383-1118673432908/Customary_Law_and_Policy_Reform.pdf

Chopra, T. (2007). *Promoting Women's Rights by Indigenous Means: An Innovative Project in Kenya*, Justice for the Poor, Vol. 1, July 2007

Clapham, C.S. (ed.). (1982). *Private Patronage and Public Power: Political Clientelism in the Modern State*. London: F. Pinter

Decker, K., Sage, C., & Stefanova, M. (2005). *Law or Justice: Building Equitable Legal Institutions*. From: http://siteresources.worldbank.org/INTWDR2006/Resources/477383-1118673432908/Law_or_Justice_Building_Equitable_Legal_Institutions.pdf

Dexter, T.J. & Ntahombaye, P. (2005). *The Role of Informal Justice Systems in Fostering the Rule of Law in Post-Conflict Situations. The Case of Burundi*. Geneva: Henri Dunant Centre for Humanitarian Dialogue

DFID. (2008). *States in Development: understanding State-building. A DFID Working Paper*. From: <http://www.dfid.gov.uk/pubs/files/State-in-Development-Wkg-Paper.pdf>

DFID (2004). *Non-state Justice and Security Systems*. London: DFID. From: <http://www.dfid.gov.uk/pubs/files/State-in-Development-Wkg-Paper.pdf>

Donais, T. (2007). *Empowerment or Imposition? Dilemmas of Local Ownership in Post-conflict Peacebuilding Processes*. Paper presented at International Studies Association 48th Annual Convention, Chicago.

Düsing, S. (2002). *Traditional Leadership and Democratisation in Southern Africa. A Comparative Case-Study of Botswana, Namibia and South Africa*. Münster etc.: Lit Verlag

Ebo, A. (2007). Non-State Actors, Peace-Building and Security Governance in West-Africa: Beyond Commercialisation. *Journal of Peacebuilding and Development*. 3(2), 53-69

- Ekeh, P.P. (1975). Colonialism and the Two Publics in Africa: A Theoretical Statement. *Comparative Studies in Society and History*, 17(1), 91-112
- Engberg-Pedersen, L., Andersen, L. & Stepputat, F. (2008). *Fragile Situations: Current Debates and Central Dilemmas*. DIIS Report no 8, Copenhagen, Danish Institute of International Studies
- Englebert, P. & Tull, D. (2008). Postconflict Reconstruction in Africa: Flawed Ideas about Failed State. *International Security*, 32(4), 106-139
- Englebert, P. (2000). *State Legitimacy and Development in Africa*. Boulder and London: Lynne Rienner
- Fajardo, R.Y. (2004). Legal Pluralism, Indigenous Law and the Special Jurisdiction in the Andean Countries. *Beyond Law, Informal Justice and Legal Pluralism in the Global South* 10 (27). From: http://www.themastering.com/www_edit/upload/cades/courses/050301/RYF-legalPluralism-BeyondLaw27-5.pdf
- Faundez J. (2003). *Non-State Justice Systems in Latin America. Case Studies: Peru and Colombia*, workshop held at the Overseas Development Institute on 6-7 March 2003, funded by the UK Department of International Development under their Safety, Security and Access to Justice Programme. Draft paper, Institute for Development Studies, University of Sussex
- Foley, M. & Edwards, B. (1997). Social Capital and the Political Economy of our Discontent. *American Behavioral Scientist*, 40 (5), 669-678
- Fox, J. (1997). How Does Civil Society Thicken? The Political Construction of Social Capital in Rural Mexico. In: Evans, P. (ed.). *State-Society Synergy: Government and Social Capital in Development*. University of California Press/University of California International and Area Studies Digital Collection, Vol. 94, 119-147.
- Franco, J. C. (2008). Peripheral Justice? Rethinking Justice Sector Reform in the Philippines. *World Development*, 36(10) October, 1858-1873.
- François, M. & Sud, I. (2006). Promoting Development and Stability in Fragile and Failed States. *Development Policy Review*, 24 (2), 141-160.
- Fritz, V. & Menocal, A.R. (2007). *Understanding State-building from a Political Economy Perspective. An Analytical and Conceptual Paper on Processes, Embedded Tensions, and Lessons for International Engagement. Report for DFID's Effective and Fragile States Systems*. From:

http://www.odi.org.uk/pppg/politics_and_governance/publications/ODI_state_building_paper.pdf.

Fukuyama, F. (2000). *Social Capital and Civil Society*. IMF working paper. WP/00/74. Washington: IMF

Goetz, A. & Jenkins, R. (2005). *Reinventing Accountability: Making Democracy Work for Human Development*. Houndmill: Palgrave Macmillan

Graydon, C, 2005. Local justice systems in Timor-Leste: Washed up, or watch this space? *Development Bulletin*, no. 68 From: http://devnet.anu.edu.au/GenderPacific/pdfs/09_gen_legal_graydon.pdf

Grootaert, C. & Van Bastelaer, T. (2001). *Understanding and Measuring Social Capital: A Synthesis of Findings and Recommendations from the Social Capital Initiative*. Social Capital Initiative Working Paper No. 24. New York: World Bank.

Grootaert, C. (1997). Social Capital: The Missing Link? In: World Bank, *Expanding the Measure of Wealth—Indicators of Environmentally Sustainable Development*. Environmentally Sustainable Development Studies and Monographs Series No. 17. Washington, D.C.: World Bank

Gugerty, M.K. & Kremer, M. (2000). *Does Development Assistance Help Build Social Capital?* World Bank Social Capital Initiative Working Paper No. 20. Washington D.C.: World Bank

Gupta, M., Grandvoinnet, H. & Romani, M. (2000). *State-Community Synergies in Development: laying the basis for collective action*. Washington, D.C.: World Bank.

Hagen, J. (1989). *Structural Criminology*. Piscataway, N.J.: Rutgers University Press

Hansen, A. S. & Wiharta, S. (2007). *Transition to Order after Conflict: Establishing Local Ownership after Conflict*. Stockholm: Folke Bernadotte Academy Publications

Herbst, J. (2000). *States and Power in Africa: Comparative Lessons in Authority and Control*. Princeton: Princeton University Press

Hessbruegge, J.A. & Ochoa García, C.F. (2005), *Mayan Law in Post-Conflict Guatemala*. From: http://www.pasoc.org.gt/documentos_in.asp

Hohe T. & Nixon, R. (2003). *Reconciling Justice: 'Traditional Law and State Judiciary in East Timor*. Washington D.C.: United States Institution of Peace

Hohe, T. (2003). Justice without Judiciary in East Timor. *Conflict, Security and Development*, 3(3), 335-357.

Huang, R. (2005). Securing the Rule of Law: Assessing International Strategies for Post-Conflict Criminal Justice. *International Peace Academy Policy Paper*.

Indonesian Legal Aid Foundation. (2007). *Legal Empowerment of the Poor: Lessons Learned from Indonesia*. Jakarta: UNDP.

Inter-American Development Bank (May 2000). *Challenges of Capacity Development, Towards Sustainable Reforms of Caribbean Justice Sectors Volume I: Policy Document*, Washington D.C.: IDB

Jackson R. & Rosberg, C.G. (1982). *Personal Rule in Black Africa: Prince, Autocrat, Prophet, Tyrant*. Berkeley: University of California Press

Jalali, A. (2002). Rebuilding Afghanistan's National Army. *Parameters*, Autumn 2002, 72-86

Juma, L. (2002). African Customary Law and Human Rights in Kenya: In Search for a Viable Framework for Co-Existence. *East African Journal of Peace and Human Rights*, 8(1), 53-82

Junaid A., Devarajan, S. & Khemani, S. (2005). *Decentralization and Service Delivery*. World Bank Policy Research Working Paper 3603, May 2005.

Kane, M., Oloka-Onyango, J. & Tejan-Cole, A. (2005). *Reassessing Customary Law Systems as a Vehicle for Providing Equitable Access to Justice for the Poor*. Arusha Conference, "New Frontiers of Social Policy" – December 12-15, 2005.

Kassimir, R. (2001). Producing Local Politics: Governance, Representation, and Non-State Organizations in Africa. In T. Callaghy, R. Kassimir & R. Latham (eds.). *Intervention & Transnationalism in Africa: Global-Local Networks of Power*. Cambridge, Cambridge University Press

Keulder, C. (1998). *Traditional Leaders and Local Government in Africa*. Pretoria: Human Sciences Research Council

Kimathi, L.W. (2005). *Non-State Institutions as a Basis of State Reconstruction: The Case of Justice Systems in Africa*. Paper prepared for Codesria's 11th General Assembly, Maputo, December 2005

Krishna, A. (2006). *Understanding, Measuring and Utilizing Social Capital: Clarifying Concepts and Presenting a Field Application from India*. Washington, DC. International Food Policy Research Institute

- Lewis, P.M. (1992). Political Transition and the Dilemma of Civil Society in Africa. *Journal of International Affairs*, 46(1), 31–54
- Low, S. (2007). *Evaluation of the “Providing Access to Justice – Legal Awareness at the Grassroots Level” Project Timor-Leste for Avocats Sans Frontières Brussels Final Report*. From:
<http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/EvaluationLegalAwarenessGrassrootsLevel.pdf>.
- Lutu, B.M. (2002). International Human Rights and African Traditions of Justice: The Quest for Connection and Meaning. *East African Journal of Peace and Human Rights*, 8(1), 41-52
- Mamdani, M. (1996). *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*. Princeton: Princeton University Press
- McClymont, M. & Golub, S. (eds.). (2000). *Many Roads to Justice: The Law-Related Work of the Ford Foundation Grantees Around the World*. New York: Ford Foundation
- Meagher K. (2006). Hijacking civil society: the inside story of the Bakassi Boys vigilante group of south eastern Nigeria. *The Journal of Modern African Studies*, 45(01), 89-115
- Menzies, N. (2007). *Legal Pluralism and the Post-Conflict Transition in the Solomon Islands. Kastom, human rights and international interventions*. From:
<http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/LegalPluralismandthePostConflictTransitionintheSolomonIslands.pdf>.
- Nabudere, D.W. (2002). Towards the Study of Post Traditional Systems of Justice in the Great Lakes Region of Africa. *East African Journal of Peace and Human Rights*, 8(1), 1-40.
- Nathan, L. (ed.) (2007). *No Ownership, No Commitment: A Guide to Local Ownership of Security Sector Reform*, 2nd ed. Birmingham: University of Birmingham.
- Nordic Consulting Group (2004). *Policing and Local Level Conflict Management in Resource Constrained Environments Case Studies in Kabupaten Sikka (NTT) and Kabupaten*. From:
<http://www.conflictanddevelopment.org/data/doc/en/conflictGovernancePoli/Policing%20and%20Local%20Level%20Conflict%20Management%20in%20Resource%20Constrained%20Environments.pdf>
- Ntabona, A. (1995). Suggestions to Escape from Ethnic Totalitarianism. *Au Coeur de l'Afrique*, No 1

OECD, (2008). *Concepts and Dilemmas of State Building in Fragile Situations. From Fragility to Resilience*. Paris: OECD/DAC. From: <http://www.oecd.org/dataoecd/59/51/41100930.pdf>

OECD, (2007). *Enhancing the Delivery of Justice and Security*. Paris: OECD. From: <http://www.oecd.org/dataoecd/27/13/38434642.pdf>

Okafo, N. (2007). *Law Enforcement in Post-colonial Africa. Interfacing Indigenous and English Policing in Nigeria*. International Police Executive Symposium. From: <http://www.ipes.info/WPS/WPS%20No%207.pdf>

Okerafoezeke, N. (2006). Traditional social control in an ethnic society: law enforcement in a Nigerian community. *Police Practice and Research*, 4(1), 21 – 33

Pargal, S., Huq, M. & Gilligan, D. (1999). *Social Capital in Solid Waste Management: Evidence from Dhaka, Bangladesh*. World Bank Social Capital Initiative Working Paper No. 16. New York: World Bank.

Penal Reform International (2000). *Access to Justice in Sub-Sahara Africa: The Role of Traditional and Informal Justice Systems*. From: <http://www.gsdrc.org/docs/open/SSAJ4.pdf>

Pino, N.W. (2001). Community Policing and Social Capital. *Policing: An International Journal of Police Strategies and Management*, 24(2), 200-215.

Portes, A. (1998). Social Capital: Its Origins and Applications in Modern Sociology. *Annual Review of Sociology* (24), 1-24

Reich, H. (2006). *Local Ownership' in Conflict Transformation Projects Partnership, Participation or Patronage? Berghof Occasional Paper*, No. 27. Berlin: Berghof Research Center for Constructive Conflict Management

Reno, W. (2008). Bottom-Up Statebuilding? In C. Call & V. Wyeth. (eds.) *Building States to Build Peace*. Boulder, CO.: Lynne Rienner Publishers

Reno, W. (2007). Protectors and Predators: Why There is a Difference among West African Militias. In L. Andersen, B. Moller & F. Stepputat (eds.) *Fragile States and Insecure People? Violence, Security and Statehood in the Twenty-First Century*. New York: Palgrave MacMillan.

Roberts, R. (2008). Hybrid Politics and Indigenous Pluralities: Advanced Lessons in Statebuilding from Cambodia. *Journal of Intervention and Statebuilding*. Vol.2. No. 1.

Rotberg, R. (2003) (ed.). *When States Fail: Causes and Consequences*. Princeton: Princeton University Press

Roy, R.D. (2004). Challenges for Juridical Pluralism and Customary Laws of Indigenous Peoples: The Case of the Chittagong Hill Tracts, Bangladesh. *Arizona Journal of International & Comparative Law*. 21(4), 113-182.

Rubin, B. (1998). Lineages of the State in Afghanistan. *Asian Survey*, 28 (11), 1188-1209

Rubin, B. (1992). Political Elites in Afghanistan: Rentier State Building, Rentier State Wrecking. *International Journal of Middle East Studies*, 24 (1), 77-99

Sampson, .R. et. al. (2005). Civil Society Reconsidered: The Durable Nature and Community Structure of Collective Civic Action. *American Journal of Sociology*, 111 (3), 673-714

Sampson. R. (2004). Neighbourhood and Community: Collective Efficacy and Community Safety. *New Economy* 11(2), 106-113

Sampson. R. (2003). The Neighborhood Context of Well- Being. *Perspectives in Biology and Medicine*, 46(3), S53-S64

Sampson, R., Raudenbush, R.S. & Earls, F. (1997). Neighbourhoods and Violent Crime: A Multilevel Study of Collective Efficacy. *Science*, 277, 918-924

Samuels, K. (2006). *Rule of Law Reform in Post-Conflict Countries. Operational Initiatives and Lessons Learnt*. Social Development Papers, Conflict Prevention & Reconstruction, Paper no. 37, October 2006. From: http://siteresources.worldbank.org/INTCPR/Resources/WP37_web.pdf

Sandbrook, R. (1998). Patrons, Clients, and Factions: Explaining Conflict in Africa. In P. Lewis (ed.). *Africa: Dilemmas of Development and Change* (pp. 64-83). Boulder: Westview

Sannerholm, Richard. (2007). *In Search of a User Manual: Promoting the Rule of Law in Unruly Lands*. From: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1068781

Schärf, W. (2003). *Non-State Justice Systems in Southern Africa: How Should Governments Respond?*, workshop held at the Overseas Development Institute on 6-7 March, funded by the UK Department of International Development under their Safety, Security and Access to Justice Programme. Draft paper, Institute for Development Studies, University of Sussex

Scheye, E. (forthcoming). *State-Provided Service, Contracting Out, and Non-State Networks: Justice and Security as Public and Private Goods and Services*. Paris: OECD.

Scheye, E. (2008). Unknotting Local ownership Redux: Bringing Non-State/Local Justice Networks Back In. In T. Donais (ed.). *Local Ownership and Security Sector Reform*. (pp. 60-81). DCAF: Geneva. From: <http://www.dcaf.ch/publications/kms/details.cfm?ord279=title&lng=en&id=95176&nav1=5>

Scheye, E. & Peake, P. (2005). Unknotting Local Ownership, in Ebnöther, Anja and Philipp Flürli (eds.), *After Intervention: Public Security Management in Post-Conflict Societies: From Intervention to Sustainable Local Ownership*. Vienna: Geneva Centre for the Democratic Control of Armed Forces and Austrian National Defense Academy

Schneckener, U. (2006). Fragile Statehood, Armed Non-State Actors and Security Governance. In A. Bryden & M. Caparini (eds.). *Private Actors and Security Governance* (pp. 23-40). Geneva: DCAF.

Scott, Jason. (2002) Assessing the Relationship between Police-Community Coproduction and Neighborhood-Level Social Capital. *Journal of Contemporary Criminal Justice*, 18 (147), 147-166

Senier, A. (2006) *Rebuilding the Judicial Sector in Afghanistan: The Role of Customary Law*. The Fletcher School Online Journal for issues related to Southwest Asia and Islamic Civilization. From: http://fletcher.tufts.edu/al_nakhlah/archives/spring2006/senier.pdf

Shaw, Mark (2000), *Crime and Policing in Traditional Societies: Conference Summary and Overview*, South African Institute of International Affairs, 30 August-1 September.

Sklar, R. (2003). The Premise of Mixed Government in African Political Studies, keynote address was presented at an international conference on 'Indigenous Political Structures and Governance in Africa,' at the University of Ibadan, Ibadan, Nigeria, July 19-21, 2001. In O. Vaughan (ed.). *Indigenous Political Structures and Governance in Africa*. Ibadan: Sefer Books Ltd.

Sklar, R. (1993). The African Frontier for Political Science. In R.H. Bates, V.Y. Mudimbe & J. O'Barr (eds.). *Africa and the Disciplines: The Contributions of Research in Africa to the Social Sciences and Humanities*, Chicago: University of Chicago Press

Sobel, Joel. (2002). Can We Trust Social Capital. *Journal of Economic Literature*, Vol. XL (March 2002), 139-154

Stromseth, J., Wippman, D. & Brooks, R. (2006). *Can Might Make Rights? Building the Rule of Law after Military Interventions*. Cambridge University Press: Cambridge

Studdard, K. & Hurwitz, A. (2005). 'Rule of Law Programs in Peace Operations'. *International Peace Academy Policy Paper* (2005)

UN SG (2004). *The Rule of Law and Transitional Justice in Conflict and Post Conflict Societies: Report of the Secretary General*, August 23, 2004

UNDP (2005). *Access to Justice during Armed Conflict in Nepal: Obstacles to Access Justice and Responses to them in a Context of Conflict*, unpublished study.

UNDP Southern Sudan (2006). Draft 2006 UNDP/UNMIS *Rule of Law Community Perception Survey Report for Southern Sudan*, 28 July (available from the UNDP Southern Sudan office).

UNDP Southern Sudan (2006). Draft 2006 UNDP/UNMIS *Rule of Law Community Perception Survey Report for Southern Sudan*, 28 July (available from the UNDP Southern Sudan office).

Ungar M. & Arias, D. (forthcoming, 2009). Community Policing and Latin America's Citizen Security Crisis. *The Journal of Comparative Politics*

United States Institute of Peace (2004). *Establishing the Rule of Law in Afghanistan*. Special Report No 117. From: <http://www.usip.org/files/file/sr117.pdf>

United States Institute of Peace. (2006). *Briefing Paper Conference on the Relationship between State and Non-State Justice Systems in Afghanistan*, December 10-14 2006, Kabul, Afghanistan. From: http://www.usip.org/files/file/conference_summary_paper.pdf

Upreti (2000), *Resource-Use Negotiation as an Alternate Strategy for Sustainable Water-Resource Management: Experience from Nepal*, *Journal of Agricultural Education and Extension*, 7(1), 11-20

USAID (2004). *A Legal Framework for Land Dispute Mediation*. Washington, D.C.: USAID

USAID. (2007). *The Multi-Layered Approach: Supporting Local Justice and Security Systems in southern Sudan*. Washington, DC: USAID.

USAID. (2007). *The Multi-Layered Approach: Supporting Local Justice and Security Systems in southern Sudan*. Washington, DC: USAID.

Van Rouveroy van Nieuwaal E.A.B. & Van Dijk, R. (eds.). (1999). *African Chieftaincy in a New Socio-Political Landscape*. Hamburg: Lit Verlag

Van Rouveroy van Nieuwaal, E.A.B. & Ray, D. (eds.). (1996). *Journal of Legal Pluralism and Unofficial Law*, Nos. 37-38

Vaughan, O. (2000). *Nigerian Chiefs*. Rochester, N.Y.: The University of Rochester Press

Wells, Q., Schager, J.A., Varano, S.P. & Bynum, T.S. (2006). Neighborhood Residents' Production of Order: The Effects of Collective Efficacy on Responses to Neighborhood Problems. *Crime Delinquency*, 52(4), 523-550.

Wisler D. & Onwudiwe, I.D. (2007). *Community Policing: A Comparative View*. International Police Executive Symposium, Working Paper, No.6. From: <http://www.ipes.info/WPS/WPS%20No%206.pdf>

Woolcock, M. (1998). Social Capital and Economic Development: Toward a Theoretical Synthesis and Policy Framework. *Theory and Society* 27(2), 151-208

World Bank (2006). *World Development Report 2006*. Washington D.C.: World Bank. From: <http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/EXTWDRS/EXTWDR2006/0,,contentMDK:20586898~pagePK:64167689~piPK:64167673~theSitePK:477642,00.html>

World Bank, Social Development Department, Environmentally and Socially Sustainable Development Network (2006). *Community-Driven Development in the Context of Conflict-Affected Countries: Challenges and Opportunities*. Online available: http://siteresources.worldbank.org/INTCDD/Resources/CDD_and_Conflict.pdf

World Bank. (2005). CDD and Social Capital Impact Designing a Baseline Survey in the Philippines. From: http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2005/07/28/000160016_20050728154734/Rendered/PDF/32405a10PH0whi10may20final01public1.pdf