

Non-state security and justice in fragile states

Lessons from Sierra Leone

Donors increasingly acknowledge that people in fragile states often rely on security and justice provided by non-state actors, including chiefs, secret societies, religious leaders, gangs or militias, paralegals, or community reconciliation and trade associations. Yet actual efforts to engage with these non-state actors have been modest to date. Donors must recognise not only that they need to work with non-state providers of security and justice services, but also that doing so effectively requires different operating procedures.

Investment in both security and justice in fragile states is widely held to be focused overwhelmingly on reforming state systems (Baker and Scheye, 2007). This Briefing Paper presents evidence from fieldwork in Sierra Leone that supports this view (Denney, forthcoming). It shows how a state bias limits the ability of donors to influence how most people really access these services, and that donors must address this if their programming is to reflect more accurately the realities of security and justice provision in fragile states. The Paper proposes four rules for more effective engagement.

Prevalence of non-state security and justice

There are no exact figures on the number of people in fragile states who rely on non-state policing and justice, but there is broad agreement that non-state providers resolve around 80% of disputes (Albrecht and Kyed, 2011). Where the state has a history of being absent, predatory or weak, some communities have created alternative channels to provide safety and resolve disputes (for instance, through trade associations or community mediation). In other cases, institutions frequently described as 'non-state' are actually products or remnants of the state,



Formal justice systems are often inaccessible – and many people continue to rely on chiefs or other informal institutions for their justice and security needs.

such as local authorities that were created or co-opted by the colonial state to enforce indirect rule.

Therefore, as debates around legal pluralism have shown, it is more accurate to think of the relationship between state and non-state as a sliding scale – and this is particularly true in fragile environments. Despite these nuances, 'non-state' or 'informal' remain analytically useful concepts because they denote the broad set of arrangements that, in some way, operate beyond the state's accountability net. A further blurring occurs in fragile settings where policing and justice functions, traditionally separated in the West, are often dispensed by a single individual (such as a chief).

Donor neglect of non-state actors

Despite the prevalence of non-state provision, the vast majority of donor programmes focus on reforming state security and justice systems. There is also a dearth of reliable figures here. However, the United Nations Development Programme estimate from 2004 that 80% of donor justice allocations target state systems (UNDP, 2004) continues to be

Key points

- Most people in fragile states rely on non-state actors for security and justice
- Overlooking these actors jeopardises donor objectives in these sectors by leaving the most accessible tier of provision unreformed
- Better engagement with non-state actors requires donors to be clear about risks, understand micro-context and adapt their operating procedures

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borne out by experience in Sierra Leone. Here, over more than a decade, most UK assistance to the security and justice sectors has focused on reforming state institutions (i.e. military, police, intelligence services and judiciary). While the policy of the UK Department for International Development recognises non-state actors as important facets of security and justice provision (DFID, 2004), there has been little engagement with the chieftdom police, trade associations or justice systems operated by chiefs and secret societies, which dominate the rural areas where most Sierra Leoneans live. To address this bias, DFID is extending its engagement with non-state actors under a second justice and security programme in Sierra Leone, beginning in 2012.

Donor efforts to improve state security and justice provision are crucial to state-building initiatives but, without complementary support to non-state providers, can reinforce a two-tiered policing and justice system. This jeopardises their objectives in this sector, neglecting to reform the services that most people rely upon and that they often see as legitimate. Nevertheless, if they are to work effectively with this more complex reality, donors need to know what they are doing.

In Sierra Leone, a failure to engage appropriately with the more accessible, non-state tier of the system has left it largely unreformed and, in some instances, continuing to operate in a discriminatory and arbitrary manner, particularly in relation to women and youth. The impact of such neglect is magnified in a country like Sierra Leone, where the inequities of the customary justice system contributed to its 11-year civil war. The potential harm caused by lack of engagement, therefore, goes beyond immediate discrimination or abuse at the hands of non-state actors to failing to address the potential drivers of conflict.

Political constraints to engagement

At a strategic level, donors recognise that improving security and justice services in fragile states means working with one key political reality: that these are often provided by non-state actors (e.g. World Bank, 2011). Yet they find it hard to operationalise this insight. The disparity between policy and practice is explained, in part, by the political nature of donor organisations. Donors are bound by their own political environment and must answer to the various constituencies to whom they are accountable – including aid recipients, the home government and, importantly, the general public at home who, ultimately, provide the funds (Unsworth, 2009).

Engaging with non-state actors can mean dealing with unsavoury characters involved in questionable activities. For instance, in Sierra Leone secret societies continue to play a role

in policing women's behaviour through conflict resolution processes and fines that, at times, enforce practices such as female circumcision or discriminatory justice (Schroven, 2006). This is uncomfortable territory for organisations committed to human rights and good governance principles, and their home publics might be hard to convince that this is the best way to spend taxpayers' money, particularly in a time of domestic spending cuts. Donors need to find a way to navigate this challenge of the sustainable reform of security and justice provision across the state and non-state divide *within* the confines of the political space available to them. The remainder of this Briefing Paper sets out some rules to help donors to engage more often and more effectively with non-state actors.

When and how donors should engage

Scant donor engagement with non-state actors means that there is little specific experience that can be used to guide future programming. It is critical, therefore, to learn from cases where substantial investments have been made in security and justice reform. There are four rules of engagement that can be drawn from experience in Sierra Leone to clarify when and how donors should engage with non-state security and justice actors. These rules can be applied to other fragile contexts where non-state security and justice providers are prevalent.

Rule of engagement 1: Accept that non-state actors are risky ... but no more than many state partners

Expanding the political room for manoeuvre will enable donors to work more extensively with non-state actors. Donors need to be clear and consistent about the risks involved in working with such actors, given that some violate the basic rights that security and justice systems are meant to protect. In Sierra Leone, some chiefs operate highly discriminatory justice systems that facilitate the oppression of youth by 'big men' through excessive fines, often commuted to labour on the big man's land.

Yet the state security and justice systems that donors work with more frequently (and that home publics seemingly accept) also violate basic rights. Indeed, the very rationale for DFID's security sector reforms in Sierra Leone was to reform 'elements within the security sector [that] can be a major source of insecurity and human rights abuse' (Short, 2000). The need to engage with problematic state security systems is, therefore, justified on the basis of trying to address violations and reform oppressive practices – and the same case can be made for working with non-state actors.

Engagement with state and/or non-state security and justice actors cannot, therefore, be represented as a stark choice between engaging

with those who support rights on the one hand and those who violate them on the other. Both systems offer opportunities and risks, and it is not always appropriate to engage with non-state actors, just as it is not always appropriate to engage with state actors. Where donors judge both to be suitable partners, they also have the option of interventions that bridge state and non-state providers to build more coordinated security or justice sectors.

Rule of engagement 2: Be fit for purpose ... non-state support needs different skills and procedures

The capacities and credibility needed to work with non-state security and justice actors may require donors to assess and invest in their operating procedures. This includes developing local contacts and networks, locating donor offices outside capital cities and recruiting more staff who speak the local dialects in which most non-state services operate and who have anthropological specialisations (rather than generic governance or technical law and policing backgrounds). For instance, one of the more established non-state justice providers in Sierra Leone is the Bo Peace and Reconciliation Movement (BPRM), which was set up during the civil war to resolve disputes around a single town, Bo, in the Southern district. BPRM has no office in the capital and is staffed primarily by volunteers who speak local languages.

Accessing and supporting these kinds of local initiatives will require donors to operate differently. Donors should also consider whether their relationship with government is strong enough to withstand the potential fallout from support for non-state security and justice actors, who may be perceived as competitors.

Critical aspects of programming – such as assessing at the outset what ordinary citizens want from any justice and security system, or gaining the trust of non-state actors to build a relationship where they are amenable to working with donors – will depend on donors cultivating the requisite capacity and credibility for success. In confronting this challenge, it is donors who must change to meet the needs of security and justice provision in fragile states, not the other way round.

Being fit for purpose also requires donors to adapt how they provide assistance. It is not realistic to assume that non-state actors will always be able to meet demanding accountability and reporting standards (not least because those involved may be illiterate) but this does not necessarily mean that they are inappropriate partners. Donors need to develop alternative financing models to work with some non-state security and justice actors. Community-based organisations can also be used as intermediaries if they are locally credible and have transparent relations with the donor. Finally, engagement with non-state secu-

arity and justice actors may not always lend itself to the kinds of ‘big spend’ programmes that donors prefer. While some interventions may focus on complex societal issues, such as the relationship between common and customary law, it is increasingly recognised that most are more likely to be targeted, small-scale projects that buy whistles, bicycles and notepads than large social engineering efforts (Derks, forthcoming).

Rule of engagement 3: Understand context ... and not just at country level

Much development work exhibits a lack of awareness of context, but this is acute in the justice and security sector where blueprint approaches are particularly resilient.

Understanding context, however, needs to go beyond country-level analysis. The constellation of security, safety, justice and rule of law that governs a community relates directly to the unique political settlements at play and, as such, varies in important ways even within a country. Donors need to be savvy about the interconnections between justice, security, interests and power and understand that altering who is responsible for justice and security will consolidate or reallocate power in crucial ways.

A failure to understand the political economy of non-state actors and service provision was evident in DFID’s Chiefdom Governance Reform Programme in Sierra Leone. This sought to re-install paramount chiefs in the provinces to attract communities back home after the war. However, insufficient understanding on the part of DFID about how chiefs and their patronage networks and justice systems were connected to the very grievances that instigated conflict in particular districts meant that the programme was ultimately dismantled in 2002. DFID has not engaged with Sierra Leonean chiefs since (Peacebuilding Support Office, 2007).

The lesson to be learnt from this experience is not that non-state actors should be ignored, but that effective engagement demands understanding of the many ways in which they provide services and exercise power within communities. Working with Shuras in Afghanistan (traditional council or consultation) has markedly different political ramifications to working with trade associations in West Africa, which in turn poses different challenges to supporting community policing in Kenya. Each of these providers will have a different relationship with their communities and the state. Engagement, therefore, needs to be built on an acute understanding of each micro-level context. There is significant diversity within the non-state category and few methods to determine which actors are appropriate partners and which should be avoided. Donors need to develop political economy analysis tools to both map and differentiate between non-state actors and to analyse the interests and power structures at play.



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Rule of engagement 4: Only engage when it adds value ... functioning local solutions should be left alone

A micro-level understanding of context will also help to determine whether an intervention is likely to add value. Where practices or institutions are working relatively well, donors need to consider whether their involvement can strengthen service delivery or whether it might undermine one of the few services that actually function, even if not in the most efficient or rights-respecting manner. For instance, efforts by trade associations, such as the Bike Rider's Association and Market Women's Association in Sierra Leone, demonstrate effective non-state mechanisms to resolve disputes that are unlikely to benefit from donor intervention. Technically, these mechanisms occur outside the law, with the associations imposing fines or other penalties on members who break association rules.

Where donors identify practices that are working well – providing functioning institutional solutions to local problems – they should acknowledge this and focus their attention elsewhere. Efforts to replicate initiatives that work in one locale in other parts of the country might be an attractive strategy for donors but, if chosen, should only be carried out in close consultation with communities, including the one where it has worked. While rolling out effective practices might seem beneficial, results from engaging with non-state security and justice providers are more likely to be limited to communities and differentiated within a country, not large-scale and replicable. The point of this work is that there are functioning local-level practices that donor assistance might support in some way – not that the solution to societal problems lies in one small community and can be scaled-up countrywide.

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