



**Non-state Justice and Security Sector Reform
Libra Knowledge Network
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If just 10% of disputes in the developing world are resolved through state police and courts, then why is it that donors in the security and justice sector concentrate 90% of their funding on these institutions? Something seems seriously awry.

On 15 January 2008, Libra Advisory Group brought together a diverse mix of Security and Justice Sector Reform (SJSR) practitioners to discuss this rather inexplicable 10/90 rule. The following is a brief summary of the wide-ranging discussion.

Defining Terms

'Non-state justice' is a topic heard increasingly in discussions among SJSR donors and practitioners. It arouses strong passions and often conjures up variant images. For some, it evokes nightmarish visions of vigilante groups marauding around neighbourhoods with clubs. Others envision beneficent sages sitting around under trees and handing down judgments ingrained in the wisdom of the ages.

Both positions are cartooned versions of a much more complex, dynamic reality that is finally getting the policy attention its significance deserves. So what exactly is a non-state justice or security provider?

Essentially, the term is a catch-all for seven diverse types of individual or organizations:

- Formal commercial security companies;
- Private citizens, organized on a voluntary, as needed, basis to combat local crime;
- Anti-crime groups, that have grown into (semi-)commercial operations;
- Security groups organised by, and for the benefit of, trading communities;
- Informal local government security structures that provide everyday policing;
- Customary chiefs;
- Restorative justice community-based organisations.

For donors and practitioners, some of these groups are in clear sight: e.g. the uniformed guards that open the doors to the apartment complexes and restaurants where they sleep and eat when in the developing world. Most, however, are not uniformed and derive their legitimacy from a combination of traditional legitimacy and deeds done. In many parts of the developing world, allegiances to non-formal mechanisms for conflict resolution and restorative justice are stronger than fealty to the state. This is for reasons of both ease and choice. For many citizens, especially in rural areas, accessing the nearest police post, magistrate, or even telephone might involve a lengthy and difficult journey. Moreover, when there is a choice between 'state' and 'non-state' justice, empirical research indicates that the latter is chosen over the former.

The discussion turned to whether donors should support this programming endeavor. A number of convincing arguments were made both for and against increased engagement.

SJSR practitioner engagement with non-state security providers: the pros....

The first argument for supporting non-state justice and security provision is that it would practically enact policy commitments. Aid donors often say they are working in the 'interests of the poor' so why not support the form of justice they go to? In Nigeria, for example, only a small minority access justice services through the formal justice system and those that do tend to be of financial means. The majority of the population cannot afford to and looks for informal systems to solutions for their problems. Therefore, support for reforms in informal policing and justice systems would be – to borrow some phrases from the donor lexicon – a 'pro-poor' and 'people-centred' policy.

Secondly, it is a much more financially sustainable strategy than continuing to prop up national institutions. Servicing and maintaining the accoutrement of donor projects is more than most countries can afford. In Timor-Leste the compounds of many police stations are graveyards of busted cars, the legacy of donor infusions of capital and insufficient money in the national budget for upkeep. As the cars rust, the majority of everyday disputes in the country continue to be dealt with by a dynamic mix of rituals, taboos, protocols and social relationships. The reach of the formal justice system is even more nominal. Despite millions invested, there are just three functioning courts in the entire country.

Thirdly, these are sustainable structures. They can be highly effective, since they have local knowledge and legitimacy. Informal structures and mechanisms that vary in their shape and organization, and which occupy a more central and accepted role over the lives of individuals. Trying to

assert the formal authority in a state police service rubs against ingrained allegiances to mechanisms for conflict resolution and restorative justice.

.....and the cons

At the same time, engaging with non-state actors carries severe drawbacks and potential programmatic risks. (Many of the potential downsides apply also to working with state institutions.)

Firstly anything run on voluntarism can be unreliable and unsustainable. They are susceptible to corruption, abuse of power & manipulation by local elites.

Second, this is a sector that may not operate according to a donor's wishes. Record keeping and accountability will be irregular. Few of the aforementioned groups are likely to be familiar with the ubiquitous 'logical framework'. Moreover, doffing attention may not be welcomed by donor's normal interlocutors: national governments. Every pound invested in the 'non-state' sector is a pound potentially not invested in the institutions of the national government. Accordingly, there may be resistance on their part

Third, if consultants can occasionally make such a hash out of programming a sector that can be 'seen' then how can programmers understand and programme to a less visible sector? Understanding such a layered and ever-moving process is much more difficult than devising a means of reconstructing the institutions of a formal system. A detailed and nuanced understanding of the local culture, history and norms is difficult enough for anthropologists, let alone consultants schooled in an entirely different background, with little prior exposure to local processes and little time to gain familiarity with them. Given the short, often rushed time frames that projects are designed under, is there a danger that projects that seek to work with the non-state sector will misunderstand the sector? There is a danger that more harm than good may be done.

Fourthly, engagement carries the risk of bad publicity: the sort that gives risk-averse civil servants the shivers. This is an unpredictable sector that is dynamic and insusceptible to management. Supporting 'pro-poor' groups may increase unpredictability and possible blowback.

Conclusion

The hindrances impeding engagement with non-state actors are profound. Though vast, they are not sufficient reasons for not trying to engage with the non-state. What was needed to engage effectively was a savvy programming approach.

The first step has been taken already in recognizing the salience and relative size of the non-state sector. Less than a decade ago, discussions of

'non-state justice' was a relatively narrow academic sub-discipline. Now, thanks to a combination of accessible scholarship and donors actually reading that scholarship, the topic is emerging as one of the mainstream. In conversations about SJSR, it is now as *de rigueur* to talk about 'non-state justice' as it is 'civil society' and 'local ownership'.

Now comes the hard part. Programming requires great sensitivity. Donors – and the large array of institutions that implement their program – need to increase their sensitivity and knowledge of traditional and informal systems operate and the belief systems on which they are based. (There was a sense that too many practitioners remain unjustifiably negative about their contributions and impact.)

In order to manage the higher levels of risk, uncertainty and complexity, and design and implement interventions, we need a much greater understanding of the context, process and content of the situation.

In effect, this means

- Companies who bid for work need to be subjected to a much higher level of scrutiny regarding their effectiveness and that their provision of consultants must be validated ensuring that they have the necessary consultancy and technical skills.
- That the process of programme design – people, organisational and environmental diagnoses - needs be significantly developed to provide much more robustness, reliability and validity. Design needs key local personnel and stakeholders with concentration on an anthropological understanding of the context,
- That we need to be more courageous in taking on more difficult work but in a focused and clearly thought out way