



Law and Order: Tools for Building State Protection Capacity to Prevent Mass Atrocity Crimes

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Key Points

- Justice sector reform (JSR) seeks to transform the laws and the judiciary of a society, disarmament, demobilization, and reintegration (DDR) disbands nonstatutory forces that are beyond the rule of law, and security sector reform (SSR) professionalizes the security sector to ensure that human rights are defended and atrocities prevented. These programs, when working in tandem, foster state protection capacity by creating laws that mitigate pathways to atrocity and establish professional, effective, legitimate, apolitical, and accountable security forces that uphold the rule of law.
- Atrocities often arise from the failure of a state's legal system to protect rights and punish perpetrators of violence against civilians. A country's legal system is both a mirror of and a guide for its development, and a logical first place for atrocity prevention by creating rights-based laws that criminalize human rights violations, mitigate pathways to inhumanity, and foster community reconciliation. Yet transforming a prejudicial justice system is extremely complex because of its political nature.
- JSR has come to mean comprehensive reform of laws and institutions that mete out justice with greater accountability, transparency, accessibility, and efficiency. In a phrase, JSR promotes "rule of law."
- A hybrid approach to JSR will help to ensure local ownership, program range, and durability, and could

serve as the first phase of a longer term JSR program that seeks to formalize a country's justice sector.

- DDR disbands militias, terrorists, and other nonstatutory forces that can commit atrocities. Their existence is also a challenge to the rule of law.
- SSR professionalizes the security sector so that it becomes a defender against human rights abuse rather than a purveyor of it. The prevention of atrocities cannot occur without moral and competent security forces.

How can a country's legal system avert atrocities? How should gangs, militias, and other nonstatutory forces be dealt with? How does one transform legitimate security forces from purveyors of atrocities to protectors of human rights? How can one make a policeman someone a child would run to for safety rather than away from in fear?

The international community has a wide range of "carrots and sticks" to help forestall atrocities like genocide or intervene in countries where they occur. However, a better remedy is to assist states in building their own protection capacity to prevent atrocities in the first place. JSR, DDR, and SSR are three programs that states and the international community can use to achieve this. JSR seeks to transform the laws and judiciary of a society, DDR disbands nonstatutory forces that are beyond the rule of law, and SSR professionalizes the security sector to ensure that human rights are

defended and atrocities prevented. JSR, DDR, and SSR have their origins in post-conflict transformation, but their utility is much broader than this: they possess a strong prevention capacity too. These programs, when working in tandem, foster state protection capacity by creating laws that mitigate pathways to atrocity and establishing professional, effective, legitimate, apolitical, and accountable security forces that uphold the rule of law.

JSR: A Hybrid Approach

Atrocities often arise from the failure of a state's legal system to protect rights and punish perpetrators of human rights violations. A country's legal system is both a mirror of and guide for its development, and a logical first place for atrocity prevention by creating rights-based laws that criminalize human rights violations, mitigate pathways to inhumanity, and foster community reconciliation. Yet transforming a prejudicial justice system is extremely complex because of its political nature. Legal traditions are the sinews of a society and often resistant to change. Worse, societies with segmented or plural legal systems face a hall of mirrors that can make JSR difficult. Accordingly, JSR must be approached with humility and conducted in partnership with the country undergoing reform.

JSR has come to mean comprehensive reform of laws and institutions that mete out justice with greater accountability, transparency, accessibility, and efficiency. It is more than catching criminals more effectively; it is about imbuing the norms of justice within a country, fostering civil values in a society, and enshrining the principle that no one is above the law. In a phrase, JSR promotes “rule of law.”

Although JSR programs vary widely, they typically entail at least five elements: (1) legal reforms that streamline existing laws and introduce new ones to support rule of law; (2) institutional development, including reform of the ministry of justice, the court system, legal education, and infrastructure; (3) the training and professionalization of individuals in the justice sector, such as judges, prosecutors, lawyers, court administrators, and ministerial staff; (4) extension work to provide accessibility, legal aid, assistance to victims, and monitoring of judicial assistance; and (5) consultations with institutions of traditional or informal justice.

However, top-down JSR programs that seek to rebuild another country's justice sector are fraught with challenges, as demonstrated in Afghanistan, Iraq, the Democratic Republic of the Congo, and elsewhere. These efforts run aground due to a heavy foreign advisory hand, too rapid implementation, and the collision of Western-styled legal norms and practices with traditional laws and principles. Legal systems are not easily grafted and transplanted from one society to another, nor should they be. Such efforts may be perceived as chauvinistic and rejected by the population undergoing the reform, nor will they resolve legal pluralism or integrate segmented societies.

Instead, a bottom-up approach builds on what already exists. Rather than emphasizing quick and massive reconstruction on the ruins of the previous justice sector, hybrid JSR amalgamates formal and informal justice systems. Customary institutions deserve a degree of respect. Informal actors such as local tribal chiefs or traditional councils, like Islamic *shura*, often provide the basic unit of local governance and need to be incorporated into overwhelmingly state-focused programs. Moreover, people often turn to informal institutions of justice when formal ones fail, are perceived as corrupt, or are unavailable—the case in many conflict-affected states. Embracing this reality rather than ignoring it may improve justice outcomes. A hybrid approach has been employed in Sierra Leone, Ghana, and elsewhere.

Hybrid JSR has several advantages. First, combining international and domestic law helps secure legitimacy and local cooperation. Second, adopting some indigenous legal traditions into the judicial edifice fosters local ownership, increasing the durability of reforms introduced by the JSR program. Third, a hybrid JSR helps guarantee access to justice since the informal justice sector frequently offers more accessible institutions, especially in rural areas where the formal system does not always penetrate. Fourth, the superior reach of the informal justice system better disseminates JSR effects throughout the country. Fifth, a hybrid approach can act as one step in a longer road to a formal justice sector that may take years or decades to develop. Thus, hybrid JSR is the first stage in a phased approach to wholesale transformation. Such an evolution might also produce a more seamless blend of local and international ideas of justice appropriate to that society.

Some will balk at any form of a hybrid justice sector. To be clear, customary law is not always compatible with formal law, human rights, and principles undergirding democratic governance. But the uncompromising concerns of fervent human rights defenders and Western norms of justice may prove too impracticable for the limits of what a JSR can reasonably achieve. The perils of such idealism in the face of complex realities have led to the concept of “good enough governance” among some international donors involved in country reforms. Born out of observations on the ground, this concept suggests that a certain degree of humility is required when tackling complex transformation efforts—like JSR—and that compromises must be made to ensure program success.¹

There is no model for a hybrid system of justice, as each is unique to the needs of the society it serves. However, it is possible to develop a set of core crimes that should underpin any legal framework for atrocity prevention. Core crimes are wrongful acts such as genocide that justify criminality. It is critical for stakeholders to find common ground on fundamental questions regarding the definitions of core crimes, the proper character for members of the justice sector, and the standard of evidence necessary to prove such crimes.

What constitutes a core crime must be a blend of international and domestic law. Domestic penal law will generally include a number of offenses that find equivalency in core crimes, such as criminal homicide; assaults, endangering behavior, and threats; sexual offenses; and kidnapping and related offences. Several sources of international law exist that can inform the compilation of a set of core crimes, including international criminal law (ICL), international humanitarian law (IHL), and international human rights law (IHRL).

Given the ambiguities inherent in human rights definitions and the complex causes of atrocities, determining what protections should be afforded to individuals comes down to distinctions between derogable and nonderogable rights. Derogable rights are those that may be suspended by states under limited circumstances, as specified in Article 4 of the International Covenant on Civil and Political Rights. Nonderogable rights cannot be restricted even in cases of public emergency. The latter include:

- The right to life (Article 6).
- The right not to endure torture and cruel or inhuman punishment (Article 7).
- The right not to endure slavery and involuntary servitude (Article 8, paragraphs 1 and 2).
- The right not to endure imprisonment for breach of contract (Article 11).
- The right not to endure retrospective criminal legislation (Article 15).
- The right to be recognized before the law (Article 16).
- The right to freedom of thought, conscience, and religion (Article 18).

By analyzing international law, it is possible to derive a set of core crimes to use as a basis for a hybrid JSR program tailored to prevent atrocities (see Table 1).

These crimes constitute, *per se*, a public wrong. Core crimes are unlawful killing, wounding, rape, hostage taking, torture, outrages on personal dignity, and abduction or arbitrary detention. Core crimes usually find corresponding laws in indigenous legal customs and should be integrated there. Derogable rights should also be honed for atrocity prevention, especially in standards of evidence and guilt as well as the codification of crimes.

Local laws may need refining and strengthening to blunt behaviors that induce atrocity, and it might be necessary to craft region-specific anti-genocide laws. Also, policies of deliberate neglect can be tantamount to atrocities, such as starving prisoners to death or withholding life-saving medicine from targeted ethnic groups. Such practices should be outlawed and oversight instruments put in place to ensure transparency and accountability.

In general, international and local notions of justice need not fully agree on the metaphysics of the law but can concur on the general principle behind it. No groups should be excluded from the rule of law, and the objective of this kind of JSR is to mitigate pathways to atrocity.

Table 1. Core Crimes and International Law

Core Crime	International Law			
	Genocide (ICL)	Crimes Against Humanity (IHL)	War Crimes (IHL)	Grave Human Rights Abuses (IHRL)
Unlawful Killing	Killing	Murder	Willful killing, killing, or wounding a combatant who, having laid down his arms or having no longer means of defense, has surrendered at discretion, killing treacherously a combatant adversary	Violation of the right to life
Unlawful Wounding	Causing serious bodily or mental harm	Inhumane acts intentionally causing serious injury to body or to mental or physical health	Willfully causing great suffering, or serious injury to body or health, subjecting persons who are in the power of an adverse party to physical mutilation, wounding treacherously a combatant adversary	Violation of the right to be free from cruel, inhuman, or degrading treatment or punishment
Rape		Rape	Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in Article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence	Violation of the right to be free from torture and from cruel, inhuman, or degrading treatment or punishment
Torture		Torture	Torture	Violation of the right to be free from torture
Outrages on Personal Dignity		Inhumane acts intentionally causing great suffering	Inhumane treatment, committing outrages on personal dignity, in particular humiliating and degrading treatment	Violation of the right to be free from cruel, inhuman, or degrading treatment or punishment
Abduction, Arbitrary Detention, and/or Hostage Taking		Deportation, imprisonment, or other severe deprivation of physical liberty in violation of fundamental rules of international law	Unlawful deportation or transfer or unlawful confinement, taking of hostages	Violation of the right to personal liberty

Hybrid JSR can be facilitated through judicial integrators—specially trained individuals or groups that straddle the line between formal and customary law. Examples include community-based paralegals, with expert knowledge of the hybrid legal framework; community safety groups, whose functions often extend beyond policing and into dispute resolution; and other community-based schemes. JSR integrators are not legal missionaries, banishing the darkness of customary law with the light of the formal legal system. Instead they are facilitators of a hybrid approach to justice that promotes the rule of law and local ownership, respects indigenous norms and institutions of justice, and fosters human rights principles.

Attorneys and other members of the formal justice sector may not welcome the perceived competition posed by judicial integrators, but this is often more of a perception problem than true competition. Paralegals, law clinics, and other informal actors should not supplant attorneys, magistrates, or judges.

Working through judicial integrators can help bridge the legal dualism initially suggested by a hybrid JSR approach. For example, paralegals and community groups can promote commonalities between the formal and customary laws, such as those against murder and rape. Second, they can identify fair-minded chiefs and elders who can help with internal advocacy for the program. Third, as the formal system is socialized, it can be invoked to check for unfairness and exploitation in the customary system, especially around core crimes. Fourth, integrators can bridge the gap between the urban and rural populations. Typically, JSR programs are instituted at capitals and major cities, marginalizing rural communities and even leaving some of them fearful of formal legal structures. Integrators address this by providing an alternative that synthesizes traditional and modern approaches. Lastly, integrators offer a gradual approach to JSR that may ease in fundamental change more effectively than the shock and awe of wholesale programs attempted elsewhere, which seem to have limited durability.

Whether formal or informal, the justice system should be participatory and inclusive of all groups. To help prevent atrocities, it must eschew historic biases against traditionally marginalized groups, such as women and ethnic or religious minorities, and criminalize their persecution. At

a minimum, the test for good practice should include the extent to which justice is meted out and perceived by local populations as fair and consistent with indigenous and international expectations (to a “good enough governance” international standard); the codification of core crimes that mitigate paths to atrocities; the extent to which the mechanisms of justice are affordable, proximate, and available to all under its influence; the simplicity of procedures and the speed of judicial service; and the ability to produce outcomes that emphasize community building and, if necessary, reconciliation.

DDR: Consolidating the State's Monopoly of Force

Atrocities are often executed at the hands of militias, terrorists, gangs, insurgents, armed political factions, and other nonstatutory forces that fall outside the rule of law. These forces must be dispersed. The key program to achieve this is disarmament, demobilization, and reintegration (DDR).² Done correctly, it transfers combatants safely into civil society, enables them to earn livelihoods through peaceful means, and supports community building. It is critical for atrocity prevention not only because it removes an unaccountable instrument of terror from the arsenal of abuse but also dovetails with other social programs that promote liberalism and reconciliation.

DDR is the fulcrum between war and peace in any context. In the short term, those who do not find peaceful ways to make a living are likely to return to conflict or join gangs; in the long term, disaffected ex-combatants can challenge public order and polarize political debate, since they are often easy targets of populist, reactionary, and extremist movements. Typically, DDR is performed in post-conflict societies. To date, the United Nations is the leader in developing and implementing DDR, with programs in Burundi, Côte d'Ivoire, the Democratic Republic of the Congo, Liberia, Sierra Leone, Sudan, Uganda, Afghanistan, Nepal, the Solomon Islands, and Haiti.³ However, DDR can also be applied to preconflict situations, which is key for preventing potential atrocities. For example, it can be used to thin a bloated military, rebalance the ethnic composition of a police force, or disband factionalized paramilitary forces.

As the term implies, DDR is a three-stage process. The first stage involves disarming combatants, who report to a safe and secure cantonment site to turn

in their small arms, munitions, and light and heavy weapons. This is usually linked to broader small-arms and light-weapons counterproliferation programs that document and destroy the weapons and munitions. The second stage demobilizes and disbands the armed groups, formally breaking up command structures and marking their official status as “civilian.” Lastly, ex-combatants are reintegrated into civil society to prevent another escalation of conflict. This typically is divided into two parts: initial rehabilitation and long-term reintegration. Initial rehabilitation entails giving ex-combatants short-term support packages and transporting them back to their homes to begin their new lives. Long-term reintegration involves vocational training and placement programs, working with communities to accept ex-combatants, and monitoring progress in the difficult transition to civilian life. The overall goal of DDR is to ensure permanent demobilization, sustainable peace, and the prevention of atrocities.

Ideally, nonstatutory forces will obey the law and willingly submit to DDR, but this is often not the case. In many cases combatants do not relinquish their weapons if they do not believe the government will ensure their safety. Because of this, the security forces conducting the operation must be large enough to monopolize force and perceived as credibly neutral by all parties, which is tricky in conflict-affected countries where distrust is ubiquitous.

In other instances, armed groups generally hold back their best fighters and weapons as a hedge against other groups they believe will renege on the process. This creates a prisoner’s dilemma that encourages preemptive defections from the DDR process, as politicized armed groups fear that rivals will defect first and gain the advantage of surprise in renewed conflict.⁴ A combatant group typically disarms only if all combatants disarm; otherwise the disarmed are vulnerable to the armed, who may seek reprisal or strategic gain against their defenseless enemies. Although simple in theory, simultaneously disarming thousands of combatants in a segmented society is thorny in practice. Mismanaging a DDR process, which is easy to do, creates a classic race to the bottom.

Sometimes, the victims of violence may not welcome DDR, as they may question why those who perpetrate violence are rewarded with money and jobs while their victims receive little or nothing.

This natural response can be partially addressed through a robust public information and sensitization campaign prior to the start of the DDR program. Its central message is simple: failing to transition combatants to civilian life almost guarantees more violence and victims.

Lastly, a DDR process requires a reliable funding source, and here the international community can help. A program that runs out of money halfway through can be worse than no program at all, since a temporary or premature shutdown may provoke an attack by the armed on the unarmed or encourage ex-combatants to take up the gun again. Also, ex-combatants who are denied benefits might seek reprisals against DDR staff. Unfortunately, it is difficult to forecast DDR funding needs in states that have endured much conflict, where nearly everyone is a perpetrator of violence, a victim, or both. Because of this, many DDR programs prioritize the “DD” to get the guns and gangs off the streets but leave the “R” to wither. The problem of the “forgotten R”—that is, not fully reintegrating ex-combatants into society—involves them turning rogue again, perpetuating the cycle of violence. This manifests itself most visibly in criminal gangs and militias, which often form from demobilized groups and can terrorize the population, hinder reconciliation efforts, and challenge the state’s legitimacy.

Despite these challenges, DDR is a critical element of any atrocity-prevention program and must not be overlooked simply because it is difficult to establish. DDR programs have succeeded in Liberia, South Sudan, and elsewhere. Without DDR, forces outside the rule of law may act with impunity and threaten the safety and security of the population, and are probable instigators of atrocities.

SSR: Professionalizing Security Forces

Discrimination, corruption, and abuse of power by law-enforcement officials, the military, and paramilitary forces ignite and fuel atrocities, and make it even harder to achieve reconciliation after a conflict. Injustice drives people to take up arms. Because of this, JSR and DDR efforts must work in tandem with an SSR program that professionalizes the state’s security forces. SSR institutes the monopoly of force within a territory and enables the government to enforce its rule of law.

Broadly speaking, “security sector” refers to those organizations and institutions that safeguard the

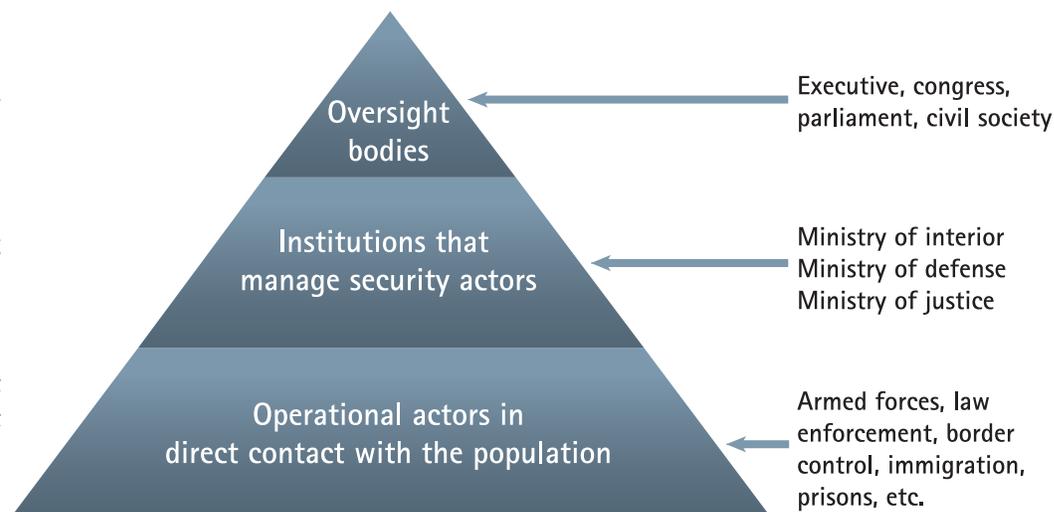
state and its citizens from security threats. SSR is the complex task of transforming the security sector into a professional, effective, legitimate, apolitical, and accountable division that supports the rule of law. Like JSR and DDR, SSR is deeply political, and technical approaches alone will fail. Program failure risks coup d'état, mass atrocities, and war.

To date, creating truly successful SSR programs remains a major unmet challenge for the international community, despite the growing prevalence of peacekeeping missions and nation building around the world. There are several reasons for this. SSR is difficult to achieve, as the examples below illustrate. Also, there remains a significant theory-to-practice gap. Consequently, there is no practicable doctrine, best practice, or even common terminology. The concept itself has no commonly accepted definition and has many names: security and justice reform, security sector governance, security sector development, security force assistance, foreign internal defense, and security system transformation. As efforts to reestablish the security sectors in Iraq, Afghanistan, and elsewhere illustrate, few practical models for SSR have been developed, perpetuating cycles of violence in fragile states, prolonging costly peacekeeping missions, and risking the fomentation of atrocities.

While recognizing that many terms for SSR exist and connote subtle differences to academics, the basic purpose of the program remains the same to the practitioner: the reconstitution of a professional security sector that upholds the rule of law. Security in this context means so-called hard security: physically protecting citizens and the state from threats that endanger normal life, public safety, and survival. Other conceptions of security also exist, such as food and energy security, but are not addressed in this context. While lack of food or energy may be contributing factors to armed conflict and atrocities, SSR programs should not attempt to rectify food shortages or energy blackouts: that would be an overreach of program scope.

The security sector itself consists of three types of actors: operational, institutional, and oversight. Operational actors interact directly with the public on security matters and may include law enforcement, military and paramilitary forces, border control, customs, immigration, coast guard, and intelligence services. Institutional actors manage the policy, programs, resources, and general administration of operational actors and may include ministries of defense, interior, and justice. Oversight bodies monitor and supervise the security sector; ideally, they are civilian led, democratically accountable to citizens, and able to ensure that the security sector serves the people and not vice versa. Oversight bodies may include the executive, legislative, and judicial branches of government as well as municipal and district authorities. One may conceptualize the security sector as a pyramid of actors (see Figure 1). Not included in the security sector are nonstatutory security forces: liberation armies, armed criminal gangs, guerrilla forces, insurgents, and political party militias.

Figure 1: Taxonomy of the Security Sector



These three types of actors can, in turn, be grouped into security subsectors, distinguished from one another by unique objectives, technical knowledge, capabilities, best practices, institutional culture, and professional ethos. Subsectors can overlap and vary widely among countries and regimes, but the distinction is useful to the practitioner designing and managing an SSR program. Taken together, the hierarchy of actors and security subsectors form a matrix of the security sector (see Table 2). This analytical framework will help the planner categorize and understand the myriad elements of the security sector in any

given country or governed area. This will also help the planner to organize a tailored response for the SSR program. As the matrix suggests, building subsector capacity and professionalizing actors make SSR a fundamentally complex and comprehensive effort that is difficult to execute.

Table 2. Analytical Framework of the Security Sector⁵

Security Subsector	Operational Actors	Institutional Actors	Oversight Actors
Military	Militaries, civil defense forces, national guards, militias, paramilitaries	Ministry of defense	Executive, legislative
Law Enforcement	Police, gendarmerie, prisons, criminal justice, presidential guard	Ministry of interior, ministry of justice	Executive, legislative, judiciary, municipal and district governments and councils
Border Management	Border control, immigration, coast guard, customs authorities	Ministry of interior, ministry of defense	
Foreign Relations	Embassies, attachés, and security liaison officers	Ministry of foreign affairs, ministry of defense	Executive, legislative
Intelligence	Collection assets	Intelligence agencies	

There are several challenges to implementing SSR programs. The United Nations, the leading actor in the field, admits its “support for security sector reform [has] largely been pursued as an ad hoc undertaking, hampered by weak capacity and insufficient resources to deliver effective support to national authorities.”⁶ Experiences in Iraq and Afghanistan have been similarly frustrated. There are many reasons for this.

First, though there is a growing consensus that early local ownership of SSR work is a critical component of its sustainability, translating this principle into concrete reality remains a challenge. Even the definition of local ownership is contested. Deciding which local leaders and political groups truly represent local aspirations may be difficult and fraught with uncertainty, and have political ramifications in both indigenous and international politics. Also, local actors often have competing visions and priorities; choosing local partners can be perilous in conflict-affected countries, where there is often imperfect knowledge of parochial agendas. In addition, it may prove difficult to keep insurgents and spoilers out of the process. If they are deemed key stakeholders, they gain legitimacy and the ability to

obstruct progress from within. Finally, measuring ownership is difficult. What metrics are appropriate? Should they privilege local or international values and priorities? Local ownership is sound in theory but ambiguous in practice.

Second, as the security sector comprises various agencies and departments, successful SSR conceptually demands a whole-of-government response

from donor nations. There are several reasons why this is seldom, if ever, done in practice. SSR is a relatively new idea, emerging after the Cold War, and consequently suffers from a dearth of coherent frameworks, common definitions, and technical expertise. On the practical level, SSR strategy demands cooperation from a wide range of agencies that often have conflicting perspectives, priorities, and objectives. The result is often competition between agencies and the uncoordinated and ad hoc implementation of SSR programs. Additionally, the lengthy time horizon for SSR to produce noticeable change may cause donors to lose interest or focus.

Third, SSR is a political process that must be accomplished in partnership with the country undergoing the reform. Conflict-affected countries’ security forces, both statutory and nonstatutory, are usually the de facto institutions of power when the process begins, and altering them can provoke violent reactions and a relapse into armed conflict. It is difficult to persuade a general or warlord in Afghanistan or Congo to put down the rifle and become a corn farmer. International organizations or bilateral partners who ignore the political nuances of SSR and attempt to implement it in a purely unilateral and technical manner will fail.

Fourth, SSR is difficult to operationalize. The majority of countries undergoing SSR are fragile or failed states emerging from armed conflicts. Operating in wrecked countries with ruined infrastructure and in areas where everything seems to be a priority is challenging. SSR processes are resource intensive, requiring significant numbers of trainers and staff, a large logistical footprint, and a programmatic robustness capable of training, equipping, fielding, and sustaining the new security force. It takes years and even decades to create a viable security sector.

Fifth, SSR programs have few good metrics for success. Even the definition of security is ambiguous. Does it refer to state security, regional security, or human security? If all three, how should they be prioritized and integrated? Many of the principles that inform different ideas about security may not easily translate into a coherent and actionable national security strategy. The human security perspective holds that a country is secure when individuals attain freedom from want and freedom from fear. How exactly should the armed forces and other instruments of national power provide this? While the principles behind human security may be sound, operationalizing them is not.

Sixth, international donors are quick to resort to traditional train-and-equip programs in an effort to improve the operational effectiveness of local security forces and put new police on the streets and soldiers in the field. Such programs quickly produce visible results and clear statistics, including number of trainees, uniformed personnel on duty, and vehicles operational. They do little, however, to transform institutions, establish government oversight, and create an appropriate civil-military relationship, which are the goals of SSR. A simple train-and-equip campaign will not transform a security sector, and such programs alone will invite failure.

Lastly, SSR programs generally do not adequately vet members of security forces for past human rights violation, a major failing. Human rights vetting is core to the prevention of atrocities by security forces yet often overlooked because vetting in conflict-affected societies is difficult, owing to the lack of credible public records; it also depends in large part upon guaranteeing the anonymity of verified witnesses who provide information about security force members. SSR programs that conduct vetting frequently compile

a relatively substantial amount of information on individuals, many of whom are ex-combatants and some of whom committed atrocities.

The temptation to hand their SSR vetting records to a special court or truth commission is great, but should be carefully considered. If this happens and the records are used as evidence against a member of the security forces, vetting sources and methods can be compromised and may result in reprisal killings against witnesses who spoke against security personnel on condition of anonymity. Also, the SSR program's credibility will be irreparably damaged, and it will be viewed as a shill for transitional justice mechanisms. Sometimes not everyone in the population wholly embraces or trusts transitional justice programs, seeing them instead as an opportunity for witch trials. Linking SSR to transitional justice will almost certainly demoralize the security forces if they believe that a flawed background check could lead to a trial and false conviction in a special court. A disgruntled or demoralized force may not advance an atrocity-prevention agenda.

SSR is an invaluable tool for atrocity prevention by professionalizing the state's security apparatus. It helps the state consolidate the monopoly of force it needs to uphold the rule of law by assessing the current security sector in terms of capacity, efficiency, and relevance and supporting the creation of a balanced and effective security sector, informed by a clear understanding of its objectives, threats, and resources available. SSR can reconstitute and professionalize security forces, such as the military and police; build civilian-led security-sector institutions, such as ministries of interior, defense, and justice, which can manage security organs competently; and establish transparent oversight mechanisms for the security sector in the executive and legislative branches, providing capable security sector governance and making the security sector accountable to citizens through democracy. Finally, SSR processes can assist in developing a national security strategy that addresses the root causes of atrocities and translate that national strategy down to local levels.

Conclusion: Consolidating Law and Order

Taken together, JSR, DDR, and SSR work as one to establish law and order that can significantly reduce the likelihood of atrocities. A rights-based JSR program that establishes a set of core crimes based on international law and blended

with complementary indigenous laws criminalizes behaviors that can lead to atrocities. Moreover, a hybrid approach to JSR will help ensure local ownership, program range, and durability, and could serve as the first phase of a longer-term JSR program that seeks to formalize a country's justice sector.

DDR serves to disband militias, terrorists, and other nonstatutory forces that fall outside the rule of law. Such armed actors are unaccountable instruments of violence that, at the very least, tear at the fabric of a brittle society and, at worst, commit atrocities. They must be brought into the fold of the law.

SSR professionalizes the security sector so that it becomes a defender against human rights abuse rather than a purveyor of it. The prevention of atrocities cannot occur without moral and competent security forces.

These three programs rise and fall together: though operationally distinct, they should be conceptually integrated and closely coordinated. DDR without SSR produces ex-combatants on the street who can act with impunity without fear of strong law enforcement. SSR without DDR creates a security sector challenged by militias, paramilitary groups, and other threats. JSR without SSR will probably fail because criminal justice systems require professional police, prisons, customs, and other instruments of law enforcement. SSR without JSR will likely be unsuccessful. Without a functioning judiciary and appropriate laws to enforce, police functionality and legitimacy suffer, and officers can end up being stooges of a corrupt legal system. Lastly, these programs are deeply political because changing power structures in a conflict-affected country is complex and dangerous. Consequently, technical approaches alone will likely fail.

Ideally the combination of JSR, DDR, and SSR reinforces reconciliation by fortifying mutual trust among adversarial groups and former enemies by encouraging followers to lay down their guns and enter a life of nonviolence. This is particularly true if all groups perceive that they will have a substantive role in crafting and serving in the transformed legal system that promotes the rights of all. This effort requires political will on the part of the host government and civil society to create space for the reforms. However, these

tools hold the promise of atrocity prevention and will build state protection capacity.

Principles for JSR, DDR, and SSR

For JSR, DDR, and SSR

- **Every program is unique.** There are no formulaic solutions or checklists for success.
- **Take a regional approach to the problem.** The antecedents of atrocities are seldom confined to the territory of a single state, nor is the solution. A regional understanding of the problem should inform the JSR, DDR, and SSR program design.
- **All politics are local.** JSR, DDR, and SSR are deeply political programs because they rewire de facto authority structures in conflict-affected states. Consequently, technical approaches alone will likely fail.
- **Political agreement.** Ensure JSR, SSR, and DDR have a clear mandate by including it in an executive order, legislation, or a peace agreement (if in a conflict setting).
- **JSR, DDR, and SSR are linked.** They rise or fall together and should be planned, resourced, implemented, and evaluated as a single entity.
- **Sufficient funds and political will.** Erratic support may result in a half-developed justice or security sector, which can be worse than none at all.
- **Institute justice and security sector management.** Transform institutional and oversight actors such as ministries, perhaps even starting with these organizations.
- **Do not graft other countries' systems on the host nation.** Work with the host nation to develop an appropriate legal infrastructure and national security strategy that uniquely addresses root causes of atrocities. Avoid templating other countries' legal systems and strategies.
- **All institutions must rise together.** Recognize that judges or police cannot get paid if the ministry of finance is nonoperational, which may impact their behavior.
- **Instill, when possible, democratic principles.** For example, civilian control of the military.

- **Cultivate professionalism.** Transparency in oversight, accounting, promotion systems, and so forth will encourage a culture of merit.
- **Sensitize the population to what's going on.** Not everyone will welcome new laws, demobilized ex-combatants into their hometowns, or the training of new security forces, especially if the legacy forces were complicit in atrocities. A coherent, nationwide, strategic communities program is needed to explain to the public why this is beneficial, how it will unfold, who will be affected, and so forth.
- **Manage spoilers.** Be inclusive in planning and engage civil society but manage spoilers effectively. If a spoiler is given a position of authority inside the program, then the JSR, DDR, and SSR program may be undermined.
- **Instill professional values.** Embed the norms of atrocity prevention in the justice and security sectors by incorporating respect for the rule of law, human rights norms, and international humanitarian law at all levels of security training and justice education. Instill a national identity above sectarian interests, and foster allegiance to the constitution rather than an individual leader.
- **Institutionalize constraints.** Checks and balances in the government will limit the power of political, bureaucratic, and security actors in a state, making them exercise restraint.
- **Humility.** Be humble about what can be achieved. Ensure expectations are managed, especially one's own.

For JSR

- **Hybrid JSR.** Amalgamate formal and informal justice systems to foster local ownership and program durability.
- **Utilize JSR integrators.** Specially trained paralegals and community organizations can help bridge the gap between the formal and informal justice sectors, ensuring a more seamless hybrid solution.
- **Core crimes.** Establish a set of core crimes based on international law that criminalize behaviors that may lead to atrocities and find equivalency in indigenous customary law.

- **Consider atrocity-prevention legislation.** Encourage the host government to pass laws that mitigate pathways to atrocities and criminalize behaviors that could induce atrocities.

For DDR

- **Include all stakeholders.** Every group that is expected to participate in DDR should be included in the agreement to engage in the program. Simply outlawing an armed group and demanding its dissolution will not guarantee its cooperation.
- **Demobilize with dignity.** Combatants are more likely to cooperate if they are not treated like criminals. However, be prepared for opposition from international and domestic audiences since many in the legacy security sector could in fact be criminals.
- **Understand how DDR will affect internal group dynamics.** DDR can change the political status of groups, which in turn can alter strategic outcomes. For example, the core leadership of a group might not wish to disarm because it would weaken negotiating power with the government, yet the periphery of the group (e.g., fighters and local sympathizers) might want to demobilize to start a new life. DDR in this context might produce unexpected outcomes, including splintering the armed group.

For SSR

- **Lose the train-and-equip mentality.** SSR is more than train-and-equip and involves engaging civil society, human rights vetting, and transformation across the security subsectors, operational actors, institutional actors, and oversight actors. Training and equipping is necessary but insufficient for SSR.
- **Vigorously vet all candidates.** To not sufficiently vet individuals in conflict countries is unacceptable.
- **It may be necessary to start over.** Avoid lustration—the process of culling an existing security force, retaining desirable individuals, and dismissing the others—and demobilize the entire force since you probably do not know who is “good” from who is “bad.” Lustration often occurs in haste and lacks the rigor of individual background checks, resulting in problems (e.g., the “de-Baathification” of the Iraqi army in 2003 that contributed to the insurgency later). It is better to demobilize the entire force and

then readmit qualified individuals on a case-by-case basis using a deliberate vetting process.

- **Size of force constrained by government's ability to pay salaries.** Force size should be determined by the host government's ability to pay salaries over the long term since unpaid soldiers are often a greater threat to insecurity than is foreign invasion. This should be a core planning constraint when designing an SSR program.
- **Smaller, well-trained, volunteer force preferable.** It is easier to instill discipline and professionalism in such forces.
- **The force should mirror society.** The new force should be inclusive of all groups across ethnic lines and women. This will help ensure it does not become a sectarian instrument of power, as the Armed Forces of Liberia was under Samuel Doe's regime. Create an ombudsman or similar office to mediate ethnic disputes within the ranks.
- **Literacy is important.** Leaders need to read and write orders. It may be necessary to include literacy courses into basic training.
- **Be aware of inherent dilemmas.** For example, sometimes one must choose between security versus development. In DDR, do you grant amnesty to potential war criminals to encourage them to participate in the program? In SSR, do you turn over vetting records to a truth and reconciliation commission, risking reprisals against witnesses who spoke with the vetting teams? Do you prioritize ethnic inclusion or literacy? An ethnically balanced force is a guiding principle of SSR, yet some ethnic groups may have been deliberately denied access to education and are functionally illiterate. Build literacy and civics courses into training.

Endnotes

1 Merilee S. Grindle, "Good Enough Governance Revisited," *Development Policy Review* 25, no. 5 (September 2007): 533–74; Merilee S. Grindle, "Good Enough Governance: Poverty Reduction and Reform in Developing Countries," *Governance* 17, no. 4 (October 2004): 525–48. For an example of a donor agency adopting this argument, see Department for International Development, *Why We Need to Work More Effectively in Fragile States*, January 2005.

2 Sometimes extra "Rs" are appended to DDR for "rehabilitation" (DDRR) and "repatriation" (DDRRR),

however, these functions are normally included in typical DDR programs. Consequently, this brief treats DDR as all-inclusive.

- 3 The United Nations defines DDR as a process that "deals with the post-conflict security problem that arises when combatants are left without livelihoods and support networks during the vital period stretching from conflict to peace, recovery and development." See "UN Integrated DDR Standards (IDDRS)," 24, www.unddr.org/iddrs/iddrs_guide.php.
- 4 The prisoner's dilemma is a fundamental problem in game theory that demonstrates why two people might not cooperate even though it is in both their best interests to do so.
- 5 This table serves only as an example, as every security sector is unique, although most have a military, police, and other elements.
- 6 *Securing States and Societies: Strengthening the United Nations Comprehensive Support to Security Sector Reform*, UN secretary-general report, S/2013/480, August 13, 2013.

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