

THE JUSTICE SECTOR

Roles and responsibilities in good security sector governance

ABOUT THIS SSR BACKGROUNDER

This SSR Backgrounder is about the roles and responsibilities of the justice sector in good security sector governance (SSG). The justice sector plays a role in providing security by upholding the rule of law, but it also plays a role in democratic oversight of the security sector by holding security personnel and the state to account before the law. This SSR Backgrounder explains different perspectives on the role of the justice sector in good SSG and why this is relevant to SSR.

THIS SSR BACKGROUNDER ANSWERS THE FOLLOWING QUESTIONS:

What is the justice sector?	2
How do the principles of good SSG apply to the justice sector?	2
What is the role of non-state justice providers?	4
How does the justice sector provide security?	4
How does the justice sector provide security sector oversight?	5
Why is the justice sector part of SSR?	5

ABOUT THIS SERIES

The SSR Backgrounders provide concise introductions to topics and concepts in good security sector governance (SSG) and security sector reform (SSR). The series summarizes current debates, explains key terms and exposes central tensions based on a broad range of international experiences. The SSR Backgrounders do not promote specific models, policies or proposals for good governance or reform but do provide further resources that will allow readers to extend their knowledge on each topic. The SSR Backgrounders are a resource for security governance and reform stakeholders seeking to understand and also to critically assess current approaches to good SSG and SSR.

DCAF – Geneva Centre for Security Sector Governance is dedicated to improving the security of states and their people within a framework of democratic governance, the rule of law, respect for human rights, and gender equality. Since its founding in 2000, DCAF has contributed to making peace and development more sustainable by assisting partner states, and international actors supporting these states, to improve the governance of their security sector through inclusive and participatory reforms. It creates innovative knowledge products, promotes norms and good practices, provides legal and policy advice and supports capacity-building of both state and non-state security sector stakeholders.

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WHAT IS THE JUSTICE SECTOR?

This SSR Backgrounder defines the justice sector as **all the agencies and actors**, both state and non-state, **involved in the provision, management and oversight of justice**. This is a broad definition, and in each national setting different legal and political systems, as well as norms, culture and historical traditions, affect exactly how the justice sector is composed and how it functions.

From the perspective of good SSG, non-state actors and organizations with an interest in promoting higher standards of justice provision could also be included in the justice sector because they provide public oversight: these include, for example, community authorities, civil rights advocates, women's organizations, civil society organizations, unions and professional associations, academic and research institutions, media and customary and traditional leaders, among others.

The justice sector can include a range of elements depending on the context (see Figure 1).

THE SECURITY SECTOR

The security sector is composed of all the structures, institutions and personnel responsible for security provision, management and oversight at national and local levels, including both:

- **security providers**, such as the armed forces, police, border guards, intelligence services, penal and corrections institutions and commercial and non-state security actors, among many others;
- **security management and oversight bodies**, such as government ministries, parliament, special statutory oversight institutions, parts of the justice sector and civil society actors with a stake in high standards of public security provision, including women's organizations and the media, among others.

There are different definitions of the security sector, but SSR is based on a broad understanding of the sector which incorporates all security provision, management and oversight bodies, including both military and non-military security institutions and state and non-state actors.

→ For more information on the security sector, please refer to the SSR Backgrounder on "The Security Sector".

HOW DO THE PRINCIPLES OF GOOD SSG APPLY TO THE JUSTICE SECTOR?

The principles of good SSG mean that **the justice sector should be subject to the same standards of accountability and effectiveness in public service provision as other public sector agencies**. Applying the principles of good governance to justice and security provision is the goal of SSR.

FIGURE 1 ELEMENTS OF THE JUSTICE SECTOR

A judicial system and associated personnel and agencies

For example: courts and judges, as well as lawyers, defence and prosecution services, state legal practitioners, bar associations, legal aid bodies and public representation programmes, paralegals, court personnel (such as bailiffs and ushers) and military justice systems, as well as alternative dispute resolution mechanisms such as tribunals, mediation services and community-based resolution mechanisms, where they exist.

Executive authorities responsible for justice sector administration and management

For example: usually a justice ministry or department that is functionally independent from the judiciary. Finance authorities and audit agencies also play a role in ensuring efficiency and accountability.

Institutions responsible for justice sector oversight

For example: parliamentary committees and independent oversight authorities such as judicial councils, judicial services and law commissions, as well as independent oversight institutions with a broader remit such as ombuds-institutions, human rights commissions and anti-corruption commissions.

Agencies responsible for law enforcement

For example: police in all jurisdictions, but also general regulatory bodies, customs and border authorities, intelligence services, civil emergency services and sometimes commercial security contractors, among others.

Agencies responsible for carrying out sentencing and rehabilitation

For example: prisons, corrections and detention authorities (including administrators and prison guards); social, medical and mental health services specifically serving the justice sector; and authorities overseeing pretrial detention and community-based sentencing, often including customary and traditional authorities or commercial companies.

GOOD SECURITY SECTOR GOVERNANCE (SSG) AND SECURITY SECTOR REFORM (SSR)

Good SSG describes how the principles of good governance apply to public security provision, management and oversight. The principles of good SSG are accountability, transparency, the rule of law, participation, responsiveness, effectiveness and efficiency.

The security sector is not just security providers: it includes all the institutions and personnel responsible for security management and oversight at both national and local levels.

Establishing good SSG is the goal of security sector reform. SSR is the political and technical process of improving state and human security by making security provision, management and oversight more effective and more accountable, within a framework of democratic civilian control, the rule of law and respect for human rights. SSR may focus on only one part of public security provision or the way the entire system functions, as long as the goal is always to improve both effectiveness and accountability.

➔ For more information on these core definitions, please refer to the SSR Backgrounders on “Security Sector Governance”, “Security Sector Reform” and “The Security Sector”.

For the justice sector this means the following:

- The judiciary is **independent** of other branches of government: justice officials are functionally independent from the rest of government. They are not pressured to make political decisions, and are not dismissed or punished for applying the law consistently and impartially.
- The judiciary does **not make political decisions**: although the judiciary can influence the law through interpretation, the development of case law and its power of judicial review, it is the responsibility of the legislature (and executive, depending on context) to make law.
- The justice sector ensures **equality before the law**: this means both that there is equal access to justice and that the law is applied equally to all people, including men and women of all backgrounds and all members of the government and the security services.
- The justice sector must be **impartial, transparent and fair** in all of its functions. Delays, corruption and discrimination are some of the most common problems the justice sector can face.
- The justice sector must be **effective and efficient** in its use of resources. The justice sector must be fully resourced to fulfil its mission, but justice sector actors also have a responsibility to use public resources carefully.

WHAT IS THE ROLE OF NON-STATE JUSTICE PROVIDERS?

Non-state justice providers are non-state actors with important historical status or a high degree of community legitimacy, such as community leaders, traditional power-holders and religious authorities. Non-state justice providers can make justice **more accessible, cheaper, faster, more transparent and fairer** for communities and individuals than the state justice sector alternative. **However, non-state justice providers may also operate in contradiction with human rights standards and the rule of law**, for example by failing to provide for equality before the law, equal access to justice or equal accountability under the law. For this reason, their relationship with state-based security and justice provision is sometimes complicated.

Non-state justice providers pose a problem for democratic oversight of the security sector because they do not have a role in state security sector oversight, and in some contexts this can mean the most legitimate and most effective justice providers are not involved in formal democratic oversight. It also means that the state has no control over which laws and norms are upheld, and this can leave power in the hands of local authorities, which may not serve the best interests of all members of their communities equally. Non-state justice provision may pose problems where alternative legal standards or traditional values clash with human rights, or fail to offer fair and due process. There is also a danger that those seeking justice may choose to present their complaints in the forum that is most likely to yield the outcome they favour, which also detracts from fairness and equality in justice provision.

Some countries find compromise between state and non-state justice providers through **hybrid legal arrangements** that give non-state actors an official role in certain aspects of state-based justice provision: for example, non-state actors may be granted the power to make judicial decisions in the realm of family or civil law disputes (usually only with the assent of the parties involved), instead of going through the state court system. Religious or customary law may also be recognized as an important source of national law within both civil and common law systems. Religious or customary law may also be recognized as an important source of national

law within both civil and common law systems. These types of legal arrangements can improve access to justice and make decisions more legitimate in the eyes of the community, while also upholding principles of good governance and rule of law.

Both state and non-state justice providers must be considered in SSR, or else improvements in security and justice provision will be limited and unsustainable. For this reason, non-state justice providers are always an important consideration in holistic approaches to SSR.

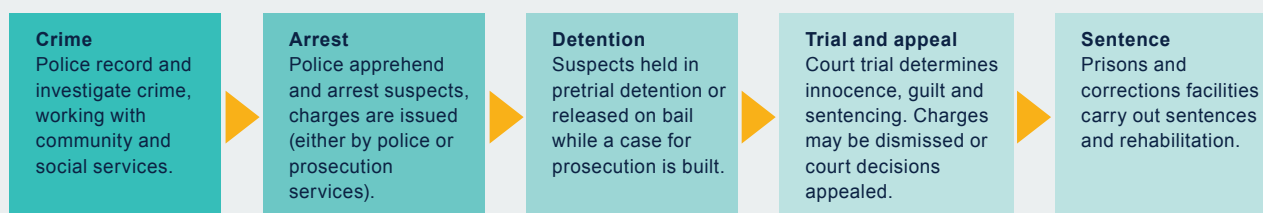
HOW DOES THE JUSTICE SECTOR PROVIDE SECURITY?

The purpose of the justice sector is to protect rights and freedoms under the law, check abuse of power and resolve conflicts. Enforcing the law is the primary responsibility of the justice sector, and most law enforcement focuses on assisting the public and managing public order, and especially preventing, controlling and punishing crime. Because of this role in law enforcement, and in particular criminal justice, the work of the criminal justice sector directly affects **security provision, management and oversight** and is often central to SSR.

The criminal justice chain is the system that handles crime from prevention to detention, through arrest, trial and sentencing (see Figure 2).

In order for law enforcement officials to fulfil their missions effectively, each part of the criminal justice chain must perform its specific function effectively. **When there are problems in one part of the chain, the consequences ripple throughout**, damaging service provision and accountability. For this reason, security and justice provision should be considered together in planning SSR activities, even if a reform programme or project targets only one aspect of service provision. A holistic approach to security and justice is a foundational principle of SSR, and SSR often involves reforms that affect all or part of the criminal justice chain.

FIGURE 2 THE CRIMINAL JUSTICE CHAIN



HOW DOES THE JUSTICE SECTOR PROVIDE SECURITY SECTOR OVERSIGHT?

The justice sector also provides security by thorough oversight and monitoring to the security sector. This happens in three ways.

- **Accountability before the law.** The justice sector ensures that security personnel do not abuse their powers and are accountable for their actions. Security sector personnel should be held to the same legal standards as everyone else, even when they are granted special powers or operate under different laws, such as military justice systems. They must fulfil their missions within the applicable legal framework and in accordance with the rule of law. The justice sector also protects the security services against abuse and corruption because the human rights of service personnel are protected under the law. The law also protects the security services from political interference and abuse of power when it clearly defines the respective roles and responsibilities of security sector actors.
- **Checks on the use of power by security sector actors.** Certain parts of the justice sector, and especially the judiciary, work with law enforcement services to ensure that the special powers vested in them are used appropriately and within the law. For example, judicial authorities are often involved in issuing special permission to police to carry out activities that might otherwise be illegal, such as searches or gathering evidence (for example, warrants). The decision to use powers that may infringe on fundamental rights and freedoms is not made at the total discretion of the police or judicial authorities, but according to a legal framework that defines how and when these powers may be used in the interests of justice and security.
- **Checks on the use of power by other branches of government.** The justice sector provides a check on executive and legislative powers by ensuring that new laws and the actions of government are compatible with the fundamental legal standards of the state's primary laws (usually a constitution). Powers of judicial review differ from country to country, but democracies give at least some power to the judiciary to rule the actions of government illegal if they are incompatible with the established legal limits of government. Where democratic principles, rule of law and human rights norms and standards are firmly established in primary law, the limits of judicial review can prevent their erosion.

TRANSITIONAL JUSTICE AND SSR

SSR often takes place in countries that have experienced violent conflict or political transitions characterized by large-scale abuses of human rights. The security sector has frequently been a perpetrator of human rights abuses in these contexts, and as a result transitional justice and SSR often take place at the same time. Transitional justice is not a special kind of justice, but instead a particular range of judicial and non-judicial mechanisms that aim to provide accountability for past abuses in order to achieve justice, reconciliation and peace. Transitional justice supports SSR because reforms to renew trust in the security services often involve vetting and dismissals on the grounds of past human rights abuses. Provisions for transitional justice and SSR are often included in peace agreements in order to improve security sector professionalism and ensure that those responsible for past human rights violations are held accountable for their crimes.

WHY IS JUSTICE PART OF SSR?

SSR aims to improve human security, and human security is impossible without justice. Although security and justice are different things, both are important in creating an environment where people feel safe and secure based on the rule of law and respect for human rights. Even though the idea that security and justice are closely related is not controversial, the extent to which justice is included in the security sector is often a political or policy decision, and for this reason not all definitions of the security sector include justice sector actors. There are three main reasons why justice and security might be considered separately:

- Justice and security sometimes have **different aims**. Different societies have different views of what justice means: for example, treating justice as a security concern may overemphasize the punitive goals of the justice sector at the cost of other approaches, such as rehabilitation or restorative justice.
- Justice and security sometimes require **different means**. Treating crime as a security threat could lead to law enforcement using more violent counter-strategies, and thereby endanger the protection of human rights, security and justice.
- Justice and security institutions serve **different functions** in a democracy. Linking justice and security could undermine the role of the judiciary as an institution of democratic control and oversight.

The potential risks involved in linking security and justice can be avoided in the context of SSR as long as the principles of good governance are applied in the interests of human security.

THE RULE OF LAW, JUSTICE, AND SSR

Good SSG requires that the security sector be subject to the rule of law. The rule of law is a principle of good governance whereby all people and all institutions, both state and non-state, are accountable to publicly known laws that are consistent with international human rights, and are enforced fairly and independently. The principle of rule of law is not the same as the principle of justice. Rule of law is a universal principle, but perspectives on justice can vary across societies according to culture, religion, history and politics. The functioning of the justice sector is different in every place depending on – among other things – the vision of justice endorsed by society. Visions of justice in every society draw on multiple and overlapping sources. Some common influences include:

- retributive justice: the idea that crime deserves punishment on moral grounds;
- utilitarian justice: the idea that crime requires punishment to deter future offences and protect the community by rehabilitating or incarcerating offenders;
- religious justice: the idea that justice is defined according to religious belief;
- restorative justice: the idea that victims, offenders and communities can repair the harm caused by crime through social or material reparations.

SSR aims to improve the rule of law and respect for human rights, but it does not promote any particular vision of justice.

Common problems in justice sector service delivery that SSR might tackle include delays, corruption, low levels of judicial capacity, low levels of public understanding about the legal system, high costs, poor prison conditions and high rates of pretrial detentions.

Common challenges for the justice sector in providing effective security sector oversight include corruption, lack of access to justice, the deference of judges towards the executive in the area of national security, and a lack of expertise in dealing with national security cases, among other things.

SSR can improve justice provision and good governance by, for example:

- updating legal frameworks to respect the principles of good governance and human rights;
- ending the misuse of military justice systems to try civilians or for political purposes;

SECTORS, SYSTEMS, AND DEFINITIONS

The terms “justice sector”, “justice system” and “judiciary” are sometimes used interchangeably, but they are also sometimes used as different definitions for the state actors responsible for justice provision. Some common examples include:

- “judiciary” can mean only judges, or the entire court system;
- “justice system” can mean only the court system, while “justice sector” can mean only the public sector agencies responsible for administration of the court system (such as government ministries or departments but not courts);
- the “criminal justice sector” (or “criminal justice chain”) includes law enforcement and judicial and penal agencies, but only those elements responsible for dealing with criminal offences, which means it may be broader or narrower than other definitions of the justice sector;
- law enforcement and corrections can be included in the justice sector or system, or considered as related but separate sectors.

The broadest definition, and the one used in this SSR Backgrounder, defines the justice sector as all the agencies and actors, both state and non-state, involved in the provision, management and oversight of justice. Regardless of the precise definitions used in any given context, security and justice provision should always be considered together within a holistic approach to SSR because both are essential to state and human security.

→ For more information on the composition of the security sector and the place of justice providers, please see the SSR Backgrounder on “The Security Sector”.

- improving how state and non-state security and justice providers interact;
- developing better national justice management policies, strategies and plans;
- ensuring the justice sector meets the needs of all men, women, girls and boys within a diverse population;
- improving parliamentary and independent capacity for oversight of the justice sector.

→ For more information on SSR and definitions of the security sector, please see the SSR Backgrounders on “Security Sector Reform” and “The Security Sector”.

WHAT TO READ NEXT

For a discussion of the relationship between rule of law, and SSR

- Alexander Mayer-Rieckh
Dealing with the Past in Security Sector Reform
SSR Paper 10 (Geneva: DCAF, 2013).
- Christoph Bleiker and Marc Krupanski
The Rule of Law and Security Sector Reform: Conceptualising a Complex Relationship
SSR Paper 5 (Geneva: DCAF, 2012).

For an overview of justice reform in the context of SSR

- OECD Development Assistance Committee
Section 7.6: Justice Reform
in OECD DAC Handbook on Security System Reform: Supporting Security and Justice
(Paris: Organisation for Economic Cooperation and Development, 2007, pp. 163-181).

For more on military justice systems

- Mindia Vashakmadze
Guidebook: Understanding Military Justice
Toolkit: Legislating for the Security Sector 5.1
(Geneva: DCAF, 2010).

For a guide to justice reform and gender equality in the context of SSR

- Shelby Quast
Tool 4: Justice Reform and Gender
in Gender and Security Sector Reform Toolkit,
Megan Bastick and Kristin Valasek (eds)
(Geneva: DCAF, OSCE/ODIHR, UN-INSTRAW, 2008).

MORE DCAF SSR RESOURCES

DCAF publishes a wide variety of tools, handbooks and guidance on all aspects of SSR and good SSG, available free-for-download at www.dcaf.ch

Many resources are also available in languages other than English.

The DCAF-ISSAT Community of Practice website makes available a range of online learning resources for SSR practitioners at <http://issat.dcaf.ch>

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