

# Non-State Justice and Security Providers and Security Sector Governance And Reform

Dr. Jimam T. Lar and Dr. Armelle Vessier



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### About DCAF

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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## About the Toolkit

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### What is the Toolkit?

This publication is part of the *Toolkit for Security Sector Reform and Governance in West Africa*. It aims to support the implementation of the Economic Community of West African States (ECOWAS) policy framework for security sector reform and governance through practical advice and guidance tailored for the West African context and based on regional experiences. It specifically aims at facilitating policy development, implementation, and management of SSR processes at the national level.

### Who is the Toolkit for?

The Toolkit has been developed as a resource for the ECOWAS Commission and all national stakeholders within ECOWAS member states, including the executive, the parliament, the judiciary, statutory oversight institutions, and civil society. It can also be useful to other actors involved in West African SSR processes, such as international partners.

### What is the structure of the Toolkit?

The Toolkit comprises eight complementary chapters (or Tools):

- Tool 1: Political Leadership and National Ownership of Security Sector Reform Processes
- Tool 2: Security Sector Reform Programming
- Tool 3: Good Financial Governance of Defence and Security Institutions
- Tool 4: Effective Management of External Support to Security Sector Reform
- Tool 5: Parliamentary Oversight of the Security Sector
- Tool 6: Civil Society Involvement in Security Sector Reform and Governance
- Tool 7: Non-State Justice and Security Providers and Security Sector Governance and Reform
- Tool 8: Integrating Gender in Security Sector Reform and Governance



### Who developed the Toolkit?

The Toolkit has been produced by DCAF - the Geneva Centre for Security Sector Governance - at the request of ECOWAS.

The Tools were written partly by African (primarily West African) experts with the support of an editorial team. All of the Tools have been examined by an editorial board made up of world-renowned researchers and practitioners. The members of the board include West African specialists in security sector reform and governance with long experience and excellent knowledge of the region.

The Toolkit has been produced with financial support from the Ministries of Foreign Affairs of Norway and Switzerland.

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## Acronyms

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AU	African Union
ANSA	Armed Non-State Actor
CSO	Civil Society Organization
ECOWAS	Economic Community of West African States
ECPF	ECOWAS Conflict Prevention Framework
FC-G5S	G5 Sahel Joint Force/ Group of Five for the Sahel (G5 Sahel)
ICJ	International Court of Justice
IDLO	International Development Law Organization
IHRL	International Human Rights Law
IHL	International Humanitarian Law
ISF	Internal Security Forces
ISGS	Islamic State in the Greater Sahara
ISP	Internal Security Providers
JNIM	Group for the Support of Islam and Muslims / Jama'at Nusrat al-Islam wal Muslimeen
MINUSMA	United Nations Multidimensional Integrated Stabilization Mission in Mali
MSA	Mouvement pour le Salut de l'Azawad (Movement for the Salvation of Azawad)
NGO	Non-Governmental Organization
NSA	Non-State Actor
NSAG	Non-State Armed Group
NSSJP	Non-State Security and Justice Provider
PMSC	Private Military and Security Company
REC	Regional Economic Community
SDF	Security and Defence Forces
SJSR	Security and Justice Sector Reform
SSR/G	Security Sector Reform/ Governance
UN	United Nations
UNDP	United Nations Development Programme
UNOCI	United Nations Operation in Côte d'Ivoire
UNODC	United Nations Office on Drugs and Crime
UNSG	United Nations Secretary General
VGN	Vigilante Group of Nigeria
SALW	Small Arms and Light Weapons
WA	West African
WFP	World Food Programme





## Preface

It is a great pleasure for me, as Head of the Regional Security Division of the Economic Community of the West African States (ECOWAS), to present the **Toolkit for Security Sector Reform and Governance in West Africa**. This publication is a practical guide in eight volumes, designed to facilitate the implementation of the ECOWAS regional normative framework on security sector reform and security sector governance. It was developed by DCAF – the Geneva Centre for Security Sector Governance – at the request of the ECOWAS Commission as part of a long-term collaboration.

In the light of this, DCAF and the ECOWAS Commission are working hand in hand to promote democratic governance through security sector reform in West Africa. It is within the framework of its draft “Policy on Democratic Governance and Reform in West Africa 2016” that ECOWAS is collaborating with DCAF to build operational security capacity through specific guidance tools. Indeed, DCAF provides in-depth guidance to support the development and implementation of solutions tailored to the region’s context.

This project is consistent with ECOWAS current efforts to promote security sector reform and governance standards and principles in the region and this process will help us achieve “ECOWAS Vision 2050”, which envisions West Africa as a stable and prosperous corner of Africa where people can live in peace and prosperity with accountable and effective security system. Indeed, security challenges are a key issue for respecting human rights and driving development in West Africa.

With a view to achieve coherence and harmonization of regional security and defense regulations and an optimal normative system, ECOWAS wishes to endow itself with essential good governance mechanisms to meet the challenges of human security. The ambition is to provide national authorities in charge of security with all the tools and mechanisms necessary for a coordinated approach to security risks and challenges in order to attain prosperity.

The aim is to develop and strengthen a West African security strategy to support the regional imperative of democratic governance, protection and defense for the region’s serene development prospective. This security effort is part of the pursuit of regional development, so it is appropriate through this practical guide to maintain an overall balance between these two dimensions.

In its drive to deploy and consolidate regional integration capacities in the area of security forces, ECOWAS aims to increase the effectiveness of its regional normative framework by equipping itself with relevant practical tools in the area of security sector reform and governance. The **Toolkit for Security**

**Sector Reform and Governance in West Africa** strives to support the implementation of the ECOWAS security sector reform project. For this purpose, the Toolkit provides practical advice and guidance drawn from regional experience and adapted to the West African context. The advice promulgated applies to the various dimensions of security and therefore offers resources to facilitate the transition from theory to practice.

A. DIENG

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# Introduction: Background of the Tool and the West African Security Context

After a brief contextual introduction (1.1), the following section will focus on how the ECOWAS countries have implemented Security Sector Reform/ Governance (SSR/G) strategies as a response to the growing insecurity and humanitarian concerns in the region (1.2). The mapping of the security sector in the West African context (1.3) will allow us to frame and define the general and specific objectives of the Tool (1.4).

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## 1.1. Objectives of the Tool

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This Tool on non-state security and justice providers is an initiative aiming to bridge the gap between research and practice on the inclusion of NSAs in SSR/G processes. The Tool has a dual objective to strengthen the rationale of the SSR/G process<sup>1</sup> for the ECOWAS Commission, for all national stakeholders within ECOWAS Member states, and for international partners to engage NSAs in SSR/G-related activities. This Tool helps to understand the *why* to engage - and the *how* to do so. The Tool therefore pioneers a mapping of non-state security and justice providers and relevant options to engage them. It compiles information to create a typology of actors (2) and to highlight key challenges (4), at-risk groups (6), situations, and related practices across the West African region (7). The Tool looks at relational dimensions between actors, primarily around service delivery, focusing on trends, patterns, mechanisms, interactions between NSAs and local populations and between NSAs and state actors.

The Tool identifies *safe spaces* to engage with NSAs and *ways* to strengthen inclusion of NSAs in the SSR/G process. It opens-up new perspectives to work on strengthening the compliance of NSAs with human rights standards and their cooperation with Rule of Law institutions. The Tool aims to support policymakers and SSR/G practitioners in assessing opportunities to engage NSAs, navigating the associated technical complexities, and anticipating the potential political and human rights risks associated to programme activities that engage non-state security and justice providers.

*Hybrid security governance* has been an enduring reality in West Africa since the independence of national states. Until recently, however, the concept was not referred to or featured in the discussion on SSR programming. In fact, it was rather seen as an anomaly or a challenge to the implementation of a mainstream state-centred perspective on governance, peace, and security, focusing on a people-centred approach. Over the past 10-15 years, however, there has been a major shift in SSR/G operational thinking

to acknowledge the prevalence of hybrid security governance in West Africa and consider its influence in shaping SSR/G processes.

In recent years, research in fragile contexts has provided the evidence base for NSA engagement and has remained at the forefront of advocacy for NSAs engagement. Internationally led research teams have increasingly documented local realities and contributed to bringing field-based evidence to policy circles. They provide a thorough reality check on the actors who are in charge of local security and justice. By conducting more participatory research and perception studies with local communities, researchers brought to light local dynamics in the provision of security and justice and the relative marginalization of state security actors (particularly police forces) in rural areas. They also underlined that state- and non-state actors are not always working at cross-purposes but that sometimes they can also cooperate.

As violent extremism and consecutive failures of peacebuilding across Africa have increased over recent years, the international community has paid greater attention to NSAs either as *spoilers* or as the main *enforcers* of local security orders. **As insecurity has intensified, so has the prevalence of community self-defence groups. Most striking is not only the multiplication of non-state security actors but the correlation with the decline of state security actors due to their diminished credibility, lack of presence, and widespread abuses.**

The context of significant fragility in the Sahel and the resulting lack of human security has made it increasingly important for international organizations and practitioners alike to *acknowledge* the role NSAs play *de facto* for local communities in the provision of security and related perceptions of legitimacy.

But *acknowledgement* of NSAs is only the first step of many. Research has outpaced policy and practice circles and many organizations and donors have remained unable to move beyond acknowledgment. While research has accumulated an evidence base and identified field realities in favour of NSA engagement, programming has not evolved significantly.

“Yet, while the influence and importance of such institutions has been widely recognized in SSR policies and guidance, [...] donors remain hesitant to engage with such actors largely because of the perceived unconformity of such systems to their own governance structures but also because of perceived lack of accountability and respect for fundamental human rights that are commonly associated with such structures.”<sup>2</sup>

Despite an increased focus on local contexts, SSR/G policy has remained, to a large extent, constrained by the state-centric assistance paradigm. Developing a specific engagement of NSAs has proven both technically difficult and politically risky. Engagement by international development and security partners could be considered by national stakeholders either as a tacit recognition and support of NSAs and their related violent practices, or as a subversive move against the host country. Many conceptual, political, and technical barriers still stand in the way today and cannot be easily overcome, hence the pioneering dimension of this work.

As the leading organization in SSR/G expertise, DCAF is proposing a way forward in this Tool that is aimed at charting a new course of NSAs' engagement in SSR/G, one more aware and inclusive of the context, and is also action-oriented with a view to mitigating related risks. The DCAF-ECOWAS Tool is therefore an attempt to reconcile the urgent need to go *beyond simply* acknowledging NSAs to a discussion on the **why** engage with a discussion on the **how** to engage - including the technical difficulties and risks involved in working with NSAs. This Tool highlights *ways* to engage with NSAs that are in line with principles of *do no harm* and that are mindful of SSR/G principles and best practices. It also clearly differentiates between *engagement* of and *support* of NSAs and reaffirms the need to include NSAs in SSR/G processes.

NSSJPs play an important role in the provision of justice and security services in fragile contexts. As mentioned above, in many transition or post-conflict countries, as much as 80% of the population access their security and justice needs through informal institutions, including customary justice and security providers. In fact, it is common to find that local communities perceive informal institutions as more

effective in resolving disputes and as more legitimate actors. The population is generally more familiar with local, traditional and/or customary institutions, and has greater access to them due to their proximity, particularly in the absence of state institutions. Such structures are also indispensable as a frontline source of knowledge on emerging threats within the community.<sup>3</sup>

*“Anyone – and in particular donors – working in programmes to improve security and justice faces a dilemma: excluding local/non-state actors could mean ignoring those mechanisms that actually provide services and have a large and immediate impact on poor people’s lives; yet including them involves challenges and potentially huge risks”.*

Derks M., “Improving security and justice through local/non-state actors - The challenges of donor support to local/non-state security and justice providers”, Netherlands Institute of International Relations, April 2012, p. 7.

In order to improve their effectiveness, donors seeking to support national and/or regional security strategies frequently look for ways to incorporate NSSJPs in their programmes. However, given that NSAs can also be detrimental to local security and justice, supporting them also involves significant consequences. The main risks with regards to including NSSJPs in SSR/G programming are:

- Reinforcing or creating service provision by parallel structures
- Political hijacking and the damages it may cause on the donors’ relationship with the host government
- Human rights violations and the limited accountability of NSSJPs
- The sustainability of SSR/G programming in volatile and fragile environments

As a response for donors and practitioners, this Tool will develop the policy and practical opportunities and challenges for including NSSJPs in SSR/G strategies and programmes. The objective of this Tool is therefore to provide a generic guide on **how to engage and incorporate NSSJPs** into an SSR/G process within the context of the West Africa region.

Keeping in mind the risks and challenges inherent in the inclusion of NSSJPs in SSR/G, the specific objectives of the Tool are:

- to come up with a broad definition of NSSJPs, which includes all security and justice local and NSAs that can play a pivotal role in SSR/G in the West African context;
- to highlight the practical opportunities to include NSSJPs in SSR/G programming, as well as the challenges and risks on giving legitimacy to NSAs that lack accountability or respect for fundamental human rights;
- to provide practical guidance on research, advocacy, and programme development/ management to ECOWAS member states on the ways to engage with and incorporate NSSJPs into SSR/G strategies and programmes;
- to better anticipate and address the major risks, threats, challenges, and vulnerabilities facing ECOWAS member states in dealing with NSSJPs and help to coordinate action among member states;<sup>4</sup>

- to highlight the crucial role that NSSJPs can have in peacebuilding processes, especially in the prevention of the recurrence of violence in post-conflict countries;
- to address cross-cutting issues as human rights and gender equality posed by supporting non-state security and justice providers;
- to guide Member states on how to deal with NSSJPs accountability.<sup>5</sup>

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## 1.2. Security challenges in ECOWAS countries

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This Tool highlights human security through the experience of populations and illustrates a confrontation with field realities, as well as the evolutions that have taken place over the last decade (2010 – 2020). Trends show the emergence of a multitude of local and international actors in the provision of justice and security. This expanding fragmentation demonstrates the emergence of non-state actors (NSAs), while state justice and security actors, such as the courts of justice and the ISF, remain weak, understaffed, and – for security actors in particular – divided into rival corps such as the police, gendarmerie, and national guard.

Non-state actors are therefore at the heart of an evolving security situation across the region, as internal security providers (ISP) have lost their monopoly on the provision of security and are increasingly considered marginal actors.

### Change of scene: the nature and evolution of security threats in West Africa

Over the last decade the ECOWAS region witnessed democratic gains, peaceful transfers of power, and governance reforms that were most successful in coastal countries. Yet the region also experienced new cross-border security threats and profound socio-economic transformations. Local conflicts and extremist violence fuel insecurity and compound the existing needs of local populations. Social divisions have been exacerbated in fragile areas across the region, namely in provinces of Northern and Eastern Mali, Northeastern Burkina Faso, and Northern Nigeria, which have been plagued by armed conflicts, the spillover of jihadist violence, and deep-seated instability.

West African societies also face numerous challenges and transformations, including social inequalities, ethnic polarization, decline of state authority (particularly in rural regions), marginalization of customary actors, the rise of militias and armed groups, migration-refugee flows and rapid urbanization, rampant criminality in larger towns, increased exposure to international influence and critical questions about traditional and national authorities, increased regional disparity between states, demographic pressure on health and education services, increased competition for land access, natural, and water resources, desertification, and the multiplication of herder-settler conflicts.

These rapid changes have fuelled violence and insecurity in both urban and rural contexts and have presented pressing and unprecedented challenges on national security governance across the region. As the security needs of local populations increase, states encounter more difficulties in ensuring the presence of local security and justice actors to deliver basic services, with local and regional solutions taking precedence over national approaches.

Against this fragmented local and regional background, state-society relations in the area of security and justice provision have been progressively redefined. A leading trend is the rise of non-state actors and armed groups providing local security and justice, often by default, in opposition to, or at the expense of state security and justice actors. As a result, state security and defence forces (SDF) meet increased resistance and operational challenges in providing security to local populations in regions outside of the capital, often failing to deliver effectively. The effectiveness and accountability of their practices have been put to the test and often fail to protect populations.

The multiplication of security threats across the region has overwhelmed national SDF response capacities. In the 1990s – 2000s, many West African (WA) countries dealt with tense civil-military relations, decades of autocratic government regimes, and coups resting on security institutions. As a result, many national security and justice actors fell into fragmentation and competition between corps. This historic legacy also negatively impacted security and justice institutions' orientation towards the needs of populations, and fostered structural problems and deficient operational procedures. The situation was aggravated by the absence of SDF-trained personnel, equipment, and regional cooperation to fight emerging threats in remote border areas. Despite the creation of the G5-Sahel, this trend endures.

The power vacuum left at the local level by the relative absence and fragmentation of state security forces fostered the spontaneous formation, multiplication, and advance of armed groups throughout the region. Over the last decade, these countries recorded a surge of non-state armed groups, including violent extremist groups (*jihadi* groups in Mali and Burkina-Faso, and *Boko Haram* in Nigeria and Niger), as well as ex-rebel armed groups, criminal groups (e.g. Côte d'Ivoire), ethnic militias (Burkina Faso and Mali), *self-defence* and *vigilante* groups (such as local self-defence groups in Mali built by local and traditional leaders, the *Koglweogo* in Burkina Faso, and informal police groups in Nigeria).

This multitude of NSAs form a continuum of actors of violence that coexist with state-led security forces across the region. A majority of NSAs challenge the state monopoly of violence and state sovereignty, ranging from substitution to violent confrontation. In the absence of state presence, NSAs also provide essential services to populations, including security and justice.

While national security has been compromised in fragile Sahel countries by the surge in violent extremism, local communities of conflict-affected areas have also experienced recurrent human rights violations and abuses by state-led security forces, which contribute to further insecurity and popular support for armed groups through military repression, exactions, extortion, and disproportionate use of force.

### The scourge of violent extremism

The security situation in the Sahel has continued to deteriorate since the mid-2010s. Violent extremist groups first emerged in Mali in 2012 and despite the long-standing international military intervention led by France, they continue to take hold in the **Sahel**. The volatile security situation across the sub-region has contributed to an escalation of armed violence and insecurity, sparking an unprecedented humanitarian crisis.<sup>6</sup> Raids and kidnappings by terrorist groups, banditry, and the spread of intercommunal violence account for much of this volatility. Violent extremists and other armed groups continue to carry out raids on military targets and civilian infrastructure throughout the subregion.

Today, violent extremist groups are no longer confined to the Sahelian states of Mali, Niger, Burkina Faso, Mauritania, and Chad. Their threat and influence spill into the northern regions of **West Africa's coastal states**.<sup>7</sup> Though West African coastal states have suffered few attacks until now, the expansion of Islamist militants in the region is a growing concern for these states, as their leaders fear that militants will use Burkina Faso as a launching pad for operations further south.<sup>8</sup> Elements allegedly associated with the Islamic State in the Greater Sahara (ISGS) in the border area spanning Burkina Faso, Niger, Benin, Togo, and Ghana are also active in the region.<sup>9</sup> By establishing further control over parts of West Africa, they could access ports, control trade, and benefit from the funds generated. They could also attempt to gain control of the gold mining industry.<sup>10</sup> In September 2017, Benin, Burkina Faso, Côte d'Ivoire, Ghana, and Togo launched the Accra Initiative<sup>11</sup> in response to growing insecurity linked to violent extremism in the region. It aims to prevent the spillover of terrorism from the Sahel and to address transnational organized crime in border areas.

The situation *in the Lake Chad Basin* is also emblematic of this regional instability. Radicalization is on the rise. Non-state extremist actors – Boko Haram and the Islamic State in West Africa Province (ISWAP) – confront state institutions and compete for power over local communities, fuelling regional political and economic insecurity.<sup>12</sup> Despite national and international counterterrorism efforts, the ISWAP faction of Boko Haram successfully expanded its operations to Niger and Nigeria. In 2019, it has been reported that the group continued to use women as suicide bombers against civilians and security and defence forces in Borno State.<sup>13</sup> Other extremist groups are still active and operating in the region, such as the Group for the Support of Islam and Muslims/ Jama'at Nusrat al-Islam wal Muslimeen (JNIM),<sup>14</sup> a Salafi-jihadist militant organization formed in March 2017.

The increase in transnational organized crime and illicit trafficking has generated revenue for NSAG, particularly rebel forces and terrorist groups. Competition for trafficking routes, as well as illicit profits, lead to conflict within and between groups, leading to splintering, in-fighting, and succession struggles.

### State security and stability

The rise of cross-border threats and extremist violent groups threaten the integrity of state security and stability. Such threats in West Africa have diverse sources and may manifest in multiple ways, including through recurring violence, weak governance, and general instability.

According to Pierre Lapaque, UNODC Regional Representative,

*“[t]he Mali crisis violently reminded us of the precariousness of peace in West Africa and in the Sahel, which remain “hot spots” of the continent. It is emblematic of the **hybrid and transnational character of the security threats in the West African space** today. Even though a majority of countries are not afflicted by open conflicts, the existence of flashpoints of tension that could flare up at any time, as well as episodic tensions notably related to electoral processes, underline the risks of tipping into open crisis situations.”*<sup>15</sup>

*“The prevailing insecurity in parts of the Sahel, notably in Burkina Faso, Mali, Niger and Nigeria, reinforced the feeling that gross human rights abuses could be committed with impunity. In some countries, the disproportionate use of force by security agencies during demonstrations and allegations that the judiciary was being instrumentalized for political purposes undermined respect for the rule of law and the enjoyment of fundamental rights. Human rights abuses by terrorists and violent extremists, as well as measures taken in the context of counterterrorism operations, remained a concern.”*

UNSC, Report of the UN Secretary-General on Activities of the United Nations Office for West Africa and the Sahel, S/2019/1005, 30 December 2019.

### Human security versus state security

The fight against violent extremism in the region tremendously affects **human security**. The proliferation of violence and terrorist armed attacks over recent years has caused massive population displacements, compounding food insecurity and malnutrition, cyclical epidemics and vulnerability to climate change and shocks.<sup>16</sup>

In 2019, 4.4 million people were displaced across the Sahel; an increase from 3.2 million in 2018.<sup>17</sup> In Burkina Faso, more than 220 security incidents contributed to accelerated displacement – from 47,000 in December 2018 to 220,000 internally displaced people (IDPs) and more than 25,000 refugees in June 2019 – representing an almost five-fold increase.<sup>18</sup> In Niger, several military camps were attacked by Islamist militants with links to the Islamic State and al Qaeda in December 2019 and January 2020.<sup>19</sup>

In Burkina Faso, after several attacks on villages by Islamist armed groups in January 2020, the Parliament passed a law recognizing local militias, the *Groups of Volunteers for the Defence of the Homeland*,<sup>20</sup> and granting its members an operational status and some social benefits under the authority of the Burkina Faso Defence and Security Forces.<sup>21</sup> The new law could leave communities more vulnerable to attacks by Islamist armed groups, as these groups have, on several occasions, targeted civilians for their alleged support of the military or local volunteer forces.<sup>22</sup>

On the other hand, military forces were also accused of having allegedly killed dozens of civilians in several counter-terrorist offensives conducted within the framework of the national counterterrorism strategy of the government.<sup>23</sup> Niger's National Commission for Human Rights spent months investigating the disappearance of civilians in the Inates commune of the Tillabéri region. The Commission found the Niger army to be responsible for the disappearance of more than 100 people in the western part of the country in December 2019.<sup>24</sup>

In these volatile environments, where the boundaries between state and non-state actors are blurred and the population is caught in the crossfire, the formal providers of security are often seen as a threat to the population's safety. These problems are not limited to the police and other providers of security, but can also be found throughout the security and justice system.<sup>25</sup> In these situations, citizens and communities rely on non-state, semi-formal (legally recognized by the state but not officially part of the national armed forces) or local arrangements to provide their security and justice needs.<sup>26</sup> In fact, as the literature argues, abuses perpetrated by state proxies trigger an escalation of homegrown terrorism.<sup>27</sup> This phenomenon is apparent in Niger.

The expansion of militant groups beyond the G5 Sahel countries calls for a reassessment of **how states respond collectively in the region**. The deteriorating security situation in the Sahel paradoxically provides an opportunity to improve state cooperation in a region that has witnessed devastating institutional rivalries between the United Nations, the African Union, ECOWAS, and the G5 Sahel.<sup>28</sup>

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### 1.3. Responding to the instability in West Africa through SSR/G

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Growing insecurity has led West African countries and their partners to launch military interventions<sup>29</sup> in order to stabilise the region, prevent the spread of extremism, and end violence against civilians. Building peace in fragile or post-conflict countries includes a range of actions and strategies, including **Security Sector Reform/Governance (SSR/G)**, that must be coordinated among actors in the field. SSR/G is part of a broader reform effort and constitutes an essential part of the peacebuilding, peace-making, early recovery, conflict prevention, sustaining peace and sustainable development agendas.

There is no single definition, standard, or model of security sector reform, as it depends on each unique country and context. However, the UN, the AU, ECOWAS, and member states converge around a similar state-centric understanding.<sup>30</sup> One of the objectives of the **AU Policy Framework on Security Sector Reform** is to “serve as an African building block contribution to the global SSR framework of the United Nations.”<sup>31</sup> The concept of SSR is used to refer to the process through which a country seeks to review and enhance the effectiveness and the accountability of its security and justice providers.<sup>32</sup> The objective of SSR is to create a secure environment that facilitates development, poverty reduction, good governance, and the consolidation of democracy based on the rule of law.

SSR/G programmes are mostly state-centric and top-down and, traditionally, SSR/G donor programmes have focused mainly on the central state institutions that provide justice and security. In fact, “although SSR emphasizes the importance of a people-centred approach, it is often interpreted within a state-building framework and for that reason supporting non-state or local actors to provide security and justice services is deemed a risk, as it can lead to duplication of service delivery, or even the creation of parallel institutions.”<sup>33</sup> Furthermore, the conventional efforts and best practices of the SSR/G approach do not resolve the issue of access to security for populations when state coverage and services are absent or inadequate.

“[S]tate-centred approaches to justice and security development have generally fallen short of expectations, especially in terms of increasing human security. [...] Including local/ non-state actors – which can have an immediate impact on local security and justice situations – in support initiatives might help to improve the effectiveness of security and justice development programmes in this respect.”<sup>34</sup> Although the capacity-building approach (train and equip) adopted in most SSR/G programmes is an important component of more effective service delivery, it has recently come under increasing criticism, since it does not sufficiently support local actors in becoming self-sustaining.<sup>35</sup>

Typically undertaken by a government with the support of international partners and civil society actors, **SSR** involves a systematic review of the policies, programmes, and activities of a country’s security sector. It addresses **both the core state providers of security** (such as the military, police, intelligence community, border guard, judiciary, and penal system) **and non-state providers** (such as private security and military companies and non-state armed groups).

*At the heart of SSR are the core values of democracy, good governance, gender equality, human security, inclusiveness, transparency and accountability, as well as a desire to propagate universal human rights.*

While the concept itself continues to evolve and some variations of this definition exist, it is broadly acknowledged that **SSR** is:<sup>36</sup>

- A nationally owned process aimed at ensuring that security and justice providers deliver...
- Effective and efficient security and justice services that meet the people’s needs, and that security and justice providers are...
- Accountable to the state and its people, operating within a framework of good governance, rule of law, and respect for human rights.

In the West Africa region, ECOWAS has chosen to associate reform to governance as member states consider that **enhancing the governance of the security and justice sector will increase the effectiveness and accountability of actors**, such as the police, civil protection, the army, prison guards, and the justice system in protecting the state and its citizens.

As access to security remains challenging, despite the large and well-resourced security services available to West African states, populations take steps to provide for their own security, whether through private security companies or community based security actors.<sup>37</sup>

**Box 1: The principles of good security sector governance<sup>38</sup>****Accountability**

There are clear expectations for security provision. Independent authorities oversee whether these expectations are met and impose judiciary and political sanctions if they are not met.

**Transparency**

Information is freely available and accessible to those who will be affected by decisions and their implementation.

**Rule of law**

All persons and institutions, including the state, are subject to laws that are known publicly, enforced impartially and consistent with international and national human rights norms and standards.

**Participation**

All men and women of all backgrounds have the opportunity to participate in decision-making and service provision on a free, equitable and inclusive basis, either directly or through legitimate representative institutions.

**Responsiveness**

Institutions are sensitive to the different security needs of all parts of the population and perform their missions in the spirit of a culture of service.

**Effectiveness**

Institutions fulfil their respective roles, responsibilities, and missions to a high professional standard.

**Efficiency**

Institutions make the best possible use of public resources in fulfilling their respective roles, responsibilities, and missions.

Today, West Africa and the Sahel region are considered to have made significant progress SSR, both at the policy and national levels.<sup>39</sup> In the past decades, in order to address their security challenges and to resolve conflicts, countries like Sierra Leone, Liberia, Guinea, Burkina Faso, and The Gambia, among others, have initiated processes to transform their security sectors into democratically-governed institutions in line with the rule of law and human rights principles.<sup>40</sup>

**Position of the Tool regarding SSR/G processes**

This Tool will review Non-State Justice and Security Providers and Security Sector Governance and Reform, as well as the conflict prevention dimensions that are essential components of successful SSR/G programmes. By building resilient security and justice systems, while addressing many of the root causes and drivers of conflict that stem from ineffective, poorly managed or unaccountable security and justice institutions, SSR/G is one of the cores aims of peacebuilding strategies in fragile or post-conflict contexts. In the aftermath of armed conflict, fragile and unstable states often fall back into violence, despite signing a peace agreement. It is estimated that between a quarter and one third of civil wars concluded by peace agreements resume in the five subsequent years.<sup>41</sup>

The African continent is generally recognized as the theatre where the vast majority of SSR processes take place, particularly as part of post-conflict reconstruction efforts/ initiatives.<sup>43</sup> Hence, combining security and justice institutions in SSR/G with peacebuilding strategies is an absolute necessity, as *these institutions have a sectoral role in the prevention of violent conflict*. To the extent that they all function effectively and coordinate well together, these institutions contribute to the stability and security in the country and, ultimately, in neighboring countries and more broadly throughout the entire ECOWAS area.

### Box 2: Examples of SSR/G activities in West Africa<sup>44</sup>

In **The Gambia**, the UN security sector reform advisory team provided support to national authorities in (1) finalizing the national security policy (initiated by the President) and strategy to guide short- and long-term reforms in the security sector and (2) ensuring that institutions attain the capacities necessary to independently provide security services to the population in anticipation of the eventual withdrawal of the ECOWAS Mission in The Gambia. The security sector reform team also worked closely with the Government to strengthen its national coordination bodies and mainstream gender into the security sector reform process, including through regular training and advisory meetings. The United Nations worked with international partners, including ECOWAS, the African Union, and the European Union, to develop a joint analysis and enhance coordination in the delivery of security sector reform-related assistance to the country.

In response to the challenging security situation in **Burkina Faso** since 2015, the UN security sector reform strategic advisory team focused its support for national authorities on developing a national security policy and architecture, as well as sectoral strategies for justice, defence, and internal security, with a view to enhancing national capacities to protect citizens against threats posed by violent extremist groups and illegal self-defence groups. The team also intensified efforts to strengthen security sector governance and oversight, including capacity-building for parliamentarians and support for the establishment of a civil society platform in which members were trained and deployed to local communities in various regions of the country.

In **Mali**, the National Council for Security Sector Reform adopted the country's action plan for the national strategy on security sector reform in September 2019. The action plan contains an outline of all key results to be obtained and actions to be taken, as well as a timeline and the institutions responsible for the implementation of the defence and security measures included in the Agreement. Those measures include the integration of former combatants of the signatory armed movements in the defence and security forces of Mali, the adoption of the Law on the National Defence and Security Policy, the operationalization of the country's local consultative committees on security, and the establishment of the territorial police.

In **Sierra Leone**, the UN supported the Office of the Vice-President in the organization of community dialogues with security institutions in hotspot areas. The Organization also assisted the office of the national security adviser and the Mano River Union in developing a strategy on border security management and the delivery of trainings to security institutions. In addition, the World Food Programme (WFP) and the United Nations Development Programme (UNDP) launched an initiative with the support of the Peacebuilding Fund to strengthen the professionalism of the security forces and to mitigate local, resource-based conflicts in the Pujehun and Moyamba districts.

In **Guinea** since 2016, the security sector reform advisory team continued to provide support by reinforcing the oversight mechanisms for the parliament and the General Inspectorate of Security Services. The team also provided support to the Government for the preparation of a draft bill against terrorism, which was submitted to parliament, and for the elaboration of a presidential decree establishing a training centre for peacekeeping operations, as part of the country's contribution to international peacekeeping.

In **Côte d'Ivoire** since 2015, the United Nations security sector reform advisory team provided support to national authorities for the enhancement of civilian control over security forces, as well as the socioeconomic reintegration of ex-combatants.

## 1.4. The security sector in West Africa

The **security sector** is composed of all the structures, institutions, and personnel responsible for the provision, management, and oversight of security at national and local levels. The security sector includes both actors that use force and actors responsible for controlling how force is used. These may include state security providers and those responsible for security management and oversight, which includes external oversight actors for civil society, media, and human rights defenders.<sup>45</sup>

Traditionally, the security sector was understood to encompass the entirety of security agencies responsible for internal and external security. These state institutions, empowered with the legal right to bear arms on behalf of the state, include military forces, police and other law enforcement agencies, gendarmerie and paramilitary forces, intelligence and secret services, and border guards and customs authorities, among others.<sup>46</sup>

*The new definition of security takes a broader view of the security sector. It recognizes the interrelated nature of the security and justice sectors and the need to balance increased effectiveness with greater accountability. The understanding of the security sector therefore encompasses a broader range of state and non-state security and justice actors.*

Security and justice institutions play a sectoral role in the SSR/G/ development/ peace nexus. Security sector reform policies and guidance place a strong emphasis on holistic and cross- sector approaches to reform, whereby **all institutions, both state and non-state**, should be integral parts of the reform process.

While there is no fixed definition of the security sector, there is, however, consensus on the categories of actors that play a key role in the provision of security and justice services. These include:

- State security and justice providers
- State governance and oversight mechanisms
- Non-state security and justice providers
- Non-state governance and oversight mechanisms

One of the most noticeable long-term trends in SSR/G is the gradual shift towards bottom-up approaches to reform, moving away from the traditional state and capital-centric approaches to SSR/G.

In countries such as Nigeria, Kenya, Uganda, and Timor-Leste, the bottom-up approach to SSR/G has often provided more direct and visible results in regard to creating inclusiveness, legitimacy, and responsiveness in security and justice provision for the population, which can otherwise be key drivers of conflict.<sup>47</sup>

In the past decade, high-level consensus on the importance of involving local actors when striving to achieve sustainable peace in conflict-affected situations has developed. Security and justice institutions included in SSR/G are analysed in the present document through a wide and holistic approach that encompasses state (traditional) actors and non-state actors. It is widely recognized that **non-state security and justice providers** (NSSJPs) play a crucial role in the provision of security services and justice in fragile and/or post-conflict contexts.

### Access to security

At least 80% of security and justice services in sub-Saharan Africa are believed to be delivered by non-state providers.<sup>48</sup>

There are various NSSJPs *cooperating with the state* in providing security and justice services and, in other cases, *competing with the state to provide these services*. This makes it imperative to reassess the premises and focus of all SSR/G strategies: **a coherent SSR/G programme or policy should incorporate NSSJPs** as part of the security providers. It is important to note that the increasing prominence of non-state security providers does not necessarily suggest state decline in power and authority. There are several contexts across West Africa region that demonstrate how non-state providers are actively and *de facto* supportive and cooperative with the state security institutions.

The prevalence of non-state providers demonstrates their continued relevance in people's lives and the ambivalent relationship they have with statutory institutions. This Tool becomes critically relevant since, the relevance of NSSJPs is recognized, but how to engage them remains to be defined.

While, in many cases, governments recognize the role of non-state security actors, such as those "activated when needed (through cash and arms transfers) to forward the government's agenda and suppress rebellions," governments also resist the explicit inclusion of NSAs in SSR/G efforts, "because to do so would be to forfeit a valuable, semi-deniable tool".<sup>49</sup> As such, SSR/G remains a largely state-centric project, at least partly because of concerns over sovereignty and external interference.<sup>50</sup> However, in the ECOWAS context, where conflicts are fragmented and boundaries are blurred between state and non-state security providers, the concept of *hybridization* of security systems has recently been developed and may prove to be a more convincing account of security governance in Africa than the standard state-focused models.<sup>51</sup>

*"SSR is a fundamental element of statebuilding more broadly, since the provision of security and justice sits at the core of what states are, as parts of legitimacy (as a provider and arbiter of justice) and the social contract (as a provider of security). As such, SSR represents a window into the statebuilding process more broadly and into the underlying – and usually unwritten – assumptions that are made by international actors when constructing states. The neglect of politics may lead to what Lemay-Hébert (2013) refers to as the 'empty-shell' approach, whereby the 'one size fits all' solution to importing states may produce a state that operates in favour of local elites but lacks fundamental legitimacy with the population more broadly"*

Jackson P., "Introduction: Second-Generation Security Sector Reform", *Journal of Intervention and Statebuilding*, 12:1, 2018, p.1-10.

## Non-State Security and Justice Providers: Who to engage?

### Summary reminder: Part 2

#### 2.1. Non-state security providers

##### 2.1.1. Self-defence groups/ Neighbourhood watches/ Militias/ Vigilantes

##### 2.1.2. Private military and security companies

##### 2.1.3. Women's groups

#### 2.2. Non-state justice providers

##### 2.2.1. Lawyers/ Paralegals/ Legal aid bodies and public representation programmes/ Civil rights advocates

##### 2.2.2. Traditional authorities/ Customary security providers/ Community leaders/ Religious authorities

##### 2.2.3. CSOs/ Women's organizations/ Victim support and prisoner assistance groups

#### 2.3. Other/ unofficial actors (without a state mandate)

##### 2.3.1. Identification of unofficial actors

##### 2.3.2. Opportunities and challenges of dealing with unofficial actors

#### 2.4. Civil society organizations and community engagement

##### 2.4.1. Definition/ Terminology

##### 2.4.2. The role of civil society and communities in improving SSR/G

##### 2.4.3. The role of civil society in democratic control and oversight of the security sector

As discussed in the previous section, recent security sector reform policies place a strong emphasis on holistic and cross-sector approaches to reform that are by definition, nationally owned. In practical terms, this means that all institutions, both state and non-state, should be integral parts of the reform process.

*“In spite of some similarities among them, NSAs represent a great deal of heterogeneity. Some may have clearly defined political objectives, while this may be less clear-cut in other cases. Some may control territory and have established administrative structures parallel to or instead of those of the state, while others have loose command structures and weak control over members. Some operate in rural areas conducting guerrilla type warfare, while others are mainly urban phenomena. Some concentrate on attacking military targets, while others attack civilians as a matter of strategy.”*

DCAF, “Armed non-state actors: Current trends and future challenges”, Horizon 2015, Working Paper n°5, DCAF & Geneva Call, 2015.

According to the AU Policy Framework on Security Sector Reform, to be truly national and inclusive, a member state should include as many national stakeholders as possible into the SSR process.<sup>52</sup> These may include but are not limited to the following:

- Representatives of various government departments and legislatures
- The local security sector
- Women’s organizations
- Political parties
- Universities, research institutions, and other think-tanks
- Civil society and representatives of youth organizations
- Customary and traditional organizations
- The local business community and financial institutions
- Labour unions and other professional groups
- Faith-based organizations
- The local media

**Resource 1: Key security sector actors<sup>53</sup>**

Different entities are in charge of the security and justice sector. The provision of security services converts into various governance, management and monitoring skills, regarding State actors like institutions and Non-state providers like associations. It is essential to distinguish between these two actors. Each of the actors has an attribution and a capacity to operate within the security sector. Through this tool, we see that it is fundamental to take into consideration and insert the different actors in the process of reform and governance of the security sector.

## Security and Justice Providers

State	Security and Justice Providers		Non-State
	State	Non-State	
	<p><b>State security providers</b></p> <ul style="list-style-type: none"> <li>• Armed forces and supporting services</li> <li>• Police, specialized law enforcement agencies</li> <li>• Gendarmeries</li> <li>• Presidential guards, close protection forces</li> <li>• National guards, civil defence</li> <li>• Intelligence and secret services</li> <li>• Border and customs services</li> </ul> <p><b>State justice providers</b></p> <ul style="list-style-type: none"> <li>• Courts, judges, and state legal practitioners</li> <li>• Defence and prosecution services</li> <li>• Prisons, corrections and detention authorities</li> <li>• Military justice systems</li> <li>• State-sponsored alternative dispute resolution mechanisms</li> </ul> <p><b>Oversight</b></p> <ul style="list-style-type: none"> <li>• Legislatures/ parliaments and their specialized committees</li> <li>• Judicial authorities</li> <li>• Ombuds-institutions</li> <li>• Human rights commissions</li> <li>• Anti-corruption commissions</li> <li>• Independent complaints authorities</li> <li>• Audit offices,</li> </ul> <p><b>Management</b></p> <ul style="list-style-type: none"> <li>• Ministry of interior, homeland security, public security</li> <li>• Ministry of justice</li> <li>• Ministry of defence</li> <li>• Ministry of finance</li> <li>• Police councils</li> <li>• Judicial councils</li> <li>• Judicial services, law commissions</li> </ul>	<p><b>Non-state security providers</b></p> <ul style="list-style-type: none"> <li>• Unofficial armed groups (militias, armed factions)</li> <li>• Self-defence groups</li> <li>• Commercial security providers, such as private security companies, private military companies</li> <li>• Neighbourhood watches</li> <li>• Women's groups</li> <li>• Customary security providers</li> </ul> <p><b>Non-state justice providers</b></p> <ul style="list-style-type: none"> <li>• Lawyers and paralegals</li> <li>• Bar associations</li> <li>• Legal aid bodies and public representation programmes</li> <li>• Victim support groups</li> <li>• Prisoner assistance groups</li> <li>• Customary justice providers</li> <li>• Community dispute resolution mechanisms</li> </ul> <p><b>Public and civil society oversight</b></p> <ul style="list-style-type: none"> <li>• NGOs with a stake in high standards of security and justice provision</li> <li>• Human rights advocates</li> <li>• Media</li> <li>• Victim's groups</li> <li>• Women's associations</li> <li>• Academic institutions</li> <li>• Independent research institutes and think tanks</li> <li>• Unions and trade associations</li> <li>• Political parties</li> <li>• The interested public</li> </ul>	

## Governance, Oversight and Management

As previously mentioned, and as will be developed later on in this section, the components of the security sector vary according to each national context. According to the AU Policy Framework on Security Sector Reform, in an African context, the security sector comprises individuals, groups, and institutions that are responsible for the provision, management, and oversight of security for people and the state.<sup>54</sup> These include but are not limited to:

- **Primary Security Institutions**, such as the armed forces, the police, gendarmerie, and other law enforcement agencies, presidential guards, anti-terrorist units, border management, customs and immigration authorities, office/ directorate of the state department, as well as any other services set up by a member state;
- **Specialized Intelligence and Security Institutions**, such as those that are in charge of finding and using intelligence to preserve state sovereignty, state security, and to defend vital national interests. These may be involved in security activities such as counter espionage, counterterrorism and the fight against all forms of organized crime;
- **Public Oversight and Management Bodies**, such as the executive, the justice ministries, the legislature, national security advisory bodies, parliamentary subcommittees, anti-corruption bodies, customary authorities, the Pan African Parliament, and regional parliamentary bodies;
- **Justice and Rule of Law Institutions**, such as the judiciary, prisons and other correctional facilities, Office of the Attorney General, Office of the Public Prosecutor, ombudspersons, traditional and transitional justice systems, human rights commissions, tribunals and courts;
- **Civil Emergency Units**, such as search and rescue services, firefighting, riot control, natural disaster management and natural resource protection units; and
- **Non-state Security Bodies**, such as private security companies, informal, traditional and customary authorities and others, as may be decided by each member state.

Paragraph 73(d) of the ECOWAS Conflict Prevention Framework (ECPF) recognizes customary and traditional justice systems, political or religious militias, vigilante groups and neighbourhood watch outfits (informal non-statutory security actors) as target groups for security governance. In conflict/ post conflict ECOWAS areas, this group also comprises guerrillas, liberation armies, and private military companies. The NSSJPs are non-statutory groups and individuals who are engaged in providing policing security and justice services. The purpose is on how best to manage, supervise and monitor NSSJPs which are either already providing positive security services or can be reformed and transformed to better abide by democratic and civil norms and principles.

*“Many summarily dismiss the non-state as undesirable or superfluous, but this stance is generally based on several myths about non-state actors: that they are inherently less powerful and legitimate than state institutions; that they are irrevocably opposed to the state; that they are static and unchanging; that they invariably violate human rights; and that they are an obstacle to development. These are features that must be empirically assessed, and will vary by particular non-state actor [...].”*

Based primarily on Baker and Scheye (2007) and Scheye (2009a).

### Actors vs. process

Another important distinction to be made at the conceptual level is that of NSAs and mechanisms. Indeed, even if mechanisms are focused on their actors, a key distinction still exists because the mechanism implies a process. One finds, for example, a process of dispute resolution, conflict resolution, or decision-making followed by more or less violent or constraining actions. It also involves interaction with other actors and other mechanisms.

The complex relationships between NSSJPs and state actors can also be mapped and qualified:

- competitive service relationships
- service substitution relationships
- relationships of mutual ignorance- few or no contacts
- limited cooperation relations
- conflicting relationships.

Very often, relationships are marked by the different aspects mentioned above, but it is important put them into perspective. For example, there are many attempts by state actors to co-opt and sometimes to integrate NSSJPs into their structures when these are functional and legitimate in the eyes of the population.

However, it is necessary to nuance the categories of actors and the demarcation lines between them in order to clarify the reality of the West African context and the fluidity between these different categories. Some actors cross categories from one to another or combine several roles and identities (these are considered hybrid actors). At least two binomials must be distinguished: State versus non-state, and formal versus informal.

These categories are not clearly demarcated, they are fluid, as neither local actors nor the population manage to make these distinctions very clear, both conceptually and in their experience on the ground.

For example, ISPs (police or gendarmerie) are formal state actors, but they are often governed by clientelist systems with informal administrative logic, and their behaviour is subject to the same informal logic. They may engage in activities that are different from their mandate or are not in compliance with the law.

Second, hybrid actors can be, for example, officials, or members of local authorities, but they play an informal role in providing security and justice services outside of their administrative functions.

NSSJPs may participate in SSR/G in different ways, and a distinction between **security providers (2.1)** on the one hand, and **justice providers (2.2)**, on the other hand, will be developed in the following paragraphs. These actors may be **mandated** (by law, constitution, etc.) to provide security and justice services at the local level.<sup>55</sup> Other *unofficial* NSAs can provide security and justice **without a state mandate (2.3)**. Finally, the pivotal role of **civil society organizations** with regards to democratic control and oversight of the security sector will be detailed in the last section **(2.4)**.

## 2.1. Non-state security providers

### 2.1.1. De facto security and community services providers

#### Definition and identification

In fragile contexts, the provision of security is a primary, rather than a secondary, function for self-defence, neighbourhood militias or vigilante groups. Where state protection from violence is absent and where communities lack the resources to purchase private security, they are left with no option but to resort to justice “through rudimentary vigilance” and “legal self-help.”<sup>56</sup>

In **West Africa**, **vigilante** groups, such as the Dozo, which can be described as unofficial actors when they are not recognized and tolerated by the state (**see box 11**), or the Koglweogo in Côte d'Ivoire and Burkina Faso, play a key role in the security sector as protection actors, but are also a great source of concern.

*“Vigilante groups can operate at a low level, mobilizing only in response to particular threats (with sporadic lynchings, for example) or establish a constant and powerful presence within communities. In this second incarnation, they can begin to operate as a de facto authority, providing security, community services and promoting “community values” or a kind of “moral revival.” In this sense they are both competitive and mutualistic.*

*The presence of vigilantes may result in a short-term decline in violence, but it more often results in displacement and increased violence in the long-term. Like other sorts of private security, vigilantism creates inequality between those who can and those who cannot buy justice.”<sup>57</sup>*

In **Burkina Faso**, as land property tensions began to turn into inter-communal conflicts, the Koglweogo and other self-defence groups have progressively taken over some of the state's prerogatives in rural areas, which disrupt local balances and generate new tensions. In 2020, the International Crisis Group (ICG) published a report on the historical and contextual background of self-defence groups that have led them to take on state functions, particularly in ensuring the security of the population in the transition period and until now.<sup>58</sup> Historically, local security initiatives have always been part of the Burkinabe landscape under local organizations, but the emergence of self-defence groups has become symptomatic of the absence of the state and the lack of public services.<sup>59</sup> The Koglweogo “present themselves as the answer to the lack of judiciary procedures in the many cases of theft or armed robbery that anger the population,” and have formed rather independently from the state, by adopting a critical discourse towards it, denouncing its inaction and publicly claiming to be ‘apolitical’.”<sup>60</sup>

### Box 3: The Koglweogo in Burkina Faso

The challenge of rural banditry has caught the state off guard. The security forces (the army and gendarmerie) are ill-equipped to deal with the problem, and rampant corruption in the security and judicial sectors has also reduced the effectiveness of law enforcement operations that previously were led by the Presidential Security Regiment (Régiment de la sécurité présidentielle, RSP). The 2011 riots also weakened the state's ability to fight crime. Aware of these limitations, authorities have encouraged the implementation of community policing strategies since 2003, which evolved into local security initiatives in 2010, tasked with passing on information to police and the gendarmerie. Red tape, budgetary limitations, and the 2014 popular uprising combined to stall this project, however. The people of Bogandé (East region) protested in March 2014, calling for re-establishment of local security committees as a liaison between the security forces and the population.

**Communities responded to the state's weakness by taking it upon themselves to fight crime by forming a self-defence group called Koglweogo** ("guardians of the bush" in the local Mossi language) in 2014. In the villages, these vigilante groups do not constitute a unified movement but exist alongside local structures. The authority held by the national leader and founder of the first Koglweogo group in Kombissiri (Centre-South region) remains limited. Nevertheless, close ties exist between these structures that are expanding through a system of patronage between neighbouring villages. They have now spread across the Centre, Plateau-Central, Centre-North, Centre-East and East regions, with the support of traditional local authorities. **According to some estimates, Burkina Faso had 4,500 Koglweogo groups in 2018, with a total membership of around 45,000.** The Koglweogo, who are generally armed with hunting rifles, have gained the support of most local people by restoring security. Their brutal punishments of suspected criminals are often met with indifference or even approval from a population keen to find effective forms of mob justice.

Emboldened by this popular legitimacy, the Koglweogo are **progressively assuming new prerogatives, even encroaching on the state's traditional control of taxation, justice, policing, and army operations.** They preside over trials, levy taxes, and impose fines. These former "guardians" have become "lords of the bush". While some traditional authorities are happy to endorse and profit from them, others are forced to interact with them under their influence and control.

Depending on the location, the vigilantes' relationship with the state **fluctuates between collaboration and autonomy.** Collaboration has been close in several regions, particularly in eastern Burkina Faso, in order to shore up the 2014-2015 transition, including from an electoral perspective. In Boulssa (Centre-North), the Koglweogo group's autonomy perhaps explains the arrest of its leader in December 2019. State authorities have also called on them to confront the Dozo – a brotherhood of some 5,000 hunters that plays a similar self-defence role, especially in western Burkina Faso – suspected of maintaining ties with the former President, Compaoré. By indebteding itself to the Koglweogo, the state is effectively giving these groups free rein.

**Authorities have not enforced a 2016 decree designed to regulate their activities due to lack of resources and resolve.** The government struggles to oppose these groups directly since they enjoy widespread support in the ruling party's electoral strongholds. **The Koglweogo, with popular backing,** has used violence on the rare occasions when arrests have affected its interests. In 2018, they surrounded the courthouse in Kaya to secure a member's release.

The "community" aspect of Koglweogo groups also stirs up tensions among communities suffering from the rural crisis. The Koglweogo mainly recruit members from the Mossi, the community that represents almost 50 per cent of the population. In the East region, their ranks are usually filled with Gourmantché, the majority group in that area of Burkina Faso. Some communities, especially in the western region, see this development as the armed front of what they call "Mossi expansionism". In the Hauts-Bassins region, for example, the Mossi's attempts to set up Koglweogo groups since 2015 have provoked fierce resistance from the Dozo and occasional clashes such as in Solenzo and Karankasso-Vigué. In the Sahel and Centre-North regions, the arrival of the Koglweogo phenomenon has exacerbated community-based violence.

**Bandits and self-defence groups are two faces of the same security crisis in many rural parts of the country. Although the Koglweogo may fight crime effectively, they are also symptomatic of a fundamental lack of rule of law in rural Burkina Faso.** Some Koglweogo members are even reformed bandits. Recently, jihadist groups have emerged as new “lords of the bush”.

*International Crisis Group, “Burkina Faso : sortir de la spirale des violences”, Report 287/Africa 24, February 2020.*

On **21 January 2020, the Volontaires pour la défense de la patrie (VDP) law** was unanimously adopted by the 124 deputies of the Burkinabe National Assembly. The mission of the volunteers is “to contribute, if necessary by force of arms, to the defence and protection of persons and property of his village or area of residence, under a contract signed between the volunteer and the state”. This contract is valid for a period of one year, renewable each year up to a maximum of five years. Following the enactment of the VDP law, the President of Burkina Faso, Roch March Christian Kaboré, received the support of part of the Burkinabe civil society, such as Yacouba Drabo, national coordinator of the Brotherhood of Dozo. Some young Burkinabè also welcome this initiative: “We are ready to go to the front line [...] It is our life we are talking about, and we are ready to spill our blood.”

In the following months, the terms and conditions governing VDP are specified. In particular, the volunteer will have to follow a 14-day training session to learn the handling of weapons and to integrate the code of conduct. His primary role will be to provide information and defend his place of residence, but he “will be able to respond to the first attacks while awaiting the arrival of the defence and security forces”. The state is also providing financial support of 200,000 CFA francs (304 Euros) for each group of volunteers formed per village, and each volunteer will be eligible for a permanent disability bonus and a lump-sum death bonus.

*GRIP, Zutterling C. “Armer les civils : la loi des Volontaires pour la Défense de la Patrie au Burkina Faso”, Éclairage du GRIP, Bruxelles, 30 Octobre 2020.*

*“Self-defence movements must not only be locally and traditionally legitimate, but they also need to be responsible actors in the national political space. Hence, “performing tradition, while doing politics” simultaneously represents the political containment and the cultural legitimacy of the self-defence movements.”*

Sten Hagberg, “Performing Tradition while Doing Politics: A comparative study of the dozos and koglweogos self-defence movements in Burkina Faso”, *African Studies Review* 62(01):173-193, March 2019.

#### **Box 4: Examples of cooperation between police institutions and Voluntary Police Services in Nigeria<sup>61</sup>**

The British Council’s *Justice for All Programme* in Nigeria, founded by the European Union, demonstrated positive outcomes by substantially engaging with the Voluntary Police Services (VPS). The programme not only assisted VPS to improve their relations with the formal police institutions, but also ensured greater accountability of VPS, and built their capacity to effectively resolve disputes in conformance with human rights standards. The support enabled the VPS in becoming more effective agents in tackling community security issues and creating a safer society, especially in areas where the formal security institutions lacked sufficient resources to do so. In this regard, the VPS became effective agents in ensuring security provision gaps were addressed in a context where commonly local level incidents have previously escalated to more significant sub-regional conflicts.

## 2.1.2. Private military and security companies

### Definition and identification

In complex and fragile environments, security functions traditionally provided by the state are increasingly undertaken by a range of private actors. The term “*private security*” encompasses private businesses that provide military or security services. This includes combat-oriented tasks, military or security training, logistical support and armed security, and guarding. It can also include weapons procurement and installation. The spectrum of the industry ranges from private security companies that operate on a local level, as well as large multinational private security and military companies that provide contractor support.

Private security providers are basically service and profit-oriented outfits and thus provide their services for a fee to various beneficiaries ranging from private residences, embassies and missions, universities, banks, hotels, oil companies and other multinationals, and other public institutions.

These companies have a legal framework which defines the scope of their activities, their organization and services, as well as the extent of their powers and sanctions for violations of the law. However, this framework is not always well defined at the national and regional levels.

### Box 5: Private military and security companies and SSR/G<sup>62</sup>

Many of the sources of conflict in fragile and post-conflict environments can be directly linked to the management of natural resources and private assets. One of the pressing challenges faced by SSR is to ensure adequate governance and security of this space, including effective accountability of private security companies tasked with protecting such assets. While in practice the linkages between mainstream SSR and business communities, including the extractives industries, remains largely ad hoc, growing attention has been given to this in recent years. [...].

Moreover, commercial entities, such as the global extractives sector, work directly with public and private security providers, as well as security sector management and oversight bodies. However, the influential role private actors play within the wider security sector governance landscape is rarely acknowledged, and legal and policy frameworks, accountability mechanisms and capacities have not evolved accordingly. By filling this gap, global regional and local efforts are directly contributing to preventing violence conflict by promoting good private security governance in line with international human rights and international humanitarian law.

Several *international norm setting initiatives*<sup>63</sup> supported by DCAF have, in recent years, made a significant contribution **to promoting more effective oversight and accountability and raising standards within the private security industry**. In addition, the Montreux Document is influencing the practices of states by providing a focus on needed legal and policy reforms to ensure effective oversight of private security. The International Code of Conduct for Private Security Service Providers is influencing the conduct of the private security industry by changing their operating practices in areas such as vetting, training and grievance procedures.

### Accountability, regulation and oversight of Private Military and Security Companies (PMSCs)

The rise of the private security sector raises questions regarding impunity and, in particular, regarding the status of private security forces outside of regular state accountability structures.<sup>64</sup>

As mentioned in the box above, (see box 5), while PMSCs present important challenges to the traditional security system, some recent multi-stakeholder standard-setting and regulatory initiatives hold some real promise for effective responses:

- The Voluntary Principles on Business and Human Rights<sup>65</sup>
- The Special Representative of the UN Secretary General on Business and Human Rights

- The International Code of Conduct for Private Security Service Providers
- The Montreux Document

The Montreux Document was designed to promote respect for international humanitarian law and human rights when PMSCs operate in the context of armed conflict. Nevertheless, existing obligations and good practices can also inform post-conflict situations and other comparable situations. The Montreux Document is based on existing provisions in international humanitarian law and human rights law: this means that any state – whether a party to the Montreux Document or not – is required to implement these provisions.

#### Box 6: The Montreux Document<sup>66</sup>

Seeking to address gaps in international humanitarian law as it applies to PMSCs, in September 2008 the Swiss government, in cooperation with the International Committee of the Red Cross (ICRC), concluded an intergovernmental dialogue on how to “ensure and promote respect for international humanitarian and human rights law” by states and PMSCs operating in areas of armed conflict. The initiative’s stated objectives were 1) to clarify the existing obligations of states and other actors under international law; and 2) to develop good practices, regulatory options and other measures at the national and possibly international level.

The Montreux Document has been almost universally welcomed by the international community, despite only being adopted by 17 countries early on. Some have praised it for its generally inclusive and even-handed approach and others have commented on the quality of its content. While the target audience of the Montreux Document was primarily states, it also adopted a multi-stakeholder approach to develop the document, bringing together representatives from governments, human rights organizations and the PMSC industry to build consensus on how to best achieve the objectives stated above. As of December 2018, 54 states are participants in the Montreux Document.

The Montreux Document was designed to promote respect for international humanitarian law and human rights when PMSCs operate in the context of armed conflict. Nevertheless, existing obligations and good practices can also inform post-conflict situations and other comparable situations. The Montreux Document is based on existing provisions in international humanitarian law and human rights law: this means that any state – whether a party to the Montreux Document or not – is required to implement these provisions.

The **International Code of Conduct for Private Security Service Providers** (ICoC), finalized in 2010, is aimed directly at private security companies. Its members “commit to the responsible provision of Security Services so as to support the rule of law, respect the human rights/humanitarian law, and protect the interests of their clients”. On 9 November 2010 the ICoC was signed by 58 companies; other companies signed after that raising the total to 708 companies (as of 1 October 2013). The ICoC applies primarily to security services delivered in complex environments. Nevertheless, the standards and recommendations are also valid in other contexts.

The International Code of Conduct Association (ICoCA) is a multi-stakeholder initiative consisting of three pillars representing states, private security companies (PSCs) and civil society organizations (CSOs). All members (i.e. states, private security companies and civil society organizations) participate in the ICoCA General Assembly and have equal representation on the Board of Directors - the executive decision-making body of the Association, which comprises 12 elected members.

The ICoCA aims to promote, direct and supervise the implementation of the International Code of Conduct for Private Security Service Providers through:

- The certification of member companies to ICoC standards
- The review of company self-assessments and the monitoring and evaluation of member private security company compliance with the ICoC
- The processing of complaints about alleged violations of the ICoC by member private security companies

The **Voluntary Principles on Security and Human Rights** (VPs), established in 2000, is a multi-stakeholder initiative involving States, companies, and CSOs. The VPs are specifically designed to guide extractive companies in maintaining the safety and security of their operations in an operational framework that ensures respect for human rights and fundamental freedoms. More specifically, the VPs guide companies in carrying out a human rights risk assessment as part of their engagement with public and private security providers, to ensure that human rights are respected during operations to protect business facilities and premises.

The VPs address the interactions between extractive companies and private security providers. The VPs note that it may be necessary to engage private security providers to complement the services provided by public security forces and put forward a series of principles to guide the behaviour of private security actors.

**ECOWAS** has addressed the regulation of the private security sector in a number of general references:

- The **ECOWAS Policy Framework for Security Sector Reform and Governance** (SSR/G) “recognizes that democratic governance and human security are at the core of the strategy, which aims at making security a regional public good and an essential service for citizens as well as a vital component in achieving sustainable development.” In addition, in its Conflict Prevention Framework, ECOWAS refers to PSCs as part of the target groups of the ‘security management’ component.
- The **ECOWAS Protocol on Democracy and Good Governance** addresses the training of PSCs: “The armed forces, the police and other security agencies shall during their training receive instructions on the Constitution of their country, ECOWAS principles and regulations, human rights, humanitarian law and democratic principles.”

## Challenges

Private security firms may sometimes act in competition rather than in concert with the state. Public and private actors may compete over skilled personnel, leading to a drain of well-trained individuals from the public to the (often more lucrative) private sector.<sup>67</sup>

Furthermore, in participating in these initiatives, it is important to recognize the level of scrutiny to which the industry was subjected in the course of these processes. More accurately, the private security industry can be said to have submitted its activities and ways of doing business to an in-depth review by its peers, governments, clients, and members of civil society – effectively asking the question, “what does the multi-stakeholder international community think is appropriate for the private security industry to provide, and according to what standards and within what limits?”

The general consensus is that private security activities should be limited in scope and in use of force, and should not be involved in overthrowing governments or directly participating in armed conflict. That said, these services may also positively contribute to public and human security in accordance with international humanitarian and human rights standards, thus making them beneficial in some circumstances.<sup>68</sup>

Finally, as the following box shows (**see box 7**), few ECOWAS states follow its international regulations. The challenge therefore lies in the effort to communicate and raise the visibility of this approach in order to guarantee a form of engagement.

Engage with private security actors offers a way to influence in favour of greater accountability. In fact, “a robust regulatory environment, the market, self-regulation, litigation and media exposure can all bring some measure of accountability to private security. Indeed, in partial response to public pressure, private security actors commonly seek to build a sense of civic solidarity by defining their aims as protecting larger social values”.<sup>69</sup>

Global, regional and local efforts to regulate the private security sector, including support in relation to the registration, handling and stockpiling of weapons, combined with more effective national legislation and regulation, form part of a prevention-based approach that can contribute to fewer incidents of armed violence as well as to greater oversight and accountability of this sector.<sup>70</sup>

**Box 7: Private military and security company in ECOWAS states and regulatory framework**

	<b>Sector size</b>	<b>Montreux document</b>	<b>ICoCA</b>	<b>Voluntary Principles on Security and Human Rights</b>
<b>Benin</b>	N/A	Not a participant	Member state: No Company members: 0 CSO members: 0	Not a state member
<b>Burkina Faso</b>	- More than 60 PSCs - Unknown number of PSC personnel	Not a participant	Member state: No Company members: 4 CSO members: 0	Not a state member
<b>Cape Verde</b>	N/A	Not a participant	Member state: No Company members: 0 CSO members: 0	Not a state member
<b>Côte d'Ivoire</b>	- 600-900 PSCs (2014) - 70,500 PSC staff - 69,000 PSC security personnel (2012)	Not a participant	Member state: No Company members: 2 CSO members: 0	Not a state member
<b>The Gambia</b>	N/A	Not a participant	Member state: No Company members: 0 CSO members: 0	Not a state member
<b>Ghana</b>	- 400 registered PSCs - 450,000 PSC personnel	Not a participant	Member state: No Company members: 5 CSO members: 0	State member NGO members: 1
<b>Guinea</b>	417 PSCs	Not a participant	Member state: No Company members: 1 CSO members: 0	Not a state member
<b>Guinea-Bissau</b>	N/A	Not a participant	Member state: No Company members: 0 CSO members: 0	Not a state member
<b>Liberia</b>	- 127 PSCs (2016) - 7,000 PSC personnel (2012)	Not a participant	Member state: No Company members: 0 CSO members: 0	Not a state member
<b>Mali</b>	- 263 licensed PSCs - Unknown number of PSC personnel	Not a participant	Member state: No Company members: 4 CSO members: 0	Not a state member
<b>Niger</b>	N/A	Not a participant	Member state: No Company members: 3 CSO members: 1	Not a state member Company members: 1 NGO members: 2

<b>Nigeria</b>	- 1,850 PSCs (1,110 licensed, 840 unlicensed) - 828,502 PSC Personnel	Not a participant	Member state: No Company members: 14 CSO members: 6	Not a state member Company members: 1 NGO members: 2
<b>Senegal</b>	- 240 PSCs - 15,000 PSC Personnel	Not a participant	Member state: No Company members: 2 CSO members: 1	Not a state member
<b>Sierra Leone</b>	- 30-50 PSCs - 3,000-5,000 PSC personnel	Participant	Member state: No Company members: 0 CSO members: 0	Not a state member
<b>Togo</b>	N/A	Not a participant	Member state: No Company members: 0 CSO members: 0	Not a state member

### 2.1.3. Traditional/Customary security providers

See Section 2.2.2. - Traditional authorities/customary security and justice providers/ community leaders/ religious authorities - in Section 2.2. Non-state justice providers.

### 2.1.4. Women's groups

Women's political participation and representation in security services remains low.<sup>71</sup> Women's participation in conflict prevention and peace initiatives throughout the Sahel is a key condition for sustainable peace, stability and development in the region, which requires the effective implementation of the "women, peace and security" agenda formalized by UN Security Council Resolution 1325.

#### Why engage?

Women's movements have driven global and national action on gender equality. Often, advocates have the greatest understanding of the challenges that women and girls face and essential knowledge of how to advance their rights. Advocating for change and accountability, women are empowered to develop their leadership skills, which support their engagement in political arenas.

**Women's political participation is beneficial to society and ensures their contribution to ongoing initiatives that promote peace, security and development.** Women and youth represent the vast majority of the population in the ECOWAS zone and in West Africa more generally, but their exclusion from decision-making processes persists.

#### How to engage?

Despite many promising initiatives, the efforts of civil society organizations are hampered by a number of weaknesses, such as excessive competition, politicization, and poor internal governance and lack of transparency. To increase the political participation of women, several recommendations can be implemented.

Engagement is vague here. Maybe chance to "one approach is to invest efforts in implementing existing norms and strengthening institutions to improve democratic governance and political participation.

In order to ensure meaningful participation in decision-making processes, women's groups professional capacities should be developed in areas such as advocacy, leadership, public administration, conflict management, and gender mainstreaming.

Furthermore, strengthening existing women's movements is a constant challenge that emphasizes the need for greater commitment. Stronger solidarity and synergies between women leaders of different

political parties and between young political elites and their excluded female counterparts can help to expand the political space available to women.

To improve social service delivery and support private sector initiatives, girls' education is a key factor for individual and community empowerment and for women's political participation.

Quality jobs for women can prevent their recruitment by extremist groups, increasing the likelihood that they will channel their grievances through the political system rather than resorting to violence.

Engagement also means promoting multisectoral approaches and increased participation in the media. Women's groups' visibility is central to this process. Within a multidimensional approach, the media can play an important role in changing attitudes about gender equality and the political participation of women and youth.

Building bridges between groups and communities helps counter conservative discourses that limit women's participation in public life. Women's groups need to engage with religious leaders who advocate inclusive politics based on a tolerant and progressive interpretation of Sharia law.

*For more information the role of women's organizations, victim support and prisoner assistance groups in justice reform, see section 2.2.3 and Part 5 of this Tool, "Non-State Security and Justice 5 Providers and Gender".*

#### Resource 2: Non-state security providers and their relations with state actors

	<i>Full cooperation</i>	<i>Substitution/ Complementarity</i>	<i>Competition</i>	<i>Limited cooperation</i>	<i>Conflicting interests/ relations</i>
Self-defence groups/ neighbourhood watches/ militias/ vigilantes	X	X	X	X	X
Private military and security companies		X	X		
Traditional/ customary security providers	X	X	X		
Women's groups/ associations/ CSOs	<b>X</b>	<b>X</b>			

*Source: Author*

## 2.2. Non-state justice providers

The justice sector traditionally includes all the institutions and actors, both state and non-state, involved in the provision, management and oversight of justice. The justice sector contributes to state and human security in two distinct ways<sup>72</sup>:

1. *The justice sector contributes to security by upholding the rule of law*: justice institutions – both military and civilian – uphold and enforce the rule of law through prosecution, trials and sentencing.
2. *The justice sector provides security sector oversight*: justice sector authorities rule on the constitutional legality of laws governing the security sector, and the lawfulness of the behaviour of security sector personnel. Justice institutions also protect the legal rights of service personnel and prevent political manipulation of the security sector.

**According to Goal 16 of the United Nations 2030 Agenda for Sustainable Development: the importance of access to justice for all in the development of peaceful and inclusive societies where effective, accountable and inclusive institutions govern.**

Within this development framework, engagement with customary and informal justice systems (CIJ) has an important role in strengthening justice. Programming engagement with CIJ systems can be conceptualized in three main ways: (1) building from public legitimacy and acceptance; (2) providing a means of accessing justice; and (3) strengthening justice for inclusive development.<sup>73</sup>

The ultimate beneficiaries of this work are justice seekers – the people, particularly those often overlooked and left behind, who claim justice and seek the protection of the rule of law.

In Mali, IDLO, for example, promotes platforms – *cadres de concertation* – that convene actors from the entire justice chain, including magistrates, police officers, court administrators, traditional leaders and civil society members, to strengthen local ownership of justice reforms. These platforms create a space for continuous dialogue between the formal and customary systems, allowing joint identification of justice problems and solutions.<sup>74</sup>

In conflict, post-conflict, or fragile environments, the judiciary system (courts and other formal justice providers) may be perceived as inaccessible, expensive and slow, or worse, as corrupt, biased and politicized.<sup>75</sup> In this context, citizens naturally turn to non-state justice providers with important historical status or a high degree of community legitimacy, such as community leaders, traditional powerholders and religious authorities.

Engaging with ICJ systems presents many opportunities as well as challenges for strengthening access to justice because of their diversity and unique characteristics. A key dilemma is how to harness the potential for improving access to justice with traditional approaches without causing harm or formalizing or legitimizing practices that infringe on rights.

Engagement must be mindful of the risks to those seeking justice, to the advancement of human rights, and to existing power structures affected by programming. For these reasons, engagement must be both principled and based on case-by-case assessments.

The hostility of some traditional and customary justice systems to outside intervention was noted as another factor to consider. However, it was also noted that many formal justice systems similarly tend to resist outside intervention. The success of strategies involving peer-to-peer engagement between judges in different countries to improve practices within formal judicial systems was noted as a possible way forward for constructive and effective engagement with decision-makers in traditional and customary systems. This could involve bringing together decision-makers and other actors from traditional systems in different countries or localities, as well as bringing together formal justice actors with informal justice actors within the same country.

Engaging with justice actors means adopting a way of working that is based on openness to holistic and pragmatic approaches whenever possible. However, it should also be noted that these approaches must take into account the risk and potential for harm in systems, the paradigmatic differences in the way justice is conceptualized, and the practical difficulties of working in developing, fragile and post-conflict state contexts. The ability of citizens to access justice is multidimensional and depends on many factors.

*“In many conflict-affected and fragile settings, justice systems must provide extraordinary levels of service while at the same time requiring extraordinary reforms in order to remain or become effective. Challenges related to capacity and resources can distance justice institutions from the poor and marginalized communities most in need of their services. Barriers to access may involve geographic distance, bureaucratic hurdles, lack of information and outreach or high costs. When these factors are exacerbated by perceived corruption or partiality of the judiciary, legitimacy and public trust evaporate, and courts lose the ability to perform their role in maintaining societal stability – and building peace.”*

Williams R., “Judges as Peacebuilders: The challenges of ensuring access to justice in conflict-affected settings”, SIPRI, 4 May 2018.

### Resource 3: Non-state justice providers in West African countries

The non-state justice sector includes:

- Lawyers; paralegals; legal aid bodies and public representation programmes; civil rights advocates
- Community leaders and religious authorities (customary and traditional leaders)
- CSOs; women’s organizations; victim support/ prisoner assistance groups
- Media and journalists
- Unions and professional associations/ bar associations
- Academic and research institutions

The following section addresses a number of these non-state justice actors without addressing them in full. The focus is explained by a desire to highlight actors of engagement in the justice system.

#### 2.2.1. Lawyers/ Paralegals/ Legal aid bodies and public representation programmes/ Civil rights advocates

##### Why engage?

Legal aid is an essential component of fair, humane, and effective criminal justice system. It is the foundation for the enjoyment of other rights, including the right to a fair trial, and an important guarantee of fundamental fairness and public confidence in criminal justice.

##### How to engage?

**Lawyers, Community-based paralegals, NGOs, and justice centres** can serve important justice functions as they:<sup>76</sup>

- are familiar with community power dynamics and may be more accessible and approachable than non-local dispute resolution actors;
- operate between the CIJ and formal systems, using the advantages of both strategically and contextually;
- may be able to overcome problems of elite capture in the CIJ system because they have the option of litigation and high-level advocacy;

**Box 8: The legal aid reform movements in Africa<sup>77</sup>**

The legal aid reform movements in Africa have been influential in the development of international standards on legal aid and have highlighted the importance of the role of lawyers and non-lawyers in providing legal aid services. For example, the momentum built from the **Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa** (2004), adopted by both governmental and NGO participants at a conference in Malawi to discuss legal aid services in criminal justice systems of Africa, was one of the key impetuses to the development and eventual adoption of the UN Principles and Guidelines by the UN General Assembly in 2012.

The **Bamako Declaration on Impunity, Justice and Human Rights** (2011), which emerged out of a regional conference on the fight against impunity and respect for human rights in West Africa, also contributed to the recognition of legal aid as a necessity for facilitating access to justice. Moreover, the **Kampala Declaration on Community Paralegals** (2012) has highlighted the role and potential of community paralegals as legal aid providers. The preamble of the Declaration notes the important roles community paralegals play, including by empowering people “to equitably resolve conflicts; to seek protection from violence; to navigate the criminal justice system; to exercise rights over land and natural resources; to access essential services like health care and education; to hold private firms accountable; and to participate in the economy on fair terms”.

- adopt a flexible and creative approach to solving problems using a range of tools not limited to adversarial techniques, including mediation and conciliation, but can also facilitate court adjudication as needed; and
- have a greater appreciation of the context to disputes and are well placed to craft workable, socially legitimate, and enforceable solutions; and integrate reconciliation practices into dispute resolution and evoke the centrality of community harmony.

### 2.2.2. Traditional authorities/ Customary security and justice providers/ Community leaders/ Religious authorities

#### Why engage?

The role and status of traditional and customary leaders varies across ECOWAS States. There are, however, some basic historical and contemporary realities that make their role in security and justice processes indispensable. This category refers to all traditional and customary institutions and offices that had existed in the pre-colonial context or were created during colonial rule and vested with traditional and customary authority.

**Box 9: Traditional and customary leaders in francophone West Africa<sup>78</sup>**

Emerging from diverse historical backgrounds, the role of traditional and customary leaders in the security and justice sector varies across the ECOWAS region. For example, in **Togo**, traditional chiefs are recognized by the new constitution dated 1992. In **Niger**, traditional chiefs are characterized by a minimum role with much control and supervision from the state; the law recognizes traditional leaders' minimum powers of conciliation in customary, civil and commercial matters involving land. In **Senegal**, the unification of legal codes (customary and civil or modern) led to the exclusive jurisdiction of the courts in judicial matters. In **Benin**, a judicial law in 2002 created courts of conciliation, and the operation of these courts is based on traditional modes of conflict resolution. Some countries have been more radical, for example in **Guinea**, traditional chiefs were completely abolished. In **Burkina Faso**, after the 1983 coup d'état, traditional rulers were attacked in the context of the struggle against feudalism. It is clear that in many cases traditional and customary leaders do provide critical support to state institutions.

### How to engage?

These institutions give the ECOWAS region's legal pluralistic landscape meaning, thus coexisting with the colonial legal system. The security and justice system reform (SJSR) strategy engaging these institutions aims at developing country specific processes of formalising and integrating their roles into the formal justice system.

For example, Alternative Dispute Resolution (ADR) processes are potentially viable means of integrating traditional and customary institutions into the juridical system. Customary authorities provide significant assistance in regulating conflicts in communities within ECOWAS countries, but the role of these authorities is often between informal and formal. Regardless of the domestic, familial, or political nature of conflicts, national or local governments must gradually incorporate the informal dispute resolution method to the formal court system, which at the same time strengthens the climate of security and development circles concerned.

#### Box 10: The role of customary actors<sup>79</sup>

For rule of law actors, it has long been clear that where formal justice institutions lack capacity or have lost legitimacy and trust, justice seekers turn to local customary adjudicators that provide accessible and locally legitimate services. In many fragile countries such customary forums have become so pervasive that formal systems have in many respects been forced to accommodate their work to them, even if they are not formally recognized. In settings in which peacebuilding involves accommodation of ethnic minorities or indigenous peoples, recognition of legal pluralism can become a litmus test of political will.

Recent development standards, including the New Deal for Engagement in Fragile States and the Agenda 2030, Goal 16, emphasize the link between sustainable development, rule of law and access to justice. For fragile countries, it is crucial to consider the role that customary actors can play, alongside formal justice sector institutions, in meeting commitments to secure access to justice throughout the country. However, the benefits of customary justice in terms of accessibility and local legitimacy must be balanced with concerns, particularly regarding their ability to deliver due process and respect for human rights.

For actors such as the g7+ group of conflict-affected and fragile states, seeking ways in which access to justice can be increased through engagement with customary justice is emerging as a priority issue.

“There is no ‘model’ or ‘standard’ framework that guarantees success in achieving access to justice”. Engagement comes with a myriad of opportunities and constraints that require actors to continually assess their current functions and their ideal roles. This critical exercise helps to determine if, when, where, and how to engage. Assessing engagement requires a nuanced, context-specific, and case-by-case analysis that takes into account numerous factors including the availability of formal justice systems, social norms, the balance of political power, and socioeconomic factors.

In the complex task of navigating through options and determining situations of engagement, the following considerations can offer guidance.<sup>80</sup>

#### Resource 4: Key considerations to plan engagement with customary and informal justice providers<sup>81</sup>

##### What are the possible entry points?

- Empowering justice seekers
- Supporting reforms of customary and informal justice systems
- Exploring interfaces between formal and informal justice

##### What are the fundamental risks and vested interests?

- Is direct engagement possible?
- Is strategic engagement possible?
- Is indirect engagement possible?

##### Are women's and marginalized voices being heard?

- Adherence to human rights standards
- Identification of possible harm

##### What are justice gaps and where do they exist?

- Normative
- Structural
- Procedural

### 2.2.3. CSOs/ Women's organizations/ Victim support and prisoner assistance groups

#### Why engage?

Discrimination against women in customary or informal justice systems adds complexity and difficulty to engagement, but, despite these challenges, necessitates commitment to ensuring the protection of women's rights.<sup>82</sup>

CSOs - women's organizations, victim support and prisoner assistance groups - are mobilizing to assert these rights and ensure support within the informal justice system. These groups are also effective when they struggle within the formal, state-based justice system.

#### How to engage?

- It is essential to look for innovative approaches to advance women's access to justice in contexts of legal pluralism.<sup>83</sup>
- Innovative approaches neither reject customary or informal justice systems as inherently inconsistent with women's rights, nor engage solely with the purpose of "fixing" them by bringing them in compliance with international standards.<sup>84</sup>
- Rather, approaches are developed from the perspective of women as justice seekers where women's participation is valued, supported, and promoted, and by understanding available justice options and maximizing opportunities to use plural justice orders.

### 2.2.4. Media and journalists

#### Definition and identification

There is quite a high degree of consensus on how the media in general should responsibly contribute to the functioning of democratic society. This agreement may be summarized, when applied to news, in the following way: there should be a free flow of accurate and diverse information which is reliable and is made available to all citizens who can use the information to challenge existing political, social, economic and cultural "truths" without destroying the moral and social fabric of society; and that citizens can ultimately use their improved knowledge and understanding to establish a stronger sense of social coherence, mutual understanding and belonging to a community.<sup>85</sup>

Expressed in this form, the list represents a series of moral or normative aspirations on what the setting of news journalism should be, how it should report contemporary events, and what the outcome of these reports should be. In short, the list represents the ideal news ecology or environment around the media and their role as an oversight and justice provider.<sup>86</sup>

In each context, the historical relationship between the security and justice sectors and the public is an ever-present influence that shapes how the media can address security and justice, especially in times of change. Where the public has suffered abuse or repression at the hands of the security and justice sectors, mistrust will likely linger and be difficult to overcome. Anger and a desire for retribution for past crimes can make balanced coverage of justice issues seem biased in the eyes of the public. While security and justice sector claims to newfound competency, professionalism, or integrity need to be backed up with evidence of meaningful change, it will still take time to convince a sceptical public. After years of secrecy and long traditions of repression, new habits of openness take time to develop even when new rules and regulations are introduced. Both the public and the security and justice sectors may be conditioned to believing that security affairs are matters of high politics, not fit for discussion in public or among non-specialists. Similarly, in places where politics or service in the security and justice sector has been dominated by a particular group, the inclusion of newer, and more diverse voices, such as women, can trigger resistance. When the media includes the views of historically discriminated groups, especially women, in discussions of security, this can introduce necessary new ideas while also providing a powerful symbol of change.<sup>87</sup>

### Why engage?

In situations in West Africa where political transitions are not necessarily easy, the context for security reporting will reflect the tensions and challenges of the transition itself. It is within these conditions that frameworks governing the security sector, rights, and media protections may be out of step with reality. A lack of experience in managing media monitoring and public debate on security issues can make security officials reluctant to cooperate with the media.

### How to engage?

The media, without a good understanding of security and justice issues, can have a tendency to sensationalize or report inaccurately, which can damage the security and justice sector's reputation in the eyes of the public and even destabilize the security situation. In this context, building productive and trust-based professional relationships between the media and the security and justice sector is a priority. The security and justice sectors will need specific training on the role of the media and how to involve them constructively, while journalists will need to develop their own professional standards for working with security and justice sector actors (qualifications, reporting standards, complaint mechanisms, etc.).<sup>88</sup>

#### 2.2.5. Oversight and accountability of non-state justice providers

On the one hand, non-state justice providers can provide justice services that are more accessible, cheaper, faster, more transparent, and fairer for communities. On the other hand, these actors 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 accountability under the law.

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 a 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 NSAs an official role in certain aspects of state-based justice provision. For example, NSAs 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. 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/G, 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. From the perspective of good SSR/G, NSAs and organizations with an interest in promoting higher standards of justice provision could be included in the justice sector because they provide public oversight.

Member states are encouraged to provide space and empower traditional and community-based oversight in recognition of African traditional authorities in a manner consistent with this policy.<sup>89</sup> In keeping with good governance principles, states are encouraged to ensure that all elements of the security sector establish internal checks and balances or internal monitoring mechanisms, since effective management provides an essential building block for sound oversight. In this regard, they should undertake regular reviews and audits of said mechanisms. It is these internal monitoring mechanisms that provide guidelines and reference points for investigations, review, and oversight of security sector operations.<sup>90</sup>

**Resource 5: Non-state justice providers and their relations with state actors**

	<i>Full cooperation</i>	<i>Substitution/ complementarity</i>	<i>Competition</i>	<i>Limited cooperation</i>	<i>Conflicting interests/ relations</i>
Lawyers/ paralegals/ legal aid bodies and public representation programmes/ civil rights advocates	X	X	X		X
Community leaders/ religious authorities		X	X		
CSOs/ women's organizations / victim support/ prisoner assistance groups	X	X			
Media and journalists		X	X	X	X

Source: Author

## 2.3. Informal security and justice actors

Unofficial actors often play a pivotal role both as security and service providers, and as sources of violence in intervention settings. One cannot ignore the reality of non-state security and justice actors (NSSJPs) which undermine and contest the writ of the state. These are NSSJPs whose activities undermine security, violate human rights and fundamental freedoms, and challenge the role and responsibility of the state.<sup>91</sup> Furthermore, these NSSJPs are willing and able to use violence for pursuing their political, social or economic and even personal objectives/agendas. The present Tool refers to them as *unofficial (without a state mandate) NSSJPs*.

### 2.3.1. Identification

In fragile and post-conflict contexts, the boundaries between mandated and *unofficial* (not mandated) actors may become blurred and the distinction not always easy to establish. Depending on each context of ECOWAS member states, unofficial actors may include:

- Rebel/insurgent and ex-combattant groups
- Terrorists
- Islamist militant groups
- Mercenaries
- Political/religious militia

In the specific contexts of the ECOWAS region, several *unofficial* groups have been identified, such as:

- Jihadist and terrorist groups: Ansar al-Din, AQIM Al-Qaeda in the Islamic Maghreb, MUJAO/Al-Mourabitoun, Katibat Macina, Katibat Sèrma/Katibat AAA, Ansarul Islam, ISGS The Islamic State in the Greater Sahara, Boko Haram, etc.
- Rebel/insurgent groups in Mali : e.g., CMA Coalition des Mouvements de l'Azawad, CME Coordination des Mouvements de l'Entente, Plateforme, Dan Na Ambassagou
- The controversial brotherhood of traditional hunters: the Dozo in Mali, Burkina Faso, Senegal, and particularly in Côte d'Ivoire
- Vigilante groups and neighbourhood watch/police in most of ECOWAS countries facing serious urban insecurity and other threats
- Street children (the case of "Microbes" in Côte d'Ivoire, and former child soldiers now street bandits<sup>92</sup>)
- Private militias (political, traditional, or religious) active, most of the time, during challenging electoral processes in some countries as Nigeria, Togo, Côte d'Ivoire, Guinea, Sierra Leone, etc.)

*“There is not a zero-sum game between the official and unofficial state: the strengthening of one does not necessarily imply the weakening of the other”*

Debos M., *Living by the Gun in Chad: Combatants, Impunity and State Formation*, Zeb Books Ltd, 2016, 177.

**Box 11: The Dozo in Côte d'Ivoire<sup>93</sup>**

*The classification of the Dozo among unofficial actors can be questioned since it can also be referred to them as vigilante groups – at least in Côte d'Ivoire where they are tolerated by the government and often seen as legitimate by the population (in some regions).*

Having adopted a prominent security role during the violent conflict of 2002–2011 in Côte d'Ivoire, the Dozo have made continuing efforts to maintain their position in the post-conflict state. In 2018, the president of the Dozo brotherhood advocated for reconciliation between the brotherhood and the state and asked for forgiveness. Today, in order to avoid such acts in the future, the Dozo want to be nationally recognized. Members of the Dozos brotherhood have been meeting regularly with Ivorians to explain their new “peace strategies” of forgiveness and reconciliation. Some populations nevertheless remain suspicious of them.

About 41,000 Dozo are spread across the country. For some experts, if the Ivorian state does nothing to formally recognize the Dozo, they could be a major source of trouble in the event of another conflict in the future. Although they have had to concede some more strategic and profitable activities to the re-established state, Dozo chiefs effectively govern the rural northern borderlands of Côte d'Ivoire.

Source: Heitz-Tokpa, K., “Mande hunters and the state: Cooperation and contestation in post-conflict Côte d'Ivoire”, *African Studies Review*, 62(1), 148-172, (2019)

**2.3.2. Opportunities and challenges**

Non-state actors play an important role in the provision of justice and security services in many fragile and conflict or post-conflict countries. In the context of West African states, it is widely admitted that citizens perceive local and non-formal services to be more effective than those offered by official entities: they are often more respected, physically and culturally closer, and more efficient, as well as cheaper and more responsive.<sup>94</sup>

**Opportunities of including unofficial actors in SSR/G:**

- *Dialogue*

Dialogue with unofficial actors should not be ruled out. With many types of actors, the possibility of opening dialogue is quite possible, or even constitutes a certain path of engagement to promote respect for human rights, support for communication, and the creation of trust between the population and the state.

The relationship with the groups must always be done through the prism of human rights violations and certain non-state groups can be questioned. But even in these cases, dialogue can exist in order to promote greater respect for rights. For example, “violent extremist groups are segmented. Foot soldiers, middle managers, and leaders don't necessarily pursue the same interests. This opens avenues for discussions at several levels. Whether such negotiations should be open is a complicated question, but the process should be led by national actors who decide on the timing, interlocutors, format, and preferred outcomes.”<sup>95</sup>

- *Peacebuilding and conflict prevention*

Understanding and involving NSAs is important not only for reducing the humanitarian impact on civilians, but also to improve the successes of disarmament, demobilization and reintegration (DDR) processes, as well as post-conflict SSG and SSR.<sup>96</sup> Such groups could be invited to the negotiating table and their needs used as conditions for inclusion in the peace process.<sup>97</sup>

- *Provide efficient and affordable services to the population*

In the context of fragile or post-conflict countries, the resources, capacities, and skills for effective protection are lacking and, as a result, police, military, and related security services are often unable to fulfil their roles.<sup>98</sup> In some cases, the police, the military, and other security services can even be perceived as part of the problem rather than the solution, leading to mistrust of military by the population (e.g. recent attacks against the civil population in Burkina Faso<sup>99</sup>).

*“It has been observed that (...) local/non-state security and justice networks often take on a large share of the justice and security service provision for people in fragile states. Local people frequently perceive their services to be more effective than those offered by official entities: they may be more respected, physically and culturally closer, and more efficient, as well as cheaper and more responsive”.*

Maria Derks, Netherlands Institute of International Relations ‘Clingendael’, Improving security and justice through local/nonstate actors: The challenges of donor support to local/nonstate security and justice providers” April 2012, p6.

#### Challenges of including unofficial actors in SSR/G:

Violent extremist groups often infiltrate spaces where the social contract between the state and its citizens is weak or non-existent. They cooperate with other criminal groups such as illegal gold miners, poachers, or traffickers who also have an interest in maintaining state absence or weakening state presence.<sup>101</sup> Very often, non-state armed groups are not amenable to reform as, through their activities, they very often undermine peace and security, commit atrocities, and engage in human rights abuses. Dealing with unofficial groups (militias, armed factions) need to echo the challenges and risks to include them in security and justice programmes.

#### Risk of level of territorial control

The level of territorial control can be a real challenge in the inclusion of non-official actors in governance and security sector reform. Many non-state and unofficial actors control or significantly influence activities in a territory and thus the lives of thousands of individuals.

The level of territorial control is often a means of assessing the “success” of a NSA (assuming that territorial control is part of its strategy and/or objectives). At a higher level of territorial control are *de facto* authorities and states that are not (or are only partially) recognized internationally. These are NSAs that have (partly) “succeeded” in “liberating” a territory. Because they can operate openly, these actors often set up administrations similar to those of many states (government, parliament, ministries, police and armed forces, etc.). When operating in such territories, humanitarian and other actors need the authorization of these NSAs. Their ambitions to assert their presence, legitimacy, and influence, some non-state armed groups may nevertheless model their objectives along more traditional markers of (state) legitimacy, to stabilize their organizations<sup>102</sup> use of force, in addition to economic, political, and ideological claims<sup>103</sup>.

### Risk of parallel service provision / Duplication of services and 'local ownership'

If we follow the logic of Derks, services in post-conflict or transition situations are delivered by a multitude of different actors.<sup>104</sup> In particular, three types of actors are involved in the administration of justice and security services:

1. Central state agencies (including those directly involved in delivery, such as the national police and central state courts, as well as ministries and other institutions involved in the management and governance of security and justice)
2. Local actors: actors mandated (by law, constitution, etc.) to provide security and justice services at the local level (the exact form of which is very context-specific, but including, for example, municipalities, municipal police, community associations, and traditional courts, etc.)
3. NSAs: actors who provide security and justice without a state mandate

These actors are numerous, sometimes with similar or even overlapping missions. There is therefore a significant risk of parallel provision and duplication resulting in system inconsistencies. In such a situation, it is therefore a good idea to focus the commitment on a reform that ensures the coherence and effectiveness of the overall system, and that reform and development efforts build effective state institutions over time.

### Risk of damaging relationship with the host government

In the context of engagement with unofficial actors, action is permitted with the support of a donor who will enter into bilateral relations with the host country. This relationship is based on trust and unwavering support for the development of better governance. However, in the case of support to a NSA, there is a risk of exceeding state sovereignty. In this case, sovereignty is called into question by an unrecognized actor who would take over administrative, judicial, or police powers.

The donor would then enter into a bilateral relationship with the actor, sometimes at the expense of the central state. This external commitment must therefore be based on the explicit agreement of the state. Otherwise, there is the risk of being qualified as foreign intervention in internal sovereign issues, and rejection of a proposal. Indeed, the integration of local/non-state/unofficial actors into a broader SSR programme can complicate discussions on such an agreement between a donor and host government.

### Risk of "doing harm"

Although it is clear that, by itself, assistance - e.g., for reducing the humanitarian impact on civilians, in developing legal engagement, by including groups to discussions tables, by identifying their capacities and level of influence - neither causes nor can end conflict, it can be a significant factor in conflict contexts. Assistance can have important effects on intergroup relations and on the course of intergroup conflict. It can be defined as the need for recognition of the potential negative effects of interventions, taking into consideration not only beneficiaries but also the wider environment, taking a step back from and even questioning interventions, and the quality of relationships with beneficiaries. Beneficiaries and their environment are thus central in the application of this principle.

Working and engaging with unofficial NSAs can lead to the undermining of central authorities, and the neglect of other NSAs. At these two levels, beneficiaries are disadvantaged in their access to justice and security. The weakening of mutual relations with the state or with NSAs will have the effect of lastingly affecting the provision of justice and security services.

### Resource 6: The *do no harm* principle<sup>105</sup>

Risks	Risk mitigation
Upsetting relationships and power balances between central state agencies and unofficial/ local/ non-state actors, as well as among local actors	This issue can be addressed by making sure to engage host governments in plans for supporting local/ non-state actors from the start, and by ensuring that such plans are based on a very detailed understanding of the power relations at the local level.
Inadvertently creating or reinforcing extortion rackets (thereby reducing security for local people) in the effort to make unofficial/ local/ non-state security providers self-sufficient	This can be managed by including a focus on accountability and oversight in programmes that support local actors (which also aligns well with overall governance objectives), and by closely monitoring the political economy of the micro-level local context.
"Damaging a good thing," i.e. overwhelming small-scale unofficial/ local/ non-state actors with an influx of large amounts of funding and associated reporting requirements	This issue requires innovative funding and management strategies, disbursing many small amounts of funding rather than a few large ones (increasing management and transaction costs), and a flexible approach to reporting standards. Here, investigating what can be learned from experiences with multi-partner pooled funds and micro-credit schemes might generate valuable insights.

*"The principle of 'do no harm' is acted upon by taking into account at all times an understanding of the history and dynamics of power, gender, religion and ethnicity in relation to the state, while finding ways to overcome dysfunctional dispute resolution and introduce reforms that are both accepted socially and locally and sustainable under international law".<sup>106</sup>*

#### The challenge related to risk aversion

As it can be complex for donors to fully know and understand the 'micro-local' context in which NSAs operate, there is always a risk that support would inadvertently be given to actors that turn out to violate human rights, or that are involved in criminal activity, corruption, and racketeering.<sup>108</sup> "Since such a situation would lead to negative publicity at home, this is something most policymakers want to avoid. There is therefore considerable wariness among donor policymakers when it comes to supporting local/ NSSIPs, and a tendency to discontinue entire programmes when a programme includes an unreliable or unaccountable actor."<sup>109</sup> Dealing with the challenge of risk-averse behaviour requires a three-pronged approach<sup>110</sup> that includes (1) the development of a knowledge-management strategy, (2) the development of perception surveys and monitoring tools, and (3) a communication strategy.<sup>111</sup>

#### The challenge and risks to address behavioural change

By dealing with these groups, their behavioural changes can be the goal. In fact, different mechanisms and result exist in different degrees of behavioural change fostering long-term transformation processes that involve not only conformity of behaviour for tactical reasons but also a genuine and sustainable change of the actors' policies and self-conception.

Resource 7: The *do no harm* outline<sup>107</sup>

<i>Step 1</i>	Understanding the context of conflict	Identifying which conflicts are dangerous in terms of their destructiveness or violence, which NSAs are involved in the conflict.
<i>Step 2</i>	Analyze (identify and unpack) dividers and sources of tension	May be rooted in deep-seated, historical injustice (root causes) while others may be recent, short-lived or manipulated by subgroup leaders (proximate causes). They may arise from many sources including economic relations, geography, demography, politics or religion. Some may be entirely internal to a society; others may be promoted by outside powers. Understanding what divides people is critical to understanding, subsequently, how our assistance programmes feed into, or lessen, these forces.
<i>Step 3</i>	Analyze (identify and unpack) connectors and local capacities for peace	How people, although they are divided by conflict, remain also connected across sub-group lines.
<i>Step 4</i>	Analyze (identify and unpack) the assistance project	Review of all aspects of the assistance programme. Where and why is assistance offered, who are the staff (external and internal), how were they hired, who are the intended recipients of assistance, by what criteria are they included, what is provided, who decides, how assistance is delivered, warehoused, distributed.
<i>Step 5</i>	Analyze the assistance programme's impact on the context of conflict through resource transfers and implicit ethical messages	Who gains and who loses (or who does not gain) from our assistance? Do these groups overlap with the divisions we identified as potentially or actually destructive? Are we supporting military activities or civilian structures? Are we missing or ignoring opportunities to reinforce connectors? Are we inadvertently undermining or weakening local capacities for peace?
<i>Step 6</i>	Generate programming options	How to provide the same programme in a way that eliminates its negative, conflict-worsening impacts. If we find that we have overlooked local peace capacities or connectors, then we should redesign our programming not to miss this opportunity to support peace.
<i>Step 7</i>	Test options and redesign programme	Re-check the impacts of our new approach on the dividers and connectors.

Resource 8: ANSAs' Behavioural change<sup>112</sup>

Approach	Key mechanism/risk	Behavioural change based on
Realist	Use of force/leverage (Counterinsurgency).	Adaptation.
Institutionalist	Bargaining (Conflict management).	Adaptation, Policy/preference change.
Constructivist	Persuasion (Norm diffusion).	Adaptation, Policy/preference change, identity change.

Resource 9: Challenges / Mitigation of including unofficial actors in SSR/G<sup>113</sup>

Challenges	Mitigation
Parallel service provision/ duplication of services and 'local ownership'	<ul style="list-style-type: none"> <li>To make sure that improvements in service delivery and state-building go hand in hand, instead of working against each other, <b>bottom-up and top-down approaches need to be integrated</b>. This can be done by ensuring that effective linkages between local/ non-state and central state actors are either created or improved upon.</li> <li><b>To think about security and justice in terms of (transferable) functions</b>, not form, in order to come up with a programme in which functions are initially provided by local/ non-state actors, and then gradually handed over to the state as its capacities to provide security and justice grow</li> </ul>
Risk of level of territorial control	<ul style="list-style-type: none"> <li>To <b>address the situation</b> with national authorities,</li> <li>To make sure that dealing with NSAs <b>does not include a formal legitimization</b></li> <li>To make sure to <b>have the local NSAs' authorization</b></li> <li>To make sure the <b>donor agreed to the engagement</b> in this area and is fully aware of the level of territorial control by the local NSA</li> </ul>
Risk of damaging relationship with the host government	<ul style="list-style-type: none"> <li><b>To engage a dialogue on the objectives of SSR and ways to achieve them</b>, as well as <b>with central state security and justice actors</b>.</li> <li><b>To integrate or at least link support for local/ non-state security and justice actors to wider security and justice development programmes</b> in such a way that together they strengthen the overall system of justice and security provision.</li> <li><b>To take a portfolio approach to negotiations with the national government on a security and justice development programme</b>. In such a portfolio approach, a programme consists of many different components, one of which can be support for local NSAs.</li> <li><b>To provide support indirectly where possible, through partnerships</b> with similar organizations based in donor countries</li> </ul>
Risk of "doing harm"	<i>See Tools 6 and 7</i>
Challenge of risk aversion	<ul style="list-style-type: none"> <li>To develop a <b>knowledge-management strategy</b> that will help them acquire a detailed level of knowledge (including the identification of reliable local informants), in order to minimize the chance of supporting actors who prove unreliable or unaccountable</li> <li>To develop <b>tools and mechanisms</b>, including monitoring tools, that identify and address existing risks and mitigate future risks</li> <li>To develop a <b>communication strategy</b> to make donor governments' domestic audiences aware of the advantages of supporting NSAs as well as of the risks and ways to attenuate these</li> </ul>
Risks to address behavioural change	<ul style="list-style-type: none"> <li>The use of force/ leverage to foster change leads to a behavioural change based on <b>adaptation</b>, which constitute a low level of change with minimum engagement</li> <li>The use of bargaining to foster change leads to behavioural change based on <b>adaptation, policy/ preference change</b>, which constitute a low level of change</li> <li>The use of persuasion to foster change leads to behavioural change based on <b>adaptation, policy/ preference change, and identity change</b>, which constitute the higher level of change</li> </ul>

## 2.4. Civil society organizations and community engagement

In their great diversity, CSOs ensure the monitoring, warning, and deal with public complaints in connection with security sector activities.

In the past decade, a high-level consensus has been reached on the relevance of including local actors, especially CSOs, when programming SSR/G, and more broadly, in achieving sustainable peace in conflict or post-conflict affected situations. To that regard, the High-Level Independent Panel on Peace Operations (HIPPO) report (2015) recommends a shift towards a more 'people-focused' approach that includes civil society actors in addressing security threats and peacebuilding challenges. The UN Secretary-General also called for a strengthening of engagement with civil society and local communities in his report on Peacebuilding and Sustaining Peace of 2018.<sup>114</sup> In response to this call, a joint UN-civil society working group is currently developing system-wide Community-Engagement Guidelines for the UN, recommending mandatory strategies for community engagement in intervention settings.<sup>115</sup>

**See also**  
**Tool 6: Civil**  
**Society Involvement**  
**in Security Sector**  
**Reform and**  
**Governance**

6

### 2.4.1. The role of civil society and communities in improving SSR/G

*“Civil society will act not only as watchdogs over security related actions of national, regional and continental authorities, but civil society engagement will also be seen as a measure of public approval of security related activities including security sector reform.”*

AU Policy Framework on Security Sector Reform, Section H. The Role of African Civil Society in Security Sector Reform, § 75.

According to the AU Policy Framework on Security Sector Reform<sup>116</sup>, the role of African civil society organizations in security sector reform will aim to:

- Promote dialogue among the different sectors of society on security issues as a confidence-building measure
- Actively participate in the formulation, monitoring and evaluation of security sector policies and legislation
- Promote peace, security and stability
- Promote and defend a culture of good governance, democratic principles, participation, human rights and freedoms as well as social justice in the security sector
- Promote and defend gender best practices in the security sector
- Conduct research and provide training on security related issues
- Advocate and create awareness on security issues in particular on security budget analysis, and monitoring and evaluation of security policy and practice
- Promote the implementation of this AU policy at the national, regional and continental levels

The African Union encourages CSOs to use relevant channels to enhance their interaction with the AU, RECs and AU member states on matters relating to their roles as described in the previous section.

*“The gaps and the causes of the weak involvement of civil society in the public oversight of the security sector can be addressed, specifically tailored and targeted to encourage greater participation of CSOs in these reform processes in West and Central Africa through specific activities:*

- Undertake communication and advocacy campaigns to disseminate and increase awareness of the AU Policy Framework on Security Sector Reform as well as the ECOWAS Policy Framework for Security Sector Reform and Governance among civil society stakeholders.*
- Conduct training workshops for CSOs so as to develop and further their expertise on SSG/R issues.*
- Encourage the idea of building coalitions of local NGOs specialized in democratic security governance issues.*
- Promote closer relations between local CSO coalitions and national human rights commissions with a view to collectively promoting respect for human rights by the Cameroonian, Malian and Nigerian armed forces.*
- Establish direct links between the African Union (DSD/PSD, CIDO and ECOSOCC) and local CSO coalitions specialized in democratic security governance issues.*
- Establish direct relations between ECOWAS and the local CSO coalitions specialized in democratic security governance issues.*
- Encourage the creation of spaces for dialogue between CSOs, defence and security forces and the executive under whose authority they operate.*
- Support the organization of CSOs advocacy campaigns on targeted topics (for instance, on the improvement of the social condition of the defence and security staff).*
- Contribute to the development of indicators for the ECOWAS Early Warning System by feeding it with the criteria selected for the FES PSCC Project SSG/R Barometer.*
- Carry out a political economy analysis on parliamentary institutions and rule of law institutions theoretically involved, as part of their prerogatives, in the supervision of security systems, but actually have difficulties exercising their role.*
- Develop fine and detailed sociologies of defence and security forces, analyse, in a very accurate way, power relations (micropolitics) within the armed forces.”*

ASSN, FES, “Baseline Study of the State of Play of Security Sector Governance and the Inclusion of Civil Society in Security Sector Reform Processes in Nigeria, Mali, Cameroon and Wider ECOWAS/ECCAS Region”, 2020.

The African Union, the RECs and member states are encouraged to ensure the participation of Civil Society Organizations as defined by the Statutes of the Economic, Social and Cultural Council (ECOSOCC) in the needs assessment, formulation, adoption, implementation, monitoring and evaluation of the security sector.<sup>117</sup>

#### 2.4.2. The role of civil society in democratic control and oversight of the security sector

Public involvement in democratic oversight is crucial to ensuring accountability and transparency across the security sector. The engagement of civil society organizations (CSOs) in the security policy domain strongly contributes to accountability and good governance: CSOs act not only as a government “watchdog” but also as an index of public contentment with the performance of institutions and agencies responsible for public security and related services.

Actions such as monitoring government performance, policy, compliance with laws, and human rights observance all contribute to this process. In addition, advocacy by civil society groups representing the interests of local communities and groups of like-minded individuals helps to give voice to often marginalized actors and opens up the policymaking process to a wider set of perspectives.

##### Why engage?

In this way, CSOs have a vital role to play not only in established democracies but also in post-conflict, post-authoritarian, and undemocratic states, where the activities of CSOs can still affect the decision-making of elites that monopolize the political process.

As a matter of fact, identifying entry points and developing methods of working through local actors to build on existing initiatives is a major way to increase this oversight role. Although the development community has tended to view NGOs and other civil society organizations as service providers and alternative channels for donor assistance, they also play an important role in the broader policy process.

##### How to engage?

CSOs play a critical role in ensuring a degree of transparency and accountability of the executive when it comes to decisions around the delivery of justice and security. Strengthening this capacity is a way to ensure their oversight position.

Based on a thorough assessment process, the capacity development approach details strategies for four different organizational dimensions: (1) Institutional Reform and Incentives, (2) Leadership Capacities, (3) Education, Training and Learning, and (4) Accountability and Voice Mechanisms.<sup>118</sup> The trainings objectives can be combined with the advocacy activities of CSOs.

## Box 12: Examples of non-state security providers in West Africa

	<b>Territorial implementation</b>	<b>NSA type</b>	<b>Activities</b>	<b>Relation to State</b>	<b>Relations to population</b>
<i>Dan Na Embassagou</i>	Mali (Mopti region)	Self-defence militias	Military actions	Competition	Cooperation
<i>Dozo hunters local groups</i>	Mali (Segou region), Côte d'Ivoire, Burkina Faso	Self-defence militias	Self-defence actions and violence	Competition	Fear
<i>Koglweogo groups</i>	Burkina Faso	Self-defence militias	Self-defence actions and violence	Competition	Cooperation
<i>Kamajor hunters</i>	Sierra Leone	Self-defence militias	Self-defence actions and violence	Competition	Cooperation
<i>Egbesu militias</i>	Nigeria	Self-defence militias	Self-defence actions and violence	Competition	Fear
<i>Oodua Peoples Congress</i>	Nigeria	Self-defence group - separatists	Political actions and self-defence actions	Limited cooperation	Cooperation
<i>Movement for the Actualization of the Sovereign State of Biafra</i>	Nigeria (Biafra region)	Separatists	Political actions	Conflicting interests/relations	Cooperation
<i>Movement for the Emancipation of the Niger Delta</i>	Nigeria (Biafra region)	Separatists	Violence and military actions	Conflicting interests/relations	Cooperation
<i>Chefs de quartiers</i>	Guinea, Burkina Faso	Informal policing	Self-defence actions	Substitution/ Complementarity	Cooperation
<i>Local initiatives of security</i>	Guinea, Burkina Faso	Informal policing	Self-defence actions	Substitution/ Complementarity	Cooperation
<i>Lamhar traffickers</i>	Mali	Criminal trafficking	Smuggling	Conflicting interests/relations	Cooperation
<i>SMP Wagner</i>	Mali	Private military/ security companies	Military actions	Substitution/ Complementarity	No
<i>Berry Aviation</i>	Niger	Private military/ security companies	Military actions	Substitution/ Complementarity	No
<i>Erickson Inc.</i>	Niger	Private military/ security companies	Military actions	Substitution/ Complementarity	No
<i>RSB</i>	Mali	Private military/ security companies	Military actions	Substitution/ Complementarity	No
<i>Ukrainian Helicopters</i>	Mali	Private military/ security companies	Military actions	Substitution/ Complementarity	No
<i>Omega Consulting Group</i>	Burkina Faso	Private military/ security companies	Military actions	Substitution/ Complementarity	No
<i>Executive Outcomes (EO)</i>	Nigeria	Private military/ security companies	Military actions	Substitution/ Complementarity	No

<i>Femmes Africa Solidarité (FAS)</i>	Senegal	OSC	Mediation	Full cooperation	Cooperation
<i>Inter-Religious Councils of Sierra Leone (IRCSL) and Liberia (IRCL)</i>	Sierra Leone/ Liberia	OSC	Mediation	Full cooperation	Cooperation
<i>Women's National Movement for the Safeguard of Peace and National Unity (MNFUN)</i>	Mali	OSC	Mediation	Full cooperation	Cooperation
<i>Comité Régional de Solidarité des Femmes pour la Paix en Casamance (CRSFPC/USOFORAL)</i>	Senegal	OSC	Mediation	Full cooperation	Cooperation
<i>West Africa Network for Peacebuilding</i>	West Africa	OSC	Mediation	Full cooperation	Cooperation
<i>Mano River Women's Peace Network</i>	Sierra Leone	OSC	Mediation	Full cooperation	Cooperation
<i>Media</i>	West Africa	Media	Information and oversight	Limited cooperation	Cooperation
<i>NGOs</i>	West Africa	OSC	Civil oversight	Limited cooperation	Cooperation

Source : Author

The following tool provides a template to be completed by the practitioner when engaging with NSAs. This stakeholder analysis allows the human rights standards and accountability of NSSJP to be highlighted in order to anticipate the risks of engagement.

## Resource 10: Stakeholder analysis - Human rights standards and accountability of NSSJP

Template to be completed in the planning phase of a project

	Full respect for international human rights norms	Understanding of human rights norms, but limited application	No application of human rights norms	Violations of human rights norms	Accountability
<b>Mandated security actors</b>					
<i>Self-defence groups/ neighbourhood watches/ militias/vigilantes</i>					
<i>Private military and security companies</i>					
<i>Traditional authorities/ customary security providers</i>					
<i>Women's groups/ associations/CSOs</i>					
<b>Not mandated (unofficial) security actors</b>					
<i>Self-defence groups/ neighbourhood watches/ militias/vigilantes</i>					
<i>Armed non-state armed groups</i>					
<b>Mandated justice actors</b>					
<i>Lawyers/paralegals/ legal aid bodies and public representation programmes/civil rights advocates</i>					
<i>Community leaders/ religious authorities</i>					
<i>CSOs/women's organizations/victim support and prisoner assistance groups</i>					
<i>Journalists/media</i>					
<b>Not mandated (unofficial) justice actors</b>					
<i>Traditional authorities</i>					

## Rationale to engage Non-State Security and Justice Providers in SSR/G

### Summary reminder: Section 3

#### **3.1. Why engage Non-State Security and Justice Providers in SSR/G?**

#### **3.2. Advantages of engaging non-state actors in peace processes, conflict prevention and SSR/G**

##### 3.2.1. Advantages of engaging non-state actors in SSR/G

3.2.2. As an important component of peace processes, SSR/G must also include armed non-state actors (ANSAs)

#### **3.3. Challenges/ Risks of engaging non-state actors in SSR/G**

##### 3.3.1. Extensive knowledge of the context

##### 3.3.2. Human rights violations and limited accountability

##### 3.3.3. The normative framework and the lack of written procedures

##### 3.3.4. The risk of political hijacking

This section will develop the rationale for engaging NSSJPs in SSR/G (3.1), focusing on the advantages (3.2) and the related challenges (3.3).

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### 3.1. Why engage Non-State Security and Justice Providers in SSR/G?

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The engagement of non-state security and justice providers in SSR/G is an important debate for organizations involved in development, security, and peacebuilding. Their importance, legitimacy, and reality are central elements that come into play during the action definition phase. The final decision will then be based on strategic and political stakes, but above all will take into account the political economy of the territory. Beyond the capacity for change that such a commitment can bring about, these arguments weigh heavily in the balance.

Furthermore, it is necessary to counterbalance these arguments by highlighting factual arguments and the distinction between engagement of the NSSJP and support of the NSSJP.

### De facto realism versus idealism

The realistic logic of NSSJP engagement may allow the practitioner to move away from a state-centred perspective and consider the human security needs of local populations. NSSJs are the de facto security providers for more than 80% of the population they represent, and their influence is growing, despite being poorly equipped.

Such hybrid security arrangements may be transactional, with money, power, or influence being traded for different forms of protection. This can mean that disadvantaged or marginalized members of society are excluded, so future work might include an emphasis on principles and pragmatic steps related to inclusion and access. Moreover, hybrid security tends to be highly localized and may evolve rapidly, which may make it more difficult to analyse situations and put in place longer-term measures for overseeing informal security provisions.

Therefore, there is no ideal type of non-state security and justice actor whose position and legitimacy would not challenge the power of the state. Partial as their functionality may be, if no credible alternative is offered to the population NSSJPs are the de facto the main providers of security and justice at the local level.

Thus, organizations may have reason to consider these mechanisms as playing an essential role for local communities. Adopting a pragmatic vision would therefore eliminate many of the conditions and adapt engagement. The fact that these local NSSJPs can contribute to stability and security is a very mixed picture and subject to limited conditions. Nevertheless, there is enormous room for progress, especially for the population.

### Engagement versus support

It is important to remember in this discussion that the state partners in security and justice are sometimes responsible for human rights violations, even though formal mechanisms provide more means and frameworks for engagement.

Thus, engagement is not synonymous with support. Engagement should be a vehicle for change and does not imply political recognition. This position is very clear and should be disseminated to SRR/G actors. Ultimately, however, if commitment is not support, it should advocate for increased commitment to bring about change. Results-based management is then inseparable from evidence-based change, which emphasizes the need for commitment in cases where change should be increased.

### Why and how is commitment justified?

An interesting dimension of the de facto approach is that it may broaden the conditions for support. The NSSJP mechanisms are locally present with existing service delivery, so they do not necessarily have to do what it takes for engagement in SSG/R to be justified. The population can be empowered through a commitment as long as it is consistent with a “do no harm” approach. While a commitment to SSG/R reduces the likelihood of these mechanisms making mistakes, it is already a meaningful commitment if it is achievable in practice.

Finally, the commitment of these mechanisms should not be equal to support. Commitment is broader than support. The differentiation between the two mechanisms is essential to take into account in this debate.

### Hybridization of security

In many parts of West Africa, the security sector is characterized by hybrid security arrangements and dynamics, from the increasingly important role played by private security providers to the role that other NSAs, including armed groups, play. Developing effective approaches to security management in hybrid contexts is an essential but complex undertaking, particularly in fragile and conflict-affected environments such as the Sahel.

True security governance exists in hybrid systems, and it can reinforce patterns of inclusion and exclusion (including gender bias). Hybrid security arrangements are sometimes in place when state/ formal actors are unable to meet the security needs of different communities - whether due to lack of resources, lack of legitimacy, or other reasons. In cases in which the state is absent from a locality, other NSAs may fill this gap, offering basic services in exchange for payment or other forms of compensation. Their ability to address larger scale security challenges or crises may be limited, however, and there is a risk that vulnerable members of society will be left out of security arrangements. At the same time, non-state providers may be able to offer vital services and be subject to regulation (in the case of private security companies) or communal oversight and social norms which establish constraints in the absence of clear and consistently enforced laws and regulations (see for example, the case of the Groups of Volunteers for the Defence of the Homeland in Burkina Faso). The challenges of hybrid security raise the question of how policymakers can work toward hybrid security arrangements to create more legitimate, broader, and effective African security governance.<sup>119</sup>

One of the main challenges relates to the risk associated with the process of integrating NSSJPs in SSR/G. Most of the NSSJPs mentioned in this tool and across the ECOWAS region, which provide security and justice services within their communities on a daily basis, evolved in the margins of the state. To a large extent, many of these groups have social legitimacy because they provide satisfactory services to the communities. In such circumstances, extending the mandate of the state security institutions may risk eroding these institutions, particularly if the state security institutions do not yet espouse the principles, norms, and values which they are expected to inculcate to NSSJPs. In cases where NSSJPs which have emerged from the communities are providing satisfactory services and enjoy some level of social legitimacy, attributes which some state security institutions lack, it then becomes pertinent to ask: what can the state learn from thriving NSSJPs?

#### Box 13: Example of hybrid security: The *Groups of Volunteers for the Defence of the Homeland* in Burkina Faso<sup>120</sup>

In January 2020, the Burkina Faso Parliament passed a law creating local militias, the ***Groups of Volunteers for the Defence of the Homeland*** (groups of volunteers composed by civilians to defend their communities). They are to operate under the authority of the Burkina Faso Defence and Security Forces. In previous months, armed Islamists have on several occasions targeted civilians for their alleged support of the military or local volunteer forces. In the village of Gasseliki, armed Islamists killed 20 civilians in January 2019 in apparent retaliation for seeking to establish a self-defence force. More recently, a witness to the 25 January Silgadji killings said that during the attack, armed Islamists accused the community of seeking support from the military to establish a group of volunteers. The government's plans to empower militias by institutionalizing the volunteers also raises concerns that such groups will commit serious abuses.

## 3.2. Advantages of engaging non-state actors in peace processes, conflict prevention and SSR/G

### 3.2.1. Advantages of engaging non-state actors in SSR/G

#### Legitimacy and effectiveness

One of the major complaints to state security and justice providers is the difficulty for the citizens to easily contact actors of this sector with the exception of local police and/or community policing.<sup>121</sup> This applies first and foremost to the security forces as the police, facing lack of means and resources, are then unable to successfully operate in due time. The establishment of community policing by competent authorities of the ECOWAS member states or the implementation of related practical measures move state security actors closer to populations and facilitate cooperation with the citizens.

Looking at field state security there are complexities and procedural delays, alleged corruption, and a lack of impartiality and unfairness in many decisions, creating a distance between the citizens and the actors. Ultimately, and despite the fact that security and justice mechanisms are essential public services, state actors operating there are not reliably accessible, affordable, or trusted by communities.

Non-state security mechanisms are embedded within local cultural, social, economic, and political realities, rendering them more accessible to populations. In many cases, the state is not sufficiently present and may therefore lack comparable legitimacy, authority, and accessibility.<sup>122</sup>

#### Flexibility and Resilience

Despite common presumptions, culture, norms, and traditions are flexible, adaptable and constantly changing. Their informal nature may enable them to change more easily than the formal bureaucratic institutions of the state. The advantages of engaging non-state justice and security actors like women's organizations, lawyers, and CSOs rely on their flexibility, adaptability, and resilience.

#### Local Ownership

Due to their bottom-up nature, NSAs may be in the best position to realize the "locally owned" and "people centred" ideals of SSR. Security and justice have different meanings for different communities. A decentralized and pluralistic approach to SSR may better respond to the actual needs and desires of communities than the top-down technocracy and universalism of a state-centric approach, the values of which may be unfamiliar.

NSSJPs across ECOWAS member states have public support from their communities, largely because, emerging from a history of military rule and culture of oppression and dictatorship, state security actors have been a source of insecurity, injustice, and lacking in liberal democracy. Furthermore, NSAs have exercised supplemental and citizen-centred security and justice assignment with fairly satisfactory results. In most of the ECOWAS countries, this gives more social legitimacy to interventions led by NSAs responsive to the specific needs of the communities. In addition, this situation establishes trusting relationships between NSSJPs and the citizens.

The social legitimacy of NSSJPs should be understood within the context of states that have struggled with providing citizens with the basic functions of security and justice, forcing citizens to turn elsewhere to fill the gap. Thus, an SSR/G strategy has a good chance of succeeding when it considers the significant social legitimacy and local implementation that NSSJPs have among the citizenry. Involving NSSJPs embeds local ownership within the process; community policing practices seek to integrate aspects of local ownership and participation.

### Cost Effectiveness

Generally, operatives of NSSJPs reside within the community where they serve, and they are often members of the community. This dimension of proximity allows NSSJPs to be held accountable by their communities since they are easily identifiable or familiar. They are accessible and their services are relatively affordable - not only relative to the cost of accessing justice through formal state channels, but in considering proximity. Those who seek their services do not have to travel long distances, as compared to traveling from rural to urban centres to access state justice and security services. It is important to note here that resources required to develop and to sustain state security institutions are often greater than state revenues allow. For Baker and Scheye, the advantages listed above help explain why “in the majority of circumstances [in post-conflict and fragile states], people look first to non-state agencies for crime prevention and crime response” (2007: 512). This condition demands more serious and nuanced attention to the non-state within international policymaking.

Underfunding is one of the challenges most African SSR processes face. Under-financed state security institutions will remain urban-based, under-trained, under-equipped, ineffective, and largely unsupported. This underlines the reasons why NSSJPs can no longer be ignored. In this way, these security and justice systems are less costly for users because they do not have to travel to urban centres or pay the costs of state bureaucracy (this is indeed one reason why people turn to such systems in the first place). Reforming and transforming NSSJPs will require fewer financial resources while operating in closer proximity to the people. Such a strategy engages the structures that are already in place and are actively providing security and justice services to local populations, rather than trying to eliminate or work around these existing mechanisms and construct new systems. In this sense, **a strategy that engages non-state structures may be more practical and realistic than state-building.**

### 3.2.2. Inclusion of armed non-state actors (ANSAs)

*(On the issue of inclusion/exclusion of ANSAs, see also Section 6 of this tool)*

The escalation of violence and deteriorating human security situation in the Sahel and West Africa are a result of armed non-state actors (ANSAs), such as insurgents, rebel groups, terrorist organizations, and resistance movements actively participating in the deadly cycles of violence and revenge by killing, maiming, and terrorizing communities throughout the region.

One of the dominant complex challenges in West African countries are inter-communal conflicts exacerbated by the recent recruitment of pastoralist Fulanis by armed Islamist groups. This situation aggravates tensions with agrarian communities which, in turn, formed self-defence groups because of inadequate or inexistent government security.

Despite the UN's focus on sustaining the long-term inclusion of communities in peacebuilding, there is a tendency to deal with ANSAs through short-term SSR/G programmes,<sup>123</sup> and a very limited number of states have productively engaged the NSAs who provide security services in SSR/G. This is of particular concern because conflicts originating in neglected peripheries are common, highlighted as a major factor in Liberia, Guinea, Chad, Mali, South Sudan, Sudan, Libya, the DRC, and the CAR.<sup>124</sup> A number of these states “are so large and unevenly settled that they are described as ‘unpoliceable’ by conventional means without an unrealistic expansion of policing budgets; thus, engaging NSAs may well be the only feasible option.”<sup>125</sup>

***Engagement with ANSAs is often short-term, state-centric, and isolated from the broader peace process:*** “In many cases pragmatism has meant doing less from a greater distance and for a shorter period of time. This means that programmes to disarm, demobilize and reinsert ANSAs into the national armed forces **have taken place in an ad hoc and time-limited fashion.** While often relatively successful, such strategies ignore the underlying political dynamics that caused ANSAs to be formed in the first place, for instance, marginalization, demands for independence or the state's inability to provide security and social services.”<sup>126</sup>

*“Violation of human rights and involvement in corruption and criminal activity are not issues that are confined to the activities of local and informal actors: state institutions are often just as guilty of improbity. This does not excuse local and informal actors from improving their practice (as should state actors). Instead, it highlights the importance of thinking about ways to manage and mitigate risks from the outset. Just like state institutions, NSAs and networks are open to learning about human rights (including the specific rights of minority communities and of women).”<sup>127</sup>*

### 3.3. Challenges / Risks of engaging non-state actors in SSR/G

Alongside benefits, there are also risks and challenges associated with including local/ non-state justice and security providers in justice and security programmes.<sup>128</sup> The challenges include:

- Cultivating the necessary **extensive knowledge of the context** to avoid duplication, one-size-fits-all approaches, and adapt inclusion of NSSJPs in SSR/G to each context depending on cultural and historical considerations.
- Designing effective implementation of **human rights standards** and the creation of **accountability mechanisms** to prevent human rights violations by NSSJPs.
- The changing and unclear **normative framework** and the lack of written procedure that often characterize NSSJPs.
- The **risk of political hijacking** and/or the risk of taking the focus off of the state.

The following paragraphs will present a way to mitigate and engage with NSSPs for each challenge identified. According to Baker and Scheye, there are challenges and risks to engaging NSAs in SSR/G, along the following lines:<sup>129</sup>

#### 3.3.1. Lack of knowledge of the context

- *Local and actor-centred intuitionism and mechanisms*
  - The NSSJP are very localized and context-based, leading to differences in the way they operate, which changes from local context to local context and from actor to actor. They are usually actor-centred and understanding the characteristics of these actors is key.
  - Even in comparing similar types of mechanisms, there are no guarantees that procedures and standards are consistent.
- *Fluidity over time*
  - Thus, a depth of knowledge is required, particularly because what may work in one context is not necessarily replicable. There is a need to map out numerous mechanisms. Furthermore, acknowledging the notion of fluidity over time is important. Groups may function differently from one day to the next since they are reactive to context and needs.

## How to engage?

### → Depth of knowledge:

- An effective and responsible non-state SSR approach requires *extensive knowledge about a wide array of local conditions, norms/traditions, and NSAs*, including their past actions, interests, values, strengths, legitimacy, weaknesses, and accountability to the community. One can use methods of mapping, profiling, assessments, and perception surveys (for more details on these methodologies, see Section 4 on Programming).
- An effective and responsible non-state SSR approach requires *investment in building an adequate and detailed understanding of the micro-local context and the small-scale local actors themselves*. This raises some practical problems, since, given the small scale of local/non-state security and justice actors, it is more difficult to assess and evaluate the roles of the local groups and their leaders than would be in the case of formal state institutions. It is clear and fully understood that the international community, as well as technical and financial partners often do not have the requisite capacity or access to acquire such detailed knowledge themselves. There is therefore the need to invest in local networks of reliable informants and analysts, as well as in perception surveys and monitoring tools. This is necessary to build up an adequate level of understanding of the micro-local context and to properly assess the effectiveness of activities.<sup>130</sup>

### 3.3.2. Human rights violations and limited accountability

#### • Human Rights Violations

Local NSAs may not conform to international standards of human rights and democracy. This is of particular concern in the area of gender equality.<sup>131</sup>

#### • Limited accountability

Non-state security and justice mechanisms often lack appropriate and functional oversight and accountability mechanism. Thus, when individuals maltreated by NSAs, they cannot often get redress.<sup>132</sup>

## How to engage?

→ *Human rights standards*: It is common to see that, in some contexts, and similar to state institutions, NSAs can be open to learning about human rights (including the specific rights of minority communities and of women). Support programmes need to build on this willingness and incorporate an element of improvement of human rights standards.<sup>133</sup>

It is important to identify ways to monitor, report on, discuss and address human rights abuse, corruption, and criminal activity in an **effective manner – this implies respect for the values of neutrality, impartiality, independence and humanity**, which can only be achieved through rigorous monitoring and evaluation, access to information and a people-centred approach.

In this respect, there is **not much difference between supporting state actors and non-state actors**; therefore, the fact that there is a chance of supporting an actor that is not meeting human rights standards or that is involved in criminal activity should not deter donors from including local/NSJPs in their programmes.<sup>134</sup> “[...] Yet, this may be more complex at the level of local/NSAs than at the level of the state, since a political dialogue with local actors is not realistic. An alternative may be to support the development of innovative ways of oversight and accountability in order to deal with this issue in a more effective and, for donors, more acceptable way. Furthermore, **in cases where the services of local and informal actors are essential for the population’s access to security and justice in the short to medium term, it is of crucial importance to improve these actors’ effectiveness and accountability, and the quality of their performance.**”

### Resource 11: Non-military approaches for making ANSAs responsible<sup>135</sup>

#### ***Inclusive approaches: dialogue/negotiation and dissemination, training/capacity building, intermediation (between parties to a conflict) and direct services***

Numerous inclusive approaches focus on understanding and involving NSAs and aim to foster a sense of ownership and implementation of humanitarian norms within them. They provide NSAs with the possibility to develop their commitments, as well as to sensitize, train and monitor them. The principal aim of these approaches is to provide better protection to civilians, by encouraging NSAs to take on responsibilities towards them. Secondary aims are confidence-building between conflict parties (through mediation, humanitarian negotiations undertaken by humanitarian agencies for programmatic operations or agreements) and a contribution to support the concerned state's implementation of its international obligations.

***Coercive approaches: denunciation/'naming and shaming' sanctions, individual criminal prosecution, and 'terrorist listing'***. Coercive approaches can be used in combination with inclusive approaches, but they are generally employed by actors other than human rights or humanitarian activists.

These different approaches can either reinforce or work against each other, mainly depending on the reaction of the NSAs to the coercive approaches. In general, coercive mechanisms have not proven to be sufficient to enforce rules on NSAs.

***Inclusive approaches face important challenges.*** First, concerned states are sometimes unwilling to let such work be facilitated by international and national NGOs and agencies. Indeed, states can be reluctant to acknowledge the existence of an internal armed conflict on their territories, wanting to avoid international scrutiny into what they consider internal affairs, and fearing the granting of a perceived legitimacy to opposition NSAs. Yet, Common Article 3 of the 1949 Geneva Conventions on international humanitarian law expressly precludes any effect on the legal status of non-state parties to a conflict. Second, the existence of a number of different 'terrorist lists' drafted by individual states and the UN complicates the work of humanitarian actors by placing logistical, political, and financial limits and consequences to meetings and other humanitarian activities (notably training) that engage listed NSAs. Finally, the objectives and strategies of some NSAs may present important obstacles to the process. For instance, NSAs may refuse to respect the applicability of humanitarian norms either because they are not familiar with them or do not feel bound by them or, simply because they consider that the 'ends justify the means'.

### 3.3.3. The normative framework and the lack of written procedures

- *Normative frameworks are often mixed and embedded between IHL, HR and common law, and their interpretation and application can be highly subjective*
  - NSSJ actors very often draw upon a variety of sources for normative references including religious texts, oral customs, and enforced local rules. There are important issues of consistency and interpretation associated with normative pluralism and the processes of selective borrowing from various sources. The alignment of practical decisions with substantive norms very much depends on the level of education and understanding of each actor, the balance of local interests, and the propensity to apply the normative framework with impartiality or not. Some actors apply certain practices intuitively without necessarily referring to a concept or a system of values. There are challenges to identify and map out the relevant normative framework in question, with the exception of Sharia law, which is often referenced by extremist groups.
  - For some groups, the reference to Quran Sharia law roughly equates the use of the bible in certain communities. The Quran may give more specific orientations regarding enforcement and consequences. It also supports a more unitary vision of the normative framework.
  - For the other groups, the normative reference framework is likely to be a patchwork of various norms that may come from traditional customs, local contexts, and the preservation of local

interests, religious norms, and, to some degree, an assortment of norms collected from national and international frameworks. In these cases, local norms may prevail over international norms, since they directly affect power positions. Hence decisions may be guided by less predictable and consistent factors such as the actor's interpretation, personality, priorities, and concerns about preserving social harmony.

- *Lack of written procedures*

- Information often relies on oral knowledge, rather than codification or written due process. Therefore, there is work to be undertaken upfront, in order document important practices. It is also difficult to instil accountability mechanisms since there are no traces of monitoring of these procedures.

### 3.3.4. The risk of political influence

- *Since local systems often represent dominant interests in the community, they can be **influenced by local stakeholders seeking political influence**, informal networks, or priorities that neglect or threaten vulnerable groups and minorities.*

They are also more susceptible to corruption and abuse. While this concern should not be underestimated regarding NSAs, the same concerns also apply to the state, and there is no a priori reason that improving performance in these areas is any easier or more difficult for NSAs than within state institutions. Indeed, they represent recurrent challenges for international state-building initiatives, and, in some cases, non-state mechanisms are more accountable and rights-respecting than formal state institutions. The fact that non-state mechanisms have flaws and shortcomings is indeed the very point of reform. What really matters is their willingness to reform.

- *Risk of taking the focus off of the state:*

The involvement of NSAs is reflected in the growing number of actors associated with the management of security policies, policies that cannot be considered as falling exclusively within the sovereign functions of states.

Engaged NSAs must play a catalytic role as a source of information, sometimes as spokespersons reflecting public opinion, and as a partner in building consensus on defence and security issues. The characteristic of this engagement is thus to put an end to the situation in which states and their agents were the privileged partners, if not the sole recipients, of military and defence cooperation. In many conflicts in West Africa, we are witnessing a widespread access to (small) arms, following the loss by the state of its legitimate monopoly of coercion.

One of the obvious shortcomings of this engagement is undoubtedly the fact that, while it seeks to situate the management of defence and security issues outside of traditional state channels, it does not sufficiently take into account – and even ignores – the growing influence of militarized groups, which may develop outside of or in parallel to the state, and sometimes against it.

The complexity of the West African context, where many crises and conflicts are characterized by the absence of borders between civilian and military entities, has to be taken into account by this kind of engagement. It is therefore essential that the mobilization of local NSAs be linked to the more general problem of representation and legitimacy of these actors. Where processes of democratization are underway, policies to promote NSAs can substitute local democratic representation.

### How to engage?

It must be made clear that, along with this message of change, incorporating NSSIPs in the ECOWAS region is not about changing focus from state to non-state. Rather, it is about incorporating non-state entities into existing state-centric SSR/G programmes or new SSR/G strategies, depending on the context.

### Resource 12: Basic principles on engagement of NSSJPs in SSR/G strategy<sup>136</sup>

Principle	State-centric SSR	Engagement with NSSJPs
People-centred	Security and justice practices defined and implemented from the centre-top-down	Security and justice practices formulated and implemented closer to recipients – bottom-up and diverse
Local ownership	Limited to the involvement of national-level political leadership	Involves regional and local level political structures, NSSJPs, and local civil society
Primacy of the rule of law	Rule of law uniformly applied, set, and enforced from the centre	Allows for plurality and hybridization <sup>137</sup>
Accessibility and affordability	Presence is very low or non-existent particularly in rural settings partly due to high cost (what about due to consideration regarding insecurity?)	Present within the community with a potential to breach the gaps of access and cost
Civil society engagement	Favours INGOs and national civil society organizations	Aims to include local-level civil society and other local stakeholders

### Resource 13: Engagement checklist for each type of NSSJP

*This questionnaire presents indicative questions to be asked to whom/by whom ? during the programming design and implementation phases in order to clarify the challenges, risks, benefits, and show the interrelationships between NSSJA and state entities, in order for the practitioner to know if it is necessary to engage with NSAs in his or her specific situation.*

Opportunities (if respond yes to each question)	<ul style="list-style-type: none"> <li>• Is the actor able to help to increase security and stability? How?</li> <li>• Does this actor benefit from a form of territorial control?</li> <li>• Does this actor benefit from local legitimacy? By whom?</li> <li>• Is this actor involved in the provision of security for the population? What kinds of security activities?</li> <li>• Does this actor act in accordance with the principles of human rights, gender equality, and other international normative frameworks? is it/has it been involved in acts of violence or violations of such norms?</li> </ul>
Entry points (points to focus on)	<ul style="list-style-type: none"> <li>• Communication and sensibilization</li> <li>• Group discussion</li> <li>• Survey</li> <li>• Interview</li> </ul>
Challenges (points to focus on)	<ul style="list-style-type: none"> <li>• Consequences (political, security, etc.)</li> <li>• Similar constraints</li> <li>• Reproducing the status quo</li> <li>• Reproducing power inequalities</li> <li>• Superficial understanding</li> <li>• Replicating challenges</li> </ul>
Good practice (points to focus on)	<ul style="list-style-type: none"> <li>• Sustainability</li> <li>• “Do no harm” policy</li> <li>• Share information</li> <li>• Consult and involve</li> <li>• Representative and empowering</li> </ul>

## Ways to engage Non-State Security and Justice Providers in SSR/G: Programming

Summary reminder: Section 4

### 4. Ways to engage Non-State Security and Justice Providers in SSR/G: Programming

#### 4.1. Mapping Non-State Security and Justice Providers

#### 4.2. Profiling and assessment of Non-State Security and Justice Providers

##### 4.2.1. Profiling Non-State Security and Justice Providers

##### 4.2.2. Assessing Non-State Security and Justice Providers capacity

#### 4.3. Challenges in SSR/G programming

With the objective of improving effectiveness and accountability of NSSJPs, donors, international NGOs, implementers, and state institutions are encouraged to include these actors in their programmes. However, NSAs can be detrimental to local security and justice initiatives, as described in the previous sections. Thus, including them in SSR/G involves challenges and risks to be overcome (4.3). Including NSSJPs requires extensive knowledge and understanding of the context and of the particular issues that are of critical importance for the citizens. The following section will discuss the ways in which to engage with NSSJPs, using practice and policy analysis, and framing guiding questions for practitioners in order to facilitate the mapping (4.1), profiling, and assessment (4.2) of NSSJPs.

See also Tool  
2: Security  
Sector Reform  
Programming

### 4.1. Mapping Non-State Security and Justice Providers

- *Establish the security landscape:* The first step in mapping NSSJPs is to establish the security landscape. This mapping will be focused on the security context in the ECOWAS region. It could be a post-war context, or a state emerging from long years of civilian or military rule without entrenched democratization. It could also be part of a country (or province or region) emerging from a long period of internal conflict. This mapping will help to understand the diversity, the extent of programming/initiatives, and the degree to which NSSJPs intervene.

- *Establish whether NSSJPs are present in a given context:* If NSSJPs are present in a given context, then it is useful to establish the different categories. Some generic categories to look out for include unofficial actors that use force and those that do not use force. Are such actors organized along particular group affiliation? This could be along skills and occupation – e.g., hunters, small scale traders, union of transport workers – or along identity lines – e.g., ethnicity and religion.
- *Use the services of relevant stakeholders to map the security landscape:* Mapping the security landscape to establish the existence of NSSJPs should be done using the services of relevant stakeholders. This will depend on the context and scale of the proposed SSR/G strategy. On a generic level, such stakeholders could include national or local government authorities, statutory security institutions, technical and financial partners, traditional and customary institutions, and civil society groups. It is equally important to sample the views of the community. This is particularly relevant in a context where the scope of SSR/G incorporating NSSJPs is limited to a particular province or region of a country. It is preferable that this mapping be done by local experts.

#### Resource 14: Mapping the landscape: non-state security and justice providers: Questions for practitioners

Mapping the security landscape	<ul style="list-style-type: none"> <li>• How do you describe the context? <ul style="list-style-type: none"> <li>- weak or fragile state</li> <li>- conflict or post-conflict</li> <li>- nature of the conflict</li> <li>- are there intra-communal conflicts</li> </ul> </li> <li>• Who are the dominant actors and specify their roles? <ul style="list-style-type: none"> <li>- state or non-state</li> <li>- local/national/regional/international</li> </ul> </li> </ul>
Presence of NSSJPs	<ul style="list-style-type: none"> <li>• What type of NSSJPs are present? <ul style="list-style-type: none"> <li>- mandated/not mandated/tolerated by the state</li> <li>- autonomous from/substitute of formal security and justice services</li> </ul> </li> <li>• What kinds of activities do these actors undertake? (security/justice/both)?</li> <li>• Do NSSJPs provide services or functions that are normally implemented by the state? (e.g., taxes?) Do they exert territorial control?</li> <li>• How can we describe the relations between NSSJPs and the population? (legitimation, emanation, opposition) What aspects suggest this?</li> <li>• How are oversight and accountability implemented? <ul style="list-style-type: none"> <li>- respect for human rights standards</li> <li>- gender equality</li> <li>- others?</li> </ul> </li> <li>• What opportunities exist for dialogue? Have there been examples of successful/unsuccessful engagements in the recent past?</li> </ul>
Relevant stakeholders	<ul style="list-style-type: none"> <li>• Mapping should involve national/local government authorities; statutory security institutions; technical and financial partners; traditional and customary institutions; and civil society groups</li> <li>• Mapping should involve the local population (perception survey)</li> </ul>

## 4.2. Profiling and Assessing Non-State Security and Justice Providers

### 4.2.1. Profiling Non-State Security and Justice Providers

If there are NSSJPs within a given landscape, what role, function, and services do they provide? These could range from dispute resolution to policing.

#### Resource 15: Profiling Non-State Security and Justice Providers: Questions for practitioners

	Questions	Recommendations
<b>Public opinion</b>	Does the group or non-state provider in question command some level of social legitimacy?	Stakeholders are advised to devise creative measures and processes that will allow for the sampling of public opinion. The outcome of such processes should be critically interrogated so as not to confuse fear with public acceptance.
<b>Hybridization</b>	What relationships exist between NSSJPs and officially recognized security institutions, if any?	This is critical to any SSR/G strategy, as cooperation between state and non-state security providers will form the backbone of successful SSR/G process. Hybridization may go beyond cooperation (two separate entities working towards a common objective) to integration (one entity annexed as an arm of the other to make operations more harmonious). This again will ultimately depend on the specific context. At this stage, there must be some kind of institutional “vetting” by ensuring respectability of NSSJPs and honourability of their leaders so that cooperation is exemplary in terms of international norms and values.

#### 4.2.2. Assessing Non-State Security and Justice Providers capacity

##### Resource 16: Assessing the capacity of Non-State Security and Justice providers: Questions for practitioners

An assessment of the capacities of NSSJPs is a necessary process in establishing the profile of such actors. Generic questions/ issues<sup>138</sup> are to be considered in assessing capacities and may include:

<b>Relationship to the community</b>	<ul style="list-style-type: none"> <li>• Which particular security functions do the NSSJPs provide (dispute resolution, legal assistance, support group, protection, prevention, public order, political influence, oversight, advocacy, information and communication, research and analysis, public finances, private and commercial support)?</li> <li>• Who are these services provided to, and who is excluded?</li> </ul> <p>Such questions highlight values as the respect of local customs and institutions by the NSSJPs and its legitimization by the local community.</p> <p>Besides, on accountability:</p> <ul style="list-style-type: none"> <li>• Are there means available for the community to influence the provision of security and norms of reciprocity in the activity's implementation? On what basis?</li> <li>• Who is represented and/or excluded in the relationship between NSSJPs and local community? What are the criteria?</li> </ul>
<b>Relationship to the state</b>	<ul style="list-style-type: none"> <li>• What security functions do the NSSJPs provide to the state?</li> <li>• Do these actors have an interest in cooperating with the state and respecting the broad parameters it sets for security provisions?</li> <li>• Is there an overlap between state and non-state structures?</li> <li>• In terms of values, to what extent do NSSJPs respect the broad values enshrined in the constitution and law?</li> <li>• Regarding accountability, what means does the state have to regulate and influence the behaviour of NSSJPs?</li> <li>• What sort of institutional relationships exist between the state officials and the NSSJPs?</li> </ul>
<b>Relationship to conflict functions</b>	<ul style="list-style-type: none"> <li>• What role did NSSJPs play in the conflict?</li> <li>• Are there lingering animosities with other local security providers, armed actors and/or the state?</li> <li>• Did the NSSJPs commit atrocities that disqualify them from inclusion in SSR values?</li> <li>• About values, do the NSSJPs respect international humanitarian law and other relevant norms in the conduct of war?</li> <li>• Are the NSSJPs accountable for crimes and human rights abuses they may have committed during the conflict?</li> </ul>

When the outcome of a mapping and profiling process is positive,<sup>139</sup> then stakeholders can proceed to consider how to support and incorporate such NSSJPs into an SSR/G process. The kind of support to be recommended would depend on the context and scope of the SSR strategy. As the AU SSR Policy Framework notes, support to be offered is always contingent on when and where it is appropriate.<sup>140</sup>

**Box 14: Example of engagement: The Voluntary Policing Sector in Nigeria**

In Nigeria, the Voluntary Policing Sector (VPS) has been included in SSR/G. The inclusion and cooperation with VPS were meant to develop and improve VPS services to all members of communities. They are now operating in a manner that is both accountable and respectful of the law, and work in close coordination with the Nigeria Police Force and other relevant counterparts.

How has VPS been included in SSR/G?

- Mapping of VPS groups
- Training in management, crime prevention and reporting, human rights and gender sensitivity
- Procedures and codes to mainstream the principle of gender aware behaviour towards women and encourage the participation of women as members of VPS groups
- A complaints system that allows for tracking of cases and accountability
- Coordination forums between the police, VPS groups and other community groups.

*Source: J4A Justice for All Nigeria, Voluntary Policing Sector. Improving service delivery, accountability and management, Monitoring Impact, August 2012.*

### 4.3. Challenges of SSR/G programming

The challenges of engaging NSSJPs are linked directly to the risk of shifting focus away from the state. Therefore, it is essential to communicate that incorporating NSSJPs in the ECOWAS region is not about changing focus from state to non-state, but rather about incorporating non-state entities into existing SSR/G programmes or new SSR/G strategies, depending on the context.

- The first and key challenge is how to convince state security institutions to embrace the approach of incorporating NSSJPs as partners within a SSR/G programme. For decades, ECOWAS member states have had a security sector that is largely state-centric, which in many cases did not recognize the existence or value the contribution of NSSJPs. This mindset has to change. Stakeholders need to accept the reality that in the attempt to improve everyday security and the enforcement of law and order in a community area, the role of NSSJPs cannot be ignored.
- Capacity constraints relating to human and financial resources can also occur in various forms, affecting both security and justice providers and recipients, as well as those initiating and implementing SSR programmes.<sup>141</sup> Among the principal constraints that can arise are:
  - lack of funding;
  - lack of ownership;
  - lack of institutional capacity;
  - lack of technical or substantive knowledge;
  - lack of capacity to absorb security sector reforms; and
  - insufficient ability to adapt to changed institutional structures.

It is therefore crucial for member states implementing security sector reform programmes to align such efforts with conflict prevention, peace processes, post-conflict reconstruction, and economic reform programmes in order to ensure **financial sustainability of SSR processes** and the subsequent reformed security sector.<sup>142</sup>

- Engagement modality: The type of engagement depends largely on the circumstantial issues that will guide the objectives.

### Resource 17: Programming activity entry points with Non-State Security and Justice Providers in West Africa

Type of engagement	Objectives	Level of engagement	Anticipated challenges/ points of attention
Awareness raising of human rights and protection of vulnerable groups	Advocate for the NSSJP engagement and inclusion in SSR/G with national stakeholders in order to reduce human rights violations	Communication activities	Need to include media and population in these advocacy activities
Focus on analyses	Conduct surveys, assessments, research to measure and understand inclusion in SSR/G with national stakeholders, cross-cutting component	Research and learning activities: Survey-monitoring- interview-mixed methods-research	Research or awareness raising are interesting activities to develop further actions
Fostering dialogue	Create spaces of dialogue for the NSSJP engagement and inclusion in SSR/G with national stakeholders, inclusion in national-local governance and active participation in SSR/G	Group discussion	Local authorities-actors could have a higher clearance and all levels of engagement
Promoting normative standards	Reduce human rights violations and strengthening the normative framework used by NSSJP to promote increased accountability through awareness-raising sessions, training with CSOs, etc.	Legal assistance, technical external control assistance	Weak consideration of the binding nature of the standard. Focus on promoting knowledge, understanding and awareness
Promoting code of conducts	Develop informal codes of conduct to increase the respect of human rights	Legal and custom assistance, focus on root causes of HRV	Deep understanding of the custom, emanation of the actors is necessary, external role of support and communication
Capacity development	Strengthen capacities of NSAs to fulfill their role or to implement codes of conduct by capacity development	Trainers' training, implementation training	Expert capacity, wide area networks
Increasing contacts of NSSJP and state mechanisms	Foster hybrid cooperation (between state and non-state actors) to provide better services to the population and strengthen outreach to underserved segments of the population	Meetings, conferences, exchanges sessions	Creation of links and spaces for regular and maintained exchanges
Delimitation of area of competencies	Increase efforts to delimitate areas of competencies and foster mutual cooperation	Legal and technical assistance, exchanges sessions	Substantial technical expertise, approvals required

## Non-State Security and Justice Providers and Gender

Summary reminder: Section 5

**5.1. Gendered roles in Non-State Security and Justice Providers**

**5.2. Implementing a gender sensitive approach: Challenges and opportunities**

**5.3. Risks to gender equality and human rights posed by supporting non-state security and justice providers and practical measures to counter those risks**

*“Equality between women and men is inextricably linked to peace and security.”*

Ambassador Anwarul Chowdhury, High-Level Advisory Group for the Global Study (UN Women, 2015)

### 5.1. Gendered roles in Non-State Security and Justice Providers

SSR on the African continent should be able to address the security needs and ensure the participation of men, women, boys, and girls. It follows that any SSR process should be a result of consultation between men and women from diverse social groups including women's organizations.<sup>143</sup> In particular, an SSR process will aim to achieve the following:

- Endeavour to implement gender best practices and women focused activities at all levels and in all the elements of the security sector;
- Improve the mechanisms for the prevention of sexual and gender-based violence with the aim of ending all violence against women. This policy includes rape and other forms of sexual violence in conflict zones under the definition of war crimes, and supports the relevant UNSC resolutions, other international, regional, and national legislation that do the same;
- Involve women in all levels of SSR processes including in leadership positions, with the aim of creating gender balance in security sector institutions;

*See also Tool 8: Integrating Gender in Security Sector Reform and Governance*

- Address specific needs of women and girls formerly associated with armed forces or groups as well as wives and widows of former combatants;
- Provide gender, international human rights, and humanitarian law training to all security personnel; and
- Increase the recruitment, retention and advancement of women in all security sector institutions.

The nexus of NSSJPs gender and SSR should start with a focus on two key areas:

**1. Identifying and supporting women:** Identifying and supporting women NSSJPs and women in NSSJPs who often play significant roles and contribute specific skill sets in the security and justice landscape. This approach has the potential to increase and improve the role of women in the security sector and reduce their vulnerability;

**2. Processes and strategies:** Putting in place processes and strategies that give due regard to gendered risk and human rights concerns within the NSSJPs' everyday practice.

- *Gendered roles in NSSJPs and human rights:* It is an established fact that most members of NSSJPs are men.<sup>144</sup> However, there are also women's organizations that play specific gendered and generic roles in promoting social justice and reconciliation in communities. Two cases from the region demonstrate this quite poignantly:
  - Case 1: In 2005, following a sensitization programme against domestic violence by local women policing committees in some parts of Sierra Leone, there was a rise in the cases of domestic violence reported.<sup>145</sup> It is likely that these cases may not have all been adequately dealt with, but it is a step forward that the women were emboldened to report. The next step would be to ensure that such cases are properly investigated and prosecuted if a case is established *prima facie*.
  - Case 2: Female members of Nigeria's VGN play a special and important role in conducting investigations of local crimes by gathering and managing intelligence within their communities. Emerging from a patriarchal experience, the traditional and customary institution is virtually dominated by men, as these institutions are embedded in cultural codes and practices. The entry point for reform must be constituted in identifying practices of human rights abuse, and making robust attempts to discourage and/or prosecute offenders of such practices.
- *Gendered roles in NSSJPs and violence:* In dealing with the challenges of gendered violence and the risks that particularly relate to women and children, it is important to clarify the perception of women. Analyses which see women only as victims should be reconsidered. There are established cases<sup>146</sup> that have shown the role that women have also been perpetrators during episodes of violent conflict. That said, the focus here is not on women's roles as perpetrators of gendered-based violence in the context of armed conflict or in the practice of state and non-state security institutions. A selective approach to the issue of gender-based violence is no longer tenable. Yet, all strategies targeted at reforming NSSJPs should consider exceptional vulnerabilities as they relate to representation, gender-based violence, and abuse. A viable strategy that will help improve gender equality and the respect of human rights should therefore focus on the following:
  - The creation of units within state security institutions to handle crimes of domestic violence;
  - The training and sensitization of NSSJPs on issues of representation, gender-based violence, and abuses of human rights; and
  - The distribution of legal documents in local languages to all relevant NSSJPs.

## 5.2. Implementing a gender-sensitive approach: challenges and opportunities

### Box 15: The need to improve women's access to legal aid<sup>147</sup>

Women often face specific barriers to accessing legal aid, due to a lack of gender-sensitive legislation, policies, and services, or due to an insufficient understanding of their rights. Special measures must therefore be taken to ensure that legal aid is effectively accessible to women. UNODC and the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), in cooperation with the Office of the United Nations High Commissioner for Human Rights (OHCHR), are implementing a 2016-2020 project to complement ongoing efforts to improve women's access to legal aid in West Africa, which is funded by the United Nations Development Account (UNDA).

**The project targets Liberia, Senegal, and Sierra Leone and aims to improve women's access to justice. It focuses on the promotion and implementation of gender-sensitive laws and policies, capacity building of legal aid providers, and legal empowerment of women.** With a human rights-based approach and in close collaboration with local authorities and civil society, the project seeks to strengthen the availability of services and build the capacity of legal aid providers, with a view to empowering women seeking services through a multisectoral approach.

In July 2015, UN Women welcomed the published General Recommendation no. 33 on women's access to justice by the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW). Unhindered access to justice for women is a critical pathway for the achievement of gender equality. Justice ensures the protection of economic assets, bodily integrity, and political voice, and provides redress when such protections are violated or compromised. Respect and protection of human rights can only be guaranteed if effective domestic remedies are available. Legal rights are meaningful only if they can be asserted. Access to justice is therefore an essential component of rule of law and a means for women to actively claim the entire range of human rights, including those articulated in the CEDAW Convention. General Recommendation no. 33 is founded on notions of inclusiveness and comprehensiveness. It stresses the importance of women's access to justice in diverse legal systems and all areas of law for all women, irrespective of economic or social status, political background, geographical location, disability, sexual orientation, or gender identity. It encompasses all justice settings (formal, informal, or semi-formal), sources of law (common law, civil law, religious law, customary law, or mixed legal systems) and the full range of legal domains (criminal, civil, family, administrative, and constitutional).

#### **CEDAW General Recommendation no. 33 on Women's Access to Justice:**

- **Improving Access:** Remove economic barriers to justice by providing legal aid and ensuring that fees for issuing and filing documents, as well as court costs, are reduced for women with low incomes and waived for women living in poverty; (para. 17(a));
- **Enhancing Accountability:** Collect data on the nature and number of cases in which legal aid and/ or public defence were required, accepted and provided, disaggregated by sex of complainant; (para. 20(d) (6)).
- **Increasing Awareness of Rights:** Disseminate multi-format materials to inform women of their human rights and the availability of mechanisms for access to justice, and inform women of their eligibility for support, legal aid and social services that interface with justice systems; (para. 33(b)).

### Resource 18: Example of guiding questions to monitor gender mainstreaming in Non-State Security and Justice Providers

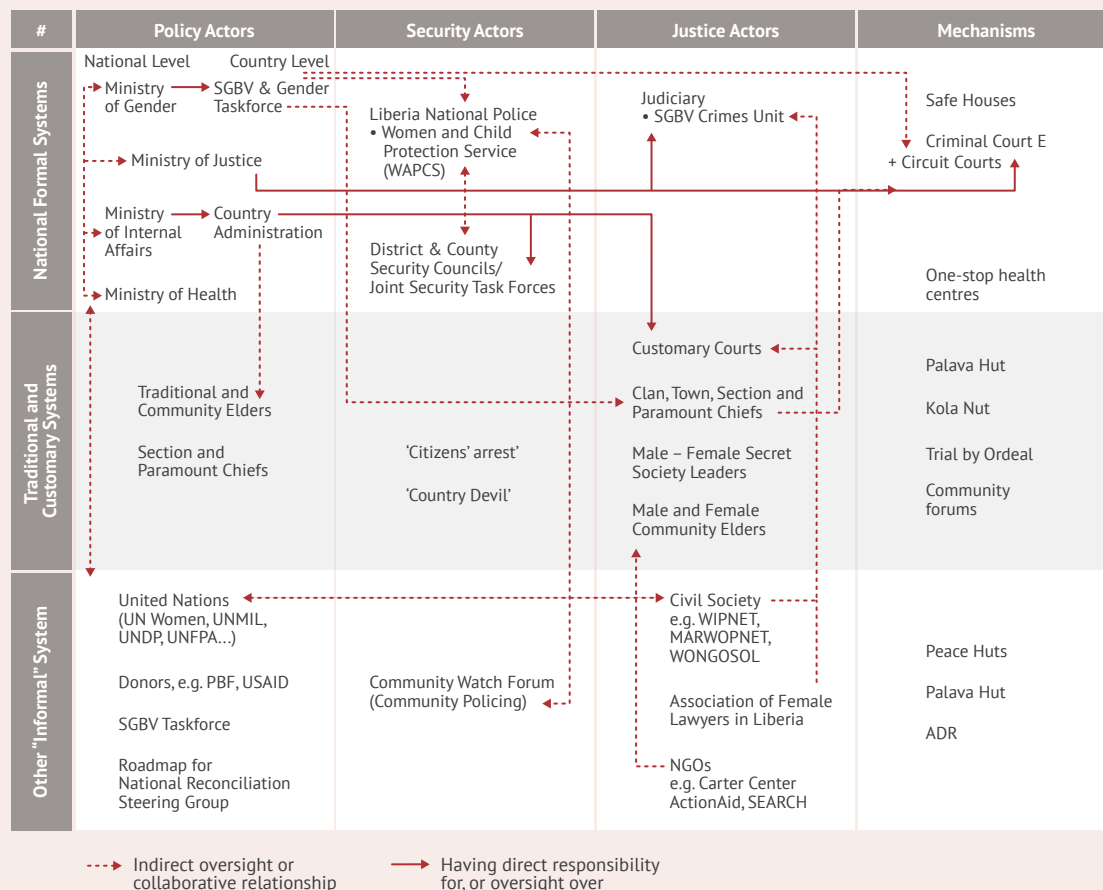
The answer to the following yes/no questions should be supported by precise, context-specific elements that illustrate the extent to which each of these points are addressed and suggest improvements:

- Are both women and men (including NSAs such as civil society organizations) consulted and involved in security provision, management, and oversight?
- Are the different security needs of men, women, boys and girls being adequately addressed?
- Does the security sector have the necessary policies, protocols, structures, personnel, training and resources to meet these different needs?
- Does a healthy and non-discriminatory work environment exist?

### Examples of complementary rather than competitive dispute resolution and justice system

- Women's access to justice in relation to sexual and gender-based violence (SGBV) in the context of a highly hybridized justice system. Sexual and gender-based violence (SGBV) remains prevalent in the post-conflict period.<sup>148</sup>
- Challenges and opportunities presented by *Liberia's hybrid justice system* in relation to addressing sexual and gender-based violence.
- In Liberia, the population has consolidated or even increased reliance on informal and traditional justice mechanisms. Despite great progress in reforming laws and state institutions, informal and traditional systems are widely considered more accessible and affordable.

### Box 16: Interlinkages in favour of and against SGBV survivors and victims in Liberia<sup>149</sup>



The activities of the NSSJPs and their staff affect segments of the population differently. Women and girls, in particular, face discrimination and barriers that prevent them from seeking effective solutions. Sexual and other forms of gender-based violence (GBV) disproportionately affect women and girls.

Abuses committed by security agents in the extractive industry have been identified by the United Nations in multi-stakeholder consultations as a significant challenge. Killings are also higher when private security personnel are allowed to carry small arms and light weapons. In South Africa, a study found that easy access to firearms was a risk factor for intimate partner femicide among security forces that included private security personnel<sup>150</sup>.

The regulation of the NSSJP should be entrusted to a specialized national regulatory authority with sufficient powers, resources, and expertise, particularly in the area of gender and the prevention of sexual exploitation and abuse and gender-based violence. The mandate of national regulatory authorities should primarily include the registration, licensing, monitoring, surveillance, and administrative sanctioning of NSAs. These regulatory agencies should monitor the adherence of NSAs to international human rights obligations, including the responsibility to prevent gender-based violence and discrimination among their personnel, and the responsibility to prevent sexual exploitation and abuse and gender-based violence or other abuses of local communities. States shall ensure that such regulatory bodies or agencies have the appropriate level of authority and independence from industry, as well as the financial and human resources, training, and infrastructure necessary to fulfil their mandates.<sup>151</sup>

### 5.3. Risks to gender equality and human rights and mitigating measures

#### Box 17: Mainstreaming gender in the ECOWAS Peace and Security Architecture<sup>152</sup>

Women need to be represented and participate in all levels of decision-making in peace and security to address their unique concerns and issues, as well as to have an impact on the peace and security landscape in West Africa.

There is a tendency to oversimplify the role of women. They are usually portrayed as the victims of violence, negating their agency in the varied and complex dimensions of armed conflict, including as strategic actors in conflict prevention and agents of change for sustainable peace. For instance, research shows that over 50% of peace agreements fail within five years and that the success rate of post-conflict transitions is low. However, the inclusion of women in peace processes accounted for a 20% increase in the probability that a peace agreement would last at least two years. Over time, this probability increases to 35% for that agreement lasting 15 years. The centrality of women's roles in families and communities has been shown to improve their effectiveness in conflict prevention and early warning strategies, such that the inclusion of women in countering violent extremism has been a mitigating factor in radicalization. This makes gender a critical entry point in any strategic engagement on violent extremism and its prevention.

ECOWAS and member states must modify their strategies to ensure effectiveness. This requires a bespoke and innovative approach to peace and security that must be inclusive.



## Challenges and opportunities of including armed non-state actors in fragile / post-conflict environments

### Summary reminder: Section 6

#### 6.1. An opportunity to build peace

6.1.1. How can national actors include armed non-state actors in SSR/G programmes?

6.1.2. How can regional and international organizations include armed non-state actors in SSR/G programmes?

6.1.3. How can SSR actors include armed non-state actors in SSR/G programmes?

#### 6.2. Spoilers of peace process: Inclusion or exclusion of armed non-state actors in peace processes?

Armed non-state actors (ANSAs) can be differentiated from NSSIPs by their their approaches to security provision. Although similar in that they are both non-state entities, their approaches are not comparable. In post-conflict countries, armed non-state actors (ANSAs), in particular, may act as spoilers of peace processes (under what circumstances? what motivates them to act as spoilers?), and the question of their inclusion or exclusion is of critical importance (6.2) when it comes to implementing SSR/G programmes aimed at building peace and preventing the recurrence of conflict (6.1).

### 6.1. An opportunity to build peace

In the context of recurring armed violence or relapse into internal or international armed conflict, engagement, including with violent actors, should always be considered. Each state, regional, and local authority facing intra-communal violence should determine the root causes of violence or conflict and ensure that all actors, namely parties to the conflict, are included in the peace process.

However, no guidelines exist on how to involve ANSAs. Two institutional legacies explain this.<sup>153</sup> First, the UN and associated NGOs select and define civil society as non-violent by definition. Institutionally, this means that much of the work carried out in relation to community engagement inherently excludes armed actors. Secondly, pragmatic peacekeeping operations are structured around a mandate to expand the state's authority. This makes it difficult for the UN to gain trust among ANSAs as an impartial actor.

*“Armed non-state actors (ANSAs) often act as important security-providers in conflict environments but are typically excluded from long-term strategies for peace. To succeed, pragmatic routes to peace should consider how to incorporate ANSAs into longer term frameworks for peace”*

Philipsen L., “Armed non-state actors need to be included in pragmatic peacebuilding”, DIIS Policy Brief, 10 October 2019.

Despite these difficulties, the role of NSSJPs with regards to ANSAs is crucial: “local justice structures are critical not only in addressing security and justice provision gaps left by the limited capacity of state institutions, but also in serving as a source of early warning when drivers of conflict become more prevalent and serious within the community”.<sup>154</sup>

ANSAs nevertheless to be included in pragmatic peacebuilding, which includes SSR/G processes. Governments, security and justice institutions, as well as regional or international actors cannot exclude ANSAs from the peace process (the risk of escalation of violence, or relapse into conflict). Many studies suggest that engagement with violent actors should always be considered integral to effective and lasting peacebuilding strategies.

#### 6.1.1. How can national actors include armed non-state actors in SSR/G programmes?

“While ANSAs are often included in peace negotiations, they are typically excluded from long-term strategies for peace. This keeps them confined to a militarized role by locking their power to their possession of arms”.<sup>155</sup>

- Most ANSAs are interested in **participating in a national political process**. This can be used to put pressure on them and gain political space in negotiations with them.
- Rather than considering unarmed actors as merely actors for civilian protection, early warning, monitoring and information sharing, they should be **included as political actors** in their own right.
- **National actors should work with the communities** and populations that ANSAs address or from which they derive their legitimacy. For example, these communities could be invited to the negotiating table and their priorities could be used as **conditions for inclusion** in the peace process.
- A **“people-centred” approach** that involves civil society actors in addressing security threats and peacebuilding challenges should be privileged.
- The inclusion of ANSAs needs to be **balanced with the inclusion of non-violent civilian groups** – namely civil society members and women – considering the needs and priorities of all sectors of society equally.
- A majority of ANSAs are comprised of young and unemployed individuals whose insurgency has economic and social root causes, including access to land, unregulated competition between pastoralists and farmers, water management, and unemployment. They have joined armed groups due to a lack of other perspectives. **New and alternative perspectives for livelihoods and education must therefore be proposed.**
- Finally, the **purely inter-community dimension** of the ANSAs accentuates this feeling of exclusion, insofar as that the real motivations of the majority of fighters in these groups are more often linked to their individual resentments (notably linked to ethnic relations) than to a religious ideology that is often claimed.
- Engagement with ANSAs should be medium- to long-term, community-centred and linked to the broader peace process, including development.

### 6.1.2. How can regional and international organizations include armed non-state actors in SSR/G programmes?

Most of studies on SSR have not historically linked the broader state-building debate to the dialogue on liberal peacebuilding. “As a result, much of the work on SSR has been very specific and focused on particular activities rather than looking at broader interventions as an expression of, and in relation to, broader social and economic reform.”<sup>156</sup>

- Despite a somewhat mixed and incomplete record of SSR interventions, many international actors are currently involved in SSR programmes. These programmes employ an **array of approaches** and a **complex combination** of international organizations, governments, non-state actors, and private companies.
- Policymakers in the region need **better intelligence – local knowledge, understanding, research, and analysis** – on the decision-making capabilities, resources, and regional strategy of groups such as Ansaroul Islam, and the Islamic State in West Africa. This would help neighbouring countries not only disrupt planned attacks but also counteract the movement of resources and propaganda.<sup>157</sup>

Armed NSAs can include insurgents, rebel groups, terrorist organizations, and resistance movements.

**Box 18: Examples of non-state armed group in West Africa**

	<b>Territorial implementation</b>	<b>NSA type</b>	<b>Activities</b>	<b>Relation to State</b>	<b>Relations to population</b>
<i>Dan Na Embassagou</i>	Mali (Mopti region)	Self-defence militias	Military actions	Competition	Cooperation
<i>Dozo hunters local groups</i>	Mali (Segou region), Côte d'Ivoire, Burkina Faso	Self-defence militias	Self-defence actions and violence	Competition	Fear
<i>Koglweogo groups</i>	Burkina Faso	Self-defence militias	Self-defence actions and violence	Competition	Cooperation
<i>Kamajor hunters</i>	Sierra Leone	Self-defence militias	Self-defence actions and violence	Competition	Cooperation
<i>Egbesu militias</i>	Nigeria	Self-defence militias	Self-defence actions and violence	Competition	Fear
<i>Oodua Peoples congress</i>	Nigeria	Self-defence group - separatists	Political actions and self-defence actions	Limited cooperation	Cooperation
<i>Movement for the Actualization of the Sovereign State of Biafra</i>	Nigeria (Biafra region)	Separatists	Political actions	Conflicting interests / relations	Cooperation
<i>Movement for the Emancipation of the Niger Delta</i>	Nigeria (Biafra region)	Separatists	Violence and military actions	Conflicting interests / relations	Cooperation

<i>Boko Haram</i>	Nigeria, Cameroon	Jihadist armed group	Violence	Conflicting interests / relations	Fear
<i>Jama'at nusrat al-islam wa al-muslimeen</i>	Burkina Faso, Mali, Niger	Jihadist armed group	Violence	Conflicting interests / relations	Fear
<i>Ansar al-Din</i>	Mali (Kidal region)	Jihadist armed group	Violence	Conflicting interests / relations	Fear
<i>Al-Qaeda in the Islamic Maghreb</i>	Burkina Faso, Mali, Niger	Jihadist armed group	Violence	Conflicting interests / relations	Fear
<i>MUJAO/Al-Mourabitoun</i>	Mali (Gao Region), Niger, Libya	Jihadist armed group	Violence	Conflicting interests / relations	Fear
<i>Katibat Macina</i>	Mali (Mopti region)	Jihadist armed group	Violence	Conflicting interests / relations	Fear
<i>Katibat Sèrma/ Katibat AAA</i>	Burkina Faso	Jihadist armed group	Violence	Conflicting interests / relations	Fear
<i>Ansarul Islam</i>	Burkina Faso	Jihadist armed group	Violence	Conflicting interests / relations	Fear
<i>Islamic State in the Greater Sahara</i>	Niger, Mali (Ménaka Region), Burkina Faso	Jihadist armed group	Violence	Conflicting interests / relations	Fear
<i>MNLA</i>	Mali (Azawad region)	Armed group – separatists	Political-military actions	Competition	Cooperation
<i>HCUA</i>	Mali (Azawad region)	Armed group	Smuggling and violence	Limited cooperation	Extortion
<i>MAA-CMA</i>	Mali (Timbuktu region)	Armed group - separatists	Political and less military actions	Limited cooperation	Cooperation
<i>GATIA</i>	Mali (Gourma region)	Armed group	Political-military actions	Substitution/ complementarity	Cooperation
<i>MAA-PF</i>	Mali (Azawad region)	Armed group	Political-military actions	Substitution/ complementarity	Cooperation
<i>CMFPR</i>	Mali (Azawad region)	Armed group	Military actions	Substitution/ complementarity	None
<i>Mouvement de Salut pour l'Azawad</i>	Mali (Azawad region)	Armed group	Political-military actions	Substitution/ complementarity	Cooperation
<i>Coordination des Mouvements de l'Entente</i>	Mali (Azawad region)	Armed group - separatists	Military Actions	Competition	Non

<i>Revolutionary United Front</i>	Sierra Leone	Armed group	Violence	Conflicting interests/relations	Fear
<i>Liberians United for Reconciliation and Democracy</i>	Liberia	Armed group	Violence	Conflicting interests/relations	Fear

- In post-conflict contexts, military and civil actors engaged in regional or international peace operations, should when possible, and using the **do no harm principle, build diplomatic skills to interact with ANSAs** who provide security locally and consider what role they can play in building peace, **using track 1, 2 and 3 diplomacy**:
  1. **Track 1:** Official discussions involving high-level political and military leaders focusing on ceasefires, peace talks, treaties, and other agreements
  2. **Track 2:** Unofficial dialogue and problem-solving activities aimed at building relationships that can inform the official process. Typically involves influential academics, religious leaders, NGO leaders, and other civil society actors who can interact more freely than high-ranking officials
  3. **Track 3:** People-to-people diplomacy undertaken by individuals and private groups at the grassroots level to encourage interaction between hostile communities<sup>158</sup>
- These skills will help to foster **dialogue** which is key to a meaningful inclusion in the **peace processes**.
- Regional and international organizations need to provide missions with **political support to prioritize protection** and to engage with ANSAs in the face of objections from host governments.
- Regional and international organizations must release **sufficient resources** to effectively engage with ANSAs.

**Engagement modality:** The type of engagement depends largely on the circumstantial issues and do not harm policy that will guide the objectives.

### 6.1.3. How can SSR actors include armed non-state actors in SSR/G programmes?

In order to include NSAs in peacebuilding, SSR outcomes should<sup>159</sup>:

- Build **diplomatic skills to interact with ANSAs** who provide security locally and consider what role they can play in building peace.
- Foster **dialogue with local actors on all levels using track 1, 2 and 3 diplomacy** (see above).
- Learn from the “**local agreements strategy**” that has been used successfully in MINUSCA, for example the UN’s stabilization mission in the Central African Republic (**see Box 19**).

## 6.2. Determining whether to include armed non-state actors in peace processes

Based on the root causes of conflicts, it is worth encouraging the states of the region to adopt a comprehensive approach to address the root causes of the emergence of ANSAs, including governance and development. This approach requires the engagement of all relevant actors: governments and government authorities, NGOs, civil society, and other actors who can play an important role in crisis resolution.

Nonetheless, non-state armed groups are often excluded from peace processes when the legitimacy of the state is in question and human rights violations occur. Their inclusion may then be based on a process of remembrance, repentance, and confidence-building.

#### Resource 19: Programming entry points with non-state armed groups

Type of engagement	Objectives	Level of engagement	Anticipated challenges
Focus on analyses	Measure and understand inclusion in SSR/G through research	Research and learning activities (learning for whom?)	With armed groups, research or awareness raising is one of the only possible activities
Mapping	Identify armed groups (research activity)	Identification	Taking into account the volatile nature of armed groups and the links between them
Survey	Identify position and ideology (research activity)	Questioning	Not being able to interview direct armed group members but security actors with knowledge
Perception study	Identify population feelings and perception regarding the non-state armed groups (research activity)	Questioning	Having a <i>do no harm</i> policy and risk analysis
Awareness raising of human rights and protection of vulnerable groups	Advocate for the NSSJP engagement and inclusion in SSR/G with national stakeholders in order to reduce human rights violations	Communication activities	Having a very thorough risk analysis done

#### Box 19: Example of successful inclusion of ANSAs<sup>160</sup>

##### Example of successful inclusion

The 'local agreements strategy' of the UN stabilization mission in the Central African Republic (MINUSCA) has managed to stabilize areas and build trust between communities. ANSAs and the state through three important steps.

First with support from mission headquarters, it has empowered MINUSCA field staff to seek small political victories to enhance the protection of civilians. State authorities in the Central African provinces are weak, but it is the local *préfet* or relevant government representative who engages in dialogue and signs the agreement. Second, the 'local agreement strategy' emphasizes follow-up with signatories.

Third, the approach seeks to empower field staff to engage with ANSAs for example, the mission recently established standard operating procedures for engaging with armed groups, stating that engagement is not merely allowed but expected in furthering the mission's mandate.

**Resource 20: Inclusion or exclusion of armed non-state actors in peace processes?****Why is the engagement of ANSAs advantageous to sustainable peace processes?**

- Military approaches against ANSAs rarely lead to conditions that promote lasting peace. Engaging with armed groups beyond military options may present an alternative option toward peace.
- The need to protect local populations from continued violence is at the heart of ANSA involvement in SSR processes. The resulting dialogue ensures a presence (of whom) in a conflict zone to monitor humanitarian conditions and save lives. Is it the role of ANSA to monitor humanitarian conditions and save lives?
- The need to ensure that armed actors who have had leading roles in the conflict and who are able to facilitate, or undermine negotiations, are involved in the peace process and are present at the negotiating table.
- An opportunity to develop a channel of communication with an armed group offers the possibility of opening, in the form of pre-negotiation, modalities for meetings between the parties involved.
- A means to better understand the armed group, its motivations, and its capacity for engagement. A better understanding will form the basis to identify the true interests of the group and to include these analyses in the SSR process.
- The possibility of building a climate of trust with the armed group in order to break with its practices that may not align with international norms.

**Negative considerations of engaging ANSAs in peace processes**

- If the engagement has an impact on the behaviour of a group that is based on violence and determined to maintain hostile positions towards its enemies
- If any form of engagement with those who use violence to challenge state power risks strengthening them and enhancing their legitimacy among their own supporters and in the international arena
- If democratic governments face attacks from the opposition blaming them for their contacts with armed groups, whether through intermediaries or directly.
- If war is a better solution
- If ANSAs ignore human rights and are responsible for atrocities against civilian populations
- If ANSAs take advantage of the international commitment to intensify armed action or block the peace process

**Risks**

- Legitimation of the actions and speeches of the ANSAs
- Unintended consequences: spikes in violence, strengthening of extremist groups, splintering of groups
- Insecurity for local and international staff
- Taxing complicity - significant legal risk if national legislation is not in favor of the engagement
- Bias/partiality if consideration of some ANSAs rather than others or NSSJPs

**Objective engagement indicators**

- The level of the interlocutors and the capacity of decision making
- The level of fragmentation of ANSAs
- The attitude of state actors toward engagement with the ANSAs
- The level of trust between the population and the ANSAs
- The absence or existence of a clear or realistic agenda
- The level of confidentiality management
- The level of inclusion of other opposing actors
- The level of responsibility committed by the ANSAs
- The level of achievement of the preliminary conditions:
  - The end of violent actions
  - The establishment of a ceasefire
  - The recognition of an occupying power
  - The renunciation of secessionist objectives



## The role of ECOWAS in supporting its Member states

### Summary reminder: Section 7

#### 7. The role of ECOWAS in supporting its member states

##### 7.1. The role of ECOWAS at policy level

##### 7.2. The role of ECOWAS at operational level

As a regional organization, ECOWAS has a major role in supporting the implementation of SSR/G and the engagement of NSSJPs in its member states at the policy (7.1) and operational levels (7.2).

### 7.1. The role of ECOWAS at the policy level

Regional and sub-regional actors such as the AU and ECOWAS “have become increasingly indispensable in the conceptualization, implementation, monitoring, evaluating, and provision of external support to security sector reform processes, including through the articulation of policy frameworks.”<sup>161</sup> Fundamentally, ECOWAS is in a position to provide policy direction at the regional level, involving member states.

While the UNSG’s 2013 report recognizes the prevalence of NSSJPs and their continued relevance, it admits that it does not yet know how best to engage them.<sup>162</sup> ECOWAS has already demonstrated the importance of SSR/G and this is reflected in several instruments including the ECPF (2008), the Code of Conduct for the Armed Forces and Security Services of ECOWAS (2011), and the draft ECOWAS Framework for Security Sector Reform and Governance.<sup>163</sup> ECOWAS can therefore promote the engagement of NSSJPs by **initiating and supporting the harmonization of the member states’ legislation on engaging NSSJPs.**

The **AU Policy Framework** on SSR recommends the **integration of informal and customary security providers and traditional justice actors into SSR processes where appropriate** as one of the core SSR principles for the African continent. In the ECPF, ECOWAS does recognize the need to “develop, adopt, and facilitate the implementation of a regulatory framework with a sanctions regime on non-statutory armed groups, including militias, vigilantes, and private security outfits.”<sup>165</sup>

However, the process of developing an action plan on how to engage and incorporate NSSJPs is still lacking. With a list of suggested activities and potential stakeholders to be involved,<sup>166</sup> the tool provides guidance on how ECOWAS can take the process forward. This process may include but is not limited to approaches of the ECOWAS Commission urging member states to undertake a comprehensive audit of NSAs.

Similarly, the ECOWAS member states may be invited to include provisions on the applicability of national codes of conduct for armed and security forces to NSAs, or even develop a code specific to these NSSJPs, as the International Code of Conduct for Private Security Service Providers dated 2010. In addition, the ECOWAS Commission may incorporate such applicability in its own code of conduct.

The objectives of this tool, focusing on processes of engaging and incorporating NSSJPs into SSR strategies, is already a step in the right direction. ECOWAS engagement with SSR/G is not restricted to policy levels; the ECOWAS Commission has equally made important strides in operationalizing its policy. In order to achieve the objectives of involving NSSJPs within the SSR/G process, the operational level has to be developed in line with the policy.

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## 7.2. The role of ECOWAS at the operational level

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The role of ECOWAS in engaging and incorporating NSSJPs is also relevant at the operational level. ECOWAS has been a key actor both in developing regional SSR/G normative frameworks and their subsequent operationalization, as well as in supporting SSR/G within the member states. There are several ECOWAS forums that can serve as entry points for the implementation of SSR/G strategies, which integrate the role of NSSJPs, such as the ECOWAS ministers in charge of security, the Committee of Chiefs of Defence Staff (CCDS), and the West African Police Chiefs Committee (WAPCCO). These forums could also serve in the sharing of best practices, encouraging dialogue, and networking.

The ECOWAS Draft SSR Policy Framework states the importance of integrating NSSJPs into SSR processes, indicating that ECOWAS already acknowledges the importance of NSSJPs. Operationalizing this engagement will, however, require ECOWAS to support the following:

- Developing a regional framework or regional model-law for the regulation of NSSJPs
- Encouraging the sharing of best practices on improving the performance and accountability structures of NSSJPs
- Creating a database of regional SSR/G experts with intellectual and practical knowledge on the issue
- Supporting the publication and dissemination of materials, research papers, and tools on the issue

ECOWAS can also contribute to making sure that support for NSSJPs should be channelled through identified local stakeholders recognized by the state.<sup>167</sup> Thus, ECOWAS can provide critical advice to donors and partners so as not to further undermine state legitimacy by going around the state to engage with unverified NSSJPs.

## 8

## Conclusion

The security situation in ECOWAS countries has remain volatile since 2019. Violent non-state actors, including terrorist groups, criminal networks, and community-based and tribal militias perpetrate repeated attacks against civilians, security, and defence forces in the Lake Chad Basin and the Sahel, threatening the West African coastal states. Security forces have also been accused of extrajudicial killings, brutality, and forced disappearances of civilians. Meanwhile, the Multinational Joint Task Force and the Joint Force of the Group of Five for the Sahel continue to conduct joint cross-border operations against violent extremists.<sup>168</sup>

ECOWAS countries can be categorized as zones of (1) conflict, (2) post-conflict, and (3) relative peace. In these varying contexts, security challenges continue to hinder regional ambitions to foster development and integration. It is imperative to deal with such challenges in the interest of the people and governments of all ECOWAS member states.

The necessary actions require focus on measures involving NSSJPs. This is even more relevant when considering the multiple actors within the security sector; both state actors and NSSJPs should therefore be at the centre of SSR/G processes. The ultimate objective of actions undertaken is the transformation of the sector on the whole, engaging all actors, so that the sector is consistent with standards and principles of good governance with a greater focus on human security.

In practice, there are several NSSJPs operating every day. It is essential to differentiate armed non-state actors (ANSAs) from NSSJPs on the basis of their approaches. Although similar in that they are both non-state entities, their approaches are divergent, raising specific challenges regarding their alignment with legal norms, the rule of law, and observance of human rights.

While state institutions remain the primary statutory bodies responsible for policing and the maintaining law and order, a plethora of non-state groups have emerged over the recent years, claiming to provide policing and law and order services. It is imperative for ECOWAS member states, donors, and civil society organizations to engage with and to support whenever possible the activities of NSSJPs as part of the security and justice sectors. There is a need to shift the mindset on how to conceptualize security and justice sector reform, as NSSJPs need to be incorporated into SSR strategies.

ECOWAS countries should initiate a holistic SSR/G process involving NSSJPs to avoid introducing systemic weaknesses for security and justice. Since the development of security and justice is a complex process,

ECOWAS should play a leading role in supporting member states when necessary - not just via policies and legal provisions, but by supporting the operationalization of such policies. Norms, principles, and values of accountability and effectiveness can also be generated from NSSJPs.

While there is a need for a top-to-bottom process that inculcates universal values and accepted practices into NSSJPs, it should not, however, preclude the value of the lessons that state security institutions can learn from the experience of reliable NSSJPs. Ultimately, the objective is to ensure that all security and justice providers deliver and serve the citizens in accordance with legal norms, the rule of law, and an observance of human rights.

## 9

## Checklist

This checklist should not be regarded as an invariable list of tools and boxes to be ticked, but rather as a general *aide-mémoire* on important points for consideration when engaging non-state justice and security providers in SSR/G processes; it is not an absolute or exhaustive list. With respect to the context-specific requirement of SSR, specific priorities and entry points should always be identified according to the context along the recommendations proposed in this Tool.

### 1. SSR/G should be nationally owned and implemented with consideration to the context

According to the AU Policy Framework on Security Sector Reform, member states are the primary providers of peace and security for their citizens and for all entities within their borders.<sup>169</sup> **National ownership** means that SSR will be conceived, designed, led, managed, coordinated, implemented, monitored, and evaluated by national actors. National authorities will also make substantial financial, human, and other resource contributions to the SSR process.

### 2. SSR/G should be inclusive ...

SSR/G requires a holistic strategy that implies the full involvement of all security sector actors in the reform process to its success: NSSJPs that are already providing policing and justice services, traditional and customary leaders, informal security providers, and private military and security companies. Advantages of including NSSJPs are:

- Accessibility and affordability: NSSJPs contribute to the sector through accessible and affordable services, a critical fact to take into account. The proximity of NSSJPs with communities is an essential element to any security and justice approaches.
- Social legitimacy and local ownership: The NSSJPs bring a legacy of greater social legitimacy and support adapted to the realities of the environments and populations to which they provide these services.
- People-centred: Individuals are at the centre of concerned NSSJPs, reinforcing the idea that security and justice are public goods.

### 3. ... but avoid legitimizing non-state actors that may undermine the SSR processes

SSR/G initiatives in member states should also take into consideration the activities of NSAs in order to identify and address activities that may undermine the SSR processes. The AU recognizes that, together with other sectors, the security sector should be subject to regular institutional review at least once every ten years,<sup>170</sup> and member states are encouraged to set up timetables for the regular review of the security sector at least once every ten years.<sup>171</sup> This should apply to state and non-state actors equally.

### 4. Inclusion and participation of civil society

SSR activities should include the participation of all facets of civil society. The NSSJP are the most direct emanations of the people, which directly justifies their inclusion in the SSR processes.

### 5. Gender mainstreaming

SSR activities should include gender mainstreaming. The engagement with NSSJPs should ensure equal recruitment and equal access to non-state security and to justice institutions. SSR activities should be clear about their engagement regarding gender training since all personnel of security forces – as well as of NSSJPs – must be trained.<sup>172</sup>

### 6. SSR/G programming

- **When to engage?** There is a need to first conduct an audit of acting NSSJPs (**see Tool 4**). Next steps could include:
  - Elaborating a proper and accurate mapping of security landscape (**see Tool 14**).
  - Profiling NSSJPs: their relations to the state, the local community, public opinion potential for hybridization, assessing their capacities (**see Tool 15**).
  - Profiling challenges and mitigation strategies related to including unofficial actors in SSR/G (**see Tool 7, 9, 20**).
- **Ways to engage:**
  - Proceed to an assessment of texts regarding existing NSSJPs (**see tool 16**).
  - Check official authorization to operate and relevant legal frameworks (**see tool 13**).
  - Oversight mechanisms and monitoring (**see tool 18**).
  - Improve accountability and performance along key indicators (**see tool 17 and 19**).

### 7. Coordination among all key actors

The holistic nature of SSR/G also underscores the need for coordination among all key actors including government, civil society, regional and bilateral actors, donors, etc. Cooperation, communication, common vision, and strategy rather than competitiveness are essential.

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#### 4. DCAF/ISSAT publications and online resources

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Tool 1: Political Leadership and National Ownership of Security Sector Reform Processes Tool 2: Security Sector Reform Programming Tool 3: Good Financial Governance of Defence and Security Institutions Tool 4: Effective Management of External Support to Security Sector Reform Tool 5: Parliamentary Oversight of the Security Sector Tool 6: Civil Society Involvement in Security Sector Reform and Governance Tool 7: Non-State Justice and Security Providers and Security Sector Reform Tool 8: Integrating Gender in Security Sector Reform and Governance

- DCAF/ISSAT, *SSR Backgrounders*,  
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- DCAF/ISSAT, *Civil society : Roles and responsibilities in good security sector governance*,  
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## Notes

1. ECOWAS SSR/G Framework, 2016
2. DCAF/ISSAT, *The Contribution and Role of SSR in the Prevention of Violent Conflict*, op. cit., 5.
3. *Ibid.*
4. Some of the challenges include inter-communal conflicts, increased violence associated with transhumance, violent extremism, terrorist attacks security threats, the multiplication of natural disasters, epidemics and pandemics outbreaks, food insecurity, irregular migration, and maritime piracy. The complex connections between the threats lead to the conclusion that a broad approach is necessary, as it is impossible to counteract the threats separately.
5. As part of the security sector, NSSIPs play a role in SSR/G: they must provide oversight, but NSSIPs can also be held accountable.
6. UNSC, *Report of the UN Secretary-General on Activities of the United Nations Office for West Africa and the Sahel*, S/2019/549, 5 July 2019.
7. Institute for Security Studies (ISS), "Hard counter-terrorism lessons from the Sahel for West Africa's coastal states", *ISS*, 05 June 2019.
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9. Institute for Security Studies (ISS), "Hard counter-terrorism lessons from the Sahel for West Africa's coastal states", op. cit.
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17. UNSC, *Report of the UN Secretary-General on Activities of the United Nations Office for West Africa and the Sahel*, op. cit., 5 July 2019.
18. *Ibid.*
19. For example, the military camps in Inates (December 2019) and Chinégodar (January 2020).
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27. Raineri L., "Explaining the Rise of Jihadism in Africa: The Crucial Case of the Islamic State of the Greater Sahara", *Terrorism and Political Violence*, 2020.
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33. Derks M., "Improving security and justice through local/non-state actors - The challenges of donor support to local/non-state security and justice providers", *op. cit.*, 16.
34. *Ibid. op. cit.*, 16.
35. *Ibid.*, 3. These challenges will be discussed in subsequent sections of the tool.
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137. The caveat is to state that plurality and hybridization should be welcomed provided such provisions do not contravene the basics of state security practice.
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139. The basic indicators of a positive outcome of the mapping and profiling process would be a scenario where the functions, interest, motivations and values of NSSJPs are either in conformity with the rule of law or have the potential to be reformed. Another key indicator is social legitimacy and support from the communities where the groups function.
140. AU Policy Framework on Security Sector Reform, Section 16, F.
141. DCAF/ISSAT, *SSR in a nutshell*, *op. cit.*, 30.
142. AU Policy Framework on Security Sector Reform, Section D3. *Legal and Security Policy Frameworks*, § 31.
143. AU Policy Framework on Security Sector Reform, Section E. *Gender mainstreaming in the security sector*, § 66.
144. NSSJPs personnel in central Nigeria and in most of the West African case studies cited in this tool are men, for example Badong, Paschal Anayenle, (2009) *Security Provision in Ghana: What is the Role and Impact of Non-State Actors?*, ALC Research Report no.5, King's College London, Hagberg, Sten (2007), "It was Satan that Took the People": The Making of Public Authority in Burkina Faso, in Christian Lund (Ed), *Twilight Institutions: Public Authority and Local Politics in Africa*, and Meagher, Kate, (2007), "Hijacking Civil Society: the Inside Story of the Bakassi Boys Vigilante Group of South-Eastern Nigeria", *Journal of Modern African Studies*, 45, 1, pp.89-115.
145. Baker (Bruce), *Security in Post Conflict Africa: The Role of Non-State Policing*, CRC Press, Taylor and Francis, 2010.
146. For example, see Chris Coulter, *Bush Wives and Girl Soldiers: Women's Lives through War and Peace in Sierra Leone*, Cornell University Press, Ithaca and London, p.125-153, (2009)
147. UNODC, "Improving Access to Legal Aid for Women in West Africa",
148. M'Cormack, F., *Prospects for Accessing Justice for Sexual Violence in Liberia's Hybrid System. Stability: International Journal of Security and Development*, 7(1), p.10, 2018. In this article, the author highlights challenges and opportunities presented by Liberia's hybrid justice system in relation to addressing sexual and gender-based violence.

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150. Abrahams, Naeemah & Jewkes, Rachel & Mathews, Shanaaz. (2010). Guns and gender based violence in South Africa. *South African medical journal = Suid-Afrikaanse tydskrif vir geneeskunde*. 100. 586-8. 10.7196/SAMJ.3904.
151. On integrating a gender perspective in external oversight of security sector institutions, *Integrating Gender into Oversight of the Security Sector by Ombuds Institutions and National Human Rights Institutions*, Geneva, DCAF, OSCE, and OSCE/ODIHR 2014 ; *Tool 1: Security Sector Governance, Security Sector Reform and Gender*, Geneva, DCAF, OSCE/ODIHR, UN Women, 2020.
152. Udoka Ndidiamaka Owie, *Beyond the Rhetoric: Mainstreaming Gender in the ECOWAS Peace and Security Architecture, Policy Briefing – Women, Power & Policymaking*, p. 2-3, August 2019.
153. Philipsen L., “Armed non-state actors need to be included in pragmatic peacebuilding”, *DIIS Policy Brief*, October 2019.
154. *Ibid.*, 5.
155. Philipsen L., “Armed non-state actors need to be included in pragmatic peacebuilding”, *DIIS Policy Brief*, October 2019.
156. Jackson P., “Introduction: Second-Generation Security Sector Reform”, *Journal of Intervention and Statebuilding*, *op. cit.*
157. Blake J., “West Africa Is Increasingly Vulnerable to Terrorist Groups”, *Foreign Policy*, 4 April 2020.
158. Philipsen L., “Armed non-state actors need to be included in pragmatic peacebuilding”, *DIIS Policy Brief*, October 2019.
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161. United Nations, “Securing States and Societies: Strengthening the United Nations Comprehensive Support to Security Sector Reform,” *Report of the Secretary General*, p. 5, 13 August 2013
162. *Ibid*, p. 5.
163. For a comprehensive overview on ECOWAS engagement with SSR at a policy and operational level see Uzeochina, Okey, *Security Sector Reform and Governance Processes in West Africa: From Concepts to Reality*, DCAF Policy Paper no.35, Geneva, 2014.
164. African Union, *Policy Framework on Security Sector Reform*, Section b, Sub-Section 16, article f, p.10.
165. ECPF (2008) § 74 (c), (2013).
166. See checklist detailed in tool 17.
167. This could include but not be limited to state security institutions, local government officials, traditional and customary leaders, and local civil society organizations.
168. *Report of the UN Secretary-General on Activities of the United Nations Office for West Africa and the Sahel*, S/2019/549, 5 July 2019.
169. AU Policy Framework on Security Sector Reform, *Section G3. Member states and National Ownership*.
170. AU Policy Framework on Security Sector Reform, *Section A2. Rationale and Scope – § 11*.
171. AU Policy Framework on Security Sector Reform, *Section D1. Security Sector Review and Needs Assessment – § 23*.
172. DCAF, OSCE/ODIHR, UN Women (2019), “Security Sector Governance, Security Sector Reform and Gender”, in *Gender and Security Toolkit*. Geneva: DCAF, OSCE/ODIHR, UN Women.
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