The Transition to a Just Order – Establishing Local Ownership after Conflict

A Practitioners' Guide

Annika S. Hansen and Sharon Wiharta
with Bjørn R. Claussen and Stian Kjeksrud

OUR MISSION

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This is the second title in the series "Handbook", published by the Folke Bernadotte Academy. For a list of titles in the series, contact the Academy.

Foreword

Ambassador Michael Sahlin
Director-General
Folke Bernadotte Academy

THERE IS NO GENERALLY agreed upon template or practice for how to carry out rule of law reform during peace operations, and for how to transfer the rule of law to local ownership. Just as we speak of "the art of war", the practice of rule of law reform and the transfer of rule of law to local ownership during peace operations is an art, not a science. While each case is unique and will require case-specific approaches, some generally applicable issues, challenges and lessons can be identified that can assist in minimising costly and time consuming efforts that currently reinvent the wheel in a field mission.

Two general questions are of interest in this context. One is the question of whether and when local ownership should be promoted, and what broad strategies that should be used at a strategic or policy planning level. Another question is the one of how these broad strategies should be translated for use by practitioners. This question is located at the operative or field level and is mainly of interest to field staff, but also has implications for policy planners.

This report focuses on the second issue area and thus the issue of implementation. It covers a number of core areas that need to be explored at the field level, and it does so by taking stock of recent field practice of rule of law reform during peace support missions. The case study based issues and challenges raised highlight important choices that have to be made. As such, the report's ambition is to contribute to the development of a template that can organize and assist the field practice of rule of law reform missions. I am convinced that the report fulfils that ambition and hope that it will inspire scholars to provide additional contributions to addressing the dual challenges of rule of law reform and local ownership during peace missions.

The support of this report is an expression of the Folke Bernadotte Academy's mandate to contribute to improving the practice of prevention and management of conflicts. The Academy is in that respect tasked to carry out research, studies and evaluations on its own and in cooperation with the Swedish and the international research community. It is tasked also to encourage and inspire the research community to carry out relevant research; strive to translate findings from research, studies and evaluations into practical applications; and disseminate findings to interested groups. Important tools in this regard are the Academy's publications, workshops and conferences. The Academy is mandated also to promote national and international cooperation within its field between government agencies, between government agencies, practitioners and the research community, and within the research community.

Michael Sahlin

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Introduction

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1   THIS HANDBOOK AND its sister publication, the policy report *The Transition to a Just Order: Establishing Local Ownership after Conflict*, *A Practitioner's Guide*, are based on the findings of a two year long study conducted jointly by the Stockholm International Peace Research Institute (SIPRI) and the Norwegian Defence Research Establishment (FFI), in partnership with the Folke Bernadotte Academy (FBA). The study offers a comprehensive analysis of the principle of local ownership, the key dilemmas involved in pursuing local ownership and the challenges and issues that arise when local ownership is being put into practice. It takes a closer look at strategies and mechanisms for transition in four cases studies: Afghanistan, the Balkans (Bosnia and Herzegovina (BiH) and Kosovo), Timor-Leste and West Africa (Liberia and Sierra Leone). The cases have been selected to illustrate the varying degrees of international involvement in post-conflict justice and security sector reform. Kosovo and Timor-Leste represent scenarios where the international community has taken the lead in taking responsibility for law and order, while West Africa and especially Afghanistan are illustrative of post-conflict environments where primacy has rested with local authorities. The study is based on field visits by the authors to all the case study countries with the exception of Timor-Leste and numerous interviews with local stakeholders, practitioners, policy makers and established academics working on justice and security sector issues. The study has also benefited greatly from discussions which took place in a workshop held in Stockholm in May 2006 as well as a rigorous

peer review process. The handbook uses the findings in the case studies and examples from these peacebuilding processes to highlight some of the key challenges.

1.1 Aim of the handbook

2   Transferring the responsibility for order to local stakeholders has emerged as a key challenge when providing post-conflict assistance to re-establish the rule of law. This handbook provides an overview of how to implement the principle of 'local ownership' in public security and the rule of law reforms. It does not discuss in detail how rule of law reform should be implemented. Instead, it addresses the specific question of how to promote *local ownership* as part of a comprehensive justice and security sector reform effort. It seeks to help its users develop a holistic view of the need to respect and foster local ownership during rule of law reform efforts by encouraging strong local commitment and participation, and building the capacity of local stakeholders to drive change and sustain efforts to strengthen the rule of law.

3   By posing key questions and raising 'Bottlenecks and stumbling blocks' the handbook can assist with the process of deciding how, where and when local ownership should be promoted; where it may not be an option; whether different circumstances call for different types of approaches; and which factors should be taken into consideration. Achieving success in this field is no small challenge. The handbook is intended to encourage practitioners to ask critical questions that can guide the transitional process.

4   The intended audience for this handbook consists of policy makers and field personnel—from the police officer on the street, who assists with the provision of public security, to the head of mission who has much broader responsibilities and must take account of the strategic picture. The recommendations will not apply universally to all users. How the handbook is used will depend on where the user is located in his or her organisation.

1.2 How to use the handbook

5   This handbook is for use in a post-conflict context where an international presence has been put in place to (re-)establish or reform the rule of law. It takes into account the broad spectrum of international missions ranging from those with a monitoring role to those with an executive role. It does not call for the immediate transfer of responsibility to local authorities but offers suggestions about how and under what conditions a gradual transfer can take place. Similarly, this handbook does not aim to provide definitive guidance on how best to approach local

ownership in the transition to a just order after conflict. It is intended to help field personnel cope with the difficult task of implementing the principle of local ownership in justice and security sector reform during peacebuilding operations. It provides basic information on different aspects of reform efforts and the typical local ownership challenges linked to each aspect. The authors' aim is to make the handbook as practically applicable as possible to allow it to be used as a reference guide during missions as well as for study and training purposes. The handbook is divided into eight chapters. The introduction gives an account of the objectives of the handbook and how to use it, in addition to briefly defining the key concepts that are used throughout. Chapter 2 delves more deeply into the key question of how to put the principle of local ownership into practice and provides a framework for the remaining chapters. Chapter 3 describes the different mechanisms available to engage local actors in return efforts. Chapters 4–7 each focus on how to enhance local ownership in the different aspects of justice and security sector reform: fact finding, strategy development, public order and transitional justice, and institution and capacity building efforts. Chapter 8 offers advice on how to assess the transition process.

6   Each chapter is divided into sections that cover the different tasks included in the main aspects mentioned above. Although the chapters might seem to be in chronological order, all the different aspects are interrelated. The practitioner is strongly advised to read through the entire handbook to grasp the complexity of the big picture before consulting the handbook as an operational guide. Each section contains a short and precise description of the main issues and a list of potential pitfalls (*Bottlenecks and stumbling blocks*) to make the practitioner aware of the challenges and the most common problems. This is followed by a list of *Key questions to consider* that is intended to assist the practitioner to decide what needs to be done. The authors recognise that each case and each particular reform project are unique and will require finely tuned approaches. Each section concludes with some examples from previous peacebuilding operations to illustrate the aspect reviewed.

1.3   Key concepts

7   The concept of *the rule of law* refers to the principle of the supremacy of the law, equality before the law, accountability to the law, fair and impartial application of the law, legal certainty and procedural transparency. The principle is intended to be a safeguard against arbitrary government. The breakdown of the rule of law is often a consequence of conflict but it can also be a cause of conflict. Without the rule of law, the legitimacy of the state cannot be established, violence does not end and reconciliation and confidence building cannot begin. This implies that

the rule of law is an issue that is fundamental to peace and conflict that must be addressed as part of any effort to prevent, manage or resolve conflict.

8   The justice and security sector is at the heart of a state's sovereignty in that the state possesses the sole legitimate right to exercise coercive power in order to deal with external and internal threats to the rule of law and the security of the state and its citizens. The term *justice and security sector* refers to all the national institutions, laws and polices established to administer criminal and civil justice, including legal regulations and monitoring. *Justice and security sector reform* is an important element in establishing the rule of law and refers to the reform of the institutions that have the authority to use force or to order the use of force and uphold the law, as well as those civil structures that are responsible for their management. In the context of local ownership, informal justice and security mechanisms might play a role but, ultimately and desirably they should have a clearly defined legal link to the state's formal justice and security sector.

9   *Local ownership* is imperative in order to make justice and security sector reform and the rule of law sustainable. For the purposes of this handbook the term local ownership embraces the recognition that a justice and security sector reform process is of integral concern to the local population and that local actors should have a say in formulating the outcomes of the process. If the reform process is to be legitimate and sustainable, it should, wherever possible, build on existing judicial systems and legal traditions and reflect the culture and values of the country in question. Additionally, it should reaffirm international laws, norms and standards. Local ownership can be implemented to different degrees and range from local acceptance or tolerance to local control over decision-making.

10 The authors of this handbook hold the view that the maximum authority possible—in accordance with the available local capacity, context, level of accountability—should lie with local stakeholders at any given time, and that a minimum level of popular and political support or acceptance is indispensable to enabling all stages of the transition to gain a foothold and be consolidated. In a case where there is strong and popular opposition, there is no place for an international effort in this area.

Putting the Principle of Local Ownership into Practice

2.1 Why, how and when local ownership should be promoted

11 A breakdown of the rule of law may be both a cause and the consequence of a conflict and, while a situation may become stable in the short term, long-term security depends on the establishment of a functioning rule of law. Establishing a functioning rule of law, including the necessary institutions, skills and culture, is a long and demanding process that will in all cases outlast the international community's political commitment and willingness to engage with and supply resources into a post-conflict society. Ultimately, the running, staffing and future development of rule of law institutions will fall to local authorities. In addition, the local population is the end-user of justice and security and must have confidence in the rule of law in order for it to work effectively and equitably. It therefore makes sense to begin building the capacity and willingness of local actors as early as possible in order that, over time, the rule of law becomes the basic organising principle of society. Calls for local ownership are the logical consequence of this reasoning and aim to put in place the minimum conditions necessary to enable formal local authorities, local staff in justice and security institutions and the wider public to sustain the rule of law.

12 It is important to note that this is a gradual process in every case. The precise shape and pace of transition in each country will depend on a range of factors and will vary in different areas of the justice and security sector. One way in which to approach implementing the principle of local ownership is to view the reform

effort as consisting of a series of stages: (i) fact finding and diagnostics; (ii) setting objectives, priorities and strategies; (iii) programme design; (iv) programme implementation; and (v) evaluation.

13   Fact finding, mapping and diagnostics are the first indispensable steps in any strategy for transition. Based on this framework, the next stage is to set priorities and objectives and to develop strategies to achieve these objectives. Clarifying priorities and objectives, in turn, is critical to assessing the extent to which progress towards the objectives has been made. Once priorities, objectives and strategies have been defined, the individual steps towards the final goal are elaborated through programme development. Programmes are likely to address various aspects of public order and transitional justice, as well as institution and capacity building and strategies to increase civil society involvement. The progress of the reform effort and its constituent programmes must be continuously evaluated to allow any necessary adjustments to the substance of reform to be made, and to identify areas in which local ownership might be strengthened and authority transferred.

14   Ownership is critical in any reform process regardless of whether it takes place in a post-conflict situation. Efforts to build local ownership would do well to keep in mind that any reform or change process introduces instability into that organisation. Staff are generally reluctant to – or even scared of – change. Staff members fear for their jobs or areas of influence and their motivation and willingness to cooperate with reformers is likely to suffer. In order to increase support for a process of change, it is imperative that goals and processes are communicated clearly to the staff. Lessons from institutional reform processes also suggest that staff should be consulted and heard in order to engender enthusiasm for the new organisation. Some of the preconditions for successful change management include clear political signals that outline the goals of reform and the authorities' commitment to those goals; that the process is as predictable and cohesive as possible; and that there is a balance between the level of ambition of the reform process and the resources available to support the organisation in the future.

15   These challenges of reform and ownership are enhanced in a post-conflict society, where local stakeholders may not trust the international reformers to understand their concerns and to act in their best interests. This underlines the need for iterative consultation, communication and transparency. In part, this is a question of attitude and the need to treat local counterparts with respect. It also calls for mechanisms to hold international actors accountable—especially if they have executive powers—in order to prevent decisions being made that do not take local interests into account, prevent international abuses, and avoid inconsistencies between the words and the deeds of international actors. Independent bodies that can monitor

complaints and take disciplinary action against international actors are a central component of local ownership and can also enhance popular trust in international actors.

16   Another characteristic in a post-conflict setting is that several reform processes are likely to be taking place across the range of public institutions—in the context of this study in police services, justice institutions and the wider rule of law culture—which increase the challenge of achieving a cohesive end-product. The fact that several reform processes vie for international attention and funds also puts additional strain on the available resources and increases the need to create a set of institutions, skills and understandings that is sustainable in the long-run by local sources of funding.

17   Having underlined the need for as much local ownership as possible as early as possible, it is important to identify some of the most important constraints.

2.2   Limitations to local ownership

18   While it is ultimately desirable that local actors take charge of their justice and security sector and are responsible for the rule of law, international efforts to transfer responsibility should be governed by a realistic assessment of local capabilities and willingness to fulfil this role effectively and impartially, and should recognise situations where a transfer may not be possible early on. Shortfalls in the local capacity to take on roles in emerging justice and security institutions can be bridged temporarily with the help of international resources that can substitute. Institution and capacity building, however, is important in order to fill the capacity gap in the long run.

19   Another limitation lies in the fact that reform processes take place in a political context and rule of law institutions are more politically sensitive than most because they are at the heart of a government's power. This is especially true when local actors have their own ideas about how to apply the rule of law, which violate international standards and human rights. It is often the case that after a conflict political authorities are not interested in relinquishing or regulating their own power, and may even gain from a certain amount of instability and a non-functional rule of law—particularly if they still want to pursue an agenda that seeks to discriminate against their opponents. In these circumstances a sustained local commitment to conduct rule of law reform is tenuous at best.

20   There are several areas in which local ownership is inherently difficult and that warrant a more extensive international role: (a) the inclusion of minorities and other marginalized groups; (b) corruption and organised crime; and (c) the pursuit of long-term goals. In other words, where corruption and organised crime have

infiltrated the political sphere, and where there is a clear bias against particular groups in society, it is either unsustainable or futile to transfer the responsibility for rule of law reform and rule of law institutions to local actors. It is important to keep in mind that authority will still have to be transferred eventually, but that putting the minimum requirements for local ownership in these areas in place may take longer, may involve delving deeper into the fabric of society and may require international oversight for an extended period of time even after formal authority has been handed over.

The inclusion of minorities and marginalized groups

21 The international community has a special obligation to ensure the inclusion of groups that are marginalised or have been excluded in the past, such as minorities or women. Local dynamics may traditionally exclude these groups and they would probably not be able to participate without the support of the 'interveners'. Moreover, political parties may benefit from continued tension between ethnic groups and therefore be interested in retaining some tension in society or even fanning the flames. This is a clear limitation of local ownership, in that sustainable and locally driven levels of minority representation could lead to different areas being largely serviced by mono-ethnic rule of law institutions. When looking for local partners in the transitional period, efforts should be made to identify and foster expertise among minority groups in society, and to explore and use locally established mechanisms to ensure greater participation. For example, women's rights groups in Afghanistan take the lead in promoting gender issues. Unless rule of law institutions meet everybody's needs for security and justice fairly and impartially, there is a danger of destabilisation by marginalised groups in the long-run. Ultimately, local ownership can only be sustainable if all groups, including ethnic and other minorities, cooperate on equal terms and practitioners should encourage such cooperation and integration early on.

Corruption and organised crime

22 Before responsibility for the rule of law can be transferred in the areas of organised crime and corruption, shortfalls in both willingness and capacity have to be addressed. Shortfalls in willingness stem from the fact that organised crime and corruption are so prevalent and all-pervasive that they have become a way of life in many post-conflict societies. The notion of local ownership presupposes that local actors share similar goals to those of the international reform effort to the extent that they are interested in consolidating peace and enhancing prosperity in the society or country. In societies where corruption is rampant and organised crime widespread, however, the assumption that local authorities are working for

the common good does not necessarily hold true and it falls to the international presence to ensure that the rule of law is applied fairly across the whole community. Individuals in all the groups of local actors—the authorities, staff in justice and security institutions and the population at large—have arranged their lives in accordance with corruption and organised crime. This is so fundamental that it is likely to require a significant international effort to break out of the old system and to move to new rules for social interaction and, more decisively, to mobilise those most affected by corruption to change the system.

23 Local ownership of the fight against corruption and organised crime is also undermined by shortfalls in capacity. Fighting organised crime and corruption requires in-depth knowledge of criminal networks and of society more generally. While the knowledge of local partners is essential in dealing with these issues, secrecy is also key to successful investigations and, where corruption and organised crime are widespread, it is difficult to know whom to trust. Even where a local police service may be entirely trustworthy and willing to engage in the fight against organised crime, it may not have the technical skills to run complex operations and investigations and process organised crime or corruption cases through the justice system. This situation may also be compounded by the lack of an appropriate legal framework. Finally, breaking into organised crime networks, especially where they are more or less sanctioned by corrupt governing authorities, can put the lives of police officers, prosecutors or judges and their families in danger. A comprehensive international strategy is therefore essential. This should range from technical training on investigation techniques to adequate protection procedures and programmes as well as awareness and outreach campaigns to gain the support and cooperation of the wider community.

The pursuit of long-term goals

24 In the immediate aftermath of conflict the population is primarily concerned with gaining immediate benefits such as an improvement to the security situation or the arrest of war criminals. More long-term reform goals might not feature among local priorities. While immediate concerns must, of course, be met to the extent possible, it is critical that a reform effort should also begin early. Ironically, it falls to international agencies that are frequently accused of short-sightedness and of insufficient staying power to take the long-term view and launch an institution and capacity building process that is unlikely to bring tangible benefits for the population in the near future. In order to bridge this gap and build a foundation for local ownership over time, it is useful for reform projects to consider ways to manage expectations by better explaining their long-term benefits and including activities that will produce immediate noticeable returns. Unless these benefits

are seen and felt, the international community will rapidly lose the support and consent of the local population.

Mechanisms for Transition

25 CHAPTERS 4–8 DESCRIBE the stages and the tasks involved in efforts to reform or establish the rule of law. Local actors can contribute to these efforts with the help of different mechanisms. The mechanisms for transition described briefly in this section reoccur throughout the handbook in the various contexts in which they may be applied. For instance, defining priorities and designing strategies for reform should involve consultation; and sharing or transferring authority is likely to take place in any institution building process. It is useful to distinguish between consultative mechanisms and mechanisms that serve to transfer authority. National professionals are important as both partners and facilitators in consultation processes and also as potential recipients when authority is transferred. An iterative consultative process therefore has a capacity building dynamic.

3.1 Consulting with local actors

26 Using consultative mechanisms is essential to the development of skills and local ownership because they initiate inclusive processes that give participants a sense of having a stake in the process and its outcome. Consulting with local actors also makes the peace process and the international presence more legitimate, and develops a momentum based on consent. Consultative mechanisms can be applied at all levels and across a variety of areas. Examples of consultative mechanisms include contact or consultative groups, nationwide round-table discussions, functional taskforces or working groups tapping into traditional areas and engaging civil society. In order to get a truly representative picture, consultation processes

have to be inclusive and to rely on a variety of feedback through meetings with NGOs as well as using surveys, opinion polls or meetings with the wider community.

3.1.1 Bottlenecks and stumbling blocks

A It is important to establish a culture of partnership rather than patronage with local actors.

B Consultative mechanisms must be coordinated with and linked to decision-making processes to ensure that they do not become talking shops but make a genuine contribution to the formulation of policy.

C In order to be perceived as genuine, the outcome (i.e., reform programmes) must reflect at least some of the preferences that emerge during the consultation process.

D Consultations are dependent on a permissive environment that allows participants to express their views, perceptions and concerns openly and safely.

E It is a challenge to consult widely enough in order to ensure satisfactory local representation while keeping the process within manageable and practicable limits.

F Where local actors struggle to lead the consultation process, qualified international staff can take on a facilitating and guiding role.

G Consultative mechanisms at the technical level must avoid becoming politicised and thereby impotent. Objective mentoring can help to maintain a focus on professional issues.

3.1.2 Key questions to consider

A At what levels and in which functional areas should consultative mechanisms be established? Can traditional institutions, such as village councils or grand assemblies, be used as consultative mechanisms?

B Has an effort been made to identify local actors that might lead the consultation process?

C Are ethnic and other minority groups including women and young people, adequately represented in the consultation process?

D Has the goal of the consultation process been properly communicated to all parties? Will post-consultation feedback be provided on actual outcomes and follow-up?

BOX 3.1.1   The Loya Jirga in Afghanistan

After the fall of the Taliban in Afghanistan, delegates from all over the country were invited in June 2002 to meet at a traditional Loya Jirga, the Grand Assembly of Elders. The Loya Jirga became an important and valuable mechanism for transition, as a forum for discussion, sharing views and resolving conflicts. The Assembly not only proved to be a healing process for the Afghan nation and a mechanism for local involvement, but also gave legitimacy to Hamid Karzai's transitional government.

BOX 3.1.2   The National Council of East-Timorese Resistance in Timor-Leste

In the lead up to the independence vote in 1999, the National Council of East-Timorese Resistance (CNRT) called for the formation of a Transitional Council to act as the primary vehicle for dialogue with the United Nations Transitional Administration in East Timor (UNTAET) and in so doing, cemented its position as the legitimate local counterpart. UNTAET rejected the CNRT proposal stating that at that early stage there was no room for consultation, which would only complicate an already difficult process, and that UNTAET's desire to remain impartial might be jeopardised by such an alignment. UNTAET argued this despite the fact that the CNRT was an umbrella organisation encompassing many of the pro-independence parties and could easily have been considered representative of the majority of the population. When UNTAET later came to implement consultative mechanisms the CNRT provided 'the vehicle through which UNTAET haltingly attempted to carry out its mandate to consult with the population'.

3.2 Sharing authority

27   Authority over justice and security institutions can be shared in different ways. National interim governments and councils are one way in which to share authority with local power holders. These are created to govern the country until a duly elected government can be installed. In this way, an interim government can be a first step towards creating joint consultative and decision-making processes between local stakeholders and the international community. Interim governments can facilitate local involvement in the transition to the rule of law and encourage the population to participate in the political process. Interim governing bodies benefit from being subject to a strict timeline for transition to more permanent democratically established institutions. Setting limits to arbitrary arrangements in the interim period makes them more legitimate and acceptable to various local stakeholders.

28 Other ways to share authority include mixed international–local chains-of-command in security forces, where internationals may take over middle to senior-management functions. This can happen when police services are newly established or struggle with their authoritarian legacy and lack experience with democratic leadership and modern management techniques. Responsibility is transferred gradually and usually from the bottom-up, where the bulk of the organisation is 'locally owned' but international actors remain in top management positions for an extended period of time. In the judicial sector responsibility can be shared by employing international judges and prosecutors. Creating so-called 'hybrid' courts can overcome gaps in local judicial capacity or an unwillingness to address sensitive crimes such as war crimes or violence against ethnic or other minorities. Although collaboration between international and local judicial staff is an opportunity to transfer knowledge and build capacity, this opportunity is often neglected because of time pressures, workloads and, at times, impatience.

3.2.1 Bottlenecks and stumbling blocks

A When working with local actors, internationals should show their local counterparts collegial respect and not treat them as 'pupils' or 'subordinates'.

B It is critical to monitor the activities of interim governments in order to prevent misuse of power or attempts to oust political opposition.

C Shared authority is not a fixed state but the beginning of a process by which responsibility should be transferred progressively, and which should be coupled with capacity building.

3.2.2 Key questions to consider

A Have representatives from all regions and the most critical social groups been included in the interim government?

B What is the existing capacity to take on leadership positions?

C To what extent can local leaders be relied on to fulfil their roles impartially and effectively?

D Have international and local roles been clearly defined to avoid overlap or gaps?

E Is there a plan, a timeline or benchmarks for the gradual transfer of authority?

BOX 3.2.1   A transitional framework for Afghanistan

The 2001 Bonn Agreement established a transitional framework with an Afghan Interim Authority and provided the basis for an interim system of law and governance using the 1964 Constitution as its foundation. The first step was completed with the establishment of the Afghan Interim Authority on 22 December 2001 under the chairmanship of Hamid Karzai. The Afghan Interim Authority exercised sovereignty for a period of six months and established the basic institutions mandated by the Bonn Agreement.

BOX 3.2.2   Shared authority in the Special Court for Sierra Leone

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Despite general misgivings about the reduced role of Sierra Leoneans in the Special Court for Sierra Leone, the investigations unit of the Office of the Prosecutor (OTP) is an exemplary model of national–international teamwork. Domestic investigators were involved in planning some of the most important operations and served in key roles in field operations. In addition to long-term secondments, a system for the rotation of Sierra Leone Police (SLP) officers on 90-day assignments was set up to provide SLP officers with experience of complex criminal investigations and evidence handling, thereby increasing professional standards. Two of the officers who spent extended periods of time working with the OTP returned to top positions in the SLP, one as the third-highest ranking member of the office and another as Director of the Eastern Directorate.

3.3   Bringing in national professionals

29   National professionals can play different roles in relation to rule of law reform efforts. In an international mission national professionals can provide insight into the local security and justice institutions. Increasingly, local staff in international missions are hired on the basis of their professional capacities rather than to provide support functions. Integrating national professionals into international missions promotes dialogue between international and local staff and serves to build capacity that can later be of benefit to local institutions. National experts— either locally based or from the diaspora—can play a role by filling key government positions or advisory positions at different levels, such as through UNDP's Transfer of Knowledge Through Expatriate Nationals (TOKTEN) programme (see box 3.3.1) and other capacity building projects (see box 3.3.2). Allocating meaningful functions to national professionals reduces the effects of the 'brain-drain' phenomenon. In some cases it may also save the international mission time and money because reform programmes may be better targeted and capacity built more rapidly. While the diaspora may be an accessible and useful resource, their

involvement should be handled carefully. They may no longer be representative of the local population, having lost touch with their native country or been radicalised durng their long absence.

3.3.1   Bottlenecks and stumbling blocks

A   Internationals should be wary of any ethnic or other bias among national professionals, especially in societies where access to resources and education was unequally distributed before the conflict.

B   While national professionals cannot realistically be expected to give up lucrative employment in an international mission, it is still important to think about how to reintegrate them into local justice and security institutions, and how to facilitate the transition.

3.3.2   Key questions to consider

A   Are the national staff in the mission being employed in the best possible way and in accordance with their professional qualifications?

B   Has an effort been made to identify national professionals who may assist the mission as advisers or programme managers or who can staff local institutions?

C   Have suitable members of the diaspora been approached to take up positions in fledgling institutions?

D   Are there ways to manage recruitment campaigns in order to counteract a potential 'brain-drain'?

BOX 3.3.1   The use of national professionals in Liberia

Under UNDP's Transfer of Knowledge Through Expatriate Nationals (TOKTEN) programme expatriate professionals and local professionals have been recruited to serve in key national positions inside the rule of law institutions. The programme is intended to help with the consolidation of the transition process by ensuring the sustainability of the government's reform efforts and filling the capacity gap in key public sector institutions.

To guarantee the smooth implementation of the TOKTEN project UNDP, the Liberian government and other bilateral donors have mobilised resources amounting to US$2.1 million for the recruitment of 20 expatriate Liberian professionals and 15 local professionals who will be funded by the project for a period of 18 months.

A Project Implementation Committee, chaired by the Ministry of Planning and Economic Affairs and Co-chaired by UNDP, will monitor the execution of the project to ensure its transparency. Other members include the Governance Reform Commission, the Civil Service Agency and two representatives from donor institutions.

BOX 3.3.2   UNDP's Capacity Building Facility Project in Kosovo

In May 2004 the Provisional Institutions of Self-Government (PISG), the Kosovo Foundation for Open Society (KFOS) and UNDP jointly launched a Capacity Building Facility (CBF) Project with the aim of improving the efficiency, effectiveness and accountability of the civil service in accordance with European standards and UNMIK's Standards for Kosovo plan. The project engages national professionals from Kosovo, the region and the diaspora to work as coaches and advisers in the areas of the rule of law, democratic institutions and the economy. These national professional advisers are provided when requested by a public institution, work in that institution and report back to UNDP through that institution. The fact that the CBF advisers are national professionals, are provided only at the request of a local actor and are based in their host institutions enhances their credibility and allows them to effectively support capacity building at management level.

4

Fact Finding

30   FACT FINDING SHOULD be the first stage of any effort to reform the rule of law in a country recovering from conflict. In order to establish local ownership of reform it is crucial to have information on the root causes of the conflict, the state and capacity of the justice and security sector, and on local actors. Developing a comprehensive strategy for reform and gauging the extent to which local ownership is feasible is dependent on the possession of this baseline information. Fact finding data can be obtained by conducting, for example, Joint Assessments Missions (JAM), Post-conflict Needs Assessments (PCNA) and sectoral mapping exercises. While the fact finding effort will in most cases be internationally led, maximising local input is indispensable to the process. Although fact finding is a specific activity that forms part of the wider planning process, further information will come to light in the course of the transition. Missions must therefore retain the flexibility to adjust to any unexpected changes or new insights into local power structures.

4.1   Understanding and diagnosing the root causes of conflict

31   A thorough understanding of the underlying causes and dynamics of the conflict is necessary before any major efforts to reform the rule of law are instigated. In particular it is important to identify whether a breakdown in the rule of law contributed to or was a consequence of the conflict. It is equally important to identify the issues that remain unresolved and could therefore have a destabilising effect on, undermine or challenge the transition to a functioning rule of law.

4.1.1 Bottlenecks and stumbling blocks

A Efforts to understand the conflict setting must provide sufficient insight, but a lengthy study of the conflict may not be possible because of time and resource constraints or security conditions.

B When conducting a fact finding exercise, it is important to recognise that perceptions of the conflict are likely to vary widely among different groups in the population.

4.1.2 Key questions to consider

A Has a balanced selection of international and local sources of information been consulted?

B What are the unresolved issues? To what extent do they have the potential to threaten the peace process or the rule of law?

C Which groups were not able to access the power structures before the conflict?

BOX 4.1.1 The Joint Assessment Mission (JAM) in Sudan

'The Sudan Joint Assessment Mission (JAM) was carried out jointly by the World Bank and the United Nations, with the full endorsement, guidance and participation of the Government of Sudan (GOS) and the Sudan People's Liberation Movement (SPLM). […] There was direct participation and engagement on the part of 17 UN agencies, 10 bilateral donors, 7 multilateral organisations, and numerous other Sudanese and international stakeholders through a wide-ranging consultation process. It is the result of a year-long detailed assessment of recovery and development needs [that] looked at eight thematic areas [including the] rule of law […].'

'Running for nearly a year, in parallel to the peace process, the JAM lasted much longer than a typical rapid field assessment, and had a strong focus on capacity building. The activities were designed to complement and support the peace process through joint dialogue, including technical and policy training in several joint retreats. The Core Coordination Group (CCG), chaired by Norway, met regularly throughout the process and provided a vehicle for joint review of key policy and process issues.'

'Framework for Sustained Peace,
Development and Poverty Eradication', 18 March 2005

> **BOX 4.1.2   Afghanistan: insufficient initial fact finding?**
>
> Recent history has shown that several peacebuilding efforts have been based on flawed and sometimes biased information. Afghanistan is only one of many examples where a lack of strategy and coherence in the approach to building the rule of law has been raised as a concern. Critics say that an initial failure to map out the previous causes of conflict, as well as the various interests and issues at stake, led to a situation where the real issues were not tackled. Afghanistan is also an example of initial fact finding efforts being restricted to the capital because of security concerns and time pressures. Local actors who feel detached from and not directly involved in developments have criticised rule of law reform efforts in Afghanistan as a Kabul-led process.

4.2 Mapping out existing rule of law capacities and informal power structures

32   The next step in the fact finding effort should be to gain an overview of the state of the rule of law and the structure and capacity of the justice and security sector. The justice and security sector will be affected differently during conflict depending on the situation. The rule of law can function to a certain degree but there are often major flaws and gaps that must be addressed. Corruption, the arbitrary implementation of laws, a lack of infrastructure and of qualified staff, and the illegitimate use of force by security forces are just a few examples of the challenges that a reform effort might face. In some cases the rule of law has completely broken down, requiring a complete restoration of rule of law institutions. Where the rule of law has failed, traditional justice mechanisms and alternative power structures often replace formal justice and security institutions. Mapping these informal structures will be essential in order to assess their potential role in rule of law reform and the new system.

4.2.1   Bottlenecks and stumbling blocks

A   Planning and fact finding missions that do not include rule of law experts run the risk of providing an incomplete or flawed picture of the challenges.

B   Rule of law fact finding exercises should ideally take place over a longer period of time, at least several weeks, and be conducted early on to avoid unnecessary delays or initiating inappropriate reform processes.

C   A special effort should be made to understand the ordinary citizens' perception of their security situation and their willingness to use the judicial system.

4.2.2 Key questions to consider

A Have all potential international and local sources of information been contacted? These include military planners; police experts; judicial, legal and penal advisers; in-country humanitarian staff; anthropologists; members of the justice system; the human rights community; local community workers and members of the diaspora.

B What was the state of the police, justice and penal systems before the conflict? What is their current state?

C What legacies influence the population's perception of, and confidence in, the rule of law?

D Is it possible to identify and map the links between hidden power structures and the existing official structures?

E Are there regional differences in the state of the rule of law?

F Is the justice and security sector politicised? Do politicians interfere in the course of administering justice?

G Is the relationship between the political leadership and the population characterised by clientism and corruption?

BOX 4.2.1   The German fact finding team on the state of the Afghan police

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On 13 February 2002 a meeting was held in Berlin to discuss international support for the Afghan police force. It was attended by representatives from 18 nations, including Afghanistan, and 11 international organisations, including United Nations agencies. Germany presented a report from a fact finding mission it had sent to Kabul in January 2002, and pledged US$10 million to support the Afghan police. This money was to go towards training, including the provision of 11 instructors, the renovation of the police academy and the reconstruction of police stations in Kabul. One finding of the German fact finding mission was that the 'police force is in a deplorable state just a few months after the dissolution of the Taliban regime. There is a total lack of equipment and supplies. No systematic training has been provided for around 20 years. At least one entire generation of trained police officers is missing. Next to constables, former Northern Alliance fighters are being put to work as police officers'.

> **BOX 4.2.2   UNMIK's executive policing mandate in Kosovo**
>
> The executive mandate of the international police in Kosovo, that is, the reason for the decision to take the responsibility for law and order away from local institutions, was not based on a thorough review of actual existing capacity but derived from two sources. First, it was simply assumed that there would be a security vacuum in the initial stage. This, in turn was based on an assumption that the Serb-dominated Yugoslav police, which in any case had been largely withdrawn, and the existing criminal law were tainted and would be unacceptable to Kosovo Albanians. Second, the international community had painted itself into a corner by taking sides in the conflict—the bombing in the spring of 1999—and branding the retreating Yugoslav security forces war criminals. In this way, the option of relying on some form of Yugoslav public security presence for a transitional period was not only deemed unacceptable to the Kosovo Albanians, but also politically unacceptable to NATO and the United States. The lack of mapping was exacerbated by the fact that UN planners were informed about their responsibility for an executive policing mission at the end of the bombing campaign only days before UN Security Council Resolution 1244 was passed and the UN mission began.

4.3   Identifying and engaging local actors

33   To establish local ownership it is vitally important to gain a thorough understanding of, and to obtain access to local actors. Local actors will eventually be the ones with full responsibility for the rule of law. Early identification of both contributors and uncooperative elements will make the transition process easier. However, local actors should not be treated as a homogenous group. They often have different backgrounds and many different viewpoints, and may represent a wide range of often conflicting interests.

34   Potential local partners could include formal authorities, staff in justice and security institutions and the population at large, which all have to be part of the process of advocating and implementing reforms. Because of the complexity of the initial phases of any international effort, it is not uncommon for the most 'visible' or the most easily accessible local actors, such as the diaspora or government representatives, to be treated as the most important contributors. This can lead to other important local actors being ignored when the first steps are taken to establish the rule of law.

4.3.1   Bottlenecks and stumbling blocks

A   Identifying potential local actors in the rule of law must be a joint effort between internationals and locals because it is the locals who will have the most understanding of power dynamics and networks, social norms and customs.

B   A lack of tradition or willingness on the part of local actors to find compromises or work together may prove a serious challenge.

C   A fact finding effort in this area should not only look for partners. Identifying 'spoilers' or opponents to reform efforts is equally important to the process.

4.3.2   Key questions to consider

A   Do the local actors being consulted represent the population as a whole? Have all social and ethnic groups, such as members of the diaspora, warring factions, local NGOs, politicians, scholars, and so on, been consulted?

B   Who are the key players and central powerbrokers, either state or non-state and official or unofficial?

C   Is it possible to gain access to the local actors identified as potential partners?

D   Are local actors willing to cooperate? How supportive are they of reform efforts?

BOX 4.3.1   Understanding local counterparts and the March 2004 riots in Kosovo

The inadequate international response to the March 2004 riots in Kosovo was symptomatic of deeper shortfalls, namely, an 'intelligence failure' with respect to assessing extremists and the more general inability to read the local mood at the time. Collectively, the international community misjudged the ability of extremists to mobilise wider support. This has consequences beyond the violent outburst of 2004 in that the international handling of the event and the lack of understanding it displayed seriously undermined local confidence in the international ability to understand and address local concerns.

BOX 4.3.2   Finding appropriate Afghan partners

Finding local interlocutors has often involved a difficult choice where a potential partner who is in a position of authority to move things forward may not be representative. Both at ministerial and lower levels of the Afghan Government, there has at times been fighting over position and authority, which has hampered attempts to find appropriate partners. The various consultative mechanisms have been insufficient in that while they have been inclusive, they have not matured into real decision-making forums. Local and international advisers and experts have played a crucial role in both agenda setting and decision making. This may be the result of a lack of local capacity and skills, but also raises questions about who to interact with locally.

4.4 Charting potential spoilers

35 Inside the various groups of potential local actors there may be 'spoilers' who seek to derail the stabilisation process. It is important to differentiate among spoilers. Some may have legitimate concerns, for example, because they were not consulted during the peace process. Others may simply wish to gain—financially or otherwise—from continued tensions. The latter type of spoilers and often have significant influence where they have political connections to criminal networks or command armed groups. In some cases spoilers also have links to international networks. Dealing with spoilers must be integrated into any strategy for transition and involves overcoming resistance to reform and fostering support among all the target audiences that make up local counterparts. Increased local ownership and sensitivity may strengthen the legitimacy of the reform effort, thereby undermining the spoilers' platform. Thorough fact finding and wide consultation are necessary in order to comprehend the range of spoilers. Local stakeholders with a high standing in the community can serve as mediators or informal go-betweens to bring spoilers 'on board'.

4.4.1 Bottlenecks and stumbling blocks

A The dividing line between spoilers and non-spoilers is often blurred. A reform partner in one context may be a spoiler in another. Spoiler activity may be triggered by different issues or may take place at different stages of the process.

B Pragmatism may demand that international actors cooperate with spoilers, who may be influential powerbrokers, in order to maintain stability or facilitate the implementation of reform programmes. However, it is critical to long-term local confidence in and the credibility of the rule of law that its integrity is not threatened.

C If the expectations of the local population are not managed, this may trigger the emergence of additional spoilers.

D If the spoiler defines the conflict as a zero-sum game and holds preferences that are incompatible with the peace process, the only way to deal with the spoiler may be by coercion or the use of force.

4.4.2 Key questions to consider

A Who are the spoilers and why do they undermine the transition process? Do the spoilers have legitimate concerns that can be dealt with?

B Are there indicators that additional spoilers will emerge? What may turn local actors into spoilers?

c   Do the spoilers enjoy popular support from local communities? Is it possible to separate the spoilers from their popular constituencies?

d   How can the capacity of local institutions to deal with spoilers be increased? For example, are formal oversight mechanisms effective enough to deal with spoiler activity?

BOX 4.4.1   Transforming the Kosovo Liberation Army into the Kosovo Protection Corps

The creation of the Kosovo Protection Corps (KPC) is an example of an attempt to integrate potential spoilers. It was clear that unless it was offered an alternative solution the Kosovo Liberation Army (KLA) would emerge as a powerful spoiler. The KPC, a paramilitary organisation formed to deal with civil disasters, was therefore created to absorb demobilised KLA fighters. Despite the fact that they have been allowed to operate with little oversight and with a poorly defined mandate, the KPC has emerged as a professional outfit that is gearing up, in anticipation of the outcome of status talks, to take an even more central position in the formal security structure of Kosovo.

BOX 4.4.2   Bringing Falintil into the fold

Once order had been re-established in Timor-Leste the challenge of disarming the armed wing of the CNRT (National Liberation Force of East Timor, Falintil) emerged. This sensitive matter was deferred several times. The former resistance movement enjoyed the support of a substantial majority of East Timorese, triggering concerns that their popularity would inhibit the multi-party system that was envisaged for the country, and that Falintil alone would write the Constitution of Timor-Leste. It has been suggested that the popularity of Xanana Gusmão, the former guerrilla leader, along with the relative political stability in the country led to a delay in the final implementation of Falintil disarmament. Correspondingly, it is the strong leadership of Gusmão that is credited with keeping the former members of the armed militia in check. There was initial international uncertainty about whether Falintil should be seen as an illegal armed group or the future core of a defence or security force. It took nearly one year before UNTAET engaged in substantive work on the issue of demobilisation. Falintil were increasingly being employed as alternative security providers in activities such as border control. It was not until deteriorating living conditions and uncertainty over the future led to discontent among Falintil members that UNTAET developed a security sector strategy that included them, and that former militia members became officially incorporated into the new armed forces.

BOX 4.4.3   Legacies of violence in the Afghan parliament

The parliamentary elections held in Afghanistan in September 2005 raised the question of whether to involve former warlords, the Taliban, and so on, in the democratic process. When the votes were counted it emerged that at least half the seats had been won by ex-Taliban mujahideen fighters and other warlords. A pessimistic assessment was made by the Deputy Head of the Afghan Independent Human Rights Commission, who stated that 'more than 80 per cent of winning candidates in the provinces and more than 60 per cent in the capital Kabul have links to armed groups'. Many Afghans see the worst offenders, the drug lords and warlords using the polls to legitimise their position.

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Developing Strategies

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36   GIVEN THE MANY tasks and the multiplicity of international and local actors, developing a sound strategy is crucial to achieving a cohesive approach to transition. A strategy should determine clear objectives, harmonise those objectives with the available resources, set priorities, identify essential tasks and assign responsibilities.

37   Local ownership enters the picture in the question of who decides what needs to be done and who should do it. While the principle of local ownership encourages only limited international involvement, it is inevitable that, given the context of post-conflict peacebuilding operations, there will be a fair degree of international involvement in institution and capacity building. Local actors should be central to planning for the transition, but the inherent complexity of a post-conflict society implies that international actors may have to decide who should be brought into the process. In particular, it is important that all the relevant local groups are at least consulted in order to improve the acceptability of the reform programmes and their suitability outside the capital.

5.1 Setting priorities and goals, and dividing tasks

38   For a transition to have legitimacy, local stakeholders must be involved in formulating strategy. The earlier they can contribute to—or indeed take the lead in—strategy development, the more appropriate the designated goals will be and the greater the benefits for building institutional capacity. An agreed strategy is also

a precondition for a compact between local and international stakeholders and for coordination between the two. Lack of understanding on either part can lead to a botched strategy and to poor execution of the strategy. Donors will obviously be keen to ensure that the strategy reflects their policies, priorities and concerns, but it is important that their activities are aligned with local policies and systems, not least in order to allow states recovering from conflicts to begin to restore ownership of their domestic policy processes.

39 No strategy should be set in stone. It should be flexible enough to adapt to changing local needs and circumstances. It is therefore necessary to maintain consultation and coordination forums for strategy development beyond the initial planning phase. These forums also ensure sustained commitment to the reform process.

5.1.1   Bottlenecks and stumbling blocks

A   There will be little support for reform unless the process of formulating strategy is sufficiently transparent and efforts are made to inform the wider population.

B   Any policy or strategy should reflect the local fiscal realities.

C   Strategies for transition to the rule of law should not be designed in accordance with what should have been done in previous missions, but should incorporate lessons learned.

D   International assistance programmes to post-conflict countries should avoid being too 'supply' driven. Rule of law reform programmes should reflect the needs of the recipient countries rather than the policy priorities of donors.

5.1.2   Key questions to consider

A   Does the strategy reflect the needs of the recipient country?

B   Does the strategy address all the critical aspects of the transition? Does it include plans for overcoming obstacles to fully fledged local ownership?

C   Based on the results of the fact finding effort, who should fill the gaps and how should they be filled?

D   What does the local population expect from the reformed rule of law institutions? What are their justice and security priorities?

E   Have objectives and responsibilities been clearly and consistently communicated to local counterparts and to the local population?

> **BOX 5.1.1   The Consultative Group for Sierra Leone:
>   A framework for peace, recovery and development**
>
> The overarching framework for negotiating the transition in Sierra Leone has been the Poverty Reduction Strategy Papers (PRSP). A Consultative Group (CG) was established as a mechanism to bring together key international and domestic stakeholders–international donors, the Government of Sierra Leone, and international and Sierra Leonean civil society –to discuss the implementation of the PRSP. The PRSP has been a critical tool for which the government of Sierra Leone is held accountable to both the international community and the local population. The CG was set up in 2002 in preparation for the drawing up of the PRSP. It has since met annually to take stock of the progress made with implementing the PRSP and to identify priority areas during the transition.

> **BOX 5.1.2   The Afghan Compact: a national strategy**
>
> The Afghan Compact, which was launched in January 2006 and builds on the Bonn process, is the result of intense consultation between the Afghan Government, UNAMA and other international partners, and represents a framework for, among other things, cooperation on the next phase of Afghanistan's transition to the rule of law. This road-map includes a comprehensive and realistic timetable for implementation, which is tied to a renewed commitment from the international community and the Afghan Government to see it through to its conclusion. The Compact has been praised as a nationally driven strategy formulation process. Draft documents have been circulated to ministries, parliament, and so on. A broader consultation was undertaken with civil society and other relevant groups.

5.2   Sequencing and devising timeframes

40   Sequencing is a particular product of strategy development in which individual components or projects are arranged over time in accordance with the priorities identified. Priorities must reflect local perceptions of the most urgent justice and security needs. Sequencing also entails linking the different elements of the rule of law reform effort. International actors have struggled to maintain a comprehensive approach. Often, in the past, only one aspect of the rule of law was targeted or the implementation of ill-designed assistance programmes undermined progress in other sectors. While sequencing of programmes should reflect priorities, in reality it is determined by practical necessities such as existing capacity, funding and the willingness to take on a particular aspect of reform. In this context timeframes are tools for planning the transition to local responsibility. Other external factors include prior experience, the influence of individuals and the overall needs for assistance with ongoing peacebuilding operations.

41 Bringing in local actors may affect the timeframes of reform efforts in that local ownership may cause delays and be more costly, but they will ultimately be more sustainable. Donors and international and local politicians should understand that results may take time if the local voice is to be allowed to develop and articulate preferences, and that timeframes have to allow for some flexibility to adjust the pace of reform as the process unfolds. It is also important to realise that different elements of the justice and security sector reform process have different time frames. This is especially true for the normative aspects of the reform process— changing attitudes is not an overnight affair.

5.2.1   Bottlenecks and stumbling blocks

A   A balance must be struck between the need to initiate long-term institution and capacity building projects and immediate impact programmes that can bring visible change or tangible results and help to secure popular support.

B   Sequencing of projects must take local views into account but also maintain an objective assessment of needs and not be distorted by the interests and wishes of high-profile stakeholders.

C   International actors should resist the temptation to transfer responsibility too soon, before the necessary capacity to take that responsibility has been developed.

5.2.2   Key questions to consider

A   Which programmes are the most urgent and should be launched first?

B   Are there links between programmes where progress in one area depends on progress in another? Are police sector reforms being coordinated with efforts to improve the justice sector?

BOX 5.2.1   A Kabul-led process?

The Transitional Administration and the interim authority worked according to the tight and carefully monitored timeframe stipulated in the Bonn process. This tight timeframe may have compromised local legitimacy. The term 'a Kabul-led process' has been used by a number of local actors who feel detached from and not directly involved in developments in the capital. Building a truly national state structure takes time, however, and the recent programme 'Access to Justice in the Districts' in the justice reform sector as well as the police programmes of mentoring and training trainers may be steps in the right direction.

BOX 5.2.2   A mismatch between international capacity and resources in judicial reform in Liberia

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UNMIL was given a strong mandate to re-establish the rule of law including restructuring the police force, developing a police training programme and working with the Liberian Government to build a national strategy for the restructuring of the legal framework and justice sector institutions. Despite UNMIL's agenda, the reform of the justice sector progressed at an alarmingly slow pace. UNMIL's justice and security sector reform budget does not include funds for infrastructure development projects. Donor governments, which normally provide funds for these projects, were reluctant to provide money until after the October 2005 elections and subsequent accountability mechanisms had been put in place. As a result, in spite of several assessments detailing the miserable state of the judiciary, no serious efforts were made to reverse the situation.

5.3   Ensuring coordination and cohesion

42   Coordination takes place between a variety of actors: international-international, local-international and local-local. In the first case, the international community is often represented by a multitude of actors such as the various international organisations and bilateral donors in the country. Where this is the case, coordinating with other international staff is imperative in order to present a cohesive approach to the local actors and to avoid gaps or duplication. This also applies to the issue of funding. Coordination between local and international stakeholders, in turn, is the essence of implementing local ownership. Finally, increasing local-local coordination is the implicit goal of the transition process. It serves to enhance effectiveness, capacity building and long-term sustainability. For instance, where national commissions have been established, the international community should promote or encourage coordination between the many commissions in order to develop coordinated local ownership.

5.3.1   Bottlenecks and stumbling blocks

A   Including all relevant stakeholders such as representatives of former warring factions or multi-ethnic groups in coordination mechanisms is necessary, but will make the process more challenging because each group is likely to have diverging views.

B   If the international effort is disjointed, it is all the more difficult to communicate goals to local actors, integrate local actors into joint planning and decision making and, where necessary, put pressure on local actors.

c Even where responsibility for a particular part of the rule of law has been allocated to a single international agency, the project as a whole risks failure unless all donors and stakeholders share information and cooperate at all levels.

5.3.2 Key questions to consider

A Are mechanisms for communication and coordination between international and local stakeholders in place?

B Have practical issues, such as infrastructure, communications equipment, climate, and so on, which might hinder effective coordination, been taken into account?

C Based on the agreed strategy, does everyone understand the objectives and their responsibilities?

D Have donor timetables, agendas and funding been coordinated in accordance with the planned sequencing of the programmes?

E Are there procedures in donor programmes for disseminating 'lessons learned' that local counterparts can feed into?

BOX 5.3.1   What kind of Afghan police force do we want?

Absence of a coordinated and holistic strategy for the area of rule of law is a returning flaw in the Afghan case. A case in point is the disagreement among the various international actors on what kind of police force is required and what length of training is suitable. The lack of a co-ordinated strategy has resulted in confusion among both international and local actors – a confusion which is making it difficult to measure the degree to which local ownership has been achieved.

Coordinating the implementation of the Afghan Compact

"The Afghan Government and the international community recognise that the success of the Afghanistan Compact requires strong political, security and financial commitment to achieve the benchmarks within the agreed timelines. Equally, the success of the Compact relies on an effective coordination and monitoring mechanism. To this end, and in addition to existing sectoral coordination mechanisms, the Afghan Government and the international community are establishing a Joint Coordination and Monitoring Board with the participation of senior Afghan Government officials appointed by the President and representatives of the international community. […] Its purpose would be to ensure overall strategic coordination of the implementation of the Compact."

The Afghan Compact, 31 January 2006

BOX 5.3.2   National Security Coordination Group in Sierra Leone

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When UNAMSIL was negotiating the mission's drawdown plans, it was made clear that this should be predicated on the domestic capacity to assume full responsibility for internal and external security. To that end, an integrated planning group comprising UNAMSIL staff and the National Security Coordination Group (representatives from the Republic of Sierra Leone Armed Forces and the SLP) was formed. The integrated planning group met regularly to assess the security conditions on the ground and potential risk factors.

5.4   Managing resources and budgets

43   The availability of funds or resources is perhaps the most crucial factor affecting strategy development and implementation. A practical starting point for establishing local ownership is that the international effort is almost always limited because of a lack of resources in terms of manpower, funds and, not least, a limited attention span. In the eyes of international contributors, the sooner that responsibility can be transferred to local stakeholders, and international expenses reduced, the better. Transition can only take place, however, when effective capacity has been developed. This is especially true of administrative, personnel and budget management capacities.

44   To avoid adhoc'ery and a lack of coordination in managing financial resources, trust funds can be useful to ensure that a coordinated and flexible approach is taken to identifying priority areas and the financing of projects. This is especially true of trust funds that are not earmarked and pool all donor assistance, when the local capacity to manage public funds is low and the influx of aid high. Such funds are typically administered jointly by international and local actors. At the same time, trust funds should not be used too widely because they are costly and complicated to manage.

5.4.1   Bottlenecks and stumbling blocks

A   A mechanism for a gradual local takeover of control of foreign aid should be put in place. A degree of government control over foreign aid is important to ensure political and financial leverage and, in turn, to build public confidence locally.

B   Budgets should be channelled through local government budgetary mechanisms as soon as they can manage them effectively and be held accountable.

5.4.2 Key questions to consider

A   How much flexibility is there in budgets and timeframes? Have the follow-on effects of delays been thought through?

B   Do local stakeholders play a central role in the financial planning process? Are there plans for handing over control of programme budgets? Is there predictability of future funds?

C   How transparent are the justice and security sector budgeting processes and are they subject to oversight mechanisms?

D   When will there be sufficient capacity? How much and what kind of capacity will be needed before responsibility can be transferred?

BOX 5.4.1   International drawdown prior to the March 2004 riots in Kosovo

The shortfalls in the international response to the riots in Kosovo in March 2004 were the result of a long process of rapid and disorganised reductions in force strength. Decreasing international attention was reflected in decreasing resources, including funding and staff. The withdrawal of forces, and the resulting inability to fill the security gap, undermined credibility and triggered a perception that international actors were not really committed to the rule of law in Kosovo after all.

BOX 5.4.2   GEMAP: International–local fiscal governance in Liberia

The Governance and Economic Management Assistance Programme for Liberia (GEMAP) is a partnership between the Liberian Government and the international donor community to ensure the proper management and accountability of Liberia's public revenue streams. This three-year programme is an initiative to tackle public service corruption. The Economic Governance Steering Committee (EGSC) – which is chaired by the President and is represented by the Liberian Government and representatives of international partners and Liberian civil society–oversees the implementation of GEMAP. In each of the key financial institutions international experts work with their local counterparts to establish transparent financial management systems, train and build the capacity of Liberian staff, as well as to report openly on their operations, revenue and spending. While these systems are being put in place, both the international community and Liberian authorities will have co-signatory authority so that no major transactions can take place without being examined by both a Liberian manager and an international expert.

6

Measures to Enhance Public Order and Justice

45   THE MOST IMMEDIATE concerns after conflict are the needs to prevent looting and handle public unrest and sporadic violence, to begin redressing crimes and atrocities committed during the conflict and promoting reconciliation. The principle of local ownership calls for authority to be placed in local hands. However, transferring public order to a state can only be achieved by tackling the sources of insecurity—often local actors that have been part of the conflict. In the context of this initial upheaval, there is a valid argument to be made for local ownership only being applicable to an extremely limited degree—if at all. This is partly because of the lack of local capacity to deal with the security situation and partly because of the fact that it is the local stakeholders that are the cause of the conflict.

46   Disarmament, demobilisation and reintegration (DDR) is linked both to the immediate security situation and to institution and capacity building. Rogue armed elements can be a destabilising factor and a threat to public order and the rule of law—especially where there are large amounts of unregistered weapons. Separating combatants from their weapons and finding secure and effective ways to collect, redistribute or destroy these weapons is an important task. DDR is also highly political, however, and while the role of local actors will be limited when it comes to managing the process of disarming and demobilising, they should be included in planning and vetting to prepare for the reintegration of former combatants into society. In the long run, it is the effective and impartial functioning of the rule of law that clears the path to laying down arms.

6.1   Meeting public order demands

47   Public order challenges are usually prominent in the early days of an international intervention, where the remnants of conflict threaten to derail the emerging rule of law. Public order challenges also resurface throughout the peacebuilding process because crowd control remains an issue in volatile areas. Breakdowns of public order are closely linked to other components of malfunctioning rule of law, such as confusion over or an absence of applicable laws, the lack of a functioning court system or a non-existent or dysfunctional penal system, which can contribute to a general sense of instability. Instability undermines popular confidence in the rule of law and in fledgling institutions, which makes addressing demands for public order an important step in the reform effort. Managing public order is also closely tied to the issue of managing spoilers.

48   Dilemmas often occur during the initial phases of the transition period when international military forces are responsible for maintaining public order and conducting crowd control. In many post-conflict situations there are rules of social interaction or mechanisms for traditional justice that function in the absence of a formal legal system. In other cases, where the state apparatus has been brought to an abrupt state of collapse, widespread looting and civil unrest may ensue for which international security forces must prepare. International primacy on maintaining public order may contradict calls for local ownership, but may also be necessary in the absence of a credible local alternative. For the international security presence, engaging in crowd control may make it harder to win the 'hearts and minds' of the local population, and underlines the need to quickly build the local capacity to meet public order challenges. At the same time, even well trained police forces struggle to handle public unrest because this is a difficult task both technically and politically. The politically sensitive nature of crowd control is enhanced in a volatile post-conflict setting and entails that a decision to entrust local police with handling public unrest must take the danger of potential bias and escalation into account. The local police services will require a wide range of specialised skills and new operational guidelines in order to fully and effectively exercise their authority with respect to crowd control and riot control. The transition to local ownership in this area is therefore likely to take time.

6.1.1 Bottlenecks and stumbling blocks

A In a post-conflict environment trust and loyalty are not yet clearly defined. Great care must be taken to avoid a deterioration in the security situation when planning a DDR process.

B International and local military and police forces will be under pressure to provide a secure environment and protect civilians from lawlessness. At the same time they will be expected to adhere to international standards on legal rights and human rights.

C The lack of trust in the population and between former warring factions often creates a tense environment that can complicate efforts to control the spread of weapons.

D A decision to transfer responsibility for crowd control to local police units should be based on a thorough assessment of their professionalism, the potential for bias and of how they are perceived by the population they face.

6.1.2 Key questions to consider

A Is there likely to be a security vacuum in the immediate post-conflict phase? How much violence might accompany it?

B Can the population be provided with an alternative to private security arrangements?

C How are different approaches to 'hearts and minds activities perceived'? Do they create confusion among local counterparts or undermine their willingness to cooperate?

D Were security forces actively used as an instrument of oppression under the previous regime? To what extent has the local population begun to trust and respect the indigenous police?

E Are local police units impartial and do they enforce the law equally?

F Have local security forces been trained to manage crowds and riots in accordance with international standards that emphasise de-escalation rather than confrontation?

G Do local security forces have all the equipment, facilities and instructors necessary to build an adequate crowd control capability?

H Are cooperation arrangements in place to allow local police to call on back-up from international military or police forces?

BOX 6.1.1   The burning of the Sarajevo suburbs in 1996

Public order challenges have been severely underestimated in the past. The burning of the Sarajevo suburbs in early 1996, the riots in Kosovo in 2004 and the looting in Baghdad in 2003 are just three of many examples. In Sarajevo the siege of the city was coming to an end in February 1996 and the Bosnian-Serb dominated suburbs were due to come under the control of the multi-ethnic government and their police forces. Fuelled by propaganda from Bosnian-Serb politicians, tens of thousands of Bosnian-Serbs began to leave Sarajevo in fear of retaliation—burning everything in their wake. The Bosnian-Serbs had no confidence in the local police force. The international security presence, consisting of the Implementation Force (IFOR) and the International Police Task Force (IPTF), were neither willing nor able to stem the flow of refugees. IFOR claimed that this was a police matter and the IPTF—correctly—argued that it had no enforcement mandate. Nor did the mission have the manpower to protect the Bosnian-Serbs. In truth, the exodus came as a complete surprise to the international presence and severely damaged the credibility of both the international forces and the Dayton Peace Agreement's promise of a peaceful multi-ethnic future.

BOX 6.1.2   DDR in Sierra Leone: getting everyone 'signed up'

The disarmament process in Sierra Leone is regarded as one of the more successful programmes. This is in large part attributed to the creation of a joint committee on disarmament. In May 2001 the pro-government Civil Defense Forces (CDF) and the rebel Revolutionary United Front (RUF) signed an additional ceasefire agreement that provided for simultaneous disarmament in accordance with the DDR programme. The implementation was monitored by a joint ad-hoc committee consisting of observers from the government, UNAMSIL and the RUF. The agreement was a breakthrough because thousands of fighters handed in their weapons and registered for reintegration programmes according to a plan that progressed methodically from district to district and even included the diamond districts where access to the gems had provided an incentive and the means to continue the war. By December 2001 over 36 700 combatants had handed in their arms to UNAMSIL, about one-third of them were members of the RUF and the other two-thirds were members of the CDF. This far exceeded initial expectations that 28 000 combatants would do so.

6.2 Addressing immediate transitional justice needs

49 Managing past injustices helps to re-establish trust between citizens and between the citizen and the state. Reconstructing this relationship requires an integrated approach that may take a number of forms, such as international, hybrid or domestic courts; truth and reconciliation commissions; or 'non-state' justice mechanisms. However any mechanism that addresses past injustices must carefully consider the nature of the existing legal system, the particular justice and security needs of the population and, most important of all, the traditions and values of the country in question. At the same time, the mechanism chosen must reaffirm international norms and standards on human rights. Particularly sensitive cases may have to be handled in internationally run trials.

50 It is for the society in question to determine the most appropriate mechanism for transitional justice and the timing of its implementation. How a society adapts its criminal laws in order to conduct fair trials, and how it determines appropriate punishment, should reflect available skills and resources. Local participation in the process of transitional justice not only builds local capacity, but also increases the viability, legitimacy and sustainability of the process.

6.2.1 Bottlenecks and stumbling blocks

A Unless the issue is of war crimes, crimes against humanity and genocide is raised immediately—even if this means postponing transitional justice measures—there is a danger that they will fester and undermine popular confidence in the rule of law.

B The transition to a just order may depend on working with actors that have been involved in abuses of human rights in the past. The key is to be aware that there is a tension between claims for accountability and the need for stability, and knowing when a failure to prioritise justice might undermine the credibility of the rule of law, of the future government and of the international actors.

C While due process is fundamental to any system of justice, a degree of flexibility with some procedural norms can be permissable. Certain procedures (eg. documentational) which do not compromise the integrity of the judicial outcome, could be adjusted to for example, reduce case backlogs.

6.2.2 Key questions to consider

A Is the time right to address transitional justice concerns? What will the impact be on the peace process? What are the most pressing issues? Has the population been consulted on priorities and the scope for transitional justice?

B Does the formal justice system have the capacity and enjoy the legitimacy required to deal with past crimes?

C If the formal justice system has suffered collapse or is biased, is it preferable to make use of customary law or traditional justice mechanisms, to leave the process to international bodies or to wait until local capacity has been built?

D Is there a local preference for a particular transitional justice approach, for example, prosecutions or truth-seeking?

E What effect will measures for transitional justice have on the security situation?

BOX 6.2.1   The Afghan transitional justice process

The Afghan Independent Human Rights Commission (AIHRC) was established under article 6 of the Bonn Agreement to address the issue of transitional justice in Afghanistan in cooperation with UNAMA and the Afghan Interim Authority. In March 2002 a national human rights workshop was organised in which a plan to address former violations and injustices was discussed. Members of civil society, elders and the government represented different groups in Afghan society. As a result of the national workshop the AIHRC was given the mandate 'to undertake national consultations and propose a national strategy for transitional justice and for addressing the abuses of the past'. The subsequent consultation process was nationwide, comprising a survey, discussions and workshops in the 32 provinces of Afghanistan as well as refugee populations in Iran and Pakistan. The results of this process were published in 'A Call for Justice' in December 2005 and bear witness to an overwhelming willingness by the Afghan population to discuss these issues and a sense of gratitude for having been consulted.

BOX 6.2.2   Rules of the Road cases in Bosnia and Herzegovina

Dealing with war crimes, including the vetting of police services and judicial systems, has been a central aspect of the re-establishment of the rule of law in Bosnia and Herzegovina. More often, however, war crimes have been an example of where local ownership has been kept at arm's length. As it became clear that the International Criminal Tribunal for Yugoslavia (ICTY) would only be able to try the most important cases, an alternative solution to try the vast number of lower level suspects had to be found. An agreement was reached in Rome in 1996 that opened the way for the so-called Rules of the Road cases to be heard by domestic courts. Cases would be based on indictments issued by the ICTY and the decision on whether a case should be transferred was also made by the ICTY. Most war crimes cases that were referred to the domestic courts in Bosnia and Herzegovina were heard in Cantonal courts in the Federation. It was hoped that the Rules of the Road cases would implicitly support local capacity building and build popular confidence in the rule of law institutions but, in reality, courts were often biased and the practice of trying indicted war criminals in cantonal or entity courts was not satisfactory.

7

Institution and Capacity Building

51   INSTITUTION AND CAPACITY building goes to the heart of creating sustainable local ownership. It has two main components: structural measures and normative measures. Structural measures aim to put in place an institutional structure, a legal framework that includes laws to define the role of the institutions as well as internal regulations and procedures, and the necessary skills to run the institutions effectively. Normative measures promote values such as transparency and respect for human rights in the individuals' and the institutional culture. The objective of institution and capacity building is to create a functioning rule of law system through which the population has access to justice, which reflects democratic principles and respect for human rights and in which the application of justice is consistent throughout the country and with respect to all population groups.

52   Local ownership is relevant to both the process and the outcome of institution and capacity building. As an outcome, building local capacity and the institutions in which capacity will be applied is the equivalent of implementing local ownership by providing the means to sustain the rule of law. In the same way, building institutions and capacity is a mechanism for transition, in that it addresses the gaps in capacity that make an international role necessary in the first place. However, local ownership is meaningless if capacity and institutions are built that are wholly inappropriate for the society in question. Therefore, local ownership must also be seen as a process that determines the outcome.

53   It is important to keep in mind that institution and capacity building is not a one-off activity. Nor does it aim to create an end state. Instead, the justice and security

sector is in a continuous process of adaptation to the changing security environment. Therefore, institutional structures must be complemented by the skills and capacity to run security arrangements and take the necessary decisions to constantly improve services. The challenges that various aspects of institution and capacity building face all have implications for local ownership, but this handbook focuses on those aspects that have a direct impact on the transition process.

7.1 Restructuring and building institutions

54 There are three main aspects to restructuring and building institutions that are relevant to the transition to local ownership: (a) the size and structure of an institution, which, for instance, will affect how affordable and sustainable it will be for local authorities; (b) the need to create new institutions, especially government or state-level bodies that have the capacity to take authority; and (c) the reform of the legal framework, including criminal codes and procedures, as well as internal guidelines and regulations.

55 Restructuring must always be based on specific local demands and conditions. This may make it necessary to create bodies that would be unusual or unnecessary in a Western context. The aim of restructuring is to rationalise the size, structure and resources of the institutions in the justice and security sector according to international standards and to ensure that their ethnic composition reflects that of the communities they serve. Restructuring entails arriving at sustainable personnel levels and salary structures, as well as multi-ethnic representation, and a reorganisation and development of administrative structures and management capacity. Meeting international standards can have specific resource implications such as, for example, the need for separate courts for juveniles, humane prison conditions and non-lethal police equipment. The long-term link between DDR and the rule of law under local ownership also arises because some of the armed elements will be incorporated into formal security forces.

7.1.1 Bottlenecks and stumbling blocks

A Institutions operate in political and social contexts. Institution building requires a political context that supports reform and a society that has an understanding of the rule of law (see also engaging civil society).

B A balance must be found between constructing the 'hardware' of institution building (equipment, facilities and organisational structures) and promoting the normative aspects (norms, values and organisational culture) through training and mentoring.

C If new legal codes and standards for the rule of law take religious aspects and traditional mechanisms into account, they should nonetheless conform to international standards. Areas of applicability must be defined as precisely as possible in all cases.

D While calls for multi-ethnicity and the inclusion of minorities must be heeded, it is important to be aware of and counteract the potential for conflict, instability and even paralysis that ethnic quotas could entail.

E Budget planning should take account of the fact that the reforming institutions are likely to incur costs during the restructuring process.

F An important part of institution building is the question of salaries and working conditions. Low salaries may tempt staff in the justice and security sector into corrupt or criminal behaviour. It is not always possible to raise salaries, but the threat of corruption and criminalisation may be reduced by improving working conditions and fostering professional ethos.

7.1.2 Key questions to consider

A Where institutions exist, do they function? Do institutions have overlapping mandates? (See also fact finding)

B Will the institutions be affordable and sustainable for local authorities? What can be done to ensure that they are?

C Do the institutions reflect the ethnic composition of the community? Is it necessary to introduce quota programmes to recruit staff from all ethnic and minority groups?

D Is the DDR process impartial? Does it aim to disarm and demobilise all the agreed members of armed groups?

E Does the existing legal framework regulate the justice and security sector?

F Do institutions have adequate internal rules and regulations, for example, on disciplinary mechanisms, recruitment, promotions, oversight, and so on?

G Has the applicable law been clarified? Are there legal codes, criminal codes, criminal procedure codes, and so on?

BOX 7.1.1   Building the Kosovo Police Service and the Kosovo Protection Corps

The Kosovo Police Service (KPS) is considered to be one of the more successful examples of an institution building process. The KPS had to be built from scratch after the withdrawal of the Serb-dominated Yugoslav security forces. Success is mostly linked to the fact that the process took a long term view from the beginning and was accompanied by a consistent and sustained international effort. Former KLA members were recruited to a new body called the Kosovo Protection Corps (KPC), which was responsible for reconstruction and will in future handle crises stemming from natural disasters such as floods. Although setting up the KPC went smoothly, problems persisted with regard to raising sufficient funds and agreeing a clear definition of the KPC's role.

BOX 7.1.2   Multi-ethnic institutions in the Balkans

The requirement for multi-ethnicity has been part of the police and judicial reform effort throughout the Balkans in order to increase public confidence in the impartiality of the rule of law. Targets have proved difficult to meet, however, and this reflects the limits of international influence. Rules, guidelines and incentive structures were put in place to regulate the recruitment and intake of ethnic minorities to police academies, as well as encourage the deployment of officers to areas where they are part of a minority. In practice, these measures have had limited effect: police officers seldom remain in or reach senior positions in areas where they form part of the minority. Multi-ethnicity highlights one of the dilemmas of local ownership, in that sustainable and locally driven levels of minority representation may mean that different areas would in fact be policed by mono-ethnic forces.

BOX 7.1.3   Towards a truly Afghan police force

Ethnic representation remains a challenge for the Afghan Police Force. It is undoubtedly important in a multi-ethnic state such as Afghanistan to integrate all ethnic groups into the Afghan police force in proportion to their representation in the population as a whole. Differences remain because of educational backgrounds and because of the historical legacy of unequal ethnic representation. The emphasis on equitable representation must therefore continue to be a fundamental criterion for admission to training and other courses.

7.2 Vetting

56 Vetting is a bridge between transitional justice and institutional reform. The vetting process focuses on the formal qualifications of staff and on whether they have a criminal record or are guilty of past human rights abuses. Identifying and removing individuals from the police force, the military, the prison service or the judiciary because of their past behaviour addresses their responsibility for any human rights violations they may have committed and prevents disloyal or abusive staff undermining the legitimacy and trustworthiness of reformed or newly established institutions. Vetting is intended to create a reliable and effective justice and security sector that respects human rights. The vetting process should be clearly defined, transparent, and involve the wider population. Local involvement is important to building public trust in the rule of law, as well as local capacity to conduct investigations into past and the potential for future abuses and to conduct trials. Vetting is not a one-off activity but a continuous process, which should ideally be carried out using an institution's own disciplinary mechanisms, that serves to correct initial errors or shortfalls and respond to unanticipated developments.

7.2.1 Bottlenecks and stumbling blocks

A Vetting is often subject to political and security pressures, which may result in a process that is incomplete and unsatisfactory. International authority should prevent shortcuts that undermine the legitimacy of the vetted institutions. At worst, vetting can result in new sources of instability.

B Where there are strong alliances, clientism or ethnic bias, locally determined criteria may be unreliable and while local actors should be consulted, they should not decide vetting criteria without international oversight.

C Vetting that takes place as part of a DDR process is usually more sensitive. It is important to be aware of both the political and the security challenges involved.

D Representation and capacity may vary between different ethnic groups because of different educational backgrounds and the historical legacy. This may prove a challenge when vetting the qualifications of staff because some ethnic groups will have been systematically disadvantaged in the past.

7.2.2 Key questions to consider

A What kind of documentation and evidence is accessible and usable in the vetting process?

B Is the vetting process being conducted in a clear and transparent manner? Have local actors been consulted on the criteria, priorities and scope of the vetting process?

C Is the vetting process being protected from political manipulation and interference?

D Are qualified local personnel available, or must international actors take on responsibilities while local capacity is being built?

E Do levels of past and present misconduct permit vetting to be carried out gradually while staff remain in office, or are abuses so egregious and widespread that staff should be made to reapply for their positions and to undergo background checks before re-employment?

BOX 7.2.1   Liberia: a public and transparent vetting process

Great care was taken to listen to and take account of domestic constituencies when restructuring the Liberian National Police (LNP). The vetting process was a two-step process to determine whether applicants were accused of human rights abuses. In the first stage, the 'war crimes check', the names of applicants to the new police force were sent to organisations with information on human rights abuses, such as UNMIL's Human Rights and Civil Affairs sections and even the Special Court for Sierra Leone, to enable personnel in these organisations to check whether the applicants were known to have been accused of human rights abuses. The second stage involved the public and entailed publishing names of applicants in three local newspapers and on leaflets sent to communities around the country. The public was then encouraged to contact CIVPOL with any relevant information about the prospective applicants. On receipt of information from either stage, CIVPOL would conduct an investigation to determine the veracity of a claim and make a decision as to the applicant's suitability for inclusion in the training process.

BOX 7.2.2   Recruiting staff for the Timor-Leste Defence Forces

The Timor-Leste Defence Force (F-FDTL) was established with Falintil members at its nucleus. The Falintil Reintegration Assistance Programme (FRAP) organised demobilisation for those who were not recruited. Although selection processes for both the F-FDTL and the FRAP created some resentment among those who were excluded, reintegration was successful on the whole. The recruitment and selection of former members of Falintil was carried out in great haste and with little insight. Neither the National Council (NC) nor any other local parties were consulted in the decision to make former militia members the nucleus of the defence force, and controversy surrounds the manner in which events progressed. The regulation was submitted to the NC for consultation once the F-FDTL had been established, on 31 January 2001, but with no time for a thorough review.

7.3 Training

57 Training is the primary tool for building and enhancing local capacity that will enable local actors to take charge of their institutions. The training, recruitment and selection of staff enhance capacity, staff competency and enable an organisation to function effectively. Training covers both skills training, such as weapons training, securing a crime scene, and so on, and 'normative' training, which includes respect for human rights as well as instilling professional ethos and integrity and building organisational culture and a sense of public duty. Training now routinely emphasises democratic principles, human rights, responsiveness and accountability. Training needs to take place at all levels of the organisation—from the leadership to the 'rank and file'—and over extended periods of time. In practice, training is often conducted under time constraints and international efforts have to strike a balance between getting police on the street and providing them with sufficient training to allow them to do their job. Similarly, training should be seen not as a 'one-off' affair, but as an ongoing exercise that uses long-term mentoring, continuous professional education, and management and specialist training.

58 It is important to continually assess the impact of training programmes to enable training to consolidate the reformed practices and attitudes and new skills that foster a reformed organisational culture. From the start, there should be a strong focus on developing local leadership skills. Existing local leadership capacity should be reviewed and offered fast-track training that enables it to take on management responsibility as soon as possible. This will serve to put in place a home-grown leadership and increase the level of local authority over rule of law institutions. The same is true of handing over training to local trainers.

7.3.1   Bottlenecks and stumbling blocks

A   When training is cut too short because of the pressing security situation, poorly trained and ineffective officers are spread throughout the country, undermining local ownership and popular trust in the police. Human rights abuses often result from a lack of skills as much as from attitudes.

B   Where training neglects organisational and financial management skills, local actors may not be able to run rule of law institutions and the transfer of responsibility will be delayed.

C   The task of transferring norms through training is difficult, takes time and should not be underestimated. Values must be adopted by local actors if there is to be sustained change after the international trainers leave.

D   The transfer of skills and norms is undermined when training is conducted by international trainers who lack the necessary qualifications. This applies to military personnel conducting police training, and to police officers or legal advisers who are not qualified instructors.

7.3.2   Key questions to consider

A   Which issues should training address? Has a balance been struck between training in technical skills (e.g., procedural law and database management) and training in norms and values such as the respect for human rights?

B   Is there pressure to train justice and security sector personnel too quickly? For example, how quickly do local police need to be on the street? Is there a large backlog of court cases?

C   Do international trainers have the necessary skills and expertise to transfer knowledge to their local counterparts? Have local actors been identified who can be trained as trainers?

D   Is the training for police officers, judges, legal professionals and corrections officers coordinated?

BOX 7.3.1   Techniques and values in training in Kosovo and Bosnia and Herzegovina

Training with a focus on respect for human rights and democratic governance, such as democratic policing or community policing, was a staple in police education in all the Balkans cases. In Kosovo both technical and normative training was included in the academy training as part of the institution-building process led by the Organisation for Security and Cooperation in Europe (OSCE) as well as in the field training and 'conversion to a public service institution'–or capacity building–that was carried out by UNMIK Police. In Bosnia and Herzegovina the OSCE and the Council of Europe have conducted training courses for judges and prosecutors since 1999 with a focus on human rights and case management. The European Union Police Mission's (EUPM) mentoring mandate also illustrates the underlying recognition that police reform is far more than technical assistance and training. Instead, police reform entails a review of the organisational culture of a given police force. The mission was based on the realisation that efforts to reform organisations and organisational culture are most likely to be successful when targeting middle managers.

BOX 7.3.2   Shortfalls in training the Timor-Leste police

In Timor-Leste there were no educational materials, hardly any buildings in which to con-
duct training and few law books. Indonesian law was chosen as the applicable law of
the territory, but Indonesian law books were only available in a limited number of printed
copies. Further, the international police given the task of teaching the law did not always
know it themselves. In addition to Indonesian law, UNTAET also implemented 'Transition-
al Rules of Criminal Procedure' in an attempt to provide directives that were clear and
consistent for various police procedures. This, however, led to significant confusion
among international police who often resorted to the laws and standards of their own
national system. In general, early training was insufficient and uncoordinated because no
staff had been given the specific task of educating the recruits and few international
police had been formally or properly trained as instructors.

7.4 Monitoring, mentoring and advising

59   Monitoring, mentoring and advising local staff consolidate the skills and values
promoted through training and are long-term components of institution and
capacity building. Monitoring, mentoring and advising are similar tasks but they
involve international staff who have an important role to play as both mentors
and overseers in the reform process to varying degrees. All three have in common
that local actors are formally in the driving seat, but they also allow internation-
al advisers to assist with applying what was learned in training to daily work, or
to train and build capacity on-the-job. In addition, any organisation needs time to
mature and develop or adjust its organisational culture—even where its staff
members may have enjoyed extensive training. For instance, monitoring, mentor-
ing and advising might focus on meeting international standards or building
loyalty to the organisation instead of to an ethnic or other group.

7.4.1   Bottlenecks and stumbling blocks

A   Impatience often results in international monitors, mentors and advisers tak-
ing on line functions rather than standing back and allowing local actors to do
the job under international oversight.

B   If international mentors and advisers are unqualified, unskilled or disrespect-
ful they cannot transfer knowledge credibly and lose their influence as mentors.

7.4.2 Key questions to consider

A Has the international role been well defined? Does it allow for the maximum degree of local responsibility?

B Have the concepts of monitoring, mentoring and advising been communicated to local counterparts? Do they understand the different processes and roles in each concept?

C Are local counterparts being treated as colleagues rather than subordinates?

D Are there procedures to feed problems found by a monitor back into training, to allow training to be more targeted and to function as a preventive mechanism?

BOX 7.4.1   EUPM's mentoring, monitoring and advising mandate

The mission statement of the EUPM calls for it 'to establish sustainable policing arrangements under BiH ownership in accordance with European and international standards'. BiH ownership dictates that the BiH authorities assume responsibility for the ongoing reform processes and make substantive contributions to these processes. This was a significant difference between the mandates of the EUPM and its predecessor UNMiBH/IPTF. The mission's Council Joint Action (2002/210/CFSP) defines the main task as 'to enhance, through monitoring, mentoring and inspecting, police managerial and operational capacities'. The EUPM chose to hold managers at middle to senior levels responsible for the police organisation under their control. The success of any mentoring, monitoring and advising mission is heavily dependent on the quality of the staff who can be recruited for international service. In the same way, the EUPM's success varied greatly in accordance with individual staff members' professional qualifications and experience.

BOX 7.4.2   Mentoring as a by-product of the Special Court for Sierra Leone

Throughout its three-year operation, the Special Court for Sierra Leone (SCSL) suffered from the fact that its two main priorities were competing priorities. There was a need to fulfil both its primary objective of completing all its cases and the secondary objective of capacity building. In response to mounting criticism, in 2005 the SCSL began to focus on legacy and capacity-building issues. Internship programmes in the office of the Prosecutor were created, where international staff acted as mentors and advisers to local lawyers. The participants in the internship programme did not take the lead on prosecutions, but served as assistants, researchers and sometimes third chairs in ongoing court cases.

7.5 Holding institutions accountable

60   Oversight structures can direct the implementation of reform and monitor whether the rule of law is functioning. Oversight is in part conducted by international monitors, mentors and advisers, but oversight is also part of an institution and capacity building process in that locally run oversight mechanisms are essential to the implementation of local ownership and to enhancing popular trust in rule of law institutions. This involves setting up oversight bodies but also teaching skills and communicating to the local actors, who will staff or use oversight bodies, what their roles and duties are. Oversight mechanisms can be separate bodies or a corrective and disciplinary system in an institution. Examples of oversight bodies include independent bodies for making senior appointments, complaint monitoring mechanisms, codes of conduct, and disciplinary action in police and justice institutions. Developing the capacity for civilian oversight of the justice and security sector is a critical element of reform, which includes providing support to civil society organisations to improve their capacity to carry out their oversight role (see also engaging civil society).

7.5.1   Bottlenecks and stumbling blocks

A   Oversight mechanisms may not fully mature until institution building has progressed sufficiently. They are still a useful vehicle, however, for engaging the wider public in ongoing rule of law reform.

B   Unless potential whistleblowers and complainants are protected, and aware that codes of conduct and protection procedures exist, intimidation may prevent individuals coming forward with information or complaints.

C   In societies with high levels of ethnic divisions, corruption or organised crime international actors may have to monitor closely the treatment of minorities, as well as the functioning of oversight mechanisms more generally, even after local bodies have been established.

7.5.2   Key questions to consider

A   At what level should oversight structures be established? Who should be a member? How should members be selected?

B   Is the body representative? Is it accessible to and impartial towards the whole population? Has the existence and the role of the oversight body been communicated widely?

C   Do oversight bodies have the authority to punish or take other action against misconduct?

D Should international representatives guide the start-up and learning phases of review bodies (either as members, external consultants or advisers)?

E What can be done to monitor investigations of attacks against minorities?

F Are local oversight mechanisms functioning in a fair and proper manner? At what point do they no longer require international oversight?

BOX 7.5.1 Civil society 'watchdogs' in Sierra Leone

One specific oversight mechanism is the Sierra Leone Court Monitoring Programme (SLCMP), an independent initiative through which Sierra Leonean lawyers and civil society activists from a variety of backgrounds seek to combine their efforts to monitor criminal trials. The SLCMP monitors proceedings on at least five levels: the general conduct of proceedings, including access to the courtroom and documentation; basic procedural propriety; substantive legal issues and decisions; issues such as strategy, process, and judicial economy; and public outreach and information.

BOX 7.5.2 Overseeing the police in Bosnia and Herzegovina

Two oversight bodies were created in Bosnia and Herzegovina: the Public Complaints Bureau (PCB) and the Independent Selection and Review Boards (ISRB). They review misconduct and senior appointments in the police forces, respectively. These were to be staffed by Bosnians from the start, but it proved difficult to find people who wanted to participate in the oversight bodies since they were being asked to do this in addition to their regular employment and for little remuneration. In part the challenge of finding members for the oversight bodies was linked to the fact that the 'ideal qualifications' stipulated by UNMIBH when the bodies were set up meant that few Bosnian professionals were qualified to sit on the PCB or ISRB. Overall, there has been an almost complete lack of civil involvement, watchdog activity, and so on, which underlines the need to encourage greater public interest in the rule of law.

7.6 Engaging civil society

61 In addition to cultivating local ownership among staff in the rule of law institutions and the political authorities, involving civil society has become an integral part of justice and security sector reform and of implementing the principle of local ownership. In addition to building popular support for the reform process, the population can actively engage in the functioning of the justice and security sector. This means that the general population accepts the rule of law as the organising principle for society and uses the formal institutions as their preferred

mechanism for delivering justice. Civil society organisations—academics, professional associations, community and religious based groups, and the media—play a critical role in creating a greater understanding in the population about how the rule of law functions. Civil society is also involved in a more organised way when it functions as a watchdog over the policies developed and applied by rule of law institutions. Strengthening or rebuilding civil society is a long-term endeavour, especially where there is little capacity and where mutual trust has been shattered. Community outreach projects, including village meetings, school visits, and television and radio programmes, are good examples of how to build trust in justice and security sector institutions. Outreach projects can usefully focus on access to justice in order to foster links between civil society, the police and the judiciary.

7.6.1   Bottlenecks and stumbling blocks

A   Any failure to involve local civil society in the reform process early on means that international efforts to build capacity and institutions will take place in a societal vacuum and struggle to engender local ownership among the wider population.

B   Spoilers, such as warlords, can severely threaten civil society and need to be managed because civil society requires a safe environment in which to operate and flourish.

C   Until a thriving and varied civil society has established itself, the loudest voices among civil society organisations, which by definition represent the interests of specific groups such as the labour unions or victims of police violence, may be biased or simply unrepresentative.

D   There is a danger that international NGOs, usually present in large numbers, might supplant domestic NGOs rather than assist with building the capacity of local NGOs and developing networks to make civil society as a whole more sustainable.

7.6.2   Key questions to consider

A   Is there an active local civil society? Are there obstacles that prevent it from voicing opinions and concerns?

B   Are there groups in civil society that can be supported directly?

C   What community outreach projects can be put to use to strengthen the link between civil society and the justice and security sector?

D How can the media be strengthened and brought into the oversight network? Have capacity building components directed at local NGOs and the media been initiated that will enable them to conduct their own outreach programmes and enhance their oversight function over justice and security sector institutions?

BOX 7.6.1   Legal awareness as a condition for justice reform for Afghanistan

As part of their transitional justice initiative, the AIHRC undertook a national consultation process that has been applauded for its efforts to reach out and involve civil society groups throughout the country. The consultation involved the use of media campaigns, the public presentation of options, live TV and radio broadcasts, and the use of shuras and local civil society groups to organise discussions around the country. Training for media experts and staff has also been seen as a public awareness exercise, increasing their ability to report on and assess issues related to the rule of law.

The Italian Justice Project includes both national and international NGOs in an effort to reach out to the general public. The promotion of legal awareness in local communities as a precondition for proper justice reform and transitional justice was identified as a key priority for 2006–2008.

BOX 7.6.2   Building community awareness in Bosnia and Herzegovina

The international reform efforts in Bosnia and Herzegovina and Kosovo have emphasised community policing as the most suitable approach to improve police–community relations and to engender greater confidence in the rule of law. UNMIBH conducted public awareness campaigns to promote the image of the police as a service provider and to increase public awareness of the fundamental principles of democratic policing, such as protection, accountability and non-discrimination, focusing on areas where the police come most frequently into contact with the public, including traffic, domestic violence, and return and detention situations.

BOX 7.6.3   Engaging the Kosovo Serb minority

Engaging civil society can prove difficult if local counterparts are unwilling to cooperate. The Kosovo Serb community has defined itself in reference to its allegiance to Belgrade and has in the main acted in accordance with its impulses and the financial support received from Serbia. The Kosovo Serb party has marginalised itself by boycotting most of the elections held since 1999. Kosovo Serbs have often boycotted attempts to build inclusive local institutions and consultation mechanisms and, for instance, have undermined the effective functioning of the fledgling judiciary.

8

Assessing the Transition

62   REGULAR ASSESSMENTS of progress are necessary in order to ensure a timely transition. This involves evaluating the outputs and outcomes produced against the intended targets, and reviewing the impact they have had or aim to bring about, such as increased access to justice or increased public security. Assessments of progress should take place not only at the end of the project cycle, but also at agreed intervals. This is helpful in determining what has been done and what remains to be done and, in turn, leads to a renewed process of planning and adjustment, and eventually prepares the way for phasing out the role of international actors. It is equally important to ensure that there is local capacity to track and evaluate progress. Assessment at the final stage of a transition is important because either premature or delayed handovers can undermine long-term local ownership.

63   The recommendations on how to assess the transition in this chapter cover two separate questions. Section 8.1 examines methodology and offers some basic advice on how to design and implement the assessment itself. It should be noted that methodology and programme evaluation are comprehensive fields of study in their own right and the section below can only indicate a few central concerns and potential pitfalls. Section 8.2 addresses how to assess progress with transferring authority to local actors. The key questions can guide the design of an evaluation of the extent to which local ownership has been established. More specifically, the questions outline areas where it may be useful to identify indicators for a systematic evaluation effort.

8.1 Designing and implementing an assessment tool

64   A system to measure progress involves developing a complex model, indicators, and so on, that cannot be covered in this handbook. Instead, this section provides some basic points to bear in mind when devising such a complex model.

65   First, the ability to measure progress depends on having a clear idea of what a rule of law reform is aiming to achieve. For instance, this may be a fair, functioning and democratic rule of law that is run and sustained by local stakeholders with a minimum of international pressure or assistance. This overarching goal consists of constituent partial goals, such as a functioning and impartial court system or a responsive and accountable police service, and benchmarks on the way to that goal. In essence, the extent to which it is possible to assess the transition depends on how well the recommendations in chapters 3–7 have been followed. For example, if timing has been thought through, it should be possible to factor the time it takes to build local ownership or to identify the delays involved in implementing local ownership into the definition of benchmarks and how they are to be reached. Similarly, only if the starting point has been sufficiently mapped out is it possible to evaluate whether progress is being made.

66   Second, a reform programme is likely to have put together a set of activities, for example, developing a curriculum for the police academy, that aims to achieve certain goals. The fact that the reform as a whole is made up of hundreds or thousands of different programmes underlines how challenging it is to turn individual assessments of progress into an overall map of where an international effort to establish the rule of law under local ownership is headed. Far too often evaluations of progress simply examine whether a programme has been carried out rather than review whether it has had the desired effect. In other words, reports on the progress of reform frequently focus on outputs rather than outcomes. Both outputs and outcomes are important, but evaluating outputs alone will say little about whether the rule of law situation has improved or the capacity of local actors has increased.

67   Third, the extent to which outcomes—and outputs for that matter—can be assessed hinges on how well indicators have been defined. Here, it is useful to make a basic distinction between hard indicators that can provide information on hard facts, such as crime rates, and soft indicators that consider perceptions, such as the extent to which a population feels involved in the reform process.

68   Finally, in the specific context of measuring the extent to which the rule of law functions and is in the hands of local stakeholders, progress should be assessed at different levels ranging from the strategic mission leadership to the programme or project level. At the same time, it is important to remember that programmes

and progress in the different areas are interdependent, in that setbacks in one area will have repercussions in others. Two central tasks are to build the local capacity to conduct reliable and useful assessments and raise awareness that regular reviews are an essential part of good management and administration.

8.1.1   Bottlenecks and stumbling blocks

A   Benchmarks must be based on indicators that can be measured rather than vague descriptions of desired outcomes.

B   Assessments must take a realistic view of what is possible and what constitutes a reasonable objective.

C   The level of detail in the progress review and the accuracy of its assessments have to be weighed against the cost and effort it will take to collect data and to feed it back.

8.1.2   Key questions to consider

A   Have resources been set aside to conduct regular progress reviews?

B   Has a timeline been set that determines when evaluations are to take place?

C   Have consultations been used to obtain feedback on what are considered realistic and important goals?

D   Have potential spillover effects between different areas of reform been factored into the assessment?

E   Are assessments being communicated across areas of reform and to relevant local counterparts?

F   Are local stakeholders gradually being brought into the assessment process and making substantive contributions?

8.2   Assessing the degree of local ownership

69   In assessing the degree of local ownership, it is necessary first to consider the conditions of the justice sector and the level of local ownership of reform efforts identified in the fact finding effort in order to measure progress. With regard to the defined goal of a transition to local ownership, progress would mean that international actors had consulted with local actors and transferred authority. Progress has been made when local stakeholders substantially influence the conception, design, implementation and review of reform strategies.

70   A dilemma can result from the fact that assessments measure progress with establishing the rule of law, on the one hand, and increasing the participation and control of local actors, on the other hand. It is easy to conceive of a situation where local stakeholders are confident about taking control capably and effectively but the rule of law may suffer because it is applied unevenly or unjustly. The international presence will have to decide which of its two goals to prioritise: whether it wants to promote local ownership, perhaps at the expense of human rights, or to step in to override local ownership and safeguard the democratic rule of law.

8.2.1   Bottlenecks and stumbling blocks

A   Assessing the emergence of structures and formal mechanisms is an important indicator for gauging local ownership, but it is necessary to review performance, values and perceptions extensively.

B   Efforts to measure progress should take account of the fact that different components of the rule of law are interdependent. The lack of local ownership in one area might affect the chances of transferring authority in another.

C   Certain negative indicators may actually be signs of increased local ownership and an improvement in the rule of law. For example, higher levels of recorded crime could indicate increased capacity for data collection.

8.2.2   Key questions to consider

A   Is there a high level of local commitment to the reform effort at all levels or does it rely on externally imposed or proposed incentives in order to proceed?

B   Is the political authority of the political leaders sufficiently robust to take important decisions on the future of the security sector, for example, on budgets, priorities, strategies, and objectives?

C   Do political authorities demonstrate their commitment to rule of law reform and a functioning justice system by allocating an adequate share of the national budget to the rule of law over an extended period of time? Do they defend the reforms to their domestic constituencies?

D   Are there effective oversight and public complaints mechanisms in key rule of law institutions in order to increase transparency and accountability? Is there a willingness to redress failures of justice?

E   Do rule of law institutions have effective internal disciplinary mechanisms to address misconduct or abuse of office? Are they willing to correct themselves?

F Does the justice and security sector continue to be heavily dependent on inter-
national donor support or is the national government largely capable of sustain-
ing salaries, subsequent reform programmes, and so on?

G Does the population actively use the rule of law institutions rather than resorting
to unregulated informal mechanisms of justice? Does the population under-
stand its rights and obligations under the rule of law system?

H Do local representatives hold senior positions in the justice and security sector?
Can they manage effectively?

I Where there has been shared authority, is the local to international staff ratio
increasing? Are local staff moving into key positions?

BOX 8.2.1   Measuring local ownership in Sierra Leone

By 2005 security arrangements in Sierra Leone began to show signs of effective local
ownership. For the first time the Sierra Leone Police SLP produced a three-year strategic
plan that set out priorities, strategies, programmes and projects. The SLP Medium Term
Strategic Plan, 2006–2008 (MTSP) also addresses the need to conduct macro- and
micro- level performance measurement of the SLP in a systematic fashion. It includes
performance indicators and targets, and assigns the Executive Management and Change
Board the task of carrying out formal monitoring and evaluations. More broadly, the
government's Security Sector Review was included as part of the PRSP. The document
includes a comprehensive institutional framework for its implementation, monitoring,
and evaluation.

BOX 8.2.2   Re-assessing the capacity needs of Timor-Leste

In 2003 UNMISET, the UNDP and the Timorese Capacity Development Coordination Unit
formed a task force to re-examine earlier assessments by consulting with state institutions.
A template for needs assessment, and one for the justification of those needs, formed the
basis of a new list of 58 'most critical' positions to be financed by UNMISET, and 118
'critical' positions to be provided for by voluntary, UNDP-coordinated, contributions. It is
notable that, although the total number of adviser positions identified had reduced by
nearly half, the number of advisers needed for the judiciary had more than doubled,
indicating that the efforts to build capacity and institutional capability in the judicial
sector had not, thus far, been sufficient. In parallel with this reassessment of needs,
UNMISET and UNDP also discussed a new programme approach, resulting in broaden-
ing the scope for capacity development from individual to institutional capacity building.
This new approach is intended to be a tool to standardise, and ultimately also to measure
and evaluate, training. This became necessary because many bilateral efforts, such as
AusAid and USAID, contained their own capacity-building components. The system that
was developed in September 2004 is less of a one-on-one, individual-level approach
and consists of three pillars: skills and knowledge; systems and processes; and
attitudes and behaviour.

Mechanisms for transition – Examples from case studies

	Afghanistan	Bosnia and Herzegovina (BiH) and Kosovo
Interim government	• Afghan Interim Authority (AIA), 2001–2004	• UN transitional administration (Kosovo), 1999–present • Provisional Institutions of Self-Government (PISG), 2001–present
Consultative mechanisms	• Loya Jirga • Afghan Compact • Consultative Groups (CG) for different sectors • Advisory Groups on issues such as gender, human rights, counternarcotics, etc to feed into CGs	• Internal Security Sector Review Process (ISSR), Kosovo • Ministerial Consultative Meeting on Police Matters (MCMPM), BiH
Tapping into traditional arenas	• Use of *shuras*, Islamic civic councils, as one forum to consult with wider population on justice issues	• N/A
Institution and capacity building	• *Tashkeel*, official plan for the Afghan Police • Provincial Justice Initiative (PJI), which uses Afghan trainers to build capacity in justice sector at district level	• Kosovo Police Service School (KPSS) • Establishment of State Court and State Prosecutors Office in BiH
Shared authority/responsibility	• Judicial Reform Commission • Afghanistan New Beginnings Programme (ANBP) for Disarmament, Demobilisation and Reintegration (DDR)	• Use of international judges and prosecutors in hybrid courts in Kosovo • Intelligence Reform Commission, Defence Reform Commission and Police Restructuring Commission, BiH
National professionals	• TOKTEN programme, which seconds local and diaspora Afghan experts into various ministries	• Kosovo's Capacity Building Facility (CBF) Project • Increase in local political officers, legal and other experts in international missions, such as OHR, OSCE BiH or EUPM
Engaging civil society	• Afghan Independent Human Rights Commission (AIHRC) various civil society groups working to produce a nationally driven proposal to address transitional justice issues	• Community Safety Action Teams Programme, Kosovo • Municipality Security Forums, BiH

Timor-Leste	West Africa (Liberia and Sierra Leone)
• UN Transitional Administration (UNTAET), 1999–2002	• National Transitional Government of Liberia (NTGL), 2003–2005
• National Consultative Council (NCC) and subsequently the National Council to review all major UNTAET policies and regulations	• Consultative Group (CG) for Sierra Leone to implement the Poverty Reduction Strategy Papers (PRSP) • National Security Coordination Group • International Contact Group for Liberia (to consult with NTGL)
• *Badame*, a reconciliatory mechanism incorporated into the Community Reconciliation Process (CRP)	• Customary and local courts in Sierra Leone
• Capacity Development Coordination Unit • 'Strengthening the Justice System' Programme targeting the Ministry of Justice, the Courts, and Office of the Prosecutor-General	• Establishment of Hastings Police Training School and regional training centres in Sierra Leone • Development of coherent policy strategy: Senior Executive Service (SES) to develop technical and professional leadership and management in the public service in Sierra Leone
• Special panels for serious crimes • Joint police force – international-local chain of command	• Special Court for Sierra Leone • Governance and Economic Management Assistance Programme for Liberia (GEMAP)
• N/A	• TOKTEN programme in Liberia to recruit 20 professional expatriate and 15 local professionals into key rule of law institutions
• Civil society representatives were included in the Consultative Group, formed in 2005 to integrate all capacity building projects in the justice and security sector	• Community-based Sierra Leone Court Monitoring Programme (SLCMP) • Liberian National Law Enforcement Association

Examples of tasks in institution and capacity building

	Institution building	Capacity building
Structural dimension	Reduction, restructuring and vetting Rank and salary structures Multiethnic composition Facilities and equipment External oversight bodies Disbanding rival armed groups Legal codes Administrative structures	Technical training, e.g., weapons training, securing a crime scene, etc. Management capacity, include budget management, human resources, planning, strategy and policy development Political and legal authority
Normative dimension	Internal disciplinary mechanisms The curriculum in academies Regulations for (merit-based) recruitment and promotion Codes of conduct and protection for whistleblowers Demilitarisation	Understanding of roles Human rights training Teaching capacity (train-the-trainers) Security policy Anti-corruption and political independence Willingness to act on misconduct Relations/cooperation with public

AIA	Afghan Interim Authority
AIHRC	Afghan Independent Human Rights Commission
ANBP	Afghanistan New Beginnings Programme
BiH	Bosnia and Herzegovina
CBF	Capacity Building Facility (UNDP Kosovo)
CDF	Civil Defence Forces (Sierra Leone)
CFSP	Common Foreign and Security Policy (EU)
CG	Consultative Group
CNRT	National Council of East Timorese Resistance
DDR	Disarmament, Demobilisation and Reintegration
EGSC	Economic Governance Steering Committee
EUPM	European Union Police Mission in Bosnia and Herzegovina
FBA	Folke Bernadotte Academy
F-FDTL	Timor-Leste Defence Forces
FFI	Norwegian Defence Research Establishment
FRAP	Falintil Reintegration Assistance Programme (Timor-Leste)
GEMAP	Governance and Economic Management Assistance Programme (for Liberia)
GoS	Government of Sudan
ICTY	International Criminal Tribunal for former-Yugoslavia
IPTF	International Police Task Force (Bosnia and Herzegovina)
ISRB	Independent Selection and Review Boards (Bosnia and Herzegovina)
JAM	Joint Assessment Mission in Sudan
KFOS	Kosova Foundation for Open Society
KLA	Kosovo Liberation Army
KPC	Kosovo Protection Corps
KPS	Kosovo Police Service
LNP	Liberian National Police

MTSP	Medium Term Strategic Plan (Sierra Leone)
NATO	North Atlantic Treaty Organisation
NC	National Council (Timor-Leste)
NTGL	National Transitional Government of Liberia
OECD	Organisation for Economic Co-operation and Development
OHR	Office of the High Representative in Bosnia and Herzegovina
OSCE	Organisation for Security and Cooperation in Europe
OTP	Office of the Prosecutor (Sierra Leone)
PCB	Public Complaints Bureau (Bosnia and Herzegovina)
PCNA	Post-conflict Needs Assessment
PISG	Provisional Institutions of Self-Government
PJI	Provincial Justice Intiative (Afghanistan)
PRSP	Poverty Reduction Strategy Papers (Sierra Leone)
RUF	Revolutionary United Front (Sierra Leone)
SCSL	Special Court for Sierra Leone
SIPRI	Stockholm International Peace Research Institute
SLCMP	Sierra Leone Court Monitoring Programme
SLP	Sierra Leone Police
SPLM	Sudan People's Liberation Movement
TOKTEN	Transfer of Knowledge Through Expatriate Nationals
TRC	Truth and Reconciliation Commission
UNAMA	United Nations Assistance Mission in Afghanistan
UNAMSIL	United Nations Mission in Sierra Leone
UNDP	United Nations Development Programme
UNMIBH	United Nations Mission in Bosnia and Herzegovina
UNMIK	United Nations Mission in Kosovo
UNMIL	United Nations Mission in Liberia
UNMISET	United Nations Mission of Support in East Timor
UNTAET	United Nations Transitional Administration in East Timor

THE RULE OF LAW is increasingly regarded as a precondition for sustainable peace-building and development, and has become a central element in international approaches to crisis management and conflict resolution. This guide explores the challenges of transferring responsibility for public order and the rule of law after conflict to local ownership. It does so by taking a closer look at the principle of local ownership—a participatory framework through which the needs and views of all stakeholders can be articulated and addressed—and how it can be implemented.

The report seeks to assist field personnel—from the police officer on the street to the head of mission—with the difficult task of implementing the principle of local ownership in justice and security sector reform during peacebuilding operations. It is intended to assist with the process of deciding how, where and when local ownership should be promoted, where it may not be an option, whether different circumstances call for different types of strategies for transition and what factors should be taken into consideration. It identifies potential stumbling blocks and encourages practitioners to ask critical questions that can guide the transitional process.

The report builds on the experiences of recent peace-building efforts, including those in Kosovo and East Timor, where the international community has taken the lead in bearing responsibility for law and order. It also builds on peace-building efforts in Afghanistan, Bosnia-Herzegovina, Liberia and Sierra Leone, where primacy has rested with local authorities.

About the authors: Dr. Annika S. Hansen is Senior Analyst at the Norwegian Defence Research Establishment (FFI) and was Chief Political Adviser to the European Union Police Mission in Bosnia-Herzegovina (EUPM) in 2003. Sharon Wiharta is Researcher with the Armed Conflict and Conflict Management Programme at the Stockholm International Peace Research Institute (SIPRI). Bjørn R. Claussen is post-graduate student at the University of Tromsø and has field experience from Kosovo. Stian Kjeksrud is a post-graduate student at Columbia University and has field experience from Kosovo, Lebanon and Macedonia.