

RESEARCH REPORT

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

A Policy Report



Annika S. Hansen and Sharon Wiharta



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*The Transition to a Just Order:  
Establishing Local Ownership  
after Conflict*

A Policy Report

Annika S. Hansen and Sharon Wiharta

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# Foreword

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*Espen Barth Eide*  
*Deputy Minister of Defence, Norway*

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*State Secretary for International  
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INTERNATIONAL PEACEKEEPING and peacebuilding have come a long way since the early days of the post-Cold War era. In many post-conflict situations, military peacekeeping is a necessary but in itself insufficient component of a larger whole. A static focus on “restoring or keeping the peace” has been substituted by a far more dynamic focus on “transition management”. Most of today’s peacekeeping and peacebuilding efforts strive to assist societies in developing a sound foundation for economic and societal development, democratic governance and the rule of law. Reform of security and justice sectors are instrumental in these efforts. A growing recognition of universal principles and values at the global level has underpinned this effort; it is increasingly perceived as acceptable that global and/or regional organizations take a stance, not only in favour of peace and development, but also about which path to peace and development a country or a region should take.

Practically all international institutions engaged in this area are currently striving to better organise their contributions to form a broad, holistic approach to long-term transition. The search for cohesion is reflected in the conceptual thinking of the major international organisations. They all more or less address the same challenge, namely how to broaden the approach to peace operations in order to deliver a focused, strategically founded, multifunctional output. The UN approach with “Integrated missions” is perhaps the best example of how to combine a broad range of perspectives, based on specific needs, in order to achieve security, development and respect for human rights in countries affected by conflict. Similar approaches are being pursued in NATO and the EU. Further, the recently established UN Peace Building Commission can be an important institution to secure peace and foster sustainable development.

In addition to developing concepts, recent efforts by international organisations, governmental and non-governmental bodies and scholarly institutions have focused on reaping the insights gained in the peace operations that have been conducted since the “new generation” of peacekeeping began in the early 1990s. In this rich intellectual material, two debates have proven particularly challenging and important: that of establishing an effective and lasting *rule of law* and that of the quest for genuine *local ownership*, i.e. that the solutions to a particular society’s needs are developed in concert with the people who are going to live with, and uphold, these solutions in the long run. Both are more easily said than done. Rule of law is as much about culture and perceptions as about formal institutions; and “cultures” are notoriously more difficult to transform than institutional frameworks. Local ownership may, if narrowly interpreted, lead to a “retour à la normale” of traditional dominance structures and be in direct contrast to the universal principles the operation was set up to establish in the first place. When it lacks local ownership, on the other hand, it may risk creating a set of unsuitable or unsustainable institutions that are a de facto cover for real political and judicial processes taking place in society’s underground.

In this Policy Report, Annika S. Hansen and Sharon Wiharta address precisely these two debates, presenting an excellent overview of the real-world challenges in establishing local ownership in the transition to a just order. They convincingly discuss the various dilemmas encountered in such undertakings and suggest ways to deal with them. Hansen and Wiharta’s Policy Report combines analytical insight into the ‘big issues’ with a view from the field. In that way, it provides valuable tools for policy-makers and practitioners alike – just as much as being a research contribution in its own right.



Espen Barth Eide



Joakim Stymne

# Preface

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*Ambassador Michael Sahlin  
Director-General  
Folke Bernadotte Academy*

STARTING WITH THE UNITED NATIONS Transition Assistance Group (UNTAG) in Namibia 1989, many UN-led as well as non UN-led peace operations have added layers of tasks to the core task of confidence building and monitoring. Ambitious mandates have created operations in which the task of rebuilding states forms part of an exit strategy. It is often argued that supporting the emergence of democracy and the rule of law should be part of such an exit strategy and that they are prerequisites for preventing a return to conflict. As such, the transition to democracy and the rule of law is increasingly used as a criterion for the success of peace operations.

An important element of democracy and the rule of law is its formal and constitutional element. Another and less easily observable element is the practice of democracy and the rule of law with regard to the broad concept of good governance. I am therefore pleased to introduce this report on how to consolidate the institutional and cultural foundations for the rule of law by transferring them to local ownership. Only this will make the rule of law self-sustaining and allow international missions to depart.

The report is based on insights from field studies carried out by the authors, as well as on consultations with experts. In addition to briefly describing the nature of the major issues, it contains recommendations that are directed at policy makers and planners at the strategic level. I hope that the recommendations will constitute one step towards meeting the demand of policy planners for general templates and guide them through issues they are likely to face when putting the principle of local ownership into practice.

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.

A handwritten signature in black ink, appearing to read "Michael Sahlin". The signature is fluid and cursive, with the first name "Michael" written in a larger, more prominent script than the last name "Sahlin".

Michael Sahlin

THIS POLICY REPORT and its sister publication *The Transition to a Just Order: Establishing Local Ownership after Conflict, A Practitioners' Guide*, are the products 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 report draws on the findings of four case studies (Afghanistan, the Balkans, Timor-Leste and West Africa) and highlights some of the key challenges of establishing local ownership of the rule of law using examples from these peacebuilding processes. The full case studies and a thorough conceptual review are included in a comprehensive volume to be published in 2007. The present report, particularly the recommendations, has benefited from discussions with policy makers and practitioners engaged in the reform of the justice and security sector as well as established academics at a workshop in Stockholm in May 2006 and during field research. A list of recommended reading that informed the underlying research for this Policy Report is included at the end of this publication.

The authors would like to thank the FBA for its willingness to support innovative policy oriented research and for generously funding this project. Special thanks are due to Laila Bokhari and Sara Lindberg for their research contributions on Afghanistan and Timor-Leste, to Birger Heldt, Research Adviser at the FBA, and to members of the FBA reference group for their comments and advice.



A BREAKDOWN OF the rule of law may be either the cause or a consequence of a conflict. While a conflict situation may be stabilised 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 put resources into a post-conflict society. Ultimately, the task of running, staffing and further developing rule of law institutions will fall to local authorities. The local population is the end-user of justice and security systems and must have confidence in the rule of law in order for them to work effectively and equitably. Calls for local ownership are the logical consequence of this reasoning. Such calls 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.

It is important to note that the degree of international authority will range from full responsibility to a monitoring, facilitating or supportive presence, and that a transition to local ownership is always a gradual process. The precise shape and pace of transition in each country will depend on a number of factors and will vary in different areas of the justice and security sector. This policy report puts forward the view that the maximum authority possible—in accordance with local capacity, context and levels of accountability—should lie with local stakeholders at any given time, and that at least a minimum level of popular and political acceptance is indispensable to all stages of the transition in order for it to gain a foothold and be consolidated. The policy report makes recommendations that might assist policy makers and planners to decide 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 which factors should be taken into consideration in decision-making and planning.

The recommendations take account of the local shortfalls that have necessitated an international role in establishing the rule of law. These fall into two main categories: the extent to which local actors are *willing* to conduct a reform process and the extent to which they are *able* to do so. The recommendations also take into account the range of dilemmas that policy makers and strategic planners are likely to face when implementing the principle of local ownership. In addition, they reflect a realistic and honest recognition of the limits to which international actors are able to direct a reform process.

Efforts to integrate local stakeholders can make use of three types of mechanisms: consultations, shared authority—such as in interim governments, integrated international-local chains-of-command or hybrid courts—and the use of professionals from the country in transition in justice and security structures. These mechanisms are applied in different phases and to different components of international engagement, ranging from initial fact finding and strategic planning processes, to meeting immediate justice and security needs, to institution and capacity building, to engaging civil society and measuring progress.

It is important to acknowledge that local ownership is about people and how they are affected by a societal reform process that is likely to bring instability and few tangible benefits in the short term. In order to consolidate a locally owned system of the rule of law, emerging institutions and practices must gain the population's trust. The key to implementing local ownership lies in being transparent, allocating significant effort and resources to communication, and meeting local counterparts and their concerns with respect and an open mind. At the same time, policy makers have to understand that implementing the principle of local ownership is fraught with difficult choices and trade-offs. The international presence may have to decide which of its two goals to prioritise, that is, whether it wants to promote local ownership, perhaps at the expense of human rights, or to step in to override local ownership in order to safeguard the democratic rule of law.

### Key concepts

For the purposes of this study, *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 rule of law is intended to be a safeguard against arbitrary governance. The breakdown of the rule of law is not only a consequence of conflict. 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. The implication of this is that the rule of law is an issue that is fundamental to peace and conflict, and one that must be addressed as part of any effort to prevent, manage or resolve conflict.

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 policies established to administer criminal and civil justice, including legal regulations and oversight. In the context of local ownership, informal justice and security mechanisms may play a role but they need to have a clearly defined legal link to the state's formal justice and security institutions, and operate in accordance with internationally recognised standards of human rights. *Justice and security sector*

*reform* is an important element in establishing the rule of law. It refers to the reform of the institutions that have the authority to use force or to order the use of force, to dispense justice and to uphold the law, as well as those civil structures that are responsible for their management.

*Local ownership* is crucial to making justice and security sector reform and the establishment of the rule of law sustainable. The term has appeared in official policy documents issued by the UN, the Organisation for Economic Co-operation and Development (OECD) and the British Department for International Development (DFID) but it is defined ambiguously. The notion of local ownership thus remains controversial and contested in policy and academic circles. For the purposes of this study 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 justice and security sector 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. It should also reaffirm international law, norms and standards. Local ownership cannot be treated as an absolute but instead must be implemented to different degrees that range from local acceptance and support for the reform process to local control over decision-making.

This policy report argues that the maximum authority possible—in accordance with the local available capacity, context and level of accountability—should lie with local stakeholders at any given time, and that a minimum level of popular and political acceptance is indispensable to all stages of the transition in order for it to be able to gain a foothold and be consolidated. In a case where there is strong popular and political opposition to a reform of the rule of law, any international effort will be unsuccessful.



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## *Introduction*

- 1 THE PRINCIPLE OF LOCAL ownership of the rule of law has been widely accepted as essential to the sustainability of justice and security sector reform. Despite this acceptance, establishing local ownership remains a key challenge for international peacebuilding efforts. This report addresses this difficult question and explores the challenges inherent in the concept and in efforts to apply it.
- 2 The rule of law has become a prominent theme in international post-conflict peacebuilding efforts. This relatively new focus has grown out of the recognition that a breakdown in the rule of law is both a cause and a consequence of conflict—not least because of the shortcomings or malevolent agendas of local actors. The genocides in Rwanda and Srebrenica, the brutality of the civil war in Sierra Leone and the ongoing atrocities in Darfur testify to how the breakdown in the rule of law is tied to broader questions of weak states, and how systemic human rights violations are often both a cause and a symptom of state failure. Conflict, particularly internal conflict, often weakens the structures and practices of law and order in a state and, over time, may result in their complete collapse. The absence of a functioning rule of law is a factor in maintaining conflict as well as one of the biggest obstacles to international and domestic efforts to build sustainable peace.
- 3 The inextricable link between the rule of law and sustainable peace has been best articulated in the concept of human security—and its emphasis on individual human rights as the foundation of international order. The growing acceptance that the concept of security must extend to the security of people as well as states

has marked an important shift in international thinking and has shaped various international policy documents. The UN Secretary-General's 2005 report *In Larger Freedom: Towards Development, Security, and Human Rights for All* reaffirmed the importance of human rights, development and security as three principal goals of the UN.

- 4 State sovereignty is now also understood in relation to the rights of the population—a relationship that is ideally structured by and implemented through the rule of law. It is implicit in this notion that the state has a duty to protect the rights of the people living on its territory and to deliver economic and social services. Accordingly, human rights have become an indicator of whether states are governing justly. In a post-conflict setting, observance of human rights is now an indicator of whether the rule of law is functioning. The implication of this is that human rights, the rule of law, and economic and social development are fundamental issues in peace and conflict and must be addressed as part of any effort to prevent, manage or resolve conflict.
- 5 International crisis management and development efforts in the past five years have striven to negotiate the linkage between the rule of law and conflict both in contexts in which the international community has taken responsibility for law and order (e.g., Kosovo and East Timor) and where primacy rests with local authorities (e.g., Afghanistan, Bosnia and Herzegovina, Liberia and Sierra Leone). Experiences are beginning to be reflected at the multilateral level in both the practice of peacebuilding and the substance of rule of law reform (police, judiciary and penal systems). The Brahimi Report of August 2000 led the way with a call for a 'doctrinal shift' in the use of police and rule of law elements in peace operations. Implementation at the institutional level is extremely slow despite some first steps, such as the recent creation of a rule of law unit in the UN Department of Peacekeeping Operations. The rule of law unit was established to overcome the lack of coordination in the international community and to work with affected national governments to marshal, assist and sustain 'post-conflict peacebuilding over whatever period may be necessary'.<sup>1</sup> Increasingly, UN missions, such as in Liberia or the Democratic Republic of Congo (DRC), are mandated to assist with the development of a strategy to consolidate governmental institutions, including a national legal framework, and judicial and correctional institutions. Similarly, in developing its crisis management capability, the European Union (EU) has placed considerable emphasis on the rule of law in the development of both concepts and operational capabilities. This is reflected in its missions in the Balkans, Georgia and Moldova.
- 6 As well as the recognition that crisis management operations must address issues of law and order from the outset, there is a realisation that the establishment of a

functioning rule of law is a long and demanding process that extends well beyond the timeline of crisis management operations and into the development phase. The increased attention currently being paid to the security–development continuum is welcome, but local actors—the most crucial element in the establishment and maintenance of the rule of law after conflict—have been neglected. Local ownership is acknowledged as central to effective and sustainable peace-building but there has been little exploration of what this means in practice. While attention has been paid to assessing which structures are needed, the skills and capacity that should accompany them and the international actors responsible for them as well as the question of who ultimately will implement these programmes and sustain them—and how—are often ignored.<sup>2</sup>



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## *Local Ownership of the Rule of Law*

- 7 AS OUTLINED ABOVE, re-establishing the rule of law after conflict is closely linked to both security and development. While a situation may be stabilised in the short-term, long-term security depends on establishing a functioning rule of law. This involves creating institutions, skills and a culture of respect for the rule of law, and implies the involvement of both crisis management and development actors in the transition to a just order.
- 8 Calls for the reform of rule of law reform are closely tied to a number of basic concepts that have become well-established elements of peacebuilding, such as an emphasis on human rights and the notions of human security, good governance and justice and security sector reform. They reflect an approach based on individual rights and indicate that efforts to implement local ownership will have to foster involvement and build capacity in a variety of arenas. At the same time, the emphasis on threats to the safety of individuals and the resulting review of the concept of state sovereignty has facilitated interventions by international entities and overriding local ownership where it is perceived to be in contradiction to the rule of law.
- 9 In order for local ownership to be implemented in a meaningful way, it is essential to have a differentiated understanding of who the local actors are in each case. In general terms, they can be grouped into three categories: (1) the population in its various organised and unorganised forms, that is, the citizen, civil society and the business community; (2) the authorities, that is, the political leadership, the civil service and local government mechanisms; and (3) actors in the justice and

security sector, both individual staff members and justice or security institutions. In a reform process, in order to locate entry points for strategies for transition, it will be important to identify distinct stakeholders and their interests among what are essentially the providers and consumers of the rule of law. Such an approach can counteract the temptation to cast the net too wide and make reform efforts impracticably comprehensive—despite the fact that the rule of law clearly affects each and every member of a post-conflict society.

- 10 For international interveners it is critical to acknowledge that, even where the rule of law appears to be in complete collapse, there is no power vacuum. In fact, a whole range of actors—rebel leaders, clan chiefs, opposition party leaders, dissidents, and so on—are likely to be jockeying for formal authority and power, and alternative informal modes of order and justice, which are often far from Western notions of human rights, continue to function. Rather than beginning with a ‘clean slate,’ efforts to rebuild the rule of law face instability and tension linked to competing claims for authority.

## 2.1 The capacity and willingness of local owners

- 11 Although there is general support for the notion of local ownership, there are a number of dilemmas that need to be addressed when transferring authority.<sup>3</sup> The first dilemma is linked to the extent to which international actors are willing to allow local stakeholders to determine the outcome of reform processes. True local ownership means accepting solutions and processes that may not conform to Western models of governance. In most cases, however, international resources, such as donor funding, will not be forthcoming unless minimum standards of good governance and respect for human rights are upheld. How then can international actors credibly engage with their local counterparts and purport to respect their preferences while at the same time insisting on a normative framework within which these preferences have to play out?
- 12 The second dilemma arises in attempts to identify local counterparts. This often involves a choice between working with counterparts that wield sufficient local power to implement reform measures effectively, but may not be very reform-minded; or working with those who are most appealing to international entities, for instance, because they are foreign educated or campaigners for reform, but have little backing or authority in the local society. In Afghanistan, for instance, the government and the US-led Operation Enduring Freedom were forced to work with war lords in order to ensure stability, thereby undermining the fragile status of the police as guardians of the rule of law.

- 13 A third dilemma is related to the mismatching time frames that govern aid, on the one hand, and the pace and duration of reform, on the other. International actors have to strike a balance between imposition and ownership and have to be aware that imposition may breed both financial dependency—where unaffordable and unsustainable paths are promoted—and political dependency—where local authorities are relieved of the burden of making difficult and unpopular decisions. The latter is, for example, true of some of the laws imposed by the High Representative in Bosnia and Herzegovina (BiH).
- 14 Ultimately, implementing the principle of local ownership and addressing the above dilemmas involve a number of trade-offs. Rather than hoping for clean solutions, international actors should prepare to make concessions. They will also have to define how and when their views can be compromised in order to ensure local ownership. One trade-off is that locally driven reform efforts—although probably more sustainable in the long run—may take longer than those that are pushed through without consultation or local leadership. For instance, it took time for the senior management of the Bosnian police services to formulate priorities for police reform—priorities that could have been stipulated more quickly by the programme development department of the European Union Police Mission (EUPM), but which might not have reflected the local needs of the rule of law.
- 15 A second trade-off can mean that solutions proposed locally may appear sub-optimal to international bodies even though they may be more suited to, and more affordable and practicable under, local conditions. Solutions to these situations are achievable with regard to technical issues but more difficult when it comes to normative questions such as due process and criminal procedures. The fact that European funding for the trial of Saddam Hussein had to be largely withdrawn when Iraqi judges declared the death penalty to be a potential and acceptable outcome is a case in point. The existing judicial infrastructure—including staff, facilities and legal frameworks—may be insufficient to deal with demands for justice and face the international assistance effort with a difficult choice: allow quick—locally accepted and driven—justice or insist on international standards that delay the course of justice and undermine local confidence in the rule of law. In Afghanistan it was difficult to meet the need for justice while the basic institutional infrastructure was lacking, and communication in and management of rule of law institutions were weak.
- 16 A third similar trade-off concerns the need to work with undesirables who may be the only way to access and to gain a foothold in the local ‘system’. With the help of such individuals, local ownership can be anchored and the rule of law can evolve over time. Throughout the Balkans, for example, nationalists have remained

in or gained central positions in rule of law institutions and been tolerated by international entities in the hope that they might be integrated into and ‘converted’ by the reform process.

- 17 Given the two main obstacles to local ownership—an unwillingness or a lack of capacity to drive change—it is useful to consider recommendations that seek to enhance the local *willingness* and *capacity* to establish and sustain an effective and democratic rule of law. It is possible to imagine a typology with four possible scenarios: (1) *reinvention*, where local actors are neither willing nor able to (re-) establish the rule of law and it may be necessary to create a new administration;<sup>4</sup> (2) *integration*, where local actors may be willing but not able, which would require that—where they exist—structures be incorporated into the state-building process; (3) local counterparts may be able but not willing to carry out reforms, a scenario which calls for a *transformation process*; or (4) local actors may be both willing and able, at which point authority should be in local hands and international support would focus on *reinforcing* existing authorities. It is important to remember that ‘local actors’ can be anybody from political authorities to judges or police officers and all may be willing or able to promote the rule of law to varying degrees, and independently of one another.
- 18 The lack of capacity of local actors and the fact that local actors are often the cause of a breakdown in the rule of law are important complicating factors in efforts to implement the principle of local ownership. It is therefore essential to approach the transition process with realism and to be aware of the limitations to local ownership. At the same time, it is all the more important to tackle the often paralysing lack of local capacity through efforts to build that capacity.

## 2.2 Making recommendations

- 19 There is a clear strategic principle that calls for the involvement of local stakeholders in order for the rule of law to be sustainable, trusted and actively used in the long run. In addition, there are numerous examples of how the principle of local ownership has been applied in micro-projects. Also strategies adopted to transfer responsibility for justice and security to local stakeholders may well be the product of practical circumstances and be wholly unrelated to, and not motivated by, ‘noble’ considerations of rightful ownership or concern for the views of any given population. Where the principle has been more consciously applied, local ownership—by definition—implies that local circumstances drive the process and set the parameters. The challenge then is to arrive at recommendations that move beyond the case- and even project-specific.

- 20 This policy guide addresses how the principle of local ownership might be incorporated into the strategic level of decision-making and planning. It offers recommendations that may assist policy makers and planners to decide 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 which factors should be taken into consideration in decision-making and planning. Recommendations on local ownership should therefore assess ‘what are the proper relationships between international and domestic (sovereign) actors [...] and what forms of participation in decision-making, policy planning and implementation, and impact assessments will legitimately reflect the values and interests of all relevant actors’.<sup>5</sup>
- 21 Another way to approach the division of responsibilities between international entities and locals is to identify areas where it may be necessary, acceptable or even desirable to override local authority, for instance, in order to break deadlocks over organised crime, corruption or war crimes. At the same time, it is important to pinpoint those areas where local ownership is particularly important because progress relies on locally engendered legitimacy or because they are of symbolic importance.
- 22 Recommendations should be guided by realism and a recognition of the limits to which international actors are able to control or direct a reform process. This is especially true given the extent to which the justice and security sector is affected by historical legacies and political contexts. This recognition can assist with determining priorities for the reform effort—and with identifying appropriate strategies for transition. In the same way, policy makers will struggle to overcome the structural obstacles inherent in how aid is delivered. The authors of this report have deliberately limited the scope of its recommendations to those that are directly relevant to implementing the principle of local ownership. They have not delved deeply into the challenges of coordinating international activity or other similarly real structural issues. Clearly, issues of cohesion, duplication, rivalry and lack of transparency on the international side are likely to complicate the transition to local ownership. While recommendations may not seem actionable immediately, they nonetheless indicate the steps necessary to put meat on the bones of local ownership.
- 23 The recommendations are structured in accordance with phases of international engagement. In part these correspond with phases in the transition to local ownership, but mechanisms for managing the transition can be applied at any stage of the process. For instance, consultation is just as important in defining the initial division of labour between international and local actors as it is during the implementation of reform programmes. In each roughly delineated phase,

recommendations are grouped under different headings that represent issues or areas of relevance to the transition to local ownership. The phases are in no way watertight categories, nor are they strictly consecutive. Instead, they reflect the fact that implementing local ownership involves both short- and long-term measures where, for instance, meeting the challenges related to public order and transitional justice in the immediate post-conflict period also entails elements of capacity building.

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## *Putting the Principle of Local Ownership into Practice*

### **3.1 Limitations to local ownership**

- 24 Although it is desirable that local actors take charge of their justice and security sector, and responsibility for the rule of law, international efforts to transfer responsibility should be accompanied by a realistic assessment of local capabilities and of local willingness to carry out these roles effectively and impartially. For instance, the warlords in Afghanistan took advantage of their cooperation with Operation Enduring Freedom to oust rival groups. A transfer may not be possible early on or until issues such as corruption, organised crime and political interference in the justice and security sector have been addressed. Meeting these challenges involves bringing about fundamental changes to a post-conflict society and requires a coordinated international approach.
- 25 The limitations to local ownership in these areas become clear when considering strategies for identifying local partners. For instance, the most powerful in a society may be those who benefit most from corruption, and are more interested in retaining their power rather than engaging in reform. The same is true of authorities that interfere with the rule of law. Choosing partners therefore involves making an assessment of willingness and capacity to reform. Strategies for what has become known as ‘spoiler management’ have underlined the need to distinguish between those who can be won over and those who cannot. This distinction becomes even clearer when promoting local ownership in corrupt and criminal environments. On the one hand, efforts to fight crime and corruption benefit

from increased effectiveness and legitimacy if they can incorporate local partners. On the other hand, legitimacy and effectiveness are reduced if efforts to combat organised crime and corruption take place in cooperation with individuals whom the population suspect of complicity in corruption or of being part of a criminal network.

- 26 Oversight structures are part of a long-term strategy to overcome the limitations to local ownership, and are central to directing the implementation of reform and monitoring regardless of whether there is a functioning rule of law. Oversight is in part conducted by international monitors, mentors and advisers, but oversight is also part of an institution and capacity building process because locally run oversight mechanisms are essential to implementing local ownership and to enhancing popular trust in rule of law institutions. Oversight bodies must be established, but skills must also be taught and the roles and duties of local actors who will staff or use oversight bodies communicated within the organisations and to the wider population. Oversight mechanisms can be either separate bodies or a corrective and disciplinary system inside an existing institution. Examples of oversight mechanisms include independent bodies overseeing senior appointments, complaints monitoring mechanisms, codes of conduct and disciplinary procedures in police and justice institutions. Developing the capacity for civilian oversight over the justice and security sector is a critical element of reform. This also includes providing support to civil society organisations to improve their capacity to fulfil an oversight role.

### *Corruption and organised crime*

- 27 Efforts to build the rule of law often fall victim to a corrupt and criminalised environment. Ties to criminal networks and political interference in policing or in trials undermine not only the course of justice, but also fragile popular confidence in the ability of the state to deliver justice. Widespread corruption and criminalised states are debilitating to peacebuilding efforts, but virtually all cases show that little consistent effort has been made to address the twin problems of corruption and organised crime. Moreover, in many cases responsibility for the rule of law is transferred to local authorities even though they are known to be corrupt. Regardless of whether these were conscious decisions, the lack of international focus is frequently linked to the daunting scope and nature of the problem, and particularly to the difficulty of breaking cycles of crime and corruption. This is especially true where corruption is an ingrained part of a society's way of life. The way in which the drug trade dominates Afghan society and security arrangements, for instance, are cases in point. Fighting organised crime and corruption and the clan and family-based patronage system of the Balkans require in-depth

knowledge of criminal networks and of the society more generally, as well as a network of contacts that can assist with the fight. At the same time, the local police service and justice system might be too involved or too frightened to conduct such a fight effectively. This underlines the need to find ways for international assistance efforts to cooperate with local partners—drawing on their knowledge and developing capacity.

### BOX 3.1 The Anti-Corruption Commission in Sierra Leone

The Anti-Corruption Commission (ACC) in Sierra Leone is a government-sponsored initiative that was created in 2000, largely because of pressure from international donors, but has been subject to political interference and achieved few convictions for corruption-related offences. The ACC has the power to investigate allegations of corruption in the public and private sectors. Once investigations are complete, the Attorney General, who has in the past been subject to political pressure, determines whether there are grounds for prosecution. Since October 2003 three judges from Commonwealth countries have been attached to the Sierra Leone High Court to hear cases referred by the ACC. However, the planned appointment of a prosecutor by the Commonwealth Secretariat has yet to materialise and this is currently undermining the independence and success of the ACC. Another criticism of the ACC is that it has focused almost entirely on a prosecutorial approach and neglected to examine the structural causes of the widespread corruption or to develop a national anti-corruption strategy.

- 28 The dilemma posed by conflicting timelines and donor demands is also important in this context. Efforts to fight organised crime and corruption are likely to have a long lead-in time and donors are unlikely to see a return on their investment in the short term. Vigorous efforts may also alienate local partners at the political level, whose support may be necessary for the successful promotion of reforms in other areas. International reformers have to decide on the level of pragmatism that is acceptable in each case, without endangering the viability and legitimacy of the rule of law reform project as a whole. Violence can also be targeted directly at reform efforts, leading internationals and their local counterparts to spend their time putting out fires rather than conducting long-term institution building.

### *Political interference in the rule of law*

- 29 The issue of corruption is often linked to a wider malign political context. In many cases political authorities are not interested in relinquishing or regulating their own power, often gain from a certain amount of instability and a non-functional rule of law and pursue agendas that seek to discriminate against their opponents.

In these circumstances any sustained local commitment to a rule of law reform is tenuous at best. Authority will still have to be transferred eventually but putting in place the minimum requirements for local ownership in areas such as corruption, crime and political interference may take longer, may involve delving more deeply into the fabric of society and may require international oversight for an extended period of time even after formal authority has been handed over.

- 30 Political interference occurs in police investigations; the prosecution and conviction of suspected criminals; in selection, recruitment and appointment processes; and in budgetary matters. It is often widespread and systematic, and usually based on ethnic loyalties. It derives from the fact that control mechanisms are non-existent and institutional divisions of responsibility are unclear. Political authorities as well as the justice and security sector often consider government manipulation to be 'normal' because of their prior experiences under an authoritarian regime. Institution and capacity building attempts to address these issues, for instance, by demarcating areas of authority or clarifying basic principles of democratic governance. Instilling a greater sense of professionalism and professional pride in rule of law institutions is a key element of strategies to combat political interference.

## RECOMMENDATIONS

### 3.1.1 Combating corruption and organised crime

- A Corruption represents one of the biggest 'spoiler' factors to successful reform efforts and sustained local ownership. Early efforts must therefore be directed at fighting corruption and crime as overriding problems throughout the system and at preventing the spread of corruption rather than combating it after the fact. This requires international coordination as well as the possible use of political and financial leverage.
- B Protection for whistleblowers is critical to breaking the cycle of impunity and codes of silence, but witness protection programmes are extremely difficult to implement in closed and clan-based societies such as in Albania or Kosovo.
- C Police services and judiciaries need to develop the ability to combat high-profile crimes, including the technical skills and investigative techniques needed to build and prosecute complex cases. The ability and willingness to combat high-profile crime will depend on supportive frameworks and conditions of service, including witness protection programmes and compensation for family members of staff killed or benefits for those injured in the line of duty.
- D The first steps towards breaking into criminal networks can benefit from, and may depend on, independent external investigators and advisers. International

actors must find ways to draw on local knowledge and capacities without exposing or undermining an investigation, for instance, by assembling teams of trustworthy and reliable local officers under international guidance or leadership, such as the teams initiated by EUPM in BiH.

### 3.1.2 Managing political interference

- A It is critical for the legal framework discussed above to include clear provisions on the appropriate relationship between politics and the implementation of justice. In particular the legal framework should protect the justice and security sector from undue political interference by nationalistic or factionalised political authority.
- B Transparency must be a guiding principle because depoliticisation efforts also play to a domestic audience and a public that has only fragile confidence—at best—in its police service and judicial system.
- C The international community has a special obligation to monitor discriminatory behaviour and to ensure the inclusion of groups that are marginalised or have been excluded in the past, such as minorities or women. In many cases representation of minorities will initially depend on international pressure.
- D When looking for local partners during the transitional period efforts should be made to identify and foster expertise among minority groups in society. Local ownership can only be sustainable if all groups, including ethnic and other minorities, cooperate on equal terms. Practitioners should encourage such cooperation and integration early on.

## 3.2 Mechanisms for transition

- 31 Notwithstanding the extent of their capacity and willingness, local stakeholders can contribute in some shape or form to the transition to a functioning rule of law with the help of different transition mechanisms. Mechanisms that have been applied in previous transition processes have included sharing authority, consultative mechanisms, tapping into traditional power structures, engaging civil society, and building institutions and capacity. The mechanisms for transition described in this section reoccur in various contexts and are often cross-cutting. 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 useful as both partners and facilitators in consultation processes but also as potential recipients when authority is transferred.

- 32 Transition processes in different sectors are often completely separate from one another. While complete coordination of mechanisms for transition is unrealistic, efforts can be made to ensure that the rule of law sector is coherent, especially in the police and judicial systems, in that effective law enforcement requires a minimum level of cooperation and cohesion between the police, prosecutors, defence lawyers and the courts.
- 33 How well the mechanisms for transition work is affected by the wider political context of establishing central government control over the entire territory. Ensuring that the rule of law applies equally throughout the country is a critical challenge. This is a practical issue for the police and justice sectors related to their presence in rural areas, but it is also a question of fostering loyalty to the state, an ethos of public service and duty, and loyalty to rule of law institutions. In order to transfer authority successfully, mechanisms need to reach out to outlying areas and not take place only in the capital.
- 34 A traditional way of transferring responsibility or authority to local stakeholders has been to hold elections to put in place formal local authority structures that can in turn legitimise the international presence in the country and lay the groundwork for its future departure. However, lessons learned suggest that a divided and traumatised society emerging from internal conflict may well be unable, in the short-term, to manage this transition without endangering the entire peace process, and that full local ownership on the political side may be counterproductive. This has led increasingly to the establishment of interim administrations in post-conflict contexts, in Liberia, Kosovo and Afghanistan, that are seen as a way of balancing the demands for legitimacy with the need to maintain a basic degree of stability and, at the same time, continue the process of post-conflict transformation. While this report focuses on local ownership of the rule of law, it is important to recognise the political context and its implications for the effective functioning of the rule of law. The creation of an interim government thus represents a first step to creating joint consultative and decision-making processes among the conflict parties, and providing for meaningful consultative dialogue between the international community and local stakeholders. Interim governments can, potentially, encourage local involvement in the transition to order and facilitate the maturation of political participation among the population.<sup>6</sup>
- 35 Another way to transfer authority is for international and local actors to share authority in the justice and security sector. Authority can be shared in different ways, for example, by allocating responsibility at lower levels but retaining international control in upper echelons, such as in the Kosovo Police Service (KPS) and the Sierra Leone Police (SLP); or by transferring control over different geographical areas to local authorities or by integrating international staff with local

staff, such as in the hybrid courts in Kosovo or Timor-Leste. Transparency is critical to the legitimacy of arrangements, where, for instance, internationals assume authority or interim governments are put in place. Unfortunately, shared authority is often undermined by the fact that international staff do not trust local staff and withhold information. Attempts have also been made to recruit national experts—either locally or from the diaspora—to serve in advisory or key positions in rule of law institutions.

- 36 Examples from the case studies show that consultative mechanisms have been useful tools for fostering local ownership of the rule of law, in, for example, Afghanistan, Sierra Leone and Liberia. Typically, a consultative process begins by identifying a wide range of potential stakeholders and discussing relevant issues with them in order to pinpoint specific areas of concern and gauge how they might be prioritised. Consultative processes can either shape the specific approach taken to providing assistance in a given area or simply contribute to an understanding of the context for the rule of law. In many societies this may involve tapping into traditional power structures.
- 37 While consultative processes are often time- and resource-intensive endeavours, they have proven and potentially significant pay-offs. Consultative processes in Afghanistan and West Africa have at least been initially successful at enhancing the legitimacy of the reform process and engendering local buy-in, as well as devising solutions that are suitable for a given context. The consultative process is also affected by the dilemma of whether local stakeholders should join a process or define the outcome of that process. In order to fulfil their potential—in terms of generating inputs and understanding to guide the reform process, and of securing popular support for the proposed changes—consultative mechanisms must be representative of all relevant groups in society, and plans and programmes must reflect at least some of the preferences that emerged during the consultation process. A consultative process that merely goes through the motions without internalising local views is easily exposed and undermines the legitimacy and the effect of the undertaking. For instance, the Police Steering Board established as a consultative mechanism by the EUPM in BiH was initially dominated by the international reform agenda with predetermined programmes that left no room for local preferences.

**TABLE 3.1 Mechanisms for transition – Examples from case studies**

	Afghanistan	Bosnia and Herzegovina (BiH) and Kosovo
Interim government	<ul style="list-style-type: none"> <li>• Afghan Interim Authority (AIA), 2001–2004</li> </ul>	<ul style="list-style-type: none"> <li>• UN transitional administration (Kosovo), 1999–present</li> <li>• Provisional Institutions of Self-Government (PISG), 2001–present</li> </ul>
Consultative mechanisms	<ul style="list-style-type: none"> <li>• Loya Jirga</li> <li>• Afghan Compact</li> <li>• Consultative Groups (CG) for different sectors</li> <li>• Advisory Groups on issues such as gender, human rights, counternarcotics, etc to feed into CGs</li> </ul>	<ul style="list-style-type: none"> <li>• Internal Security Sector Review Process (ISSR), Kosovo</li> <li>• Ministerial Consultative Meeting on Police Matters (MCMPM), BiH</li> </ul>
Tapping into traditional arenas	<ul style="list-style-type: none"> <li>• Use of <i>shuras</i>, Islamic civic councils, as one forum to consult with wider population on justice issues</li> </ul>	<ul style="list-style-type: none"> <li>• N/A</li> </ul>
Institution and capacity building	<ul style="list-style-type: none"> <li>• <i>Tashkeel</i>, official plan for the Afghan Police</li> <li>• Provincial Justice Initiative (PJI), which uses Afghan trainers to build capacity in justice sector at district level</li> </ul>	<ul style="list-style-type: none"> <li>• Kosovo Police Service School (KPSS)</li> <li>• Establishment of State Court and State Prosecutors Office in BiH</li> </ul>
Shared authority/responsibility	<ul style="list-style-type: none"> <li>• Judicial Reform Commission</li> <li>• Afghanistan New Beginnings Programme (ANBP) for Disarmament, Demobilisation and Reintegration (DDR)</li> </ul>	<ul style="list-style-type: none"> <li>• Use of international judges and prosecutors in hybrid courts in Kosovo</li> <li>• Intelligence Reform Commission, Defence Reform Commission and Police Restructuring Commission, BiH</li> </ul>
National professionals	<ul style="list-style-type: none"> <li>• TOKTEN programme, which seconds local and diaspora Afghan experts into various ministries</li> </ul>	<ul style="list-style-type: none"> <li>• Kosovo's Capacity Building Facility (CBF) Project</li> <li>• Increase in local political officers, legal and other experts in international missions, such as OHR, OSCE BiH or EUPM</li> </ul>
Engaging civil society	<ul style="list-style-type: none"> <li>• Afghan Independent Human Rights Commission (AIHRC) various civil society groups working to produce a nationally driven proposal to address transitional justice issues</li> </ul>	<ul style="list-style-type: none"> <li>• Community Safety Action Teams Programme, Kosovo</li> <li>• Municipality Security Forums, BiH</li> </ul>

Timor-Leste	West Africa (Liberia and Sierra Leone)
<ul style="list-style-type: none"> <li>• UN Transitional Administration (UNTAET), 1999–2002</li> </ul>	<ul style="list-style-type: none"> <li>• National Transitional Government of Liberia (NTGL), 2003–2005</li> </ul>
<ul style="list-style-type: none"> <li>• National Consultative Council (NCC) and subsequently the National Council to review all major UNTAET policies and regulations</li> </ul>	<ul style="list-style-type: none"> <li>• Consultative Group (CG) for Sierra Leone to implement the Poverty Reduction Strategy Papers (PRSP)</li> <li>• National Security Coordination Group</li> <li>• International Contact Group for Liberia (to consult with NTGL)</li> </ul>
<ul style="list-style-type: none"> <li>• <i>Badame</i>, a reconciliatory mechanism incorporated into the Community Reconciliation Process (CRP)</li> </ul>	<ul style="list-style-type: none"> <li>• Customary and local courts in Sierra Leone</li> </ul>
<ul style="list-style-type: none"> <li>• Capacity Development Coordination Unit</li> <li>• ‘Strengthening the Justice System’ Programme targeting the Ministry of Justice, the Courts, and Office of the Prosecutor-General</li> </ul>	<ul style="list-style-type: none"> <li>• Establishment of Hastings Police Training School and regional training centres in Sierra Leone</li> <li>• Development of coherent policy strategy: Senior Executive Service (SES) to develop technical and professional leadership and management in the public service in Sierra Leone</li> </ul>
<ul style="list-style-type: none"> <li>• Special panels for serious crimes</li> <li>• Joint police force – international-local chain of command</li> </ul>	<ul style="list-style-type: none"> <li>• Special Court for Sierra Leone</li> <li>• Governance and Economic Management Assistance Programme for Liberia (GEMAP)</li> </ul>
<ul style="list-style-type: none"> <li>• N/A</li> </ul>	<ul style="list-style-type: none"> <li>• TOKTEN programme in Liberia to recruit 20 professional expatriate and 15 local professionals into key rule of law institutions</li> </ul>
<ul style="list-style-type: none"> <li>• Civil society representatives were included in the Consultative Group, formed in 2005 to integrate all capacity building projects in the justice and security sector</li> </ul>	<ul style="list-style-type: none"> <li>• Community-based Sierra Leone Court Monitoring Programme (SLCMP)</li> <li>• Liberian National Law Enforcement Association</li> </ul>

## RECOMMENDATIONS

### 3.2.1 Interim authority

- A At least a minimum level of authority must be transferred to transitional governments in order for them to enjoy local legitimacy. Following the 2004 riots, the Provisional Institutions of Self-government (PISG) in Kosovo complained of being an empty shell and demanded that more authority be transferred to their hands. However, the international presence may have to ensure that this will not block the fair and effective application of the rule of law. At the same time, interim governing bodies benefit from being subject to a strict timeline for transition to more permanent democratically established institutions. Setting limits to ‘arbitrary’ initial arrangements can secure legitimacy and acceptance among various local stakeholders in the interim period.
- B Where there is no history of a strong central government, loyalty to the state and its primary responsibility to implement the rule of law has to be fostered during reform efforts, for example, through education and training. This does not detract from the need to be responsive to the particularities of different districts and communities, but should instil an understanding that the rights and obligations contained in the rule of law apply to all equally. This will of course depend on the extent to which the central government manages to ‘earn’ respect and loyalty from outlying areas.
- C It is useful for international organisations to approach local ownership at a district level in order to build a closer relationship with the local population, see for instance the Provincial Reconstruction Teams (PRTs) in Afghanistan, but they must be aware that they may be creating a parallel structure to the local government. Mechanisms for communication and cooperation between the centre and the districts must therefore be established.
- D Decentralisation of authority and empowerment of local power holders must be matched with mechanisms to follow up activities and hold them accountable for the implementation of policies and programmes.

### 3.2.2 Cooperation and/or shared authority (different levels/different functional areas)

- A National capacities should be encouraged and developed. International personnel should be aware that their presence can undermine local authority and responsibility. As such more national experts should be seconded into key governmental positions—such as advisory positions at different levels—with international financial support. The current practice of short-term secondments, such as in the Transfer of Knowledge Through Expatriate Nationals

(TOKTEN) programme, is a first step, but does not adequately lend itself to sustainable capacity building and ought to be revisited.

- B In peacekeeping missions increased efforts should be made to recruit local staff to work in their professional capacities. The international missions in BiH increasingly hire local lawyers and political advisers. This is a difficult balance—where international salaries tempt national staff away from playing a constructive role in local institutions where capacity is already scarce.
- C Where the decision is taken to have shared authority, for example in a hybrid court or in the police service, or where authority is being progressively transferred to local actors, international staff should be prepared to serve under local managers.
- D When engaging with local actors, it is important to establish a ‘culture of partnership’ rather than patronage. The UN Senior Mission Leadership Programme is an example of an appropriate forum for providing guidance and training to senior leaders to enable such a ‘culture of partnership’ to be mainstreamed in international missions.

### 3.2.3 Consultative mechanisms

- A Mechanisms such as commissions or consultative bodies should not be established as a ‘quick fix’ to foster local ownership. In other words, they should not replace a strategy for transition and for overcoming obstacles to fully fledged local ownership.
- B National commissions that have been established in different functional areas of the rule of law should include coordination mechanisms in order to increase coordinated local ownership of the rule of law.
- C Consultative mechanisms are invaluable and can be applied at all levels and across a variety of areas. They initiate inclusive processes that give participants the sense of having a stake in the process and its outcome. Despite their inherent value, consultative mechanisms should focus on outcomes rather than outputs, such as frequent meetings, and avoid becoming ‘talking shops’. Instead, they should be linked into decision-making processes that genuinely contribute to the formulation of policy. The process of establishing the Truth and Reconciliation Commission (TRC) in Sierra Leone involved comprehensive consultations with local civil society organisations and consultative conferences that resulted in the inclusion of novel elements in the TRC’s mandate, such as that special attention be paid to child victims and child perpetrators. In contrast, the establishment of the Special Court in Sierra Leone was criticised for being internationally driven and initially lacked local backing.

- D Where management capacity is so limited that coordination suffers, international staff can take on a facilitating and guiding role in advising on meetings and agendas, assisting with strategy formulation, and so on. Naturally, this requires skilled and experienced international staff.
- E An inclusive and consultative approach at the technical level tests its mettle when it reaches the level of political decision-making. Local rule of law professionals may have been open to and participated in developing reform plans and devising strategies. These are then often thwarted, however, by political obstructionism. At the conclusion of their work, the TRC in Sierra Leone published an extensive report containing recommendations on institutional reform but the government has been reluctant to implement the binding recommendations. In cases such as these, there is a clear opportunity for international authorities to assist local counterparts with resisting pressure or—in the most extreme cases—to impose the locally designed reform plans.

#### **3.2.4 Tapping into traditional areas**

- A International agencies should treat traditional rule of law mechanisms with respect and an open mind. While international standards on human rights should not be compromised, they cannot serve as pretext for not engaging with or finding genuine opportunities to integrate traditional approaches.
- B A delicate balance has to be maintained between Western notions that emphasise the rights of the individual and group rights that are prevalent in more traditional, non-Western societies.
- C Because consolidating the rule of law is a gradual process, shortfalls in human rights may have to be tolerated during the transitional phase in order to build greater respect for human rights over time, especially where traditional mechanisms are the only trusted and accessible form of justice. In the absence of credible alternatives, citizens trust informal leadership structures despite their flaws and abuses.
- D Traditional justice mechanisms can be an efficient and cost-effective way to reach out to communities and to dispense justice. Given that formal justice systems often do not reach beyond the cities, as in the case of Sierra Leone and Liberia, it is the informal systems that enable the majority of the population to have any access to justice at all.

### 3.3 Fact finding and identifying strategies for transition

- 38 A thorough understanding of the local context and local players is pivotal to addressing the dilemma of identifying partners. For this reason, fact finding is an essential foundation for developing a transition strategy, and also represents a first step towards implementing such a strategy. Fact finding should provide a roughly preconceived notion of the direction that the international intervention might take. In practice, however, international operations are seldom based on thorough fact finding and fact finding often seeks the path of least resistance. In other words, it is often not comprehensive and consults only with the most obvious counterparts such as among members of the diaspora—who may or may not be representative of the population—or restricts itself to gathering information in the capital rather than in less accessible areas. At the same time, fact finding efforts are almost always conducted under time and resource constraints, where a lengthy study of the local context and conditions may not be possible. This underlines the need to draw on local and regional experts and those international actors who have lived in the affected country for long periods of time and have obtained a substantial level of understanding.
- 39 The time and resource constraints that most fact finding efforts will be subject to highlight the need for coordination. All actors need to have a similar perception of the conditions for intervention, the existing local capacity, the gaps and the tasks. The fact finding effort will be more comprehensive and more thorough if the job is shared. Unfortunately, the dynamic among international contributors means that many are likely to be wrapped up in their own planning and are often unwilling to share information, especially if it might place their organisation in a negative light.
- 40 Many post-conflict interventions are criticised for not being well planned before deployment. At the same time, despite a formal dedication to the principle of local ownership, little effort is put into identifying and working with local actors because it is usually a complicated and time-consuming process. The same is true of international–local cooperation more generally: it is far more difficult to adopt a hands-off consultative advisory role than it is to simply do the job. International efforts to put local actors in control will not succeed unless there is a fundamental change in attitude among international donors—an attitude that acknowledges the time that it takes for local capacity to develop sufficiently, and that solutions can emerge by a circuitous route.

### BOX 3.2 Bringing together key players

'In instances where the civilian lead, and military support, for capacity and ownership-building is so important, there is no substitute for getting the key players together beforehand to participate in a "mission readiness" training simulation to familiarize everyone with their individual roles, and with the contribution they will be expected to make to the overall peacebuilding effort. The success of the UN Transition Assistance Group to Namibia (UNTAG) in 1989 was largely attributed to the fact that the head of mission called for such a pre-deployment exercise.'

*Arthur Dewey, former United Nations Assistant Secretary-General, and most recently U.S. Assistant Secretary of State for Population, Refugees, and Migration. Remarks made at Saltsjöbaden Seminar Meeting, Sweden, 26–28 September 2006.*

- 41 The benefits of going the extra mile to engage local stakeholders, starting from an effort to chart the stakeholders in the context of a fact finding process, can be significant. In Afghanistan the absence of such an exercise meant that the international approach did not take political divisions and local power structures fully into account. A dialogue can make conditions for intervention more propitious where it creates an understanding of the context of intervention and serves to identify the gaps and the tasks for either international support or substitution. Where an effort has been made to understand and to involve local stakeholders, international imposition may be more palatable. In this way, consultations become a first step in critical efforts to manage public expectations.
- 42 An exchange of ideas with local stakeholders is not only relevant to determining a division of authority between internationals and local contributors at the outset. Planning should also concern how to manage the eventual transition, but decisions on how to move to full local ownership are often haphazard. At the same time it is important to be realistic. Local stakeholders can provide vital input into developing a viable and practicable strategy, but a wide consultation may not be feasible and local stakeholders may not have the capacity for strategic planning.
- 43 There is also a series of issues linked to the question of international capacity and accountability. The capacity of an international operation has two implications for local ownership. First, international organisations take over responsibility from local stakeholders based on the argument that local counterparts lack the willingness or the capacity to fulfil their roles effectively. The extent to which the international players can then deliver a credible alternative to local ownership is central to their legitimacy and ultimately to their success. Second, the transition to local ownership, with regard to both the process of transition and the need to build coherent institutions and capacity, will be severely hampered if it is con-

ducted by a disjointed international effort. In several cases, Afghanistan's lead nation set-up being a notable example, different donors, organisations or lead nations have taken responsibility for different parts of the rule of law effort. In these cases, it has proved difficult to ensure that the rule of law applies equally across different sectors, across the country and to all groups.

- 44 Sequencing is one particular product of strategy development in which individual components or projects are arranged over time in accordance with priorities that have been identified. Because the credibility and legitimacy of the reform efforts are so dependent on bringing about tangible benefits as soon as possible, priorities have to 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. In the past, it often happened that only one aspect of the rule of law was targeted or the implementation of badly designed assistance programmes undermined progress in other sectors. Police reform was stipulated as a key task in the Dayton Peace Agreement for BiH but a number of years passed before the first tentative steps towards monitoring court activity were initiated. In Sierra Leone police reform was treated as an isolated project for a long time. While the 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. Other external factors include prior experience, the influence of individuals and the overall need for assistance in ongoing peacebuilding operations.
- 45 Time frames are tools for planning the transition to local responsibility. Bringing in local actors may affect the time frame of reform efforts in that local ownership may cause delays and be more costly, but it will ultimately make the process more sustainable. Donors and international and local political decision makers need to understand that results might take time to materialise if the local voice is to be allowed to develop and to articulate preferences, and that timeframes have to allow for some flexibility, especially to adjust the pace of reform as the process unfolds.

## RECOMMENDATIONS

### 3.3.1 Fact finding

- A Fact finding needs to be thorough enough to give international efforts a basis on which to assess whether authorities are representative of their population, and can speak on their behalf. However, there is already a great deal of existing information available both internationally and locally, and there is no need to reinvent the wheel.

- B Fact finding needs to map out the existing capacity and rule of law culture, both in the capital and in outlying areas. Plans based solely on insights and assessments made in the capital may not be applicable to the rest of the country.
- C Fact finding must explore what other contributors are doing, or planning to do, about rule of law reform.
- D The diaspora community is a convenient and valuable source of information. However, the view from these communities may have become disconnected from the reality in the home country and may be politically motivated. Any information gained must be balanced by reviewing other sources of information. In Timor-Leste rebel fighters were wary of returnees from abroad whom they believed ‘had chosen the easy life rather than fight’ and were now assuming the position of central interlocutor with the international community. This resulted in debilitating divisions in the country and led to the international effort misjudging the sustainability of local authority.

### 3.3.2 Strategic planning

- A A coordinated strategy on the rule of law is needed in order to avoid gaps, but also—with regard to local ownership—to prevent the emergence of two parallel systems (formal and informal). This will avoid disjointed and short-sighted international assistance, short-sighted local planning, overlaps between mandates and corruption. The strategy should also address the question of transition. Mechanisms such as the International Contact Group on Liberia and the Peace Implementation Council in BiH are often established to oversee a peace process and have been useful in providing strategic direction and harmonising international policies.
- B A countrywide strategy on the rule of law should be developed as early as possible in order to avoid the capital becoming separated from the rest of the country. Existing structural shortcomings, such as in Sierra Leone where courts only existed in cities and access was difficult for the rural population, must be addressed. This will, of course, be governed by the prevailing security situation but the lack of security should not become a pretext for not attempting to establish the rule of law in the rest of the country.
- C In order to convey the merits of a reform process, and justify the instability it may entail, it is crucial that international actors have a clear understanding of the objectives, rationale and strategies behind their undertaking as well as how to best operationalise reform concepts. This may seem obvious but, all too often, mandates are couched in terms that make them either incomprehensible or meaningless.

- D Ideally, the choice of strategy for transition should be based on an assessment of the existing capacity and circumstances in any given case. In order to mitigate the influence of external actors, a joint planning effort should identify the critical elements of the rule of law most in need of reform.

### **3.3.3 Timing and sequencing**

- 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 tangible results and help to secure popular support.
- B The sequencing of programmes must take local views into account, but also maintain an objective assessment of needs and not be distorted by the interests of high-profile stakeholders.

### **3.3.4 International accountability**

- A The multiplicity of actors on the ground makes it necessary for a coordinated approach to be taken by international actors in order to present a united voice to the local stakeholders. This is all the more difficult where tasks are divided into distinct components for which a particular donor or international organisation is responsible. After a disjointed start in BiH, the High Representative managed to coordinate the international approach through weekly meetings of the so-called Board of Principles, which included the heads of all major international missions in the country. The UN, which is often the overarching international presence, has a responsibility to coordinate the disparate parts of the reform effort.
- B The strategy must be communicated consistently to all counterparts in local authorities. At the same time, the objectives and strategy must be communicated to and understood by all international staff who will have to explain approaches to their counterparts. Although this is highly challenging, fostering communication remains a central goal and any improvements will assist the reform and the transition process.
- C It is essential to communicate to donors and political decision-makers that results may take more time to materialise if the local voice is allowed to develop and state its preferences.
- D International staff must be skilled in their own area of expertise and—given the emphasis on capacity building—at transferring knowledge to their local counterparts. Training and preparation for mission deployment should underline these skills and include components on the principle of local ownership to a greater extent than they do at present.

- E Where international organisations have taken on the transitional administration of a territory, mechanisms to hold international transitional administrations accountable should be established.

### 3.4 Meeting the demand for public order

- 46 Meeting the demand for public order is a specific task in law enforcement that aims to stabilise an area and entails managing hostile, and often armed, crowds as well as looting and similar security threats. In the context of a post-conflict society, threats to public order are a challenge that often has to be met in the early days where the remnants of conflict threaten to derail the consolidation of the rule of law. These initial public order challenges have been severely underestimated in the past, for example, during the burning of the Sarajevo suburbs in 1996 and the looting of Baghdad in 2003. Public order challenges resurface throughout a peace-building process and crowd control can remain an issue in volatile areas, for instance, when violence flared up in Kosovo in March 2004. Managing crowds is therefore a critical skill that must be passed on to the local police service.
- 47 Breakdowns of public order are closely linked to other components of a malfunctioning rule of law, such as confusion over or the absence of applicable laws, the lack of a functioning court system or a dysfunctional or non-existent penal system, which can contribute to general instability.
- 48 Given the fragile trust that many groups in post-conflict societies have in peace processes, it can be highly destructive when international and local security forces are unable to deal with public order challenges. Transferring authority for crowd control can have great benefits but also harbour significant dangers. On the positive side, the population may perceive the extent to which local police, including specially trained police units, can manage public order challenges as an indicator of the degree to which the rule of law can be trusted to deliver personal safety. At the same time, the three examples mentioned above illustrate that it is difficult for local police to be regarded as impartial security providers where tensions flare into violence. The ability to manage crowds and prevent an escalation of violence depends on the skills of local police service, on cohesion inside the police force and on its attitude towards the crowd they are facing. In other words, the extent to which local police can handle public order challenges is a question of both willingness and capacity. Public order challenges may also be too reminiscent of the preceding conflict to allow local forces to conduct crowd and riot control in a non-partisan manner, using proportionate amounts of force without escalating the situation. An ill-conceived and premature transfer to local actors may therefore threaten or even unravel hard-won progress on reconciliation.

- 49 In the immediate post-conflict phase, where the risk of violent outbursts is arguably the highest, there may be no alternative to international military and police forces dealing with public order challenges if local security forces have not been trained sufficiently to take on this role, do not have an impartial and non-confrontational outlook, or may join in the hostilities. It is crucial to begin building capacity for a long-term transition but—because crowd control is politically sensitive, highly context dependent and complex—putting in place the technical skills and the underlying values will take time.

**BOX 3.3 The March 2004 riots in Kosovo**

Following two incidents in the preceding two days—a drive-by shooting of a young Serb man and the drowning of three Albanian children—violence erupted throughout Kosovo on 17 March 2004. Over 50,000 people took part in two days of rioting that left 28 people dead, 600 injured and 3,600 Serbs, Roma and Ashkali homeless. The violence took international security forces by surprise and exposed the inadequacy of the Kosovo Force (KFOR) and United Nations Mission in Kosovo (UNMIK) Police responses to public order challenges in Kosovo. The international security forces were ill-prepared with regard to training, equipment and not least cooperation mechanisms between the international military and the police presence.

These shortcomings also extended to the Kosovo Police Service (KPS) which was not adequately trained or equipped to deal with unruly crowds on this scale and had only minimal coordination with KFOR and UNMIK. While some KPS officers acted highly professionally, others revealed their clear ethnic bias by either passively standing by or participating in the violence against minorities. Overall, the experiences of handling the March 2004 riots indicate that the KPS struggled to fulfil its role impartially because of inadequate training and inadequate back-up. This was compounded by the fact that the KPS organisational culture had not had time to consolidate, allowing KPS officers to fall back into old behavioural patterns when faced with challenging conditions and a tense political context.

- 50 Another challenge for the transfer of authority for crowd control to local security forces is linked to the need to respond instantly in the immediate post-conflict phase, where there is no time to identify suitable local partners. The most visible potential partners are likely to be those that were the most active during the conflict or are the most heavily armed—neither of which are acceptable starting-points for managing crowds. While it is theoretically possible that credible forces of peace present are in a conflict area, it will be exceedingly difficult to identify and assess them in time to entrust them with handling public order challenges in the wake of the conflict. They would also be likely to be regarded as a new opponent by the warring factions.

## RECOMMENDATIONS

### 3.4.1 Public order challenges

- A Police services must be trained to manage crowds and should have cooperation arrangements in place to enable them to call on back-up from international military or police forces.
- B Before transferring authority for crowd control, a thorough assessment of whether local police and other security forces can handle unruly crowds in an unbiased and non-confrontational manner must take place. Authority should only be transferred when qualified and effective leadership is in place.
- C A decision on transfer should take into account the extent to which the public perceives the police and security forces to be competent, hostile or biased. Opinion polls on public perceptions of the KPS indicate that while Kosovo Albanians declare themselves highly satisfied with police performance, Kosovo Serbs are far less confident.

## 3.5 Addressing the immediate need for transitional justice

- 51 The violent legacies of contemporary conflicts usually undermine popular trust in the rule of law. Transitional justice is related to local ownership in that the way in which transitional justice challenges are met will influence whether the local population can be persuaded to trust the police or the judiciary.
- 52 Transitional justice is a combination of both short- and long-term processes that countries moving from conflict to democracy decide to embark on in order to address recent large-scale human rights violations in order to guarantee accountability, administer justice and achieve reconciliation in the society, and to restore the dignity of victims. The norms and institutions of justice may serve several functions in the context of the transition. These include establishing individual responsibility and denying collective guilt, dismantling and discrediting institutions and leaders responsible for atrocities, establishing an accurate historical record, providing victim reparations and promoting deterrence. Managing past injustices is a key component to re-establishing trust among citizens and between the citizen and the state. Reconstructing this relationship requires an integrated approach and may take a number of forms: international, hybrid and/or domestic courts, such as in Sierra Leone and Kosovo, truth and reconciliation processes, such as in Afghanistan, and mechanisms for 'non-state' justice.
- 53 The notion of transitional justice originated in Latin America, Eastern Europe and South Africa in the context of states undergoing a change from an authoritarian or repressive regime to a more democratic one. Those experiences involved

reforming biased and dysfunctional systems of justice in countries that were functioning relatively well. In contrast, transitional justice is applied to countries emerging from conflict that have weak or no state institutions, where the need for accountability for past crimes (i.e., justice) has to be balanced with the interests of the state-building process and pursued in the shadow of potential violence (i.e., stability). These processes involve a sequence of crucial and interdependent decisions that start with whether there should be an attempt to come to terms with the past at all. Should trials be conducted using the legal system to ensure guarantees of due process? Or should they occur outside the legal system in a more political and expedient way? Should transitional justice target all perpetrators, only the leaders and their agents, or a mix? How should the perpetrators be punished? Should reparation be made only to the living or also to the heirs of the victims of past crimes? Should reparations be made to individuals or to groups?

- 54 Attempts to address the needs of transitional justice in a post-conflict context are also symptomatic of the difficulties involved in implementing the principle of local ownership. While 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 the traditions and values of the country in question, it must, at the same time, reaffirm international norms and standards with respect to human rights. This means having to strike a difficult balance between allowing local preferences to determine the main parameters within which transitional justice is pursued—for instance, by choosing between a Truth Commission or a Tribunal, choosing to apply both mechanisms or deciding on the scope of a transitional justice review—and ensuring fair and non-partisan application of the mechanisms. The challenges that might arise in the process can be linked to shortfalls in willingness, such as ethnic bias, or capacity, such as a lack of qualified legal staff.
- 55 The local ownership dilemmas also come into play in decisions on applicable law and appropriate punishment; in the challenge of identifying professional, unbiased local cooperation partners; and in the need to ensure sustained funding and support to carry out a transitional justice process thoroughly.
- 56 The role of international agencies is to ensure that local preferences do not undermine democratic values and are not discriminatory. International actors can do this by mentoring and assisting with the development of laws and constitutional processes, and also by taking on a share of responsibility for the execution of the laws, for instance, by deploying international judges or issuing executive policing mandates. Where local authorities are unwilling to fulfil the functions necessary for the effective functioning of a fair justice system, the international role and responsibility will be greater. In cases where international judges or police officers take on

the responsibility for difficult cases, such as those that might involve corruption or organised crime, they should be aware of the possibility of creating dependencies.

## RECOMMENDATIONS

### 3.5.1 Dealing with war crimes and impunity

- A The issue of war crimes and crimes against humanity should be addressed immediately. In some cases this may result in a decision to postpone action but this will have been a conscious choice that cannot be interpreted as an effort to sweep past crimes under the carpet. Liberia initially concluded that if Charles Taylor did not interfere in the politics of the region, he could remain in Nigerian custody. However, when he continued to play a role in Liberian politics, this was considered an affront to victims and pressure for Taylor to stand trial increased, leading to his extradition in March 2006.
- B A mixed approach that combines formal internationally implemented and sustained mechanisms with informal, locally rooted processes is a useful compromise. In Timor-Leste criminals were sentenced in accordance with international practice, but the sentence was declared pending and the guilty party given an opportunity to make reparations in accordance with traditional practice. This can also encourage reform of local models in accordance with international standards without imposing external solutions.
- C While a locally grounded effort to deal with the past is critical, international involvement is necessary where courts or other transitional justice mechanisms are biased or lack capacity. Where an international or ‘hybrid’ model of transitional justice is chosen, such as in Sierra Leone, strong efforts must be made to ensure that it becomes a catalyst for permanent change in the domestic system.
- D Where certain types of crime have been identified as especially sensitive, it might be useful for them to be subject to internationally-run trials. There may be a lack of experience with a certain type of crime, a weak link in the hierarchy of courts or systematic bias. These shortfalls can be overcome through international participation. In Sierra Leone judges from Commonwealth countries were attached to the High Court to hear cases referred to it by the Anti-Corruption Commission.
- E If a gap in the judicial capacity has been identified, the deployment of international judges, prosecutors and defence lawyers can be instrumental in building up such judicial capacity. However such deployments should be strategic rather than fill gaps haphazardly. International judges must also be well prepared and become acquainted with local laws and customs.

- F A gradual handover of the more sensitive cases enables local courts and prosecutors to develop skills, experience and confidence while an international presence can monitor proceedings.
- G The way in which the police and judicial institutions deal with ongoing violence and violations, and the extent to which they are non-partisan or not ethnically biased, affects local trust in and acceptance of the rule of law. Monitoring investigations into attacks against minorities should be a priority area for international agencies.

### 3.6 Institution and capacity building

- 57 Institution and capacity building goes to the heart of creating sustainable local ownership by addressing gaps in the willingness and capacity of local actors using elements of structural reform and elements of normative reform. Measures to promote structural reform put in place an institutional structure, a legal framework—including laws to define the role of the institutions—as well as internal regulations and procedures and the skills necessary to run the institutions effectively. Measures to foster normative change promote certain values, such as transparency and respect for human rights, in individuals and the institutional culture. The objective of institution and capacity building is to achieve a functioning system of rule of law 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. The formulation of a national security policy and a vision of how justice and security sector institutions are interlinked are also critical to ensure the coherence of the institution and capacity building process.
- 58 In the context of local ownership, institution and capacity building is both a process and an outcome. 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. Building institutions and capacity is also a mechanism for transition in that it addresses the gaps in capacity that make an international role necessary in the first place. However, all this is meaningless if local 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.
- 59 Institution and capacity building seeks to enable local ownership through the following main activities. First, it entails recruiting, training, equipping and deploying the bulk of staff, be they police officers, legal or corrections staff. This starts the process of putting the majority of local actors in place in the justice and security sector institutions and often involves a vetting process.

**BOX 3.4 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, incl. budget management, human resources, planning, strategy and policy development Political and legal authority
Normative dimension	Internal disciplinary mechanisms Curriculum development 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) National security policy Anti-corruption and political independence Willingness to act on misconduct Relations/cooperation with public

- 60 Second, the physical institutions as well as organisational structures inside which the staff will fulfil their duties must be established. These institutions include police stations, courts, training institutions such as police academies or university law faculties, and Ministries. This also implies the availability of text books, curriculum development, and so on. Early missions with a rule of law mandate were often limited to these first two aspects of institution and capacity building and often focused exclusively on the police rather than on the complete chain of justice. There is still a tendency to use technical measures in the hope of bringing about fundamental cultural change as well as a lack of fundamental understanding about how to manage change.
- 61 Third, a specific part of institution and capacity building and a foundation for local ownership entails ensuring that a legal framework is in place within which rule of law institutions can function. This involves determining the division of labour between the various rule of law institutions but also—where necessary—creating bodies such as a Supreme Court, a Ministry of Interior or an Ombudsman Office. The most fundamental issues, such as the division of powers, the

independence of the judiciary or fundamental guarantees of human rights, are likely to be addressed in the context of a constitutional process—either putting in place a new constitution or revising the existing one. In this context, the dilemma between involving local stakeholders either in a process or in determining outcomes can be partially defused. Once some of the structural elements are in place, such as the independence of the judiciary, there is room for local preferences to be expressed about how to structure the court system or the police service, or the kind of external oversight mechanism that is suitable for a given society.

- 62 Clarity and transparency on fundamental legal issues are not only critical for the institutions themselves, to reduce any arbitrariness and to enhance legitimacy and effectiveness, but also central to the population at large in that clarity can contribute to reducing mistrust and to building confidence in the institutions and the value of the rule of law more generally by increasing predictability. This is especially true where rule of law reform is taking place in connection with a wider reform of the system of governance. For example, the legal system can assist with explaining the role, rights and duties of police services, and also the duties of citizens to support and cooperate with the rule of law institutions. In addition, a set of laws is required to guide the activities of each institution. For instance, in several cases a police law was put in place that stipulated roles, internal procedures and organisation, rank structures, chains-of-command, and so on. This is often subject to significant political wrangling because clarifying these issues can reduce the scope for political interference in policing arrangements, such as occurred in BiH where laws on the police were only introduced 10 years after the peace process began.
- 63 Apart from the legal framework that determines the organisational and functional parameters of rule of law institutions, the applicable law on the basis of which the police service, judges and prosecutors exercise their authority needs to be put in place or made practicable and brought into line with international standards. The international security and police forces initially struggled with a disputed legal basis in Kosovo, where it was unclear whether the Yugoslav criminal codes should apply. In other words, clear criminal codes and criminal procedures are necessary in order for the police to be able to enforce the law. The content of the codes can be left up to local preferences, for example, whether an investigation should be led by the police, a prosecutor or an investigating judge. Unfortunately, because of the involvement of too many international donors, codes are sometimes inconsistent.
- 64 Fourth, in order for local ownership to be effective and sustainable, management and administration capacity are critical. The importance of the ability to run fledgling institutions has been neglected in the past, but is receiving more attention

in current operations. Training programmes can now include fast-track options, such as in Iraq, and a focus on management skills for senior police officers and ministry officials, such as in the Kosovo Police Service, the Liberian National Police or the Sierra Leone Police. Important elements of management training have included the administration of budgets, human resources and disciplinary measures. Naturally, administrative skills are needed not only at management level, but throughout the rule of law institutions.

- 65 Fifth, mentoring and monitoring is a long-term component of institution and capacity building and is a safeguard in the period after the formal transfer of responsibility. Any organisation needs time to mature and develop or adjust its organisational culture even where its staff members may have enjoyed extensive training. Training now routinely incorporates the political and normative context, emphasising democratic principles, human rights, responsiveness and accountability. Regardless of whether primacy rests with international or local staff members, follow-up in the shape of further mentoring and monitoring should continue for a significant period of time. Mentoring and monitoring illustrates the long-term nature of assistance to institution and capacity building. The dilemma between the time needed to consolidate reform, and international assistance which is notoriously more impatient and short-sighted is especially apparent in this area. Ideally, the performance of police officers, judges and prosecutors should be monitored using home-grown internal guidelines, promotion criteria, disciplinary mechanisms and external oversight bodies. These may not work perfectly in the early phases, and international oversight and guidance on the application of institutional safeguards, as well as simply mentoring to optimise performance, play a useful role. Mentoring, monitoring and advisory missions are experiencing a new lease on life, not least reflected in ESDP operations, the mandates of which typically include mentoring, monitoring and advising as core tasks. Success remains dependent on the quality of the staff who can be recruited for international service.
- 66 The normative elements of training and transforming organisational cultures contribute to reconciling local ownership of the reform process with the outcome of reform by establishing parameters for international minimum standards and communicating values to local staff members. By fostering compatible views, the risk inherent in allowing local solutions is also reduced. Ultimately, building institutions and developing the capacity to lead them also means accepting that outcomes will be determined locally sooner or later. Institution and capacity building is not a one-off activity, nor does it aim to create an end state. Any justice or security sector is in a continuous process of adapting itself to a changing security environment.

- 67 The difficulty of having to find suitable partners for the institution and capacity-building effort is linked to the issue of vetting and involves a fundamental decision about whether to work with existing structures and staff or build new institutions from scratch. The vetting process entails screening existing or newly recruited staff who then form the body of the institution. The dilemma manifests itself in cases where it may not be feasible to suspend the institutions' functions while selecting, training and allowing new staff to mature into their roles. The international presence has a choice between fulfilling line functions in the interim period or allowing 'tainted' staff to continue in their positions. In the case of South Africa, staff were retained because there was a fear that not enough new civil servants could be recruited to run the country. This is a dilemma inherent in vetting processes and need not be elaborated, except to underline that the degree to which authority for institution building can be transferred to local counterparts will vary greatly with the perceived culpability of the existing body of staff.

## RECOMMENDATIONS

### 3.6.1 Restructuring

- A A National Security Policy should be developed in concert between local and international stakeholders, and will serve as the framework for many of the structural reform measures in the justice and security sector.
- B An essential goal of restructuring is to create affordable and sustainable institutions. This should be reflected in a number of structural elements, including size, staffing levels, facilities, equipment and salary structures. This will require difficult choices and prioritisation over, for instance, whether or in what form the country in question can afford to create the bodies recommended below.
- C No institution can function without an administrative backbone, including human resources, finance and other administrative support functions. As much effort has to be put into creating the organisational framework of an institution as is put into honing the front line.
- D Where the police service has played an active role in the conflict, it has to be converted from an instrument of war and given a peacetime role, which entails, among other things, a reduction in size and armaments, restructuring and a demilitarisation of doctrine and modus operandi.
- E A vetting process is essential to remove staff who may seriously undermine the legitimacy and trustworthiness of the newly reformed or established institutions. Unfortunately, vetting is often subject to political pressure and may result in a process that is either incomplete or limited in scope. In this regard,

international authority should prevent shortcuts that would undermine the legitimacy of the vetted institutions. At the same time, public involvement in the vetting process is important because it is one way to engender the public's trust in the rule of law.

- F Existing law should be scrutinised for applicability, and workable criminal codes and procedures developed as soon as possible, in cooperation with local legal experts.
- G Laws regulating the police and the judicial and penal systems should also be developed as soon as possible. Given that local capacity is usually scarce, the laws may take time to draft and the process may require international support or the use of mentors from countries that have undergone similar transitions.
- H A system for merit-based promotions should be put in place and implemented. This should be coupled with clear and efficient rank structures, which are usually part of the laws regulating the police and judiciary.
- I Laws typically include provisions on how rule of law institutions can be held accountable, for instance, by creating and regulating oversight bodies such as the Public Complaints Bureau in BiH or the Police Council in Sierra Leone. International supervision of, or participation in, oversight bodies may be necessary in the start-up phase.
- J A mission statement to guide institutional business and development on a daily basis should be devised for each rule of law institution. This process should at least involve mid- to senior level managers.
- K Disciplinary rules and regulations should be put in place, including organisational units that can investigate complaints and enforce disciplinary measures. Internal investigative units may have to include international staff or close monitoring in the initial phase to overcome local reluctance to investigate colleagues.
- L Independent bodies for senior appointments, monitoring complaints and disciplinary action in the police and justice institutions are a central component of local ownership and can also enhance popular trust in these institutions. The High Judicial and Prosecutorial Council (HJPC) and the Independent Selection and Review Boards (ISRB) in BiH are good examples. International representatives may guide the start-up and learning phases of the review bodies, either as members or as external consultants or advisers.

### 3.6.2 Training

- A There is a difficult balance to be struck between getting police officers on the street and providing them with sufficient training to allow them to do their job. The German police project that provides Afghan National Police officers with a thorough three-year training programme and the US two-week alternative are examples at opposite ends of the spectrum. If training periods are too short, local ownership and popular trust in the police and judiciary may be undermined by spreading poorly trained and ineffective staff throughout the country. Human rights abuses often result from a lack of skills as much as from attitudes.
- B Existing local leadership capacity should be reviewed and, where appropriate, offered tailor-made fast-track training that enables potential leaders to take on management responsibility as soon as possible. This will serve to put in place a 'home-grown' leadership and increase local authority over rule of law institutions. This applies to all levels—better use can be made of local professional skills by flagging existing local capacity and expertise to enable it to be consulted or placed in positions in the new or reformed institutions.
- C It is important to recognise that training must continue over an extended period. For instance, local police forces will need a range of specialised skills in order to fully and effectively exercise their authority with respect to the whole spectrum of criminal activity. Examples of challenging areas that require specialised training are organised crime, and crowd and riot control.
- D Training should emphasise strategic management capacity, that is, develop skills to identify and formulate strategic priorities as well as analytical and assessment capacities.
- E Efforts should be made to begin training local trainers and to bring them into the capacity building process as early on as possible. Train-the-trainer efforts began late in Sierra Leone and the training of the SLP remained dependent on the United Nations Police (UNPOL) for a long time. In addition, there should be an effort to extend training centres to districts, such as through the use of mobile training centres. The establishment of new training institutions should also take into account existing educational facilities and coordinate curriculum development and reform—especially with regard to linking judicial training centres with law faculties at universities.
- F It is beneficial to coordinate curricula across the justice and security sector. Particularly where new laws and standards have been introduced, training for police officers, judges, defence lawyers and prosecutors should be in sync. The

introduction of new criminal codes and criminal procedure codes should be accompanied by widespread training and outreach activities across all sectors of society, including for legal professionals and police officers but also for other civil servants, local office holders (e.g., Mayors) and perhaps also schools and universities. This was the case following the introduction of the new Criminal Code and Criminal Procedure Code in BiH.

- G Meeting the need for multi-ethnic police forces may require unequal treatment in training, because of, for example, differences in the level of education. In this way, training can level the playing field and allow members of all groups to participate fully in the police or judicial services. This is especially true in countries where there is a high rate of illiteracy and systematic discrimination.
- H Where training is provided by several donors, different components of the training will have to be coordinated closely to ensure a uniform approach.
- I An assessment of the impact of training programmes is critical but rarely takes place. Insights gained from evaluations can be fed back into training efforts.

### **3.6.3 Budgets and financial matters**

- A It is important that budgetary issues are clarified, not least by working with agencies in other fields and the overall development effort. Long-term planning for reform should be based on an understanding of where funding is coming from, whether the supply of funds is predictable and how much will be available in the interval before responsibility can be transferred to local authorities. Although the Sierra Leone National Budget has fully funded the salaries of SLP officers since 2003, the financial sustainability of the service is uncertain given limited government resources.
- B Budgets should be channelled through local institutions as soon as possible, if they have the capacity to manage the budget and if there are effective oversight mechanisms to hold the institutions accountable.
- C A mechanism for the gradual local takeover of financial control over foreign aid should be put in place across the board. Some degree of government control over foreign aid is important in order to ensure leverage (political and financial) and to build local public confidence. In Liberia the Governance and Economic Management Assistance Programme (GEMAP) was launched to tackle public service corruption and to ensure proper management and accountability by including international experts with cosignatory authority in the Central Bank.

- D Channelling funds through NGOs may create another layer of bureaucracy and expense, but these may be the only bodies that have the administrative capacity and presence throughout a conflict area to deliver funds.

### 3.7 Engaging civil society

- 68 Establishing the structures and institutions of the rule of law and strengthening the capacities of these institutions is not sufficient to ensure the proper functioning of the rule of law. The *rule of law culture* is a key factor in ensuring the success of justice and security sector reform efforts. In addition to cultivating local ownership among the staff in rule of law institutions and political authorities, involving civil society has become an integral part of justice and security sector reform and of implementing the principle of local ownership.
- 69 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 entails 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 obtaining justice. Civil society organisations—academics, professional associations, community and religious 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 manner where it functions as a watchdog over policies developed and applied in rule of law institutions.
- 70 International actors often underestimate the difficulty of bringing about popular engagement in post-conflict and post-authoritarian settings in which there is no tradition, no interest and little taste for social activism. 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. In both Kosovo and BiH forums for regular meetings have been established at the municipal level.
- 71 International support for civil society is also fraught with danger in cases where local NGOs form in response to available funding rather than as a reflection of grassroots concerns. In the worst case, international assistance can have the opposite effect to that which is intended. Rather than activating wider sections of the population, external support can isolate indigenous civil society organisations from their popular base.

## RECOMMENDATIONS

### 3.7.1 Fostering confidence by engaging civil society

- A Community outreach projects, including town or village meetings, television and radio programmes and school visits, are critical elements in engendering trust in security sector institutions. Crimewatch-style television programmes, in which unsolved crimes are presented and viewers can phone in, have proved effective at engaging the population in the rule of law in the Balkans. Access to justice is an essential focus for outreach projects. This is important to foster links between local actors, especially between civil society, the police and the judiciary.
- B Outreach efforts should include a capacity building component aimed at local NGOs and advocacy groups to enable them to conduct their own outreach programmes. This might be achieved by involving local NGOs—where they exist—in the planning and implementation of awareness campaigns, thereby offering on-the-job training. For example, a security sector review process was led by the Liberia National Law Enforcement Association with support from an international NGO. Where there is little or no tradition of an active civil society, international monitoring of and advice for locally devised campaigns will have to continue. Funding for local civil society will also be necessary.
- C The public affairs section or department of international organisations operating in a country is perhaps the one department where recruitment of local staff is imperative. Local staff who are more familiar with the culture of the country can disseminate information to the wider population in an appropriate fashion. This will raise greater awareness of the reform process and can lead to wider popular support.
- D Training for the media is a useful step towards ensuring the continuation of outreach and enhancing the media's ability to fulfil their part of the oversight function of security sector institutions. In West Africa radio and—where available—television have been critical to raising awareness and engaging the public in essential processes such as vetting. However, the print media proved a less useful channel in Liberia because literacy rates are low and newspapers have small circulations and are not readily available outside Monrovia.
- E International contributors to the development of civil society should be aware that funding can distort the evolution of indigenous NGOs. It is therefore critical to find the right balance between international encouragement and financial support, and allowing the space for true grassroots concerns to emerge.

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## *Assessing the Transition*

- 72 IN THE PAST international operations have generally proven unwilling to engage in, or incapable of, serious self-scrutiny not only because of time pressures, but also because of political pressures from donors and contributors. Developing a system for setting objectives and benchmarks and for measuring progress towards these goals is a complex and time-consuming endeavour, but regular assessments of progress and of potential lessons are also necessary to ensure a timely transition and to prepare for a phasing out of the role of international actors. Measuring progress is critical because either premature or delayed handovers can undermine long-term local ownership. The collapse in Timor-Leste in 2006 and the successive missions in Haiti indicate that mission progress and the local authority's ability to uphold the rule of law unaided can be misjudged. A system for measuring progress involves developing a complex model that depends on having a clear idea of the overarching goals of international assistance and the benchmarks that should be achieved on the way towards these goals. The ability to pinpoint goals and to evaluate whether progress is being made will in turn depend on having mapped out the starting-point sufficiently well in initial fact finding efforts.
- 73 Arriving at an accurate assessment is an intricate undertaking because it should merge insights from a range of programmes and activities. Programmes and progress in the different areas are interdependent and setbacks in one area will have repercussions in others. At the same time, progress reports frequently focus on outputs, that is, whether a programme has been carried out, rather than outcomes, i.e. whether that programme has had the desired effect. 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.

- 74 Assessments of progress should not only take place at the end of the project cycle, but also be undertaken at regular predetermined intervals. This is necessary in order to review achievements, assess the remaining shortfalls and inform a renewed process of planning and adjustment. Efforts to measure progress also have a capacity building component that aims at developing the local capacity to track and evaluate progress and to raise awareness that regular reviews are an essential part of good management and administration.
- 75 There is also a tendency to focus only on hard facts. However, popular confidence in the rule of law is a central element of local ownership, so evaluations should also take ‘soft’ feedback on perceptions of security and justice into account.

## RECOMMENDATIONS

### 4.1.1 Measuring progress as a tool of transition

- A Assessments must take a realistic view of what is possible and what constitutes reasonable objectives. These should be based on thorough fact finding and continuous dialogue with local actors at all levels, and be reflected in the national security policy for the justice and security sector.
- B Clearly defined benchmarks must be developed in order to measure progress. This presupposes that the strategy recommended above has been developed and provides a common understanding of core objectives. In order to avoid establishing a complex system that is too cumbersome or time-consuming to operate, policy makers should identify priority areas and key objectives in collaboration with their local counterparts.
- C Benchmarks should reflect the time it takes to build local ownership so that it will be possible to identify delays involved in implementing local ownership and to adjust programming accordingly.
- D Inside the international presence or mission structure, dedicated resources should be allocated for assessment and benchmarking. Where available, local staff should be brought into the assessment to ensure that at least some ‘local’ views are reflected in the assessment and that local capacity is built.
- E Because several international organisations are likely to be involved in promoting the rule of law, it is important that assessments are shared at a strategic level in order to gain an overall view of progress and identify openings for increased local involvement.

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## *Concluding Remarks*

- 76 ALTHOUGH MOTIVATED by noble considerations about the rightful owners of the rule of law after conflict, policy makers must understand that implementing the principle of local ownership is fraught with difficult choices and trade-offs. There is, for instance, little value in empowering local political authorities that are either biased, corrupt or both. Nor does it inspire local confidence in the rule of law when ill-trained police officers enforce the law heavy-handedly. This illustrates that the dual objectives of establishing the rule of law, on the one hand, and increasing the participation and control of local owners, on the other, may conflict at times. A situation is easily conceivable where local stakeholders are confident, capable and effective at taking charge but the rule of law may suffer because it is applied unevenly or unjustly. The international presence will then have to decide which of its two goals to prioritise: whether to promote local ownership, perhaps at the expense of human rights, or step in to override local ownership and safeguard the democratic rule of law.
- 77 International missions often assume that they would do a better job than imperfect local authorities—despite being limited in terms of their duration, funding and scope. Commitment to the principle of local ownership, however, means allowing newly established bodies to make mistakes. The question then arises: which mistakes cannot be tolerated and in which areas does the international community need to retain a ‘power of veto’. These would include areas in which the local authorities may be biased, for instance, with regard to the treatment of minorities and related issues such as the right of return and human rights, and that have

important implications for the viability of the peace process. Another area where local authorities might not be credible power holders is with regard to ensuring redress for past atrocities crimes, or combating corruption and organised crime. At the very least the international presence can provide the space for local ownership to grow by reducing tensions, stabilising the security situation, preventing total economic collapse, and so on.

- 78 Throughout the process it is important to acknowledge that local ownership is about how people will be affected by a reform process that is likely to bring instability—inherent in all organisational reform—and few tangible benefits in the immediate future. In order to consolidate a locally owned rule of law the emerging institutions and practices have to gain the population's trust. The key to implementing local ownership lies in being transparent, allocating significant resources to communication and meeting local counterparts and their concerns with respect and an open mind.
- 79 A key question will be how to prioritise, given the fact that funds for reconstruction and reform are always limited. Several recent missions, such as the EU missions in the Balkans or Eastern Europe, have relied on a more limited international role in terms of numbers. This more targeted approach in which skilled international staff are placed in key positions to direct, guide, mentor and advise—and only exercise full authority over police services, and judicial and penal institutions and oversight mechanisms where unavoidable, may be a less expensive but equally effective way to structure international assistance. The growing number of programmes that make constructive use of national professionals in line and oversight functions are a natural continuation of and useful complement to international monitoring and mentoring.
- 80 International actors should be careful about assuming that local actors share the same agenda. Divergences in views about priorities, processes and outcomes can be linked to personal interests in power and gain, but also to cultural differences. After years of fighting and suppression, a simple 'switch' to the principles of democracy, the rule of law and human rights may be difficult to bring about. Although it is likely to be a comprehensive and time-consuming process, this does not mean that such a transition should not be attempted. Regardless of the challenges, dilemmas and obstacles involved in implementing the principle of local ownership, there is ultimately no alternative to transferring the responsibility for maintaining a just order to the local actors who will use, govern and be subject to their rule of law.

1. United Nations (2004a).
2. Scheye (2002), Hansen (2005), Marenin (2005) and Chesterman (2007).
3. Hansen (2002, 2005).
4. Chopra and Hohe (2004).
5. Marenin (2005).
6. Dwan & Wiharta (2005).



- Alexander, Jane, 2003. *A Scoping Study of Transitional Justice and Poverty Reduction*. Final Report for the Department for International Development. London: Department for International Development.
- Bayley, David H., 2006. *Changing the Guard: Developing Democratic Police Abroad*. Oxford/New York: Oxford University Press.
- Bayley, David H., 2001. *Democratising the Police Abroad*. New York: National Institute of Justice.
- Bruce, David and Rachel Neild, 2005. *The Police that We Want. A Handbook for Oversight of Police in South Africa*. Johannesburg, South Africa/New York: Centre for the Study of Violence and Reconciliation/Open Society Justice Initiative.
- Call, Charles T. and William Stanley, 2002. 'Civilian Security', pp. 289–305 in Stephen Stedman et al (eds.), *Ending Civil Wars*. Boulder: Lynne Rienner Publishers.
- Caplan, Richard, 2005. *International Governance of War-Torn Territories: Rule and Reconstruction*. Oxford: Oxford University Press.
- Caplan, Richard, 2004. 'Partner or Patron? International Civil Administration and Local Capacity-Building', *International Peacekeeping*, vol. 11, no. 2, pp. 229–247.
- Chanaa, Jane, 2002. *Security Sector Reform: Issues, Challenges and Prospects*. Adelphi Paper, no. 344. London/Oxford: International Institute for Strategic Studies/Oxford University Press.
- Chesterman, Simon, 2007. 'Ownership in Theory and in Practice: Transfer of Authority in UN Statebuilding Operations', *Journal of Intervention and Statebuilding*, vol. 1, no. 1, pp. 3–26.
- Chesterman, Simon, 2004. *You, the People. The United Nations, Transitional Administration, and State-Building*. Oxford: Oxford University Press.
- Chopra, Jarat and Tanja Hohe, 2004. 'Participatory Intervention', *Global Governance*, vol. 10, no. 3, pp. 289–305.
- Cohen, Craig, 2006. *Measuring Progress in Stabilization and Reconstruction*. Washington D.C.: United States Institute for Peace.

- Covey, Jock, Michael Dziedzic and Leonard Hawley (eds.), 2005. *The Quest for Viable Peace*. Washington D.C.: United States Institute for Peace.
- DAC/OECD, 2005. *Security Sector Reform and Governance*. DAC Guidelines and Reference Series. Paris: OECD.
- Department for International Development, 2003. *Security Sector Reform Policy Brief*. London: Department for International Development.
- Dwan, Renata and Sharon Wiharta, 2005. 'Multilateral Peace Missions: Challenges of Peacebuilding', pp. 139–166 in SIPRI *Yearbook 2005: Armaments, Disarmament and International Security*. Oxford: Oxford University Press.
- Elster, Jon (ed.), 2006. *Retribution and Reparation in the Transition to Democracy*. New York: Cambridge University Press.
- Fearon, James D. and David D. Laitin, 2004. 'Neotrusteeship and the Problem of Weak States', *International Security*, vol. 28, no. 4, pp. 5–43.
- Groenewald, Hesta and Gordon Peake, 2004. *Police Reform through Community-Based Policing. Philosophy and Guidelines for Implementation*. New York/London: International Peace Academy/Saferworld.
- Hansen, Annika S., 2005. 'Building Local Capacity for Maintaining Public Security', pp. 293–332 in Anja Ebnöther and Phillip Fluri (eds.), *After Intervention: Public Security in Post-Conflict Societies—From Intervention to Sustainable Local Ownership*. Geneva: Geneva Centre for the Democratic Control of Armed Forces.
- Hansen, Annika S., 2002. *From Congo to Kosovo: Civilian Police in Peace Operations*. Adelphi Paper, no. 343. London/Oxford: International Institute for Strategic Studies/Oxford University Press.
- Hurwitz, Agnés and Kaysie Studdard, 2005. *Rule of Law Programs in Peace Operations*. New York: International Peace Academy.
- International Alert, 2002. *Supporting and Enhancing Community-Based Peacebuilding*. Global Issues Policy Note, no. 1. London: International Alert.
- Jensen, Erik G. and Thomas C. Heller (eds.), 2003. *Beyond Common Knowledge: Empirical Approaches to the Rule of Law*. Palo Alto: Stanford University Press.
- Jones, Seth. G, Jeremy M. Wilson, Andrew Rathmell and K. Jack Riley, 2005. *Establishing Law and Order after Conflict*. Santa Monica: RAND.

- Kent, Randolph, 2005. 'Security and Local Ownership: Rhetoric and Reality', pp. 34–41 in Thierry Tardy and Rama Mani (eds.), *Pursuing Security in the Post-Conflict Phase: Implications for Current and Future Peace Operations*. Geneva: Geneva Centre for Security Policy.
- Krasner, Stephen D., 2004. 'Sharing Sovereignty. New Institutions for Collapsed and Failing States', *International Security*, vol. 29, no. 2, pp. 85–120.
- Leggett, Ted, 2003. *What Do the Police Do? Performance Measurement and the SAPS*. ISS Paper, no 66. Pretoria: Institute for Security Studies.
- Lopes, Carlos and Thomas Theisohn, 2003. *Ownership, Leadership and Transformation: Can We Do Better for Capacity Development?* London: Earthscan Publications.
- Mani, Rama, 2002. *Beyond Retribution: Seeking Justice in the Shadows of War*. Cambridge: Polity Press.
- Marenin, Otwin, 2005. *Restoring Policing Systems in Conflict Torn Nations: Process, Problems, Prospects*. Occasional Paper, no. 7. Geneva: Geneva Centre for the Democratic Control of Armed Force.
- Mendeloff, David, 2004. 'Truth-Seeking, Truth-Telling and Post-Conflict Peace-building Curb the Enthusiasm?', *International Studies Review*, vol. 6, no. 3, pp. 355–380.
- Neild, Rachel, 2002. *Sustaining Reform: Democratic Policing in Central America*. Citizen Security Monitor, October. Washington D.C.: Washington Office on Latin America.
- Neild, Rachel, 2001. 'Democratic Police Reform in War-Torn Societies', *Conflict, Security & Development*, vol. 1, no. 1, pp. 20–43.
- O'Neill, William, 2005. *Police Reform in Post-Conflict Societies: What We Know and What We still Need to Know*. IPA Policy Paper. New York: International Peace Academy.
- Paris, Roland, 2004. *At War's End. Building Peace after Civil Conflict*. Cambridge: Cambridge University Press.
- Paris, Roland, 1997. 'Peacebuilding and the Limits of Liberal Internationalism', *International Security*, vol. 22, no. 2, pp. 54–89.
- Perito, Robert M., 2004. *Where is the Lone Ranger When We Need Him? America's Search for a Postconflict Stability Force*. Washington D.C.: United States Institute for Peace.

- Rose-Ackerman, Susan, 2004. 'Establishing the Rule of Law', pp. 182–221 in Robert I. Rotberg (ed.), *When States Fail. Causes and Consequences*. Princeton: Princeton University Press.
- Scheye Eric and Gordon Peake, 2005a. 'Unknotting Local Ownership', pp. 235–260 in *After Intervention: Public Security in Post-Conflict Societies—From Intervention to Sustainable Local Ownership*. Geneva: Geneva Centre for Democratic Control of Armed Force.
- Scheye, Eric and Gordon Peake, 2005b. 'To Arrest Insecurity: Time for a Revised Security Sector Reform Agenda', *Conflict, Security & Development*, vol. 5, no. 3, pp. 295–327.
- Scheye, Eric, 2002. 'Transitions to Local Authority', pp. 102–122 in Renata Dwan (ed.), *Executive Policing. Enforcing the Law in Peace Operations*. SIPRI Research Report, no. 16. Oxford: Oxford University Press.
- Shaw, Rosalind, 2005. *Rethinking Truth and Reconciliation Commissions*. USIP Special Report, no. 130. Washington, D.C.: United States Institute for Peace.
- Stedman, Stephen J., 1997. 'Spoiler Problems in Peace Processes', *International Security*, vol. 22, no. 2, pp. 5–53.
- United Nations, 2005. *In Larger Freedom: Towards Development, Security and Human Rights for All*. Report of the Secretary-General, A/59/2005. New York: United Nations.
- United Nations, 2004a. *A More Secure World: Our Shared Responsibility*. Report of the High Level Panel on Threats, Challenges, and Change, A/59/565. New York: United Nations.
- United Nations, 2004b. *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*. Report of the Secretary General, A/2004/616. New York: United Nations.
- United Nations, 2001. *No Exit without Strategy: Security Council Decision-Making and the Closure or Transition of United Nations Peacekeeping Operations*. Report of the Secretary General, A/2001/394. New York: United Nations.
- United Nations, 2000. *Report of the Panel on United Nations Peace Operations*. United Nations Security Council document S/2000/809. New York: United Nations.
- Wiharta, Sharon, 2004. 'Post-Conflict Justice: Developments in International Courts', pp. 191–206 in *SIPRI Yearbook 2004: Armaments, Disarmament and International Security*. Oxford: Oxford University Press.

ACC	Anti-Corruption Commission (Sierra Leone)
AIA	Afghan Interim Authority
AIHRC	Afghan Independent Human Rights Commission
ANBP	Afghanistan New Beginnings Programme
BiH	Bosnia and Herzegovina
CBF	Capacity Building Facility (Kosovo)
CG	Consultative Group
CRP	Community Reconciliation Process (Timor-Leste)
DDR	Disarmament, Demobilisation and Reintegration
DFID	Department for International Development
DRC	Democratic Republic of Congo
ESDP	European Security and Defence Policy
EU	European Union
EUPM	European Union Police Mission in Bosnia and Herzegovina
FBA	Folke Bernadotte Academy
FFI	Norwegian Defence Research Establishment
GEMAP	Governance and Economic Management Assistance Programme (for Liberia)
HJPC	High Judicial and Prosecutorial Council (Bosnia and Herzegovina)
ISRB	Independent Selection and Review Boards (Bosnia and Herzegovina)
ISSR	Internal Security Sector Review Process (Kosovo)
KFOR	Kosovo Force
KPS	Kosovo Police Service
KPSS	Kosovo Police Service School

MCMPM	Ministerial Consultative Meeting on Police Matters (Bosnia and Herzegovina)
NATO	North Atlantic Treaty Organisation
NCC	National Consultative Council (Timor-Leste)
NGO	Non-Governmental Organisation
NTGL	National Transitional Government of Liberia
OECD	Organisation for Economic Co-operation and Development
OHR	Office of the High Representative (Bosnia and Herzegovina)
OSCE	Organisation for Security and Cooperation in Europe
PISG	Provisional Institutions of Self-Government (Kosovo)
PJI	Provincial Justice Initiative (Afghanistan)
PRT	Provincial Reconstruction Team (Afghanistan)
SES	Senior Executive Service (Sierra Leone)
SIPRI	Stockholm International Peace Research Institute
SLCMP	Sierra Leone Court Monitoring Programme
SLP	Sierra Leone Police
TOKTEN	Transfer of Knowledge Through Expatriate Nationals
TRC	Truth and Reconciliation Commission
UN	United Nations
UNDP	United Nations Development Programme
UNMIK	United Nations Mission in Kosovo
UNPOL	United Nations Police
UNTAET	United Nations Transitional Administration in East Timor
UNTAG	United Nations Transition Assistance Group in Namibia
US	United States

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 report 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 implementation of the local ownership principle, and the transfer of responsibility, has proven to be one of the main challenges for efforts to strengthen the rule of law. The report assesses the challenges involved in meeting immediate public security needs and long-term institution and capacity building in justice and security sector reform. It also offers recommendations that may assist policy makers. The recommendations take into account the extent to which local actors are willing and able to conduct a reform process, and the range of dilemmas that policy makers and strategic planners are likely to face when implementing the principle of local ownership.

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.

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