

## *Lessons Learned*

# Conference Report

## **After Intervention: Public Security Management in Post-Conflict Societies – from Intervention to Sustainable Local Ownership**

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### **About the Report**

This report is based on insights and discussions shared at an international author's workshop of the PfP Consortium, by the Security Sector Reform Working Group, entitled *After Intervention: Public Security Management in Post-Conflict Societies – From Intervention to Sustainable Local Ownership* organised by the Democratic Control of Armed Forces (DCAF), Geneva and hosted by the Latvian Ministry of Defense in Riga, Latvia 14-16 April 2005. It also draws on views expressed in papers submitted to a first conference on the same topic held in Budapest in Fall 2004.

The aim of the project was to look in detail at local ownership of post-conflict reconstruction processes after intervention, in particular security sector reform and public security management. The project sought to identify the key problems with promoting and establishing local ownership, the inherent weaknesses of the international interveners in promoting locally owned processes of reform, the difficulties within a post-conflict society in the immediate aftermath of war to cope with transitional issues and identifying potential solutions to enhancing local ownership of security sector reform and public security management.

Security sector reform (SSR) is a primary objective in all transitional post-conflict societies and after an intervention. Establishing accountable public security forces, oversight mechanisms, a transparent judicial system, a process of justice and public management of these systems are part of an overall objective to ensure stability and sustainable peace. It has long been acknowledged that without such reform conflict will be renewed. SSR will, however, only be truly successful if local ownership by the local stakeholders is at the core of these processes.

This report draws on and reflects the discussions and also the papers submitted on several key issues. It, in particular, reflects thoughts regarding the problematic nature of the concept of local ownership, and how its many uses may weaken its applicability; the legitimacy of an international mission, the new government and accountability in a post-conflict society and how this affects local ownership and hence the potential outcomes of security sector reform, which in turn affects stability and security; it emphasises the issues of transitional justice, how crucial these processes are in a transitional society and how the role of ownership is central to their success; it discusses emerging law systems and judicial reform, their importance for future security, potential transferable international norms and the problems of a model judicial system; it looks at local ownership in relation to the processes of disarmament, demobilisation and reintegration, how local capacity and capabilities may limit local ownership, and the frequent lack of political will to conduct such processes; finally, six cases are very briefly reviewed to underline the change in emphasis on local ownership through the years.

The views expressed are those of the author and do not necessarily reflect the views or opinions of the project participants or those of the authors of the book's chapters.

## **Contents**

- 1 Local Ownership
- 2 Legitimate Authority
- 3 Local Ownership of Transitional Justice
- 4 Emerging Law Systems
- 5 Local Ownership and Demobilisation, Disarmament and Reintegration
- 6 Local Ownership in Selected Cases
  - Bosnia
  - Haiti
  - East Timor
  - Kosovo
  - Afghanistan
  - Iraq

Selected Bibliography

# 1 Local Ownership

Although the significant increase in the number of interventions in war-torn societies by the international community in the 1990s had an ever increasing focus on security sector reform and management of public security forces, it has only been more recently that ‘local ownership’ as a concept has received attention in policy and academic circles. Reform of the security sectors in interventions has been based on a westernised view of how such reform should take place and be conducted, and the objectives have frequently been established to meet donor requirements. However, since the late nineties and early part of this century more and more emphasis has been placed on the importance of local ownership of these processes. This trend began in the NGO communities who argued that without local ownership of reform of public security agencies, such as the military, police, intelligence agencies, and others that are encompassed within the notion of security sector reform, it cannot be successful. It is now commonly accepted that the notion of local ownership is something that must be promoted in international interventions and post-conflict reconstruction, including security sector reform. The Secretary General of the United Nations stated in relation to rule of law and transitional justice that ‘*we must learn better how to respect and support local ownership, local leadership and a local constituency for reform, while at the same time remaining faithful to United Nations norms and standards.*’<sup>1</sup> It has also been emphasised that ‘*Along with establishing security, the core task of peacebuilding is to build effective public institutions that, through negotiations with civil society, can establish a consensual framework for governing within the rule of law.*’<sup>2</sup> Moreover, the UNDP has acknowledged that their programmes have been hampered by not promoting local ownership and

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<sup>1</sup> Secretary General Report on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, UN Doc. S/2004/616/ 3 August 2004, para. 17. Local ownership was also significantly underlined in the Presidential Statement, Security Council stresses importance, urgency of restoring rule of law in post-conflict societies, Security Council 5052<sup>nd</sup> Meeting, SC/8209, Press Release, 6 October 2004.

<sup>2</sup> UN Report of the High Level Panel on Threats, Challenges and Change, *A More Secure World Our Shared Responsibility*, A/59/565, 2 December 2004, p. 64.

that local ownership is crucial for the success of a justice and security sector reform programme.<sup>3</sup>

Seemingly, there is, therefore, a consensus on the virtues of local ownership. However, there are vast difficulties with and differences in the definition of the concept, glaring operational difficulties in implementing it, issues regarding at what stage it should be implemented and questions as to how and whether in certain circumstances it can be. In addition, local ownership must not only be implemented, but it must also be sustainable. There are many reasons for promoting local ownership, but in relation to SSR it is crucial because SSR is a highly political process and it deals with protection of a state's sovereignty. In addition, over forty per cent of all post-conflict societies return to conflict within a span of five years – local ownership of SSR might assist in reducing this deplorable statistic. Yet, so far, there has been more rhetoric than implementation.

Although local ownership and its importance has been emphasised for some time now there has been very little agreement over these issues, namely what exactly local ownership means, what it can be under different circumstances, how the international community should implement it in a post-conflict society after an intervention, if indeed it is something that can be 'implemented', whether focus should be on capacity building immediately after conflict so as to ensure local ownership, at what stage local ownership should take place or be induced, does the effect of local ownership automatically become reduced if it arises later on during the intervention, or, should it be a priority from the outset of the intervention, and is this in all cases a possibility. These are only some of the issues connected with local ownership, some of which will be addressed in this report.

Local ownership will be discussed in this report in relation to four processes. First, is the question of legitimate authority of both the intervening power, in this case the United Nations, and that of the newly

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<sup>3</sup> UNDP, *Justice and Security Sector Reform*, BCPR's Programmic Approach, November 2002, pp. 13-14.

instituted local government. Second, is the potential for and the actual problems inherent in local ownership of transitional justice mechanisms and the positive and negative aspects of this particular conundrum. Third, is the need for local ownership and the difficulties in achieving this, particularly in the context of the rule of law and emerging law systems. Fourth, is the issue of disarmament, demobilisation and reintegration (DDR) and how this needs significantly more local ownership to succeed and have continued sustainability after the end of the intervention. Lastly, six cases are very briefly mentioned encompassing the interventions from the early nineties until the present day, underlining the role of local ownership in these operations and how it has developed.

### **1.1 What is Local Ownership?**

Local ownership lacks definitional clarity as applied by policy makers, academics and the United Nations. As with too many concepts in the security arena, it can be interpreted to mean a host of different things. It can be both an outcome and a process.<sup>4</sup> It can, in practice, mean anything from information meetings by the interveners to in-depth consultations and locals and interveners working side by side. It will also, inevitably, differ from country to country and circumstance. Nevertheless, local ownership is, to one extent, about political control over the post-conflict reconstruction processes, the ability to influence the political decisions made about SSR and reconstruction.<sup>5</sup> Local ownership only truly exists if the domestic stakeholders believe that SSR and the reconstruction processes are theirs. What must not be overlooked in the discussions of conceptual ambiguity is that the beneficiary of local ownership is supposed to be the local population.

Despite its inherent vagueness, local ownership is broadly viewed as a process in which, after an intervention, the ‘locals’ take charge of and

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<sup>4</sup> See e.g. Annika Hansen, “*Building Local Capacity for Maintaining Public Security*”, DCAF, 2005, forthcoming.

<sup>5</sup> See e.g. Edward Rees, “Public Security Management and Peace Operations. Kosovo and UNMIK: Neverland”, DCAF, 2005, forthcoming.

‘own’ the different processes of reform and change in the post-conflict transitional society. Yet, there are several problems with even this generalised and simplified idea of local ownership. In particular, there is the notion of the ‘locals’ and who they are. To view them as one coherent mass with an identical view of such issues as security sector reform, transitional justice and DDR is a fallacy and increases the problems of local ownership.<sup>6</sup> It must be acknowledged that there are different groups of ‘locals’ with distinctively different views on these issues. There are often vast differences of opinion within a population regarding how certain groups would like to structure security sector reform and public security management operations. There will always be a select few ‘locals’ that the intervening forces will, particularly at the beginning of an operation, work with. These are not necessarily representatives of the majority of the population. They might not promote what the majority of the population considers to be necessary with respect to reform. In the majority of the operations to date, insofar as ‘locals’ go and of only the few who have been consulted, they were not necessarily representative or legitimate. There is also a need to accept that ‘locals’ in local ownership can mean the very people that the interveners do not necessarily like or want to co-operate with, but who are viewed differently by the population and may have legitimacy among local communities.

## **1.2 Assumptions**

Local ownership is further complicated by the numerous assumptions it is based on.<sup>7</sup> As indicated above, it is assumed that ‘locals’ refers to a homogeneous mass with one uniform opinion as to the needs of post-conflict reconstruction and reform. Moreover, it is built on the assumption that locals have the capacity to locally own such processes from the outset. However, more often than not, there is an absence of capacity on many levels in societies that have long suffered from conflict and war. There is an absence of ability to transform the security sector in

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<sup>6</sup> See also Eric Scheye and Gordon Peake, “Unknotting Local Ownership”, DCAF, 2005, forthcoming.

<sup>7</sup> See also Scheye and Peake, “Unknotting”, 2005.



a meaningful way without first having that capacity built up by the international community. It also builds on an assumption that the locals have been entrusted with the ownership of reconstruction. This legitimacy may not be existent or it can take some time before it can be created. Moreover, the public perception of reform might be substantially different to what is assumed by the international community. There can be resistance to reform among the public, particularly if it means considerable cut-backs and higher unemployment or if there is a lack of understanding as to what reform might bring about. In addition, there are often difficulties in instituting reform because of the institutional opposition to reform itself. There is, in any organisation, an in-built self-preservation mechanism, which means opposition to change and reform. There must, therefore, be incentives for change, assuming that there is an unlimited willingness to reform is unfounded at best. All these create a more complex environment for local ownership and must be taken into consideration when debating the issue.

### ***1.3 How Can it Be 'Implemented'?***

Although local ownership is recognised as having a high value, strategies for 'implementation' or supporting local ownership have been vague and habitually weak. They have been applied in an ad hoc manner and, more or less, on a trial and error basis. There has been no consistency. There are no UN strategies for supporting local ownership, although there is a consensus that it must take place during a peace operation, but how it can and should be implemented has thus far not been sufficiently addressed. One main reason for the frequently observed avoidance of local ownership is that proper implementation would mean that the processes of SSR and reconstruction would take a significantly longer time and be much more complicated. Consequently, as soon as local ownership is taken seriously, the timeframe increases significantly. Hence, ignoring local demands entails finishing the reform process quicker.

Local ownership came particularly to the fore with the UN operations in Kosovo and East Timor, but in both these operations local ownership was ad hoc. In East Timor, local ownership, although emphasised from the very beginning, was not in actuality introduced until a later stage. East Timorese counterparts were gradually introduced in all the positions that the UN personnel were holding and they began working together to build capacity among them. Then the East Timorese took over and the UN personnel continued their work in supporting roles. There was, however, no clear strategy as to when this was to take place and it differed in the various sectors and in the different geographical areas. In some places, it worked well; in others it did not. It tended to depend more on the type of personalities that were working together, rather than on any strategy aimed at coherent local ownership of the process of post-conflict reconstruction.

#### ***1.4 Transfer of Authority***

Timing is of crucial importance to local ownership. At what stage is it better to start such a process? Local ownership is in part a transfer of authority from the intervening forces to that of the local government and institutions.<sup>8</sup> It is these transfer mechanisms that have not been sufficiently established and managed. A transfer of authority from the interveners to the local authorities cannot take place with a high potential for success unless certain targets have been met by the international community. There are often too many factors that hinder the ability to self-reform. A number of these will need to be addressed primarily at the start by the international community. Hence, a gradual and phased transfer of authority is, in many cases, most appropriate.

It is crucial that local ownership does not become an exit point by which the international community transfers its responsibility to the local owners. It must not be used as an abdication of responsibility. Local owners must be part of the process from the start, although this means a longer and more complicated process of SSR for the interveners.

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<sup>8</sup> Rees, "Public".

Moreover, local ownership should not become window dressing, where the locals are consulted but their views and recommendations are not listened to.

A complicating factor is that there is a contradiction present in the emphasis on local ownership and the transfer of authority, namely, that to be successful security sector reform must be locally owned. However, it is often the actions of the local owners that explains why there is a need for an intervention and reform of security forces to begin with.<sup>9</sup> In certain missions, this has meant that public security management has been controlled by the perpetrators of the conflict, particularly if there has been unwillingness to take charge of public security by the intervening forces. Therefore, building up capacity to be able to transfer authority to the local owners is crucial. This is not to suggest that they should not take part in the decision-making processes of SSR. However, due to the transitional state of a post-conflict society and, particularly, the lack of legitimacy of many of the actors and the absence of capacity to conduct such efforts, transferring complete authority to local owners early on in the intervention may be counterproductive. This is not recommending non-involvement of locals from the very early stages, but it is underlining that there might not be the capacity for the owners to fully own these processes at that stage. Moreover, it means that the international intervener must re-evaluate certain aspects of the assumptions discussed above and deal with all types of local owners irrespectively if they find them to be palatable or not.

Transfer mechanisms must be established and strategies elaborated so that after a certain time, the timeframe will depend upon the context and circumstances of the particular mission and local authority can be fully transferred to the representatives of the local population. The ad hoc method of relating to local ownership must be avoided, since it reduces the chances of successful SSR.

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<sup>9</sup> Scheye and Peake, “Unknotting”.

## *1.5 Sustainability*

Sustainability is the key to all reform and reconstruction processes. Establishing structures, mechanisms and institutions that can be sustained after the withdrawal of the international community is essential for successful reform. The systems that are left behind after a peace operation may be unsustainable without significant donor support which, inevitably, will wane and when it does reform will fail. Local ownership heightens the potential that sustainable structures are put in place. Few external actors will know what can be sustained as well as a local actor. Establishing elaborate, for example, prison systems or oversight mechanisms which cannot be supported locally after withdrawal is futile. Reform must reflect the realities of the particular country – this might not quite measure up to the standards expected in a number of donor countries, but only systems that can function without international donor funding must be established. Dependency must be avoided. Creating institutions without representation from the local population reduces the chances of sustainability.

Even with considerable local ownership during the reform process there is a chance that systems are put in place that cannot be sustained. It should not be assumed that because choices are made by locals that they are per definition sustainable or appropriate. One reason for this is that local owners may desire a type of reform that can only be achieved with considerable resources which, at the time of and during an intervention, is present. They may see this as an opportunity to obtain a certain level of development, for example, in the penal system. This also increases the importance of the structures and organisations that are being reformed, for example, by making them very reliant on specific advanced technologies. There may be a hope or expectation of continued donor funding, because certain systems have been adopted. Nevertheless, in general, the more local input into reform, the less chance there is of creating unsustainable structures.

## **2 Legitimate Authority**

To achieve the objectives of any intervention, including security sector reform and public security forces management, the intervening power and the new local regime must possess legitimate authority. This is crucial not only in relation to succeeding with the process of reconstruction, but also in establishing a viable process of local ownership, which then in turn can create sustainable reform processes. There are several crucial factors in establishing and obtaining legitimate authority in a post-conflict society, key among them is accountability.

### **2.1 UN Legitimacy**

In any UN operation, the UN will have legitimacy insofar as it has a Security Council mandate to proceed with the operation. However, it is not legitimacy in the eyes of the international community that is discussed here, but rather legitimacy as seen by the local population in the mission country.

A UN mandate will not automatically infer legitimacy upon the interveners as viewed by the public. Crucially, legitimacy of the international presence is often tightly connected with the co-operation partners of the interveners. Often there is an assumption that there is a vacuum of authority when the UN intervenes, particularly when referring to so-called 'failed' states. However, it is important to remember that there is rarely, if ever, a vacuum of authority in any state. There are always actors with authority and those who possess some type of legitimacy. The problem is that, repeatedly, some of these actors are ignored by the international community because they might not have international legitimacy; hence it is viewed as if there was a vacuum. It is, however, crucial that these groups of authority, if they have local legitimacy are brought into the process of reform and reconstruction, if not they can undermine the efforts and changes that the international community are trying to bring about.

Moreover, if these groups are not consulted, not only can they become an obstruction to the reform process, but the UN can lose legitimacy because it is only consulting with a few select members of the local community. A tendency in UN operations has been that the mission consults with only a certain part of the population. One UN representative stated that in a peace operation, the locals were more frequently avoided than consulted.<sup>10</sup> This was, particularly, in relation to non-political elites. The consultation with locals was for a long time, and to some extent still is based on a random choice of who they are able to speak with, feel comfortable dealing with and who seem to have the most capacity.<sup>11</sup> Capacity, however, does neither necessarily translate into the most representative co-operation partners, nor to the interlocutors who have legitimacy. The chosen interlocutors of the international community may not have broad legitimacy amongst the population. Hence the ‘locals’ are reduced to a small non-representative proportion of the population. By defining local ownership in this manner in practice, the UN stands to lose legitimacy and this has happened in several missions.

The selective consultation process is also based on a lack of knowledge by key actors in the mission country. There is, habitually, little information among the interveners of local groups with perceived legitimate authority by the population and identifying the key local actors can become difficult. If the UN loses its credibility and legitimacy whilst conducting security sector reform, the whole reform process can stand to lose its legitimacy as well, so that after withdrawal of the international community, the security forces and public security management may start to unravel. Co-operating with groups that have perceived legitimacy in the mission country irrespective of how the international community may perceive them is, therefore, crucial not only to ensure legitimacy of the international mission, but also to infer legitimacy onto the reform and reconstruction processes. In a post-conflict situation, there might not be any actors that can strictly be viewed as ‘ideal’ co-operation partners for the international community, but for there to be representative local ownership they must be given a

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<sup>10</sup> Author’s interview, UN staff, August 2004.

<sup>11</sup> Author’s interview, UN staff DPKO, May 2005.

role in the reform process. However, the international community do also have a key role to play to ensue that actors are included who, had the reform processes been exclusively locally driven, would otherwise have been excluded, such as women.<sup>12</sup>

Moreover, legitimacy of the UN and the international community can also be undermined because of other agendas driving SSR, such as those of counter terrorism and illegal immigration.<sup>13</sup> SSR and the rule of law have tended to be dominated by these types of agendas, thereby ignoring local views. If the local population perceives this to be the case in an intervention, then legitimacy is ultimately eroded.

## 2.2 *Accountability*

Accountability is central factor when discussing legitimate authority whether that is the legitimate authority of the international interveners, that of the newly constituted local government or the security sector reform processes. If there is no accountability, there will be no legitimacy of either the authorities or the processes of change. Ensuring accountability should be a priority from the very beginning of a peace operation. However, this has rarely been the case.

### UN Accountability

After an intervention, where post-conflict reconstruction and reform are at the top of the agenda, the UN is also charged with constructing, or supporting the construction of accountability structures for the new and/or reformed security forces. A key problem in this context is that the UN lacks adequate accountability structures for its own staff. Hence, the UN is trying to impose a set of standards that, in effect, it itself also lacks.

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<sup>12</sup> See also Hansen, "Building".

<sup>13</sup> Agnes Hurwitz, "Towards Enhanced Legitimacy of Rule of Law Programmes in Multidimensional Peace Operations", DCAF, 2005, forthcoming.

The UN has a set of accountability structures to deal with trespasses and breaches of UN and local laws by its representatives in the mission country. However, for grave breaches such as assault, rape, trafficking of women and murder – all crimes that have been committed by international staff in peace operations – the perpetrator is sent away from the mission to be dealt with by his/her national government. It is then up to the national government to decide whether or not to prosecute and what sentence should be given. For the local population, this is not necessarily seen as adequate. The perpetrators are removed, there is no feedback into local communities, there is no way of knowing the outcome of a trial or if one is held – the victim is completely on the outside of the process. In addition, it can be viewed as a reward rather than a punishment to be returned to one's home country.

For the UN to have continued legitimacy, the issue of accountability for UN staff must be addressed. These are the same staff that are trying to establish accountability structures for the newly reformed security forces and create oversight mechanisms for parliament, intelligence services and all parts of the security sector. Yet, their organisation is lacking oversight and sufficient accountability structures. They run the risk of being perceived as above the law, a law they are trying to reform to conform to international standards of human rights and humanitarian law, still, the accountability of their own staff is not visible. Needless to say, nations contributing to the UN will not allow their nationals to be tried in a mission country under local laws irrespective of their crimes – however, there must be an international accountability structure that establishes a feedback mechanism into the community, gives the victims an opportunity to tell their part of the story and to see that these perpetrators are held accountable for their crimes. This will help to ensure legitimacy of the UN and the reforms it is attempting to establish.

### Government Accountability

To ensure legitimacy of the reform and reconstruction processes both UN and also local government accountability must be in place. After long periods of conflict and war there are rarely any accountability structures left and it is important that these structures are a focus from



the very beginning of a peace operation. There needs to be an emphasis that there has been significant change from the old regime to the new. One of the most significant changes in a transitional democracy is that of accountability of the government to its people.

It is this accountability that will ensure that the government sustains legitimacy and, hence, confers legitimacy on SSR and reconstruction when in local ownership. However, accountability structures will take considerable time to establish and to get to function in a proper manner. The legacies of the previous authoritarian, criminal and/or corrupt regime will take time to shift. Bureaucratic opposition might be encountered at different levels whilst attempting to ensure governmental and parliamentary oversight. In addition, there is always scope for continued corruption, even organised crime, in a transitional society, which serves as a further obstacle to establishing functional accountability structures. This is where in civil society groups, media and others can get involved in the meantime and should be encouraged to function as oversight bodies in addition to the official ones that are slowly being created. They can have a potential instant impact upon accountability. Moreover, education and information must be disseminated as to how these structures function so that there is awareness both that they are present and can be used for the good of the population.

### **2.3 *Elections as a Tool for Legitimacy***

Since the early nineties and the expansion of peace operations, there has been an emphasis on elections as a means of inferring instantaneous legitimacy upon the new government in a post-conflict society. Prior to Haiti, the international community promoted fast elections with its intervention in today's Iraq. Nevertheless, rapid elections have never solved any of the problems faced by a post-conflict society. Rather, they have often complicated matters significantly. Yet, it is still being promoted as one of the key ways in which to ensure that the new regime possesses legitimate authority and legitimacy.

There are many potential problems associated with pressing for early elections – irrespective of circumstance and situation. Insisting on early elections when there are few ways of ensuring free and fair elections, when a democratic culture has not yet been established, when there has not been sufficient time to establish a significant and representative number of parties, when politicians and population alike have not been through an educational campaign designed to inform them of what these types of elections and ‘democracy’ means, can have the cumulative effect of reducing the legitimacy of the election process itself, as well as, the elected government.

It is a danger to use elections to generate legitimacy before a society has been able to create a competitive political environment. Irrespective of this danger, continuous efforts have been made to promote early elections in the immediate aftermath of most interventions. Elections will only infer legitimacy upon a new government if the populace has been convinced that it has participated in free and fair elections, if there was an understanding of the concept of elections and the democracy it was aimed at establishing, if there were enough political parties so that real choices were seen to have been on offer – and that they were not only recycled old parties of the earlier conflict, but part of a new ‘democratic’ process. Moreover, accountability structures, as outlined above, are also a necessity to ensure the legitimacy of the new regime, in as much as it represented an elected body, and these elements often take a longer period of time to construct. Therefore, postponing the first elections, so as to establish democratic processes, ensuring that a vibrant political environment and accountability structures are in place, will not only enhance the legitimacy of the newly elected government, but also ensure that the elections are built on more democratic foundations, which will reduce the chances of a reversion to authoritarianism.

Hence, it is more important in the transition period to have legitimate co-operation partners and then, in time, to have elections and accountability structures. Elections must neither be a pre-emptive exit strategy nor must local ownership become a way in which to override responsibility by the international community. Local ownership must be present through consultations from the beginning of any reform process in any mission

country. However, early elections should not be instigated so as to establish legitimacy and local ownership of all the processes in the post-conflict reconstruction phase. Early elections have more often than not been about establishing exit points rather than a true political will to ensure the legitimacy of the local government and local ownership of reform processes. It has more been about limiting international responsibility. Limiting responsibility does not serve to establish successful reform. Capacity and capabilities must be offered but the decision as to what type of SSR should be utilised must lie with the local owners.

### **3 Local Ownership of Transitional Justice**

Transitional justice consists of mechanisms created to deal with crimes committed during a period of conflict or war. They are retrospective in nature and seek, in different ways, to right the wrongs of past human rights violations. Although they are retrospective in nature they have an impact on the current situation, particularly on the perception of public security. They come in many forms, most prominently, the international criminal court, international tribunals, special courts, truth commissions, domestic trials and traditional methods of justice. Transitional justice has become of increasing importance in recent years as part of the post-conflict reconstruction process. There has been a growing realisation of the nexus between peace and justice, where the UN Secretary General has highlighted the importance of integrating justice into the peace process.<sup>14</sup>

Local ownership of these processes of justice can be vital to their outcome. Truth commissions, domestic trials and traditional methods of justice are mechanisms where, because of their very nature, local ownership can more easily be established. They are taking place within the country's own borders and relying on, to a much greater extent, local capabilities to ensure justice. Yet, in a volatile post-conflict society there are several factors that impinge not only on local capabilities regarding

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<sup>14</sup> Draft report Wilton Park Conference, "Transitional Justice and Rule of Law in Post-Conflict Societies: The Role of International Actors", 24-26 January 2005, p. 2.

transitional justice, but also on the will and possibilities of serving justice. The international community can, therefore, play a crucial role in strengthening local capabilities within these three frameworks for pursuing justice to ascertain that the problems within each framework are met and solved.

### **3.1 *Peace vs. Justice***

In all post-conflict societies where peace is a fragile commodity there has been an assumption that justice must often be traded for peace and that this is the price to pay for stability. The international community has frequently supported such a view and been loathe encouraging, in particular, domestic trials to deal with crimes committed during conflict. There has been a focus on reconciliation rather than justice based on the assumption that these are two opposing objectives. Moreover, there has been the in-built assumption that, in particular, local mechanisms of justice, rather than dispersing justice and peace, would lead to renewed conflict and war. Domestic trials have been viewed as retributive without an ability to establish reconciliation of any form. Therefore, truth commissions as a reconciliatory tool of justice have become increasingly popular and its use widespread in post-conflict societies. However, what is important for the international community to consider is that the concept of justice differs from one country to another, as do local norms, political issues and interference, capacity, and popular perceptions of justice.<sup>15</sup> So supporting a single framework alone, or, assuming that one mechanism will be preferable to all others in all circumstances ignores the factors that influence justice as well as the variations in the definition of justice in various countries.

In an increasing number of cases throughout the nineties and until the present day, the local populations in countries that have been affected by international intervention have demanded justice in the form of trials and tribunals. The perception by local populations has often been that there cannot be reconciliation without having some form of criminal

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<sup>15</sup> Horowitz, "Towards".

procedures taken against the perpetrators of past crimes. Therefore, there have been a slowly growing number of cases in which different types of mechanisms to address past abuses and crimes have been applied.

Local ownership of these processes, as with all the processes in a post-intervention post-conflict society, is important for their success. However, as will be discussed, there are several obstacles to *early* local ownership of these three processes of justice.

### 3.2 *Choice of Process*

There are several key problems commonly shared by all three mechanisms of local justice. First, they are part of a process of political transition. The justice mechanisms, with or without the assistance of the international community, will be affected by the political transition and, hence, certain ‘deals’ will almost certainly be made. The new regime, whether elected or an interim regime, will try to ensure that it does not upset to any significant degree the outgoing regime so that they will not use their powerbase to destabilise the country. Second, is the question of capabilities - in an immediate post-conflict period there is rarely, if ever, capabilities to conduct domestic trials, truth commissions or even traditional mechanisms without significant external help. This help must be given without trying to influence the choice of mechanisms or what would better serve the local community’s needs. The choice should be in the hands of the local owners and the support of that choice should come from the international community. Third, needs assessment establishing the need for justice and how that can best be met is often absent, which can lead to simplified solutions and an over-reliance on certain types of mechanisms without taking into consideration the different contexts involved.

Unfortunately, justice is often seen as a choice between the domestic court system and a truth commission. However, it is not necessarily an either/or situation; they can exist together and will, in certain circumstances, serve the purpose of justice more by being applied together. A complementary approach to justice will serve both justice

and reconciliation best in the long run. The international community can significantly assist local efforts by not only supplying lessons learnt from other contexts, but with capabilities to ensure that the structures will serve justice.

### 3.3 *Truth Commissions*

Truth commissions are non-judicial bodies established to investigate human rights abuses, perpetrated in a specific time period usually by the military, government or other state institutions, typically during conflict and civil unrest. They are established and given authority by the local governments or international organisations, in some cases by both. The objective is to establish the pattern of human rights abuse committed within a certain timeframe.

Truth commissions can be completely locally owned – and as with many post-conflict processes, this factor is essential to their success. However, truth commissions can naturally be heavily influenced by the international community, which is establishing or helping to establish such a commission. Commissioners are frequently non-locals, as are the researchers, and other staff members of a commission. Ideally, there should not be more than fifty per cent of international staff on these commissions. While the influence of international staff is not necessarily negative – in many cases it is a necessity, because of the lack of capacity and capabilities, there is, nonetheless, a question of balance. In Sierra Leone, the truth commission was very strongly influenced by international staff and the in-put of the locals was argued to have been minimal with too few efforts made to ensure local ownership of the process.<sup>16</sup> The truth commission did not seek to engage civil society and the local commissioners had limited engagement in the truth commission's report.<sup>17</sup> Moreover, some truth commissions have had skewed representation from just certain sectors of local society,

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<sup>16</sup> Author's interview of Sierra Leone truth commission staff member, New York, May 2005.

<sup>17</sup> Ibid.

sometimes as a reflection of the international co-operation. A broad coalition of people should be represented.

Although there can be significant international influence in the truth commission process, in the follow-up there is a marked absence of it, and local ownership is, so to speak, complete, which reinforces a major shortcoming of truth commissions, namely their lack of enforcement capabilities and their reliance on political will. Their recommendations, for example, in terms of reparations, can be ignored and often are. It is fundamental that victims have a forum in which to tell their story and to establish generalised patterns of abuse and the reasons for it. If, however, the recommendations are ignored due to an absence of political will, it is doubtful as to whether reconciliation will ensue. Media and government attention is dependent upon the circumstances surrounding the conflict, and international pressure and interest. However, interest and political will are crucial ingredients to ensuring the success of truth commissions.

Due to the truth commissions' non-ability to punish, they are much less politically sensitive than trials and tribunals and can be a deliberate chosen strategy by the local government to avoid dealing with issues of retributive justice. Their limited power serve no direct threat to the outgoing authoritarian regime and because they serve a limited threat truth commissions can be used by new governments as the only process of dealing with the past. For certain governments, a truth commission is chosen because this is the least disruptive process and its findings and recommendations can be ignored. Furthermore, by establishing a truth commission, the government can then not be accused of inaction. A case could be made for more international pressure to ensure that recommendations are followed up; this would not necessarily inhibit local ownership, but would ensure that truth commissions are not be used as a tool to avoid justice.

### 3.4 *Domestic Trials*

Domestic trials are another transitional justice mechanism in a post-conflict setting which can be used to deal with past crimes for human rights abuses. Domestic trials are, however, faced with numerous challenges. More often than not, the judicial system is in need of extensive reform. It may have stopped functioning during the conflict. It may have been corrupt, and/or supporting human rights abuse conducted by government agents. It is doubtful whether any post-conflict society will immediately, upon the cessation of hostilities, be capable of conducting fair and impartial trials. Hence, reform is necessary.

Judicial reform requires long-term commitment as well as extensive resources, which impacts upon the ability to hold domestic trials, but interim solutions can be established to ensure fair trials in local courts should the state choose this mechanism to deal with past human rights abuses. In a transitional period, the international community plays a crucial role in supporting the development of the judicial system. There have been several examples of ad hoc solutions - in East Timor, special panels were created which consisted of both international and East Timorese judges. This hybrid solution is cheaper than a fully-fledged international tribunal and can be valuable because of the inherent local ownership of such a process. Domestic trials can have an additional positive effect in that the population sees the consequence of this mechanism and recognise that it is their own government taking control of the process, signalling a change towards accountability. In Bosnia, a new high court has been created with a special chamber that hears war crime cases. It will consist of both local and international judges and international prosecutors will also be involved.<sup>18</sup> Establishment of this court reinforces local ownership, accountability and change.

Minimal standards for a fair trial must be in place for domestic trials to be used for past crimes. This must be prioritised from the beginning, resources and adequate support must be given. Using domestic courts to

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<sup>18</sup> Kurt Bassuener, "Lost Opportunities and Unlearned Lessons – the Continuing Legacy of Bosnia", DCAF, 2005, forthcoming. See also Matthieu Damien, "The Case of Bosnia-Herzegovina", DCAF, 2005, forthcoming.



address past human rights violations can also influence the future judicial system and how it develops. It may help re-establish the judicial system for ordinary crimes. International influence versus local ownership becomes therefore particularly pertinent if these trials aim to influence the law system.<sup>19</sup> The reformed law system should not be imported – it can apply hybrid methods to deal with past crimes since many of these will also be covered by international laws and standards, but not for the country's domestic law system dealing with ordinary crime. It is, therefore, crucial that in this transitional period particular attention is paid to local legal norms, traditions and systems which will influence the structure of the reformed system.

Other objections have also been raised against the use of trials in post-conflict societies. One of these is that it may destabilise the peace agreement or obstruct the transition to democracy. However, the new regime and stability may be threatened if no action is taken, because in post-conflict societies, particularly in a transition to democracy, civil society expects change. Accountability for acts of torture and violence is a crucial underpinning of a democratic society. If this is not forthcoming it may threaten stability and reconciliation. This must be established from the start, not necessarily through the domestic court system, but a shift must be seen to have taken place. Accountability is a foundation upon which democracy rests and addressing this must not be ignored. Hence, the current tendency of the international community to support truth commissions and shy away from domestic trials could be viewed as undue influence on the justice processes, particularly since in many post-conflict societies there is and has been a demand for individual criminal responsibility.

Although the demand for individual criminal responsibility has been raised in several cases, Kosovo, East Timor, Haiti, Rwanda to name a few, no domestic judicial system will be able to handle, just after a conflict, the potentially vast number of cases. Hence some have argued that the process will seem arbitrary and unfair.<sup>20</sup> However, not all

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<sup>19</sup> This will be further discussed in section 4.

<sup>20</sup> See e.g. M. Minow, *Between Vengeance and Forgiveness. Facing History after Genocide and Mass Violence*, Beacon Press, Boston, 1998, p. 45 and D. Bloomfield, T. Barnes, L.

perpetrators need or should be dealt with in one mechanism of justice. Individual prosecution of a number of key perpetrators will serve as a symbol that impunity no longer reigns, other perpetrators can then be dealt with by a truth commission and/or by the traditional justice system.

### 3.5 *Traditional Justice*

Traditional mechanisms are, on a broad and general level, mechanisms for solving disputes, conflicts and crime at the community level, where a village or tribal council, community meeting or council of elders deals with crimes perpetrated towards the community or individuals, or resolves conflicts and disputes. In the last few years, traditional mechanisms to address past crimes have been increasingly promoted in a UN peace operation context.<sup>21</sup> There are numerous problems associated with promoting these mechanisms for past crimes, including that they frequently deny the perpetrator the rights of a fair trial and the punishments can be against international human rights law and standards. The ability of some traditional mechanisms to deal with large-scale human rights abuse, because of their own non-adherence to international standards of human rights is, therefore, questionable.

The United Nations cannot support mechanisms whose punishments contradict international human rights laws, to deal with breaches of those very same human rights laws. Blanket support of *all* traditional justice mechanisms should not be given because there is a strong potential for local ownership and these are rooted in and reflect the country's own culture. Assessments of these mechanisms in each case and when and to what crimes it can be applied to must be made together with the local stakeholders. Only traditional mechanisms that do not breach international human rights law should be fully encouraged and supported by the international community.

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Huyse (eds.), *Reconciliation after Violent Conflict. A Handbook*, IDEA, Stockholm, 2003, p. 105.

<sup>21</sup> For example, the UN Secretary General mentioned traditional mechanisms in the Introductory Statement at the Security Council meeting on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, 6 October 2004.

The primary advantage of traditional methods is that they are entirely owned by the local population. It is not enforced from the outside and they decide how to deal with the perpetrator without external interference. In this way, they can start reconciling with each other, the past and with the crimes committed. Moreover, the local population sees an immediate and direct effect of the justice procedure. Both truth commissions and local trials take place either in capitals or in the larger cities and are, therefore, removed from large parts of the population. Traditional methods have an immediacy which should not be ignored.

Traditional mechanisms can be an invaluable way of dealing with past crimes in a transitional society, but four factors must be taken into consideration. First, what the traditional mechanisms are must be established prior to supporting them unconditionally, so that human rights, public security forces and the rule of law will not be undermined. Second, the mechanisms should not deliver punishments which are a violation of international human rights. Third, through a consultation process with the local authorities, it must be decided as to what crimes should be applied. Fourth, it should be applied in conjunction with domestic trials, since they can be complementary.

#### **4 Emerging Law Systems**

In the aftermath of conflict and after an international intervention, establishing the rule of law and law systems are crucial to ensure prolonged and sustainable peace and stability. Without institution building, a fragile peace can easily revert back to conflict. A transitional society is just that, in transition, which means that new conflicts can easily erupt unless strong foundations are put in place from the very beginning of the intervention to ensure that this does not happen. One of the key foci must be that of the law system. It was not until relatively recently that the crucial role played by judicial reform in post-conflict reconstruction was fully appreciated by the international community. However, in the last four years, there has been an increasing acceptance that law system development deserves as much focus as public security forces and that, often, the reform of security forces, the police in

particular, is futile if there is not a concurrent reform in the judicial system. Yet, this has not translated into as active policies of reform in other fields of post-conflict reconstruction. Moreover, the problems associated with conducting the reform of law systems in the aftermath of an intervention are abundant. However, peace operations are currently mandated to deal with the reform of law systems and local ownership is as crucial, if not even more so, as in any other context.

The international community is faced with an array of complexities when having to address local law systems and their reform. Local law systems must be grounded in local norms, customs and traditions and, therefore, local ownership of legal and ethical standards and the emerging law systems are essential. It is tightly interwoven with how to deal with transitional justice and the influence of the international community in this process; with the very nature of the fragile society it is confronting; with the fact that heightened criminality is the norm in most post-conflict societies and, therefore, that need for a functioning law system is immediate yet to develop such a system takes a long time; with the absence of knowledge of local laws and current systems by the vast majority of those involved in the intervention.

#### ***4.1 Local Judicial Culture and Imported Legal Framework***

In any intervention, international public security forces are faced with a situation where once stability has been achieved an increasing level of criminality is likely to follow – this has been established in most missions. Focusing on the reform of public security forces without simultaneously reforming the judicial system has, therefore, been accepted as futile. However, transforming a judicial system takes considerably longer time than that of, for example, training and monitoring local police forces. Yet, there is an immediate need for a functioning system to be put into operation. The temptation of significantly influencing the creation of such a law system can therefore be considerable, particularly because it affects the exit point and resources needed to be spent. However, external models cannot be imported wholesale - this will limit their chances of success. Local

ownership of the reform of judicial systems is paramount, but it faces the same difficulties as local ownership of any other reform process.

All countries have long established traditions of some form of law systems, they might not reflect civil, common or sharia law, but are still law systems. Whether or not the reformed law system will be built on these past law systems is a decision that will have to rest with the local population or, more correctly, its representatives. These decision-making processes can only be taken through consultation processes with the local population.

The reform of a law system is a very arduous, time-consuming task and resources and multiple agencies, including development agencies, will need to be involved. It is not merely a question of 'finishing' the task of judicial reform during the presence of an international peace operation. Therefore, the potential influence on the reformed local law system will be considerable. It is important that the internationals concerned with judicial reform know the past and current law systems of the country. If they are to contribute in a significant manner, and not only suggest imported models, then a thorough knowledge of previous law systems are essential. If they have this background then the international community may be able to suggest different types of options to the mission country. The local population can then make informed decisions based on the options available to them.

Compiling these existing legal codes and legal frameworks is neither a fast process nor is it the primary objective in the aftermath of an intervention. The immediate aim is to ensure public security. Yet, because of the centrality of the issue of law systems, it is something that has to begin as soon as possible.

Establishing local ownership of a process of judicial reform based on in-depth knowledge of previous and current law systems is problematic, but not impossible, particularly because it is such a long-term process, so that local ownership has the potential to grow as has the knowledge of the international community. It is in the immediate aftermath of conflict and intervention, where crime and instability is on the rise and where

there is a non-functioning judicial system, where international influence versus local ownership becomes more challenging.

#### **4.2 *A Legal ‘Kit’ and Transferable Norms and Standards***

It is the international missions’ task to ensure compliance with international human rights standards and norms. In some missions, there is a law enforcement mandate; in others, there is not. Yet, in all missions, there is some part that establishes SSR on some level. Therefore, the international public security forces are faced with dealing with, either directly or via their local counterparts that they are training or monitoring, the vacuum created by a non-functioning judicial system in the post-conflict society. To eliminate that gap not only to discourage lawlessness and impunity, but also encourage the reforming public security forces and foster trust in these forces by the local population certain solutions have been proposed.

It has been suggested that transitional codes should be used by the international public security forces and local forces in transitional countries during a certain period of time until permanent laws and codes can be established. A number of such codes are currently being created.<sup>22</sup> These transitional codes would function as a legal tool kit to be applied during a peace operation. They specifically focus on criminal law, and law enforcement, including criminal and penal codes. It is doubtful whether these transitional codes, if or when used, will be applied in full. Rather, it is expected that selective parts will be applied in the different cases.<sup>23</sup>

This is one way of tackling the immediate problems that an international mission faces and, in particular, for its security forces operating in an environment in which the local laws are unknown, where the international law enforcement officers come from different laws systems, and where there is a need to address common crime on a day-

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<sup>22</sup> USIP are supposed to finish these specific codes at the end of the year. For more information see <http://www.usip.org>

<sup>23</sup> Author’s interview, UN staff member, DPKO, May 2005.

to-day basis. There is a pressing need to have this in place and it cannot wait until reform or strategies of local ownership have been introduced. These codes have the potential to narrow this gap, to ensure uniformity in application of law throughout the territory without resorting to application of a potentially abusive law system. Yet, these transitional codes must be extremely general in nature built on the principles of international human rights standards and norms. They must be built on international transferable legal norms of respect for human rights and life and they cannot be seen as going against the local culture. It must be made clear that application of these codes are for a limited time only until local stakeholders have been able to establish and adopt local laws. They must not influence the type of system that will succeed it; they need to be a short-term solution to an immediate problem.

Another solution to this judicial gap in the early period after an intervention would be to decide what local law or what part of the local law should be applied in the transitional period. This was done in East Timor where the Indonesian criminal and penal code was applied until a local East Timorese criminal and penal code was agreed upon by the East Timorese. The problem in this connection centres on who decides what law or what part of the law to apply until what time and with what background knowledge do these parties reach their decisions. For example, certain ethnic or religious groups can be marginalised in a process that necessitates speedy decisions. Hence, the application of an international transitional code for a short specific time period might be a better option.

However, having applicable laws and norms that are transferable to missions countries are only part of the solution. Having a functioning court system with lawyers, prosecutors, and judges are also essential for this to be working and to close the judicial vacuum. Establishing rule of law teams that can come into an intervention at short notice and make needs assessments has been one suggestion to quicken the pace of reform. However, establishing or reforming judicial institutions will take a much longer time. Perhaps, as with transitional justice where there is a combination of international and local judges at domestic trials, this would be one way of dealing with the judicial gap. International judges

trained in these transitional codes could preside over domestic courts for limited periods of time, where local judges in a reform programme would also be presiding. This would certainly minimise the number of detainees languishing in prisons. It would also heighten the belief in a working system and in the public security forces by the public. However, it would be necessary to establish local consultation committees from the beginning. This could only work if it is made clear that these are only interim solutions until domestic systems are in place so as to deal with the immediacy of the problem without trying to influence the type of system chosen later on. Unfortunately, it is to be assumed that such a system could go on for rather longer than anticipated and, moreover, take on a life of its own in regards to influencing the foundations for the reformed system thereby undermining local ownership.

### **4.3    *Education***

Education and information of the public is a crucial part of any SSR process, hence also that of law systems. The public must learn to trust the slowly reforming law system and to do so they must be informed as to what it is about, what it can do and how it can work for them, not against them. In most conflict and authoritarian societies, there is a heavy reliance on traditional mechanisms of justice often due to the fact that the courts are far beyond the reach of most people. However, frequently, it is also because there is no trust in the existing law systems, since they have been abusive and corrupt and justice was rarely dispersed by it. Therefore, information and education as to what this new system entails allows for a growing awareness by the general population that it can use the system without fear of retribution or being abused by it. This represents an important part of change as the transitional society moves from one of conflict to hopefully one of sustainable peace.

This education and information should be supported by the international community but run by local NGOs and civil society organisations. Enhancing this type of outreach is enhancing and strengthening the judicial system and ensuring that if and when traditional methods are



used it is as a supplement to the judicial system not because there is fear or distrust of the reformed system.

## **5 Local Ownership and Demobilisation, Disarmament and Reintegration**

DDR processes have received a high level of attention for a long time in peace operations. There have been innumerable DDR programmes after wars and they have always been a complicated matter.<sup>24</sup> However, in the context of intervention and, in particular, with emphasis on local ownership the issues become even more complex.

Disarmament involves the collection of small arms, light and heavy weapons within a conflict or post-conflict zone from all parties. Ideally, it includes the development of arms management programmes, safe storage and destruction of the arms collected. It may entail the assembly and cantonment of combatants. It is not usually an easy task to disarm ex-combatants. Disarmament programmes face numerous problems, including opposition to disarmament by ex-combatants, but the failure to do so increases the risk of instability and further conflict.

Demobilisation is where the parties to the conflict disband the military structures and combatants begin the transformation into civilian life. Each demobilisation process varies depending on the individual post-conflict situation. Nevertheless, the process should broadly involve selection and preparation of assembly areas, planning of logistics, resource mobilisation, selection of those ex-combatants who will be demobilised, cantonment and registration, disarmament, needs assessment, provision of services (health care, basic training) pre-discharge counselling, discharge and transport to home areas. Yet, often in practice it has often entailed simply selection, cantonment and discharge. Moreover, frequently there is self-demobilisation, where ex-combatants leave the battlefields and re-enter society.

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<sup>24</sup> The problems and potential solutions to DDR have been debated extensively and will not be repeated here. See e.g. Beatrice Pouligny, *The Politics and Anti-Politics of Contemporary Disarmament, Demobilisation and Reintegration Programmes*, CERJ, September 2004.

Reintegration is the process which allows ex-combatants and their families to re-enter civilian life and adapt socially and economically – the success of this process is dependent upon both ex-combatants and civil society. It is a long process, which alongside economic and social reintegration includes a substantial psychological adjustment. Reintegration can take years and it is particularly important that local ownership is ensured in the way that the reintegration programmes are structured and implemented. Any reintegration programme that is undertaken without knowledge of how civil society wants to handle the ex-combatants will, ultimately, fail. This is also tightly interconnected with justice and how civil society views the need for different types of justice.

Numerous approaches and ways to DDR have been attempted in post-conflict societies by a multitude of actors both international and local. The consensus is that reintegration is always more difficult, less emphasised and given less resources than the demobilisation and disarmament processes, although they are interdependent and need to be addressed simultaneously. DDR processes are essential to ensure stability and security in any transitional society and the broader needs of DDR must be addressed prior to SSR. It must come at a very early stage and it is at this juncture where the most pronounced problems with ensuring a certain level of local involvement may be encountered.

### **5.1 *Local Political Will***

If one assumes that there are clearly identifiable local stakeholders to cooperate with from the start of the intervention that are representative for all parties to the conflict - this in itself as has been established is not very probable - then these may not for several reasons have the political will necessary to support a process of DDR in its early stages. It can be difficult to get the parties involved, for example, due to fear of a DDR process - that is a fear of revenge from the actors targeted for DDR programmes. Well-executed DDR programmes theoretically are supposed to leave the combatants content to be reintegrated and pleased

with the outcome of the process. Nevertheless, this is not the most commonly observed result. Hence, there is a real threat that unless the former combatants are successfully contained after a DDR process they may restart the conflict. Therefore, there is often an absence of political will to conduct such processes. Consequently, if a choice is made not to get involved, an absence of local ownership will result. The local government may prefer that these operations are conducted by externals so that the locals can distance themselves from it and emphasise the neutrality and non-involvement of local parties. The disarmament process, for example, can be hampered and tensions heightened if one party is seen to be more involved or in charge of the process.

The reluctance to disarm is also tightly interwoven with the attitude of new regimes towards transitional justice. Although there may be an acknowledgement of the need for a DDR process, removing status and power from all actors can be viewed negatively. This is also the case with justice, whereby prosecuting individuals creates the fear that they might rise up against the new or interim government with a renewal of conflict as the end result. However, if there had been a successful DDR process it would be easier to have a transitional justice process, including individual prosecution, without fear of reverting back to earlier patterns of conflict. If all parties to the conflict are adequately disarmed and demobilised, then justice can be a part of the process of reintegration. Avoiding supporting disarmament and demobilisation increase the chances of avoiding justice, and it can become a way of seeing the need for forgetting or forgiving as the only foundation on which to build peace.

In addition, all parties tend in the early aftermath of a conflict to want to hold on to their weapons, since in the early transitional period renewed conflict can be as probable an outcome as peace. Hence, there is an in-built opposition by all parties to begin a disarmament process, although most argue for it. This is one reason why most disarmament programmes conducted collect only a fraction of the estimated weapons early on in the process. Lack of will to conduct such disarmament therefore influences the degree of local ownership.

Reintegration must take place for a sustainable peace to be achieved irrespective of the lack of enthusiasm by the different parties to conduct disarmament and demobilisation. However, the larger the number of ex-combatants with weapons, the higher the chances of an absence of reintegration. Local ownership and willingness to conduct reintegration are greater because they take a longer time and are not as immediately politically sensitive. Nonetheless, offering vocational courses and compensation to ex-combatants can be politically sensitive, since it may enrage the civilian population and the new government might not want to be seen as supporting their former abusers. This will vary extensively in the different post-conflict societies and numerous variables will influence how the new government will deal with reintegration. The key is that local ownership must be at the core of this process or it will not succeed.

## 5.2 *International Political Will*

The UNDP has stated that ‘...*demobilisation of combatants should be accorded relatively low priority by UNDP as so many critical variables remain outside the organisation’s control... actual demilitarisation and demobilisation is exceedingly difficult... the risk of failure under such programmes is therefore extremely high.*<sup>25</sup> This statement underlines that demobilisation is an extremely difficult process, which the international community is becoming increasingly disenchanted with. Disarmament is also a process which the international community has been extremely hesitant to undertake, fearing that it might infringe upon the security of the people conducting the disarmament programme. One result of this unwillingness to perform disarmament programmes, particularly if the local regime is also unwilling, has been that small arms have spiraled out of control. If there is not a successful disarmament process after intervention, the level of small arms has a tendency to increase which, in turn, heightens instability.

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<sup>25</sup> UNDP, *Governance in Post-Conflict Countries*, accessed 23 May 2005, pp. 62-63.

The importance of DDR has always been emphasised by the interveners, however, in practice after an intervention DDR has been defined in the most minimalist way. The lack of enthusiasm, by those involved in the intervention, to conduct DDR is also influenced by the number of organisations involved with the different DDR processes. If possible, it is often left to the other organisations, among them the UNDP, to develop programmes. This can lead to a situation where the interveners begin to rely on subsequent interventions by international organisations to conduct such processes. However, certain aspects of these issues need to be addressed at an early stage. Moreover, even among the numerous organisations dealing with DDR, there is a lack of co-ordination and communication, serving only to limit the extent of the successful implementation of these programmes.

DDR has sometimes been talked about as progressing from demobilisation to disarmament to reintegration, however all these factors need to all be addressed simultaneously, and the processes need to begin early on. For example, disarmament must be addressed as soon as possible after an intervention and, at that stage, only the interveners should have the capability to conduct such a process. Non-implementation of DDR programmes, or partial implementation, creates a much more difficult environment for the public security forces both local and international, which will have to deal with the consequences of its absence. It heightens the chances of the reformed public security forces facing potential failure, because the environment that they have to deal with has not been sufficiently secured.

### **5.3 *Local Capacity and Capability***

In addition to the operational and practical difficulties with instigating a DDR process and the frequent absence of international and local will there is the question of local capacity and capability concerning local ownership of DDR processes.

Following a conflict, there is limited, if any, capacity and capability for local owners to conduct their own processes, assuming that there is an

earnest willingness by the different parties to conduct such processes to begin with. They will not be able to logistically operate disarmament or a demobilisation process without significant external input and assistance. Since the DDR process needs to be established very early on to have the desired outcome, it is faced more acutely by the problem of establishing local ownership. Early on, the interveners have greater difficulty identifying local interlocutors, are less able and, perhaps, less willing to deal with all the different stakeholders in society and, in addition, the potential for renewed conflict is at its highest at this time. Yet, it is at this time when the need for local support is very great. Reintegration is a much more long-term process and therefore local ownership can more easily be established and reinforced over time. Nevertheless, there needs to be a focus on capacity building from the very beginning so that, later on, all these programmes may be run more in entirety by local stakeholders.

Moreover, in reference to a point that was made earlier on in this report, what must be emphasised is that both the intervention and the DDR process were put in place so that the local communities would stop the conflict and stop using their weapons, hence local ownership becomes extremely tricky at this juncture. There might, therefore, be a need for insisting on the establishment of particular disarmament and demobilisation programmes that will ensure stability. Local control over these two processes at this stage may be minimal.

## **6 Local Ownership in Selected Cases**

Local ownership has developed during the course of peace operations from the early nineties until today. Below are a few cases exemplifying how local ownership has been emphasised, or, in some cases ignored altogether.

## *Bosnia*<sup>26</sup>

In Bosnia, local ownership started to be employed in 1998 – this was particularly strong in relation to the public security functions. The international community wanted Bosnia to begin to take responsibility for its own tasks. However, a key problem was that the public security forces had not only been involved in war crimes, but also organised crime after the war and were, therefore, seen as a threat to public security in many cases. There was little interest in reform among the public security forces – reform was seen as reducing their own power and abilities to protect their own ethnic groupings. These were the main factors that needed to be dealt with by the international community prior to transferring authority. Extensive consultations with local stakeholders should have been emphasised throughout, but due to the specific circumstances surrounding the security forces, the capabilities and willingness to self-reform was minimal.

The focus on local ownership can, perhaps, due to the long-term involvement of the international community in Bosnia, be viewed as part of an exit strategy. It was not until 2001 that a Partnership Forum and a Civic Forum was created so as to aid the process of local ownership. Admittedly, the context of the conflict has not aided the implementation of local ownership, but it should not have hindered the creation of, for example, these forums at an early stage.

## *Haiti*

In the case of Haiti, after the first intervention in 1994, local ownership was never really on the agenda neither in rhetoric nor in practice. The mandate consisted of demobilisation of the army, ensuring security and stability, returning democracy, and restructuring the security forces. There were minimal consultancies held with the population in respect to any of these issues. The small political and business elite were consulted on certain issues, but they had never been representative of the

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<sup>26</sup> For in-depth treatment of the case of Bosnia see: Bassuener, “Lost”. See also Damien, “The Case”.

population at large, quite to the contrary, many of the business elite in particular supported the outgoing authoritarian military regime.

In relation to SSR, local ownership was evident only insofar as the demand by the local communities was met concerning the abolishment of the Haitian Armed Forces. The international community had wanted to reform the forces, but the population demanded their dissolution and former President Aristide supported this. However, the reform of the police did not, in any way, involve local ownership – even the political elite was astounded over the way it was conducted particularly because many of them were trained by the military or at military bases, which was reminiscent of the former armed forces. This was also reflected in the democratisation process, where the majority wanted a participatory democracy, yet received only rapid elections. The complete absence of a consultative process to enhance local ownership in Haiti of the post-conflict reconstruction process reinforced the unravelling of all of these processes – with the result of renewed conflict and the establishment of a new UN mission to Haiti.

### *East Timor*

In the UN mission to East Timor established after the referendum for independence in 1999, local ownership was at the top of the agenda from the very beginning. The UN held a transitional authority mandate, but was focused on the fact that they needed to withdraw and leave the structures created in East Timorese hands. The transfer and hand-over became key issues. This focus was made easier by the fact that the main actor of the conflict was Indonesia who was no longer an actor within East Timor's borders; hence, there were not as many and complicated actors in the conflict to deal with.

Nevertheless, irrespective of the awareness of the transfer of authority and local ownership, the strategies for implementation were ad hoc and differed from community to community. After a period of time, the East Timorese worked together with UN staff so as to be able to take over those positions after the international withdrawal. It was a phased



approach, where the East Timorese gradually took over and the UN person became the adviser. The success of this approach varied according to the position and the people involved.

Moreover, in relation to SSR, choices were made which reflected the preference of certain members of the political elite, rather than the local population as such. This was, for example, evident in regards to transitional justice where the political elite continued to emphasise the need for a truth commission and reconciliation, whereas the local population demanded trials for key perpetrators. It was also influenced by international willingness, resources and donor objectives, such as the Portuguese involvement in training and reforming the former combatants into a new military force.

### *Kosovo*<sup>27</sup>

Kosovo is, in many ways, a special case because its status remains unresolved – whether it is to be independent from Belgrade or not – this has created problems in relation to local ownership. This situation has put the international community in a difficult position. It is restricted in how much local ownership it can encourage, since the future and status of the territory is unknown. Security sector reform will perhaps look distinctively different if Kosovo becomes independent then if it will not.

Nevertheless, there has been a gradual transfer of authority, but only in certain areas, for example, public security and the use of force still rests with the internationals. UNMIK has primary responsibility for maintaining law and order and KFOR handles external defence as well as having a partial internal role. The key problem is that the international community is in a situation where it will have to establish essentially sovereign institutions without inferring sovereignty upon the institutions or the territory.

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<sup>27</sup> For in-depth analysis of Kosovo, see Rees, “Public”.

In 2005, there have been more extensive consultations between UNMIK and Kosovars to ensure more local ownership of SSR, but as yet there are no strategies in place for the transfer of responsibility for public management of the security sector. In addition, the Police Act will not be passed by the Kosovo Assembly, but by SRSG decree – minimising local ownership in relation to this particular issue.

### *Afghanistan*<sup>28</sup>

In Afghanistan, the Bonn agreement set forth a locally driven process to accommodate a multitude of groups across Afghanistan. Community forums were established to provide information and advice on community matters. After decades of war, there was very little local capacity to develop SSR and public security management and extensive help was necessary. A lead nation approach was taken, where five lead donor nations held primary responsibility for five pillars of DDR: (Japan), police (Germany), military (US), counter-narcotics (UK), judicial reform (Italy).

In addition, a policy of the ‘light footprint’ was promoted. Rather than encouraging local ownership, the ‘light footprint’ policy can be viewed as an effort to avoid public security measures by the international community, whose efforts have been concentrated in Kabul. The ‘light footprint’ can be seen as a reflection of the commitment of troops to Iraq, which meant that public security was absent in large parts of Afghanistan. A ‘light footprint’ can create vast problems in relation to public security. Moreover, it does not necessarily translate into successful local ownership.

However, local ownership has been relatively successful in relation to DDR, where they have succeeded in some of their intended goals. The international community provided the funding and resources, but stayed out of the actual programmes. On the other hand, local ownership of

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<sup>28</sup> For an in-depth analysis of Afghanistan, see Richard Punzio, “Public Security Management in Post-Conflict Afghanistan. Challenges to Building Local Ownership”, DCAF, 2005, forthcoming.

military reform has been extremely harmed by the coalition forces persistent support for private militias of warlords to continue the fight against the Taliban. A UNDP report emphasises that the international co-operation and assistance to Afghanistan ‘should be scrutinized for issues related to ownership’ and that Afghan ownership must be seen as the most important objective.<sup>29</sup> It has not been established by far in all remits of Afghan SSR.

### *Iraq*<sup>30</sup>

Iraq is a very different type of operation to that of a UN peace operation; however, it is worth mentioning here. It exemplifies the tendency of the international community to rely on certain levels and/or sectors of local society when defining local ownership and getting their information on what strategies would be best for the future of the country.

Regarding SSR, it reflects the particular participating nation’s view of such reform and the objectives of the war. For example, law and order in Iraq was not given sufficient pre-planning, police groups were reformed on an ad hoc basis by coalition military commanders in the early stages and only 6-8 weeks later did it become more organised. Initial thinking on law and order came from Iraqi exiles in Washington D.C., together with Arabists and US State Department Officials, but they were not part of a planning group, but rather a discussion group.<sup>31</sup> Moreover, they consisted of exiled Iraqis and, hence, were not entirely representative of Iraqi society.

Currently, the aim is to ensure local ownership of SSR. For example, international police advisers are based in and work together with the Ministry of the Interior to reform the police. Yet, in practice, reform remains dependent on the different sectors and on who is in control.

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<sup>29</sup> Shahrbanou Tadjbakhsh (ed.), *Security with a Human Face: Challenges and Responsibilities*, UNDP, February 2005, p. 40.

<sup>30</sup> For an in-depth analysis of the Polish role in Iraq, see: Rafal Domisiewicz, ”Consolidating the Security Sector in Post-Conflict States: Polish Lessons from Iraq”, DCAF, 2005, forthcoming.

<sup>31</sup> Author’s interview with person involved with SSR in Iraq, February 2005.

There are, in the Polish sector, regular meetings held with the provincial and municipal councils and religious leaders. These talks are focused on the political and religious leaders, as they have been identified. As was discussed earlier, the identification of local actors with legitimacy is one of the key problems for international interveners and this problem has not been any less pronounced in Iraq.

## **Selected Bibliography**

Ball, Nicole, *Enhancing Security Sector Governance: A Conceptual Framework for the UNDP*, October 2002.

Ball, Nicole, *Evaluation of the Conflict Prevention Pools. The Security Sector Reform Strategy*, Dfid evaluation report 647, March 2004.

Bloomfield, D., Barnes, T., and Huyse, L. (eds.), *Reconciliation after Violent Conflict. A Handbook*, IDEA, Stockholm, 2003.

Chalmers, Malcolm, *Security Sector Reform in Developing Countries: An EU Perspective*, Saferworld/the Conflict Prevention Network, January 2000.

Clingendael, International Alert, SaferWorld, *Towards a Better Practice Framework in Security Sector Reform, Broadening the Debate*, Occasional SSR Paper No.1, August 2002.

Ferguson, Chris, *UNDP: Conference on Justice and Security Sector Reform, Coherence, Cooperation and Comparative Strengths*, GFN Paper no. 16, May 2003.

*The Introductory Statement at the Security Council Meeting on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, 6 October 2004.

Minow, M., *Between Vengeance and Forgiveness. Facing History after Genocide and Mass Violence*, Beacon Press, Boston, 1998.

*Presidential Statement, Security Council Stresses Importance, Urgency of Restoring Rule of Law in Post-Conflict Societies, Security Council 5052<sup>nd</sup> Meeting, SC/8209, Press Release, 6 October 2004.*

*Secretary General Report on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, UN Doc. S/2004/616/ 3 August 2004.*

*Security Sector Reform Whitehall Seminar, Final Report, GNF Paper No. 85, November 2004*

Tadjbakhsh, Shahrbanou (ed.), *Security with a Human Face: Challenges and Responsibilities*, UNDP, February 2005.

UN Report of the High Level Panel on Threats, Challenges and Change, *A More Secure World Our Shared Responsibility*, A/59/565, 2 December 2004.

UNDP, *Justice and Security Sector Reform, BCPR's Programmic Approach*, November 2002.

UNDP, *Governance in Post-Conflict Countries*,  
<http://magnet.undp.org/Docs/crisis/monograph/Monograph.htm>

Wilton Park Conference Draft Report, "Transitional Justice and Rule of Law in Post-Conflict Societies: The Role of International Actors", 24-26 January 2005.

Williams, Rocklyn, *Building stability in Africa, Challenges for the New Millenium*, Monograph 46, February 2000.