

# CMI REPORT

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## Learning to Build a Sustainable Peace: Ownership and Everyday Peacebuilding

Ole Jacob Sending (ed.)

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# Learning to Build a Sustainable Peace: Ownership and Everyday Peacebuilding

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## Introduction

Much of the literature on peacebuilding/statebuilding is characterized by a certain narcissism, in that it tends to exaggerate the power of external actors to do good (and bad).<sup>1</sup> Researchers have tended to focus on UNSC mandates, on policy documents, resources, and on coordination problems, inferring from these how peacebuilders operate and their contribution to peace in a given country.<sup>2</sup> They thus treat the implementing level of peacebuilding efforts – what we here call everyday peacebuilding – largely as a black box. As a consequence, we know little about how peacebuilders at the country level are actually operating: how do they interpret the situation, assess different courses of action, adjudicate between conflicting objectives, and make decisions? Are there shared beliefs and informal ways of doing things among peacebuilders, and do these differ from official policies and guidelines? This study aims to help fill this gap in the literature on peacebuilding by examining what happens when “the book hits the ground” This offers a different vantage point for assessing current peacebuilding efforts and consider reforms.

This study examines peacebuilding efforts in four quite diverse settings – in Afghanistan, Haiti, Liberia and Sudan. In Afghanistan, efforts to build peace take place amidst an on-going war. In Haiti (where the study was done before the earthquake), peacebuilding must be seen in the context of high levels of organized crime, weak state structures, and rapidly shifting governments. In Liberia, state structures are equally weak, but with a more stable political situation and a president that has the ear of the international donor community. In Sudan, peacebuilding is challenging both in the North and in the South, but for very different reasons.

We focus on the principle of *local ownership*, for several reasons. It is among the principles of the Paris Declaration of Aid Effectiveness and is widely considered a precondition for sustainable peacebuilding. Moreover, ownership is derived from the institution of sovereignty. By implication, therefore, the *principle* of ownership is more fundamental for peacebuilding than its (changing) substantive content. Ownership concerns the generic procedures through which external actors relate to and interact with internal actors.<sup>3</sup>

Analyses of post-conflict reconstruction efforts typically find that while some progress is made in building capacity, in establishing new institutions and in starting economic recovery, there is little institutionalization of the international community’s peacebuilding efforts. Investments in capacity building fail to engender change in social relations, and new institutional frameworks are often captured by elite groups seeking to perpetuate their power. As a result, investments in reconstruction and peacebuilding often fail to yield sustainable peace dividends. Various explanations have been offered for this, ranging from lack of resources and long-term commitment to poor strategies and lack of coordination among external actors.

While relevant, these explanations do not go to the heart of the matter. Our research supports conclusions which show that the behaviour of local actors is more important than that of external actors in determining whether a sustainable change will emerge over time. If peacebuilding efforts

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1 Englebert, Pierre and Denis M. Tull (2008) “Postconflict Reconstruction in Africa: Flawed Ideas about Failed States” *International Security* 32(4):106-139; Bhuta, Nehal (2008) “Against State-Building” *Constellations*, vol.15, no.4, 517-542.

2 Doyle, Michael and Nicholas Sambanis (2000). “International Peacebuilding: A Theoretical and Quantitative Analysis”, *American Political Science Review* 94(4): 779-801; Paris, Roland (2004), *At Wars End*, Cambridge: Cambridge Univ. Press; Chandler, David (2006), *Empire in Denial: The Politics of State-Building*, London: Pluto Press; Barnett, Michael (2006) “Building a Republican Peace: Stabilizing States after War” *International Security*, vol.30, no.4, pp. 87-111.

3 Sending, Ole Jacob (2009), “Why Peacebuilders are “Blind” and “Arrogant” and What to do About it”, NUPI Policy Brief, 3/2009, Oslo: NUPI.

are to be institutionalized and sustained, local stakeholders will have to commit themselves to a new way of organizing and governing society. There must be “local ownership”.

While much has been written on ownership in relation to development cooperation, there has been little or no systematic empirical analysis of how local actors define and understand ownership in the field of peacebuilding. The present study helps to fill this gap by linking in-depth interviews with external actors to in-depth interviews with local actors, assessing where their views are corresponding or differing.

Three ideal-typical models of local ownership, based on perceptions and understandings held by international as well as local actors, can be identified;

- Ownership is a goal or an outcome of peacebuilding efforts. Ownership concerns getting local actors to internalize the values and goals that underwrite liberal peacebuilding. It follows that ownership can be achieved through persuasion, socialization, incentives, discipline, etc. Central in this model is the assumption that ownership is a modality for achieving “sustainability”.
- Ownership is a right – a question of domestic sovereignty and thus autonomy and control.
- Ownership is a conditional right that presumes capacity and responsibility. Factors that hamper ownership are here seen as inadequate capacity building, lack of motivation or a lack of will.

International policies to promote “local ownership” are shaped by many factors, including mandate and interests at the headquarters and in the field, but three cross-cutting dimension are of particular interest to this study:

- What is the meaning of “ownership”? Ownership can be interpreted in different ways, as consultation, participation, control, accountability, sovereignty, etc.<sup>4</sup>. Is ownership to be “respected”, “allowed”, or “established”? Use of certain language or set of categories typically legitimizes some types of intervention and marginalizes others.<sup>5</sup> How does understanding and use of the term “ownership” affect actions?
- Who allies with whom in the implementation of “local ownership”? While the national government is the formally validated point of contact, external actors typically privilege some actors rather than others. What considerations inform the choice of partners? Local actors are often diverse, in competition or conflict with each other, and represent different commitments, values and interests. Local actors, in turn, use their relationship with external actors to increase their leverage, power, and autonomy to influence policy. Limited knowledge and understanding of the local scene among external actors often represents a source of knowledge to enhance autonomy for local actors.
- How can international peacebuilders learn? Previous research has identified several organizational barriers to learning within the UN system.<sup>6</sup> It seems that UN peace operations are more likely to be successful when learning from the environment and adapting to evolving situational factors at the country level.<sup>7</sup> Hence, we ask to what extent field staff can adopt new practices and change standard operating procedures in response to evolving realities on the ground? How much leeway is there for international staff in the

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4 See Chesterman, Simon (2007) “Ownership in Theory and in Practice: Transfer of Authority in UN Statebuilding Operations. *Journal of Intervention and Statebuilding* 1(1):3-26.

5 See Autesserre, Severine (2009) “Hobbes and the Congo” *International Organization* 63: 249-280.

6 Torsten Benner and Phillip Rotman (2008) “Learning to Learn? UN Peacebuilding and the Challenges of Building a Learning Organization” *Journal of Intervention and Statebuilding*, vol 2, no. 1, pp. 43-62.

7 Howard, Lise Morjé (2008) *UN Peacekeeping in Civil Wars*. Cambridge: Cambridge University Press, p. 19.



field to be flexible and innovative in light of UNSC mandates, demands from member states, and from instructions from New York?

## Summary of key findings

- The discourse and practice of “local ownership” vary significantly according to country context.
- As a rule, external actors do not seem to regard promotion of local ownership as a fundamental aspect of their job.
- How local ownership is interpreted and acted upon by external actors is often antithetical to how ownership is defined and used in policy documents.
- Local actors tend to understand ownership as a right, above all as a right to control externally initiated policies. External actors tend to understand ownership as a conditional right.
- In claiming that ownership is a conditional right, external actors typically refer to lack of local responsibility, capacity or political will. By implication, external actors often assume that ownership is theirs to grant to local authorities or local stakeholders.
- Ownership is in some cases not central in the frames of understanding and action that international staff use in seeking to build peace. Often it appears as a “problem” to be resolved or a challenge to overcome.
- Incentives for promotion and careers within the UN system are heavily linked to measurable results and outputs, and not to local processes and the sustainability of reform efforts.
- International staff often have limited knowledge of the society, language, culture and politics of the country where they serve, making it difficult to navigate among competing local claims of ownership.
- Donor efforts to promote ownership typically face the dilemma of aligning with one sectional interest in the short run, while broad consensus on a national strategy only develops, if at all, over the long run.
- International rules and administrative procedures that structure relations between the UN and national actors can place external actors in a superior position (e.g. in most multi-donor trust funds). In these cases, the UN acts within the framework of ownership as a very conditional right..
- With respect to justice sector reforms, external actors and national authorities have until recently given priority to rebuilding the formal justice sector. This has often meant sidelining customary and local justice institutions. Increasing shift to incorporate institutions of informal justice, on the other hand, raises difficult questions regarding which local actors should be privileged in the promotion of local ownership, particular in matters regarding women’s rights.

## The country cases

General questions regarding ownership are explored with reference to different aspects of peacebuilding in all the case studies. The different country case studies all focus on rule of law as a key component of peacebuilding. The case study on Afghanistan focuses on rule of law reforms in the area of women’s rights. The case study on Haiti (prior to the earthquake) looks at the broader efforts to reform the judiciary system. The case study on Liberia focuses on funding for rule of law efforts through the Peacebuilding Fund and how it structures attempts to secure ownership. The case study on Sudan looks at the different challenges of implementing rule of law program and securing ownership in the North and the South.

In the case of *Afghanistan*, Torunn W. Chaudhary, Orzala Ashraf and Astri Suhrke note how a prolonged international military presence, often misguided and poorly designed aid projects, and a president who has courted Islamist sentiments in public statements and political coalition-building have combined to undermine the appeal of Western models of reform, particularly in regard to women. In this political landscape, overt international support for women's rights exposes Afghan women's rights advocates to accusations of being Western agents. UN field offices and other international organizations and donor agencies thus risk playing a counterproductive role when responding to demands from Western headquarters and Western public opinion for a strong public position on women's rights. Examining the making of two sets of laws – the Shia Personal Status Law and the law on Elimination of Violence against women (EVAW law) – the authors note the importance of the timing, context and form of international assistance for the national debate over specific laws. With the Shia law, there was broad agreement among its opponents that the internationals had an important role to play in lobbying such key political actors as President Karzai, the Minister of Justice Sarwar Danish and House Speaker Qanooni. Low-key and low-profile international aid was best. Yet, when that failed to produce results, Afghan opponents were divided over the value of international public loudspeaker diplomacy. In the case of the EVAW law, the timing of international assistance was clearly a problem. Keen to protect the law as an Afghan product, key Afghan actors sought to limit international technical assistance. When that was offered unsolicited at a late stage in the process, the Afghan proponents of the bill rejected what was essentially sound international advice from a technical perspective. In both cases, but especially with regard to the Shia law, lack of knowledge constrained the internationals from providing timely and appropriate assistance.

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In the case of *Haiti*, Amelie Gauthier and Madalena Moita show how there is widespread confusion as to what ownership entails and at what level it should be made a priority. Most reform efforts have focused on state institutions, thereby marginalizing broad sectors of society which are key to the Haitian polity. The authors note, for example, “how civil society organizations, usually closer to the citizenry expectations and needs, complain about not being consulted for strategies design”. The approach to ownership taken in Haiti, essentially seeking the participation of the government, has revealed several problems in a context of severe fragility. Key here is the fact that the government has changed three times in the last four years, and the minister of justice has changed even more often. Moreover, because institutional relations are based on personal connections and loyalties, newly appointed officials tend to reject or ignore what has been done in the past, and establish new priorities. In this sense, international actors need to adjust as they go, but the UN and other organizations have difficulties in operating in such a flexible manner. In addition, Haitian culture, where “everybody has a chief” and where few Haitians are willing to take the responsibility for a decision unless there is consensus, exacerbates the challenges of identifying and working with a clearly identifiable counterpart. Moreover, few if any accountability mechanisms as a practical tool for evaluating implementation and resource allocation according the needs of the population have been set in place by the UN or the government. Similarly, there is little in the way of mechanisms to institutionalize and make use of past experiences.

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In the case of *Liberia*, Morten Skumsrud Andersen and Ole Jacob Sending find, first, that peacebuilders operating at the country level generally see ownership as a principle whose implementation is difficult if not impossible in Liberia. The capacity, responsibility, and in general political culture of Liberia are typically regarded in a way that justifies by-passing considerations of ownership. Ownership, then, is argued away or downplayed with reference to an ideal or a standard

that external actors define and apply in assessing Liberian institutions and politics. Studying the set-up and functioning of the UN Peacebuilding Fund, the authors found that a series of institutional or organizational features beyond the control of UN staff in Liberia made it almost impossible to take ownership seriously. The issues range from the fact that UNDP – as administrative agent of the Fund in Liberia – operates in DEX mode (Direct Execution) rather than in NEX mode (National Execution), making it very difficult to disburse funds to Liberian actors. Moreover, the application procedure and the selection process for the Peacebuilding Fund – which is specifically aimed at fostering national capacity – was such that international actors were calling the shots on the contents of projects, the choice of partners, and their implementation.

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In the case of *Sudan*, Samia Nager and Gunnar Sørnbø draw attention to how ownership is interpreted quite minimally as participation in the actual implementation of projects, not in their design. They note, further, that while local ownership is seen as a key principle for aid effectiveness and a core value for UN agencies, it is not mentioned as a priority in most project documents; nor is there any obligation to consider or report on local ownership within a project. The main concern is with processes that can ensure the approval of the project or programme, and this is mostly done with minimal participation by local actors. Ownership does not play a role in the introductory courses for international staff coming to Sudan, and its promotion depends on individual rather than institutional initiatives. Finally, the authors show how asymmetrical relations between international and domestic actors are fostered by the widely held assumption that all local actors have only limited capacities, whereas all international actors are in a position to lead, educate and strengthen local capacities and skills.

# Afghanistan

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Justice sector reform and human rights promotion are important areas of international assistance to post-conflict peace-building. In Afghanistan, recent legislation that affects the rights of women highlights the sensitive nature of international involvement in this area and the difficulty of rendering effective assistance.

Afghan women have historically been afforded weak protection in the formal justice system and beyond. Furthermore, the position of women is a highly symbolic and contested issue around which various political groups mobilize. The *post hoc* justification for the 2001 international intervention to improve the situation of women is a case in point. Overall, the immense politicization of the status of women in Afghanistan makes reform in this area particularly challenging. The study examines the nature and consequences of international involvement in two recent pieces of legislation that affect the lives of Afghan women: The Shia Personal Status Law (hereafter “the Shia law”) and the law on Elimination of Violence Against Women (EVAW).

## The context

Promoting women’s rights in post-Taliban Afghanistan is a matter of principle and formal policy in the UN system and the major Western countries. Western media, NGOs, human rights activists and public opinion generally make support for Afghan women’s rights a high-profile and non-debatable imperative, although rhetorical commitments have not always translated into practice. In Western policy debates, such rights are usually referenced to international human rights and other secular-sourced instruments, such as the Convention to Eliminate all Forms of Discrimination and Violence against Women (CEDAW). Inside Afghanistan, however, the political field has become increasingly antagonistic to such discourses. A prolonged international military presence, often misguided and poorly designed aid projects, and a president who has courted conservative sentiments in both public statements and political coalition-building, all have combined to undermine the appeal of Western models of reform, particularly in regard to women. Moreover, overt international support for women’s rights exposes Afghan women’s rights advocates to accusations of being Western agents.

In this political landscape, Afghan women’s rights activists, and officials working on governmental and non-governmental gender programmes have – whether for tactical reasons or out of genuine conviction – increasingly formulated gender rights within an Islamic framework and liberal interpretations of *Sharia*. Field offices of the UN, other international organizations and donor agencies in Afghanistan, in turn, have sought to calibrate different interests, in the first instance between demands from headquarters or “home” for a firm position on women’s rights, and the constraints of local conditions that could make the difference between effective and counterproductive assistance.

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<sup>8</sup> This report is based on fieldwork in Afghanistan in late 2009 and early 2010. The authors wish to thank the numerous persons – Afghans and international staff – who generously contributed of their time and knowledge. Some persons also read through and commented on an early draft, for which we are particularly grateful.

The two laws examined here presented quite different challenges. The Shia law originated among a group of Afghan Shia clerics with ties to religious scholars in Iran and was formulated according to orthodox Islamic jurisprudence. The law defined personal law (property, marriage, divorce) for the country's Shia minority in terms that significantly restricted the rights of women and contained what many Afghan women and legal scholars saw as an excessive codification of personal life. Of particular concern in the West, the law established a legal understanding of marital relations in which the wife's obedience, including in conjugal matters, is rendered in return for financial maintenance from the husband. This point was included in the version signed by President Karzai in March 2009, provoking international outrage. The UN High Commissioner on Human Rights called it "reprehensible", President Barack Obama chose "abhorrent".

By contrast, the EVAW law originated in a completely different Afghan setting, framed by 20<sup>th</sup> century interpretations of women's rights, their codification in CEDAW, and the views and experience of progressive Afghan women. Many of these women had direct experience of dealing with cases of violence against women through positions in the Ministry of Women's Affairs, women's NGOs, and the courts. The EVAW was signed as presidential decree in 2009, and as of early 2010 was still awaiting Parliamentary ratification.

The parliamentary context at the time when the two laws were prepared and processed, (2005-2010), was decidedly conservative. True, there were more women in the parliament than ever before in Afghanistan's history, with 68 out of 249 members of the Lower House (Wolesi Jirga), and 23 of the 102 members in the Upper House (Meshrano Jirga). Yet they did not form a coherent group, and were certainly not united in a pro-women agenda.<sup>9</sup> Among the male parliamentarians, clerics and ex-mujahedin commanders likely to be conservative in religious and social matters were in the majority, totalling three-quarters of the male members of the Lower House, according to one cautious estimate.<sup>10</sup> Religious conservatives chaired five central committees in the House, including the Justice and Judiciary, which was central in the Shia law case. The committee was chaired by Maulawi Ataullah Ludin, a Sunni Pashtun and high-ranking Hezb Islami official, a movement and later a political party known for its Islamic militancy, and currently a key political ally of the president. The Speaker of the House, Yunus Qanooni, a (Sunni) Tajik, acted as a broker among opposing interests in the legislative process involving the Shia and the EVAW laws. On balance, it seems clear that he favoured the conservatives.

## The Shia Personal Status Law

The 2004 Constitution for the first time stipulated that courts were to apply Shia jurisprudence in family matters where both parties are Shia (Article 131). This formed the basis for efforts to draft a personal status law, led by the Shia scholar Sheikh Asif Mohseni. A Qizilbash Shia from Kandahar with close ties to Iranian religious scholars, Mohseni had a different background from that of most of the Afghan Shia population, who belong to the ethnic Hazara minority. Mohseni's promulgation of the law was perceived by many as a bid to position himself as a leader of the Shia population through an attempt to shift the primary identification of this group from ethnicity to religion.<sup>11</sup>

The Minister of Justice, Sarwar Danish, himself a Shia, reportedly shepherded the draft prepared by Mohseni's group through the Ministry of Justice for technical review before sending it to the

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9 Andrea Fleschenberg 2009, *Afghanistan's Parliament in the Making*. Berlin: Heinrich Böll Stiftung, in collaboration with UNIFEM, p. 113. See also A. Wordsworth 2007, *A Matter of Interests: Gender and the Politics of Presence in Afghanistan's Wolesi Jirga*. Kabul: Afghanistan Research and Evaluation Unit (AREU).

10 Fleschenberg, 2009, quoting Thomas Ruttig, see also Andrew Wilder 2005, *A House Divided? Analysing the 2005 Afghan Elections*, Kabul: AREU.

11 Lauryn Oates 2009, *A Closer Look. The Policy and Law-Making Process Behind the Shiite Personal Status Law*. Kabul: AREU.

Parliament in 2006. Here the draft was buried in committees for almost three years before being reported out to the floor and passed in early 2009. The slow passage reflected in part the opposition from a small but determined number of liberal parliamentarians who worked with civil society organizations to gain time to remove some of the most objectionable features of the bill. More important, there was concern among the Sunni religious scholars that a separate law for Shias would diminish the position of Sunni jurisprudence as the predominant Sharia source of legislation in the country. If passed, it would be the first law in Afghanistan's history based solely on Shia jurisprudence. At the same time, unrelated disputes involving the largest Shia group, the Hazaras, erupted over other matters. Conflict between Hazara farmers and Pashtun nomads over access to land, and disagreement over quota representation for Pashtun nomads in the Parliament, paralysed parliamentary proceedings for almost one month. In this situation, the parliamentary leadership was reluctant to bring to the floor a bill that might accentuate ethno-religious divides.

The delay gave the opponents time to organize. The most public and politically visible opposition formed around a few women parliamentarians and a civil society organization who opposed it on grounds of human rights, women's rights and liberal interpretations of Sharia. An additional process was initiated by the Afghanistan Independent Human Rights Commission (AIHRC), which engaged Kateb University, a private university influenced by Hazara religious scholars, to review the bill. The opponents succeeded in modifying the proposed law in three priority areas: raising the legal age of marriage (from "minor", taken to mean 9 for girls, to 16 for girls and 18 for boys) the age at which the father can claim custody of children after divorce (raised from 2 to 7 for boys and 7 to 9 for girls) and giving the wife greater freedom of movement outside the house. The opponents had a much longer list of proposed amendments – a shortlist of 17 and a wish-list of 96 changes, including the conjugal obedience item – but a powerful Sunni leader and ex-mujaheddin, Abdul Rasul Sayaff, who had been an initial opponent of the law, cut the discussion short. After his intervention, the Lower House voted to approve the bill as a package without further debate on 7 February 2009. So apparently did the Upper House a little later,<sup>12</sup> and the bill went to President Hamid Karzai for signature.

The opponents of the bill made no major effort to solicit international support until after it had been approved by the Lower House. When the bill then was moving through the final stages of approval, however, some MPs and civil society approached international actors. An *ad hoc* coalition of Afghan opponents, Western donors and UN organizations started to meet in February and March to assess strategies for further modifying the bill. At this point, items of priority were provisions governing polygamy and the wife's obedience to her husband. However, international actors hesitated to take a strong stand, for several reasons.

First, the politics of the case were complicated. Since the Shia elite, including the Minister of Justice, supported the law, some internationals feared being perceived as standing in the way of Shia desire for a separate law and thereby opposing minority rights. In Parliament, sectarian lines were strongly evident. Some Shia MPs openly stated "this is our law" and asked Sunni MPs not to intervene. All Shia women MPs voted for it, and Shia women activists were told not to spoil this opportunity for the Shia community to get their own law. Specific issues could be sorted out later, they were told. Opponents were also told that their opposition was un-Islamic – a serious charge that could imply blasphemy or apostasy.

There were tacit political understandings and bargains. Sayaff's eventual endorsement of the law was premised on a rejection of the rights of Sunni parliamentarians to debate its content, and effectively signalled an arrangement in which Sunni and Shia actors would recognize each other's

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<sup>12</sup> The government maintains that the bill was finally passed on 22 February, but there is no record of the Upper House discussing it on that day or any other day.

exclusive authority on their respective jurisprudence. The implication was to preclude debate across sectarian lines in Parliament on any law with religious associations. Conservative Sunni MPs supported the bill on the basis of this understanding and after it had been made clear there would be no separate Shia courts and a provision for temporary marriage (inimical to Sunni jurisprudence) had been removed. Yet many of these MPs were brought to believe they were voting for an advisory document rather than a law. In a bargain of a different kind, rumours circulated that Karzai and Mohseni had made a deal whereby the latter would “deliver” the Shia vote for Karzai in the 2009 presidential election, in return for Karzai’s support for the bill.

The UN itself was divided over how to respond. Whereas some officials – notably within UNIFEM – advocated a strong stance against problematic aspects of the law, others within the UN system argued that the issue was too sensitive, and called for a lessening of UN activity on the issue to avoid “destabilization”. International officials on the Kabul human rights network – a group of human rights advisors organized around the EU and the UN – asked themselves if it were wise for international actors to get involved in this thicket of thorny issues – and if so, how should it be done? They had earlier expended human rights capital on religious issues by opposing verdicts on blasphemy and apostasy, each time causing a massive public outcry and controversy.

Second, the process surrounding the drafting of the law was extremely complicated and opaque, making advocacy for change exceedingly difficult. Lack of knowledge constrained the Afghan opponents of the bill, and even more so the internationals. UNAMA had produced a preliminary translation of the bill, but there was no authoritative translation until April 2009, well after it had been passed by the Parliament and signed by President Karzai. Indeed, translation was no simple matter. The bill was a complicated legal corpus of 249 clauses, with numerous terms and concepts in Arabic. USAID had a dozen experts working for two weeks to produce an authoritative translation. Although international concern would be justified in terms of international human rights provisions, including CEDAW (which Afghanistan had signed in 2003), some donors felt that ignorance of Shia jurisprudence was a constraining factor. The opaqueness of the Afghan political process and the failure of Western governments to invest in long-term country expertise (including language resources) meant that the internationals had only limited information that was verifiable. By late March 2009, when the EU-UN network of international human rights advisors had moved to a more active stance, they did not know which version of the law had been adopted by the Parliament. In fact, they did not have an authoritative translation, or even a copy of the law itself. They did not know whether Karzai had signed it or not, or even whether it was now a law (the chairman of the House Justice Committee said it was only an advisory opinion for the Supreme Court). To complicate matters further, the UN community remained divided.

At this point, unknown sources leaked a UNIFEM document assessing the law to the international press. The debate entered the Western public realm with consequent loss of nuancing. International headlines proclaimed that the law legalized rape in marriage, citing a provision on conjugal obedience that required the wife to submit to sexual intercourse once every fourth night (Article 132). Information landing on the desk of a European foreign minister said the law sanctioned rape, house arrest and paedophilia. The UNIFEM document was leaked to coincide with the opening of a major international meeting on Afghanistan in The Hague on 31 March, called by the US government to solicit allied support for stronger involvement in Afghanistan. News of the law created public outrage in NATO member countries, given their formal commitment to promote democracy and human rights in Afghanistan. Western official reactions were predictable. With the credibility of the international mission at risk of being undermined in the eyes of their populations, NATO governments issued strong statements condemning the law.

Faced with a storm of public international protest, Karzai at first withdrew the law, claiming technical reasons and that he had not read it. He then announced that the Ministry would review the law and amend any articles in contradiction with Sharia or the Constitution.

The stronger international stance had also emboldened some of the Afghan opponents of the law. Several Shia women not connected to the parliament or the core opposition staged a public protest. It was supported by Hazara leaders opposed to the influence of Mohseni and his suspected ambition to take credit for delivering the country's first law for the Shia minority. The demonstration dispersed in the face of strong counter-demonstrations organized by Shia clerics linked to Mohseni, who accused the women of being anti-Islamic, Western agents and prostitutes.

In the months that followed, Afghan women and civil society organizations, the UN and concerned embassies met repeatedly to agree on strategies for influencing the review process of the law that had been announced by the Minister of Justice. Groups of Afghan women, including civil society activists and MPs, met several times with government officials to follow up the review. But with the Afghan government playing its cards close to its chest – the Minister of Justice was reportedly managing the review in person – it proved difficult for these actors to access and provide input to the process. An amended law was presented by the MOJ in early July. The revisions included changes in language relating to sexual obedience, but these and other changes were only minor, and were seen as insufficient for the core opposition from the Parliament and civil society that had fought the bill from the start. Members of this coalition wrote an open letter to President Karzai expressing their concern. The amended law, they argued, failed to take into consideration their suggestions and as a result remained problematic on many issues, particularly relating to polygamy, women's rights to work and sexual obedience. Nevertheless, the bill was signed by the President on 19 July in the presence of some women critics of the law. At that point, some groups took a more positive stance. Most notably, the AIHCR issued a statement declaring that the efforts of civil society to bring the necessary changes to the law had been successful.

## The EVAW law

The EVAW law originated in 2005 in the Afghan EVAW Commission, established by the Ministry of Women's Affairs (MOWA) with support of UNIFEM, to address the problem of violence against women. Citing widespread and abhorrent cases of violence against women, the Commission argued that there was a need for a new law that could end impunity and provide more severe punishments.

The legal department of MOWA drafted the first version of the bill. The department consulted various legal experts, other academics and government officials although concern to protect the law as an Afghan / MOWA item resulted in UNIFEM not being included at this point. The MOWA draft was officially submitted to the Ministry of Justice (*Taqnin* section) on the International Women's Day in 2006 amidst national media coverage. A group of Afghan women's activists, however, felt that the bill required significant improvements and started working on a revised draft, this time with the technical support of UNIFEM. Following a nine-month process, their draft was submitted to the *Taqnin* through MOWA channels in late 2007. Yet another, parallel, drafting process had started in the Parliament's Women's Affairs Commission, much to the dismay of the contributors to the previous drafts. This draft, a short and declaratory statement, was perceived by other participants in the process as an attempt by the main female MP involved to position herself politically, at the expense of unity among women activists.

The *Taqnin* now had three drafts and started work on creating a single version. But while Afghan efforts had been multiple and competitive from the start, international involvement – apart from UNIFEM support to the civil society draft and assistance to *Taqnin* in streamlining the three drafts



into one – was not evident until late in the process. In early 2009, more than three years after the initiative had originated in the EAW Commission, a joint international-Afghan working group received a copy of the draft law through the *Taqnin*. The working group (Criminal Law Working Group, chaired by UNODC) included international legal experts with a mandate to ensure consistency and coherence in the area of penal law. Numerous laws had already been introduced, often on the initiative of international advisors schooled in their respective national legal traditions, creating incoherence in the legal corpus. Presented with a short deadline, the committee could make only minor suggestions, most of which were not incorporated by the *Taqnin*.

By this time, concern over the Shia law was deepening, and women activists and concerned internationals started to look to the EAW law as a possible corrective to its problematic provisions. The EAW law thus appeared on the agenda of the international-national advocacy coalition that was lobbying to amend the Shia law. In an evident concession to this group, President Karzai signed the EAW law and the Shia law at the same time, on 19 July 2009.

When the EAW law was sent back to the Parliament for review and ratification, women activists became increasingly worried that it would fail to get past conservative MPs in an acceptable form. Some argued that the only viable strategy was to furtively introduce the law in plenary on a day when key conservatives were absent. The Women's Affairs Commission in the Lower House that was tasked with leading the process sought instead to develop a consensus by taking the law to the Joint Commission composed of representatives of all 18 parliamentary commissions, before bringing it to plenary debate.

The parliamentary proceedings were an opening for international experts from the joint working group that had tried to modify the draft to re-enter the process. Having secured a copy of the text, they became concerned on discovering that technical weaknesses remained. Chief among these were a lack of coherence with the broader legal framework and confusion over legal categories. At this point, however, the logic of legal professionalism clashed with the logic of politics.

Women activists argued that the purpose of the law was in part political, that is, to bring the problem of violence and discrimination against women to political attention and send out a strong signal against impunity for such crimes. They also feared that introducing changes at this point would complicate the matter, and might provide ammunition to the conservatives, especially if opponents could frame the law as a foreign creation. Undoubtedly, there was also a strong sense among the women who had worked on the bill for years that this was "their" product and some resentment that unsolicited external advice was being offered at such a late stage in the process. As a result, repeated efforts by international legal experts to improve the technical language of the law did not succeed.

In the Parliament, meanwhile, the atmosphere in the Joint Commission was becoming increasingly hostile. Conservative MPs accused women supporters of the law of being anti-family and under foreign influence. In the end, meetings were suspended. Those who had worked on the law from the beginning now argued that it was better left as a presidential decree, and that the parliamentary process should be abandoned. There were concerns that the law would either be rejected or get through Parliament only in a severely butchered form. The new situation also revealed a split among the women MPs, with the initial backers of the law accusing key members of the Women's Affairs Commission of using the parliamentary ratification process to put their stamp on the law and claim credit for delivering it.

The international actors were becoming similarly fatigued over the parliamentary process. Earlier attempts to lobby key parliamentarian powerbrokers on the bill had not yielded results, and there was a sense that salvaging it as a presidential decree might be better than nothing. By spring 2010,

due to the efforts of its original supporters, the EVAW law had been taken off the parliamentary agenda for the time being, with its eventual acceptance there uncertain. Having lost patience with the long drawn-out process of getting the law past the Parliament, supportive government agencies, women's organizations and donors were preparing to implement its provisions as a presidential decree. Scattered reports of prosecutions based on the EVAW law in courts also started to emerge.

## Conclusions and policy implications

Their different origins and purpose notwithstanding, these two bills affecting the rights of Afghan women intersected as they passed through the legislative process. Some policy implications in terms of international assistance therefore apply to both, whereas others are specific to one of the two.

In both cases, the nature and timing of assistance was critical. As for the Shia law, Afghan opponents were in retrospect somewhat divided as to what would be an appropriate international strategy. There was broad agreement that the internationals had an important role to play in lobbying key political actors such as Karzai, the Minister of Justice Sarwar Danish and House Speaker Qanooni. Low-key and low-profile international aid was best. When that failed to produce the desired results, Afghan opponents were divided as to the value of public loudspeaker diplomacy. In one sense, it worked, in that it brought the problematic features of the bill into sharp political focus and led to some revisions. However, the most significant amendments had already been secured by the Afghan opponents of the law, so the additional revisions made after the international outcry were minor.

In any case, what finally moved Western powers to take a strong stance on the Shia law were not the pleas of Afghan opponents of the law, but concern in Western home ministries and organizational headquarters. That came about when the international media presented the bill in sensationalist terms. The level of international public diplomacy at that point increased dramatically.

By openly moving to the frontline of Afghan public debate, Western political figures to some extent alienated segments of the Afghan opposition to the law. Once the issue had become framed and strongly polarized alongside foreign vs Islamic/ Afghan fault-lines, many Afghan actors found a middle-ground position untenable, for various reasons. Some disengaged from the issue. Others declared themselves satisfied with the revised law, leaving those international actors who had come out strongly to oppose the law both puzzled and embittered.

As for the EVAW law, the timing was clearly a problem. Keen to protect the law as an Afghan product, key Afghan actors sought to limit international technical assistance. When that was offered, unsolicited, at a late stage in the process, the Afghan proponents of the bill rejected what was essentially sound international advice from a technical perspective. But the emphasis on Afghan "ownership" was also a way to protect the bill in what had become an increasingly polarized legislative and political climate.

In both cases, but especially with regard to the Shia law, lack of knowledge constrained the international actors from providing timely and appropriate assistance. Admittedly, the sheer complexity of the Shia law made it difficult for even legal scholars of Shia jurisprudence to assess the text. As for the international actors, having made limited investments in developing relevant language, religious and cultural skills, their choice of assistance strategies was basically between passive-non-interference (chosen early in the process) and public diplomacy (in the latter phase). As regards the EVAW law, greater sensitivity to the underlying political logic might have made for better working relations between the international experts and the Afghan coalitions working to promote the law.

The processes surrounding both bills highlight the problems of law-making in Afghanistan after 2001. The legislative process in general has been characterized by a high degree of fragmentation. Individuals and smaller groups (both Afghans and international advisors) who sought to secure the adoption of “their laws” have dominated the process. Often, laws have been drafted in their entirety by actors outside the Afghan government, who then used political pressure and relied on favours to ensure the adoption of the law. While such strategies are part of legislative process everywhere, in Afghanistan they have become paramount. The result has been incoherence and inconsistency in the legal corpus as a whole.

The *ad hoc* approach to lawmaking has also contributed to an opaque legislative process which puts a premium on informal connections with the executive and key powerbrokers to influence the outcome. In the cases considered here, the lack of transparency and accountability made it difficult for the parties concerned to obtain even basic information about the legislative process, and seriously hampered both international and Afghan attempts to review and promote changes in the Shia law. Many international actors clearly wanted to see the EAW law passed, even in an imperfect form. In this case the informal channels worked to their advantage, as combined international and Afghan pressure succeeded in getting the bill passed as a presidential decree and, later, prevented it from being rejected in Parliament (at least for the time being). In the case of the Shia law, by contrast, those mechanisms worked against both Afghan and international actors who tried to secure amendments. Arguably, they would have been better served by a transparent and rule-bound legislative process.

The legislative histories of the two laws also illuminate the contradictions set in motion when significant amounts of external funding are invested in supporting or building a country’s civil society. The end result might be that technocratic requirements for programme design and reporting take priority over preparing local civil society for national political mobilization for social change, even to the point where the former function may impede or override the latter. At least equally important, competition for funding within civil society tends to undermine coalition-building and information-sharing. Such dilemmas are by no means unique to Afghanistan. However, in the case of Afghanistan, where external funding has been exceptionally large and often delivered at a pace that has outstripped local capacities ravaged by decades of war, such effects have been particularly evident.

The current political field significantly shaped the strategies available for both Afghans and international actors – both groups had to take care to avoid accusations of foreign influence. Undue foreign intervention in the country’s affairs is a common concern that resonates strongly locally, and can severely discredit those who stand accused of either exercising or being complicit in it. In this sense, ownership becomes a litmus test for political legitimacy rather than an organizing principle for sustainability.

The authority in any given case to demarcate and defend local ownership vis- à-vis “the foreigners” – as the international presence is collectively know – is not given, but fought over in every case. It follows that those whose ownership international actors should relate to and ideally attain is by no means unambiguous. As one UN worker asked in regard to considerations of ownership: who owns the Shia law? Was it Shia clerics, women, the Shia minority or the Afghan population more general? Ownership as an ideal of international aid practice typically masks the political implications of such questions.

*Several policy implications flow from this case study of Afghanistan:*

Greater investment in relevant language, cultural and religious skills would enhance the international community’s choice of assistance strategies.

Greater coordination of international assistance to legal reform would have helped to streamline the process of revising the law, produce more clarity and less conflict in the reform process, and create greater coherence in the body of law.

International and national support for greater transparency and accountability in the legislative process are essential to open up space for parties concerned to access the process. This might entail a trade-off between substance and process – that is, between employing informal lobbying for desired outcomes and overall support for an open and rule-governed legislative process.

In promoting legal reform, international actors should give greater consideration to enable local civil society to mobilize politically for social change. This helps to create genuine local ownership and reduces the conflictual effect that a more direct international role is likely to produce, above all in sensitive religious and cultural issues.

## Haiti

AMELIE GAUTHIER and MADALENA MOITA<sup>13</sup>

Haiti lacks a judicial body that is independent from the government, with its own budget to administer the courts, independent powers to nominate judges and magistrates and to monitor their conduct<sup>14</sup>. This makes the judiciary weak and vulnerable to political interference. For example, the Minister of Justice applied disciplinary sanctions to five magistrates, for presumed involvement in corruption. Three of the sanctions were revoked and two others were suspended.<sup>15</sup> However, his actions have also been interpreted as interference by the government in the judicial branch, accentuating the need for a truly independent body. There have also been conflicts of authority between former Prime Minister Michèle Pierre Louis and the President over the control of the Ministry of Justice.<sup>16</sup> Controlling the judicial system is a powerful asset for political leaders, and the sector has become a politicized and corrupt arena.

A recurrent theme in interviews with both internationals and national representatives is the lack of critical infrastructure for the judicial system: Haiti's courts are run-down, with little office furniture, let alone such essential working tools as the civil and penal codes in French and Creole, or computers and archives to store the trial information. Particularly acute is the lack of trained human resources. The complete "set" of legal actors – judges, court personnel, lawyers, prosecutors, civil servants – in the ministry is often not prepared for their responsibilities, and individuals are often appointed on the basis of personal or political ties. In some remote areas, judges are unable to read or write. This is a general problem in a country suffering from severe "brain drain" and highly dependent on technical expertise.

The administration of justice and the functioning of the courts are hampered by lack of trained personnel. Moreover, the tendency to give priority to civil cases over criminal ones leads to long periods of pre-trial detention and extremely long court processes. Some NGOs in Haiti are now working to gather detailed information about each detainee and the legal procedures they have been through. This exercise will help to identify the bottlenecks in the processes of detention, trial and judgment, and where in the process the detainee stands. While there have been many reports on the problems of the judiciary system, there seem to be major shortcomings in what is written about each case, the profiles of the judges involved, and statistical information about the functioning of the court. "There is a strong need for case management, court management – all kinds of all management."<sup>17</sup>

We mention these shortcomings here because they are important for assessing Haitians' perceptions of the justice sector, and thus the state itself: Access to justice is virtually non-existent for the 60% of the rural population. Instead, conflicts are typically resolved locally, and people place their trust either in the police chief, the locally elected municipal representative, or a Catholic, Protestant or voodoo priest. Although it is difficult to define these means of resolution as typical "informal

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13 Independent Consultants.

14 Data collection for this case study was done prior to the earthquake on January 12, 2010.

15 "Sweeping Clean the Judicial System: RNDDH encourages the Ministry of Justice and Public Security to continue cleansing the system", Press Release, 9 April 2009, Haiti.

16 Interview with lawyer, Port-au-Prince, 31 March 2009.

17 Interview with an international NGO representative, Port-au-Prince, 1 April 2009.

justice” as known from African states,<sup>18</sup> the methods of conflict resolution in these rural areas are definitely outside the official legal parameters set by the civil and penal codes. Rulings are often based on common sense, grounded in cultural and local contexts.

The feelings and sentiments expressed by Haitians towards the formal judiciary system are, not surprisingly, predominantly those of fear and distrust. It is common knowledge that judges, despite being civil servants of the state with a responsibility to serve the people, often serve their own interests. There is little in the way of professional ethics and principles that guide the judges in their work, and they are frequently accused of corruption. As one lawyer in Port-au-Prince put it to us during an interview: “There is heavy competition between magistrates for elitist enrichment, and new magistrates are more corrupt than the older magistrates.”<sup>19</sup>

## Reform plan

Against this backdrop, it is not surprising that justice reform has been made a priority. The basis for these reform is the Growth and Poverty Reduction Strategy Paper (DSNCRP)<sup>20</sup> of November 2007, which sets five priorities for reform: i) Restructuring and modernization of the Ministry of Justice and Public Security, ii) Restoration of the judiciary, iii) Improving access to the courts and to an efficient court system, iv) Rehabilitation and consistent development of the incarceration system, v) Modernization of the legislation.

The DSCRCP is the central in that it sets priorities, and most importantly permits donors to work within the government’s framework. However it has several limitations. The priorities cover virtually everything, and the document does not establish any strategy for achieving the objectives. Moreover, all the main donors operate within this framework, with their own plans and strategies for reform. Coordination efforts abound, and various mechanisms have been put in place, such as *table sectorielle*, but without serving as effective focal points for coordinated action.

The major international players in the area of justice reform in Haiti are MINUSTAH, UNDP, the OIF, NCSC, ILAC, EU, Canada, and the United States. Despite a certain division of labour, there is a lack of consensus among donors as to the preferred model for reform (French, Latin American, North American). Haitians are also deeply divided, and it is difficult to see the contours of anything resembling a broad political consensus on how to move forward. The presidential working group on the follow-up of the reform, which works independently from the Ministry of Justice and the various others commissions each with their different teams, is but one indication of the structural problems involved in efforts to reform Haiti’s justice sector.<sup>21</sup> This background forms the institutional and political setting for such reform efforts, and it should be borne in mind as we move on to analyse the various actors and their perceptions of ownership.

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18 African informal justice systems are generally characterized by strong tribal organizational structures, where the hierarchies are clearly defined, the supremacy of the chief is recognized and his decision is respected.

19 Interview with a lawyer, Port-au-Prince, 31 March 2009.

20 Document Stratégique National pour la Croissance et la Réduction de la Pauvreté.  
<http://www.mpce.gouv.ht/dsncrpfinal.pdf>

21 The various commissions are as follows: Presidential Commission “Groupe de travail sur la reforme de la justice”, Presidential Commission “Groupe de travail sur la reforme de la Constitution” (now terminated; results have been presented to the Parliament), Presidential Commission “Groupe de travail sur la modernisation du code pénal et du code d’instruction criminelle”, Commission under the Ministry of Justice and Public Security “Commission Nationale de Détention”, Commission under the Ministry of Justice and Public Security “Commission sur la refonte des codes et de la législation”(not yet operating). Source: internal UNDP document.

## Perceptions of ownership

### Donors

The policy documents of all major donors identify “local ownership” as a fundamental principle. Given the status accorded to this principle in policy documents, it is surprising to find that there is little in the way of specific guidelines for practical implementation. Donors typically present a standard framework – for example, the five-page guidelines from the European Commission concerning Rule of Law policies<sup>22</sup> – usually prepared by experts in Brussels or elsewhere. Similarly, USAID has established procedures for its officers to elaborate country analysis in order to set specific Rule of Law priorities. Again the concept of ownership appears: “the post-conflict rebuilding process is challenging and complex. It requires strategies that promote local ownership and financial sustainability, and that develop local capacity quickly.”<sup>23</sup> The Guide offers recommendations on how to best get information on the country’s political and historical context so that USAID officers may perform a correct assessment of the justice sector. However, the Guide goes on to say: “if the rule of law is a universal principle, then supporting the rule of law is not necessarily imposing foreign ideas on a society”. This is a frequent but dubious operationalization of local ownership: Peacebuilders do make an effort to acquire specific country knowledge in order to better understand how to promote local ownership, but all this takes place within a framework where there are certain standards, values and policy principles that are held to be universal.

Here the UNDP differs in having a longer history of emphasizing ownership; it also has much clearer guidelines for how its staff are to establish or promote local ownership. A UNDP report on strengthening the rule of law in post-conflict settings notes that:

At the country-level, UNDP responds to requests by Host Governments and derives its country-specific mandate from Standard Basic Agreements (SBA) between the Host Government and UNDP. Thus, as a development agency, UNDP Rule of Law programming is not only guided by national ownership, as a principle, but this principle is also embedded in UNDP execution modalities. Nationally-owned needs assessments are central to UNDP programming design. Partnership and coordination with national partners is essential to this process.<sup>24</sup>

Generally, however, donor literature on ownership is ambiguous when we move from the level of policy to the level of implementation at the country level. In effect, country-level operations correspond to a difficult, on-going translation effort, where donors’ principles encounter developing countries’ demands. Here, experts who benefit from a deeper knowledge of the country are expected to perform elastic manoeuvres to make policies from headquarters fit in with reality and vice-versa – what Schlichte and Veit call “policy bending”<sup>25</sup>. Or, as one donor representative put it, “Policies towards fragile states need to be much more flexible” – reflecting a general view among peacebuilders about the challenges involved in mediating between and aligning the world of policy and the world of political practice in Haiti.<sup>26</sup>

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22 Programming Guide for Strategy Papers, Rule of Law (January 2009) available at: [http://ec.europa.eu/development/icenter/repository/F22\\_judicialsystem\\_fin\\_en.pdf](http://ec.europa.eu/development/icenter/repository/F22_judicialsystem_fin_en.pdf)

23 Ibid.

24 UNDP, Strengthening the Rule of Law in Conflict- and Post-Conflict Situations. A Global UNDP Programme for Justice and Security 2008-2011, available at [www.undp.org/cpr/documents/jssr/rule\\_of\\_law\\_final.pdf](http://www.undp.org/cpr/documents/jssr/rule_of_law_final.pdf).

25 Klaus Schlichte and Alex Veit 2007, “Coupled Arenas: Why state-building is so difficult”, Humboldt University Berlin: Working Papers Micropolitics no. 3, 2007, available at: [http://www.ipw.uni-magdeburg.de/inipw\\_media/schlichte/mikropolitik/03\\_07\\_Coupled\\_Arenas.pdf](http://www.ipw.uni-magdeburg.de/inipw_media/schlichte/mikropolitik/03_07_Coupled_Arenas.pdf).

26 Interview with a donor agency representative, Port-au-Prince, 30 March 2009.

In interviewing those operating in Haiti to help build peace, the authors were frequently asked to explain the meaning of the concept of “local ownership” – which would indicate that ownership does not form part of the framework or culture of peacebuilding applied by peacebuilders in performing their tasks. In interviews with donors, alignment with the DSNCRP was mentioned as a sign or proof that they did recognize and live by the principle of ownership. Specifically, interviewees deemed “ownership” to be present when one or more of the following obtained: the government’s signature of a specific agreement; the fact that the government would contribute part of the resources (human or financial); that the government would assure future continuity of the project.

Note that these criteria see ownership as an outcome, not a process or a point of departure in the sense of it being a question of the government recognizing or appreciating “the benefits of the policies and to accept the responsibility for them”<sup>27</sup>. In fact, however, the basic instrument for “local ownership” mentioned by donors – the DSNCRP – is by several national actors seen as the product of an unsuccessful executive branch policy of the 2007 government of Jacques-Édouard Alexis, later removed from power. Haitians do not recognize the document as a “Haitian” plan but as one that was externally conceived, or, at best a “mixed Haitian and international community” plan.<sup>28</sup> Furthermore, very few local actors recognize the adequacy of the document, and the current government hardly accepts it as the basic plan for elaborating public policies. This state of affairs has arguably been exacerbated by the report authored by Paul Collier for the UN, in which new and different priorities are proposed.<sup>29</sup>

Considering “local ownership” successful and/or important when it follows an “orphaned” plan like the DSNCRP raises the question of *whose* ownership is being granted. Governments have changed frequently in Haiti, and between these there have been no overarching national plans or strategies. Today, there is no one who really assumes responsibility for implementing the DSNCRP. Instead, it serves as a useful point of departure for internal donor coordination efforts. This lack of continuity in government policy certainly makes securing local ownership even more challenging – especially since international donors operate with plans and formal constraints that make it almost impossible to shift priorities in accordance with new government plans in Haiti.

## Government

When asked, government officials showed little or no knowledge or understanding of the principle of ownership. When asked about specifics – for example, whether efforts to reform the justice sector were driven, controlled, designed by donors or by Haitians – they would typically say that final decisions are, ultimately, in the hands of Haitians. The government engages in an ongoing dialogue with donors to select from a menu provided by external actors, be it the UN or others. However, several interviewees from donors and the UN said that negotiations with external actors as pursued until the point where they manage to persuade the Haitian government to accept their proposals. Thus, while Haitians may see themselves as the main decisions-makers, international actors see themselves persuading the Haitians to accept their position.

Lacking financial resources for adequate governing, the government tends to accept donors’ conditions and suggestions so that there will be money coming into the system.<sup>30</sup> In Haiti, this

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27 James M. Boughton and Alex Mourmouras 2002, Is Policy Ownership an Operational Concept?, IMF Working Paper, p.3, available at: [www.imf.org/external/pubs/ft/wp/2002/wp0272.pdf](http://www.imf.org/external/pubs/ft/wp/2002/wp0272.pdf)

28 Interview with high-level government official, Port-au-Prince, 3 April 2009.

29 Paul Collier 2009, Haiti: From Natural Catastrophe to Economic Security. A Report for the Secretary-General of the United Nations, January 2009, available at: <http://www.focal.ca/pdf/haiticollier.pdf>

30 As Haiti generates only around 11% of its GDP in revenue, the country is heavily dependent on external financing. Country Report, The Economist Intelligence Unit, November 2008, p. 8.



results in a power struggle between international actors, who have the resources and are pressured to see results, and national political leaders, who must balance conflicting demands from their different supporters. This dynamic corresponds to what Barnett and Zuercher call “*co-optive peacebuilding*”, where “local elites and peacebuilders negotiate a peacebuilding programme that reflects the desire of peacebuilders for stability and the legitimacy of peacebuilding and the desire of local elites to ensure that reforms do not threaten their power base”.<sup>31</sup> In contrast with a predominance of either international or local actors (respectively a *cooperative* or a *captured* type of peacebuilding) we would suggest this formula may, in many cases, be preferred over the alternative, since it does not challenge or interfere with the relations between the state and society that determines the state’s legitimacy. In the case of Haiti, however, there are good reasons for concluding that it is precisely the character of the relation between state and society that must be transformed in order for a more stable and legitimate state to emerge.

## Civil society

Interviews with civil society organizations (CSOs) showed that their priorities in terms of Rule of Law differed systematically from those set by the DSNCRP and the external actors. When asked what the priorities should be, CSO representatives would express concern about social and economic rights, gender issues, food security etc.– points often absent from the rule-of-law programmes designed by external actors. Moreover, they noted that a key obstacle to reform in the judicial system is the vicious circle of impunity and corruption that erodes institutions’ legitimacy and credibility. Oddly enough, donors seem to have generally avoided these issues.

CSOs feel marginalized from reform efforts in the judicial system, noting that they have rarely been consulted by national or international actors during the definition of priorities. Some donors stressed that they supported the government on the condition that civil society was consulted, but the space and mechanisms for dialogue between the state and organized citizenry are extremely weak. In fact, many CSOs do not want to collaborate with the government at all, seeing their role much more as an opposition to the regime than as a strategic partner working towards commonly agreed objectives. This tendency, in turn, has to do with sub-optimal democratic practices and historically established and deep-rooted political division. For Haitians, the primary frame of reference for solidarity and burden-sharing is the family, after years of dictatorship and the ensuing survival-logic that have led CSOs to compete for funds from international donors with an eye to securing financial rewards.

In terms of rule of law and the justice reform, MINUSTAH (the United Nations Stabilization Mission in Haiti) is seen as collaborating closely with USAID. MINUSTAH is viewed as privileging contact with the government as its main partner, while largely avoiding civil society. And although working with non-state actors is emphasized in the MINUSTAH mandate,<sup>32</sup> significant organizational and practical constraints seem to block day-to-day interaction with civil society. In general terms, different donors employ very different practices as regards their interaction with the government. Some donors referred to holding regular meetings with local authorities in an effort to reach consensus on policy implementation, while other donors said that they preferred to integrate their own officials into the work to be done by the Haitian state. The UNDP, for example, usually emplaces an official working with national judicial authorities.

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31 Michael Barnett and Christoph Zuercher 2007, “The Peacebuilder's Contract: How External State-building Reinforces Weak Statehood”, available at <http://www.polisci.umn.edu/~mirc/paper2006-07/spring2007/barnett&zuercher.pdf>, pp.3-4.  
32 <http://www.un.org/Depts/dpko/missions/minustah/mandate.html>

## Implementation agents throughout the country

Throughout Haiti, the UN and other external actors have staff engaged in implementing a range of projects and programmes within the justice sector. Interviews with staff engaged in these tasks brought out a slightly different interpretation of ownership. Representatives of three major institutions – the National Centre for State Courts (NCSC), the International Legal Assistance Consortium (ILAC) and the International Francophone Organization (OIF) – appeared to have a more acute sense of the importance, and challenges, of securing local ownership. Most of these actors had been chosen by donors after responding to a call for proposals and by having experience in the field of justice reform in developing countries. As an example, these organizations said that they had started projects by first conducting an in-depth diagnosis of the Haitian justice system, performed by nationals who would later be integrated into the respective teams. A specific project on designing rules in the courts in collaboration with the judges' association indicates that it may be easier to establish ownership on a smaller scale, between professional/technical staff representing both external and internal actors, than at the strategic and political level between donors and the government.<sup>33</sup> The consultation process was held to be central to the governments' assurance of gradually bearing the financial costs of the projects.

### Major Obstacles to Ownership

Haitians have become accustomed to a heavy presence of international actors. For some, this has engendered a passive attitude, while causing frustration and resistance in others. The political elite have accumulated knowledge about the functioning of peacekeeping operations, donor interests, and good governance reforms. Their interaction with international personnel has facilitated the elements of a shared culture and language, making communication and negotiations easier. However, the failures of the past and the difficulty of sustaining reform efforts have also generated significant frustration and mistrust on both sides.<sup>34</sup>

### Local limitations

One crucial factor that limits ownership is local capacity. Young, educated people are often the first to leave Haiti, to take up positions abroad. As a result, both the government and civil society organizations suffer from severe shortages of qualified human resources. Many interviewees mentioned lack of capacity to participate as a serious limitation. This is an important and often overlooked aspect of ownership: that local actors themselves may feel that they are unable to participate because they lack the necessary educational background or experience. It indicates that the often highly technical language of peacebuilding and development may in itself be a barrier to entry for local actors. The lack of continuity in government has also proven a major setback in reform processes. Perhaps especially in fragile states, ownership is based on individuals rather than institutions: New ministers will naturally identify new policies and priorities. However, the absence of a functioning state apparatus, and no minimum agreement and national consensus on core priorities, leave the plans of external actors vulnerable to changes that often undermine the sustainability of reform efforts.

The normal democratic process whereby civil society influences parliamentarians for their vote is still dysfunctional in Haiti. Without any kind of binding accountability and control mechanisms over the government and elected members of parliament, democracy is thwarted. Civil society is characterized by its weak capacity to engage and formulate proposals and solutions. These

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<sup>33</sup> Interview with an implementation agency representative, Port-au-Prince, 1 April 2009.

<sup>34</sup> Civil Society representatives advocated for a change in paradigm from the international community, Presentation in a Workshop on Fragile States organized by FRIDE, September 2007, Madrid.

structural features are exacerbated by what many see as a political culture focused on personal enrichment. As one UN official put it: “The president does not believe in the state”,<sup>35</sup> referring to the fact that there has been no sustained effort on the part of the President to confront – through a reform and strengthening of the justice sector – such problems as narco-traffickers, patronage networks and corruption rings.

## External actors

In the last three years, the government has twice fallen, bringing down the Minister of Justice who had worked hand in hand with MINUSTAH on legislation to guarantee the independence of the justice system. With a new government and a new minister, MINUSTAH and other external actors face a big challenge in trying to secure the support (ownership) by the new government, while continuing the reform efforts started under previous governments. Two presidential commissions have been created, and two further commissions under the Ministry of Justice, all of which makes the challenge of pushing forward on previously agreed upon objectives all the more daunting. The international community finds itself trapped into working with personalities, not institutions, and sustaining programmes that are often unsuitable or directly unwanted by key actors.

Furthermore, donors face important technical and financial restrictions. There is the timeline paradox: the pressure exercised from donors to get quick results that can be measured quantitatively ( $x$  number of courts repaired,  $x$  number of judges trained, etc.) often contradicts or undermines the necessary, and slow, work to establish ownership and sustainability of reform efforts. Quite a few interviewees argued that ownership has been “sacrificed” for the sake of results.

Accountability and transparency is central to ownership. Many Haitian interviewees emphasized the problem that the government is forced to be accountable to donors, whereas accountability to Haitian society is less of an issue. The lack of accountability between donors and the local population creates not only confusion but also outright resistance. As one Haitian put it: “How many more expensive and ineffective projects do we have to put up with?”<sup>36</sup>

## Policy implications

Do peacebuilders learn? Many peacebuilders interviewed in Haiti had prior experience from working on several missions. Some had in fact been posted to previous missions in Haiti, which should help in building knowledge and understanding of Haitian society. However, many interviewees commented that internal “turf wars” within MINUSTAH and among the various UN entities inhibited learning and flexibility. Moreover, possibilities for individual promotion are very much linked to measurable results and outputs, and not to local processes and the sustainability of reform efforts. In such an environment, sharing learning experiences (and especially failures) might be discouraged.

Evaluations of rule-of-law work in Haiti have pointed out that, in the past, external actors have advanced “donor-driven” policies while neglecting interaction with civil society.<sup>37</sup> Our analysis indicates that knowledge and information about the *relationship between* the state and its citizens, and specifically people’s perceptions of the justice system, should be made integral to any reform effort. While ownership is part of the Paris Declaration it still needs to be specified and rendered

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35 Interview with a UN official, 20 October 2009.

36 Interview with civil society representative, Port-au-Prince, 13 April 2009.

37 Jamal Benomar 2001, “Rule of Law Technical Assistance in Haiti: Lessons Learned”, World Bank Conference Co-Hosted by the Government of Russia “Empowerment, Security and Opportunity Through Law and Justice”, 8-12 July 2001, Saint Petersburg.

operational.<sup>38</sup> Moreover, to the extent that local ownership means that programmes and projects should be “initiated by local actors” and/or that they have “local support”, it entails a more fundamental re-thinking of donors’ practices of interacting with local actors.<sup>39</sup>

To be sure, the main issue facing peacebuilders in Haiti is how to grapple with and help to resolve the deep divisions within society. The discussion over reforming the penal code is representative: whereas some actors advocate complete and immediate modernization, believing that this will bring about positive changes in the functioning of courts and that will “trickle down” through society, others advocate a more gradual modernization of a few laws and articles so that the country can adapt to these changes. Peacebuilders need to take this lack of national consensus on the strategy for judicial reform as their point of departure. Fostering wider debate on what strategy to adopt can not only help to render reform efforts more sustainable, but the debate itself might well create a more genuine sense of local ownership. However, donor definitions of ownership and measures put in place to secure it run counter to such slowly evolving processes as a national public debate – donors operate with very linear methods of measuring ownership in terms of government contribution, signature of official documents, the assumption of financial responsibility when international funding terminates.

More attention should be paid to serving Haiti as facilitators rather than as builders, as advisors rather than as authoritative experts.

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38 Paris Declaration on Aid Effectiveness. Available at <http://www.oecd.org/dataoecd/30/63/43911948.pdf>

39 Laurie Nathan 2007. No ownership, no commitment: a guide to local ownership of security sector reform, University of Birmingham. Available at <http://www.ssrnetwork.net> [accessed 15 October 2007].

## Liberia

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We are in a small village in Bong County, Liberia, speaking with the village chief, asking him about the rule of law. Quite a few villagers gather around, and we ask about the justice sector in Liberia. “Justice? You need to be rich to get justice.” For starters, he tells us, the police are miles away, and they won’t do anything unless they are paid some money, ostensibly to cover petrol expenses and to provide a little extra cash for a salary of some 90 US dollars a month. If the case goes to court, we are told, there is little chance of a fair trial. The judge can easily be paid to rule in one way rather than another. According to the chief and the rest of the group in this small village, justice is simply not something associated with the laws formulated in Monrovia. Instead, they see traditional practices of adjudication and conflict resolution vested in traditional authorities as providing a modicum of justice. As a study of local perceptions of the justice system in Liberia recently concluded: “Liberians ... overwhelmingly believe that the formal justice system falls drastically short of expectations, to the point where many believe that the formal system is concerned primarily with fees ... By contrast, Liberians reported far more satisfaction with access to, the pace of and the costs associated with customary justice institutions.”<sup>41</sup>

This brief illustration provides a useful frame for the subsequent analysis of how the principle of ownership is understood and acted upon by external actors as they seek to build peace in Liberia. It indicates that the implementation of the rule of law – a hallmark of the prevailing peacebuilding model – has not progressed to the extent that large segments of society see it as relevant or effective. These villagers did not object to the *content* of the laws that form the formal legal code. What they objected to the lack of equal enforcement. That might indicate that the tension so often presumed to exist between liberally oriented peacebuilding strategies and pre-existing values and institutions may be overstated. Moreover, it tells us that, in post-conflict settings, it is not so much a question of establishing but reforming the rule of law: already established mechanisms for upholding some law and order often have greater relevance and legitimacy than efforts focused on expanding state capacity. In sum, a lot revolves on how ownership is interpreted and acted upon: that impacts not only on the type of peacebuilding strategy to pursue but also on how that strategy is sought implemented and through what channels.

How peacebuilding is operationalized at the country level cannot be grasped without considering in some detail the institutional set-up of the relationship between external and internal actors. First, there is the question of the formal rules and procedures that stipulate how different UN entities – UNMIL, UNDP, UNHCR, UNICEF, etc. – are to interact with the national government and other actors in the given country. Second, there is the question of the basis from which those engaged in peacebuilding think. We will look at each question in turn. On the formal rules and procedures, we focus on the UN Peacebuilding Fund established for Liberia. On the cultural and institutional aspect, we draw on an extensive set of interviews with UN staff and others in Liberia, to provide some ideal-typical interpretations of ownership by “everyday” peacebuilders.

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<sup>40</sup> Associate Senior Researcher, Chr. Michelsen Institute.

<sup>41</sup> Deborah Isser et al. 2009, *Looking for Justice: Liberian Experiences with and Perceptions of Local Justice Options*, Washington DC: US Institute of Peace. p. 9.

## Institutional framework for UN peacebuilding

The UN Peacebuilding Fund (PBF) is one of many multi-donor trust funds (MDTFs) within the international aid architecture. The Fund is intended to be a “risk taking and catalytic instrument for peacebuilding support”<sup>42</sup>, focused on filling strategic gaps in peacebuilding strategies in selected countries, and their implementation. Projects under the PBF may have a duration of maximum eighteen months. The Fund is managed by the PBSO under the Secretary General’s authority. UNDP is the administrative agent, with responsibility for financial aspects and accounting. Projects funded by the Peacebuilding Fund at the country level have a set-up whereby – according to UN rules – a UN agency must act as the recipient agency (RA). While the RA must be a UN organization, there is in principle no limitation as to who the “implementing partner” might be.

Decisions on who is to receive funding are made by the PBF Joint Steering Committee at the country level. In making these decisions, the Steering Committee refers to the national-level “Priority Plan” for peacebuilding, which is formulated at the country level, and to the Terms of Reference and Rules of Procedure, formulated at UN headquarters in New York. Moreover, a report from a “Technical Advisory Panel” on the quality and feasibility of different projects is used. Examples of questions in the generic application form are: Is the project explicitly based on Liberia PBF Priority Plan? Does the project build capacity within national institutions? Does the project promote and ensure national and local ownership? Does the proposal have mechanisms to ensure that it is sustained beyond the end date?<sup>43</sup>

The steering committee for the Fund is co-chaired by the UN resident coordinator/DSRSG and the Liberian Minister of Internal Affairs. It includes a further 15 representatives, amongst them USAID, the Swedish and US ambassadors, representatives of international NGOs and civil society, and of the business community. While nominally representative of both external and internal actors, our interviews with members of the committee indicate that significant differences exist among members as to their familiarity with the formal rules guiding the Fund and their clout in determining which projects are approved. First of all, no representative of Liberian civil society were initially part of the committee. When they were included, they were “overwhelmed” by the complex rules and procedures that guide the Fund. This was in part because there was “no effort to raise awareness of PBF rules and activities” amongst representatives of either national or international NGOs.<sup>44</sup> Second, most members of the steering committee are internationals, which indicates that national representatives are at a disadvantage not only in terms of the technical aspects of the Fund but also in terms of sheer numbers. Finally, the DSRSG, who co-chairs the Committee, is said to be the “most powerful person” in the committee because he can “make things happen”.

The rule that the RA must always be a UN agency may seem trivial, but it has some significant effects on the relationship between actors wishing to apply for funds. Interviews with both UN staff and NGOs indicate that UN entities in effect became a gatekeeper for applications, since Liberian actors cannot apply for funds without the backing of a UN entity. Some interviewees even argued that this institutional set-up enables UN agencies to “shoehorn themselves into our projects”.<sup>45</sup> In our interviews with both recipient agencies and implementers, we heard contradictory stories about how a project came into being, in terms of who took the initiative, who persuaded whom, and how much one or the other was contributing to the project. For example, a senior UNDP official acknowledged that it was the UNDP that had written all of the applications submitted to the PBF although the UNDP should only, per the Terms of Reference of the PBF, serve as an (administrative) recipient agent (RA). In a nutshell, the institutional set-up of the PBF is such that it

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42 Report of the Secretary General, “The Peacebuilding Fund”, A/63/218, 4 August 2008.

43 Liberia Peacebuilding Fund Joint Steering Committee Terms of Reference and Rules of Procedure.

44 Interview with head of international NGO, Monrovia, 2 October 2009.

45 Interview with staff from an implementing partner, Monrovia, 29 September 2009.

puts UN entities in a position to select national partners and also to shape the contents of applications. Moreover, in the Steering Committee, there is every indication that representatives of donors and the UN hold sway, in no small part because of their familiarity with the technical aspects of the PBF and because of what they can “make happen” by virtue of representing a UN entity.

This institutional set-up also affects the implementation of projects. Quite a few interviewees noted that the involvement of Liberian actors in both designing and implementing projects has been very low. There have been complaints that the UN recipient agencies are doing most of the implementation work by themselves – so much so that a Liberian Minister came to the Peacebuilding Secretariat to complain that the UN recipient agencies were doing everything on their own.<sup>46</sup> According to the terms of reference of the Liberian peacebuilding fund, UN organizations are to function as “recipient organization” from the Multi-Donor Trust Fund, where the money for the Liberian Peacebuilding Fund comes. Projects are not to be implemented by UN organizations, as they are intended to build local capacity and secure local ownership. However, the institutional set-up of the PBF seems to undermine these objectives.

For one thing, the Priority Plan for the PBF is to be derived from Liberia’s Poverty Reduction Strategy (PRS). This document is to be produced and “owned” by the government. However, the production of that part of the PRS that concerns peacebuilding was produced largely by international experts. An UNMIL civil affairs officer was hired to “ensure that the PRS was conflict-sensitive”. He noted that “...there is a tendency on the part of post-conflict governments, because of urgent needs to rebuild, to forget or overlook critical needs regarding post-conflict issues. We sat down and identified critical conflict factors in Liberia.”<sup>47</sup> The PRS process was organized around several working groups, with representatives from various parts of the government and from the UN and other donors. When asked whether it was the government that took the initiative to establish a working group on peacebuilding and conflict sensitivity, this interviewee responded: “No, no, it came from us. Then the government saw the need. ... We developed several papers on conflict sensitivity for each of the four pillars of the PRS. ... It was the UN that took the lead in drafting the 10 pages. We said: ‘These are the issues you need to address.’ We took the lead. Quite frankly we really did not only have a say. The government lacks capacity on conflict sensitivity and peacebuilding.”<sup>48</sup>

Moreover, the UNDP operates in so-called DEX mode – Direct Execution – in Liberia. The underlying reasoning is that in order to have full control over the use of UN funds and to avoid corruption and to minimize fiduciary risks, UN agencies are not to transfer funds to the national authorities and then let them distribute money according to their priorities. As one UNDP employee put it, “the UN doesn’t want money to pass through the ministries – except to the Ministry of Finance, where people from PricewaterhouseCoopers are advisors”.<sup>49</sup> Despite an idealized vision of cooperation and ownership, there is a lack of trust in the government, and no money is going through them.<sup>50</sup> The DEX mode, then, is motivated by fiduciary concerns. Only when the UN trusts national authorities to spend and use funds in accordance with established rules and regulations do they shift towards NEX mode – National Execution. Admittedly, there are good reasons to be concerned with corruption. Our point here is simply to note that DEX renders efforts to establish ownership much more difficult.

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46 Interview with PBF staff, 30 September 2009. Interview with head of major international NGO, Monrovia, 2 October 2009.

47 Interview, UNMIL Civil Affairs Officer, 22 May 2008.

48 Ibid.

49 Interview with UNPBF staff, Monrovia, 2 May 2009.

50 Interview with UNPBF staff, Monrovia, 2 May 2009.

The institutional interface between external and local actors – here exemplified by the set-up of the PBF in Liberia – is heavily tilted towards external actors in terms not only of financial control, but also as to the selection of whom to support, and the substantive content of specific projects. This bias should not be exaggerated, however: government agencies often *do* have considerable power in peacebuilding projects, and concerning the allocation of funds. Nevertheless, this institutional interface has considerable implications for the likelihood of establishing genuine ownership for peacebuilding efforts.

## Perceptions and the practice of ownership

A central issue regarding ownership is the question of who develops the project proposals, concept notes and overall strategies within the above system. When asked directly about the extent to which UNDP took a hands-on approach in developing proposals for the PBF, a UNDP official quipped, “Well, *of course* we are! We’re development professionals. That’s what we do.”<sup>51</sup> As we discuss in some detail below, such views are not uncommon, indicating that those who represent the UN in post-conflict settings identify themselves as professional authorities on what constitutes proper peacebuilding strategies. Very schematically, we may say that the substantive content of peacebuilding is defined “top–down” (deductively) from a set of liberal principles stipulating how (ideal) societies *should* be organized and governed, and not “bottom–up” (inductively), where knowledge about what works is generated from actual experience.<sup>52</sup>

This impulse to *do* rather than support or facilitate, to define plans and to tell government officials what they should do in order to build a peaceful, liberal democratic state is closely linked to several standard phrases that recur in the discourse on peacebuilding and state failure. It has to do with how ownership – despite being hailed as a foundational principle – is typically subordinated to institutionalized practices for peacebuilding. As Donais has noted, “In practice (...) local ownership in peacebuilding contexts has come to be less about respecting local autonomy and more about insisting that domestic political structures take responsibility for – *ownership* over – the implementation of a pre-existing (and externally-defined) set of policy prescriptions.”<sup>53</sup> Still, we need to ask: how do peacebuilders reflect on, define and approach ownership in practice?

A general finding from our interviews with peacebuilders representing different UN entities and other donors is that societies emerging from conflict lack the motivation, capacity, responsibility or accountability to govern effectively and legitimately. It is the absence of these key traits that is often invoked to explain why ownership is a conditional right and why it is so difficult to establish in practice. We discuss each of these traits in turn.

*Lack of motivation and lack of responsibility:* A “lack of motivation” among local representatives is often seen as something that hampers the establishment of genuine local ownership. It is sometimes even seen as an expression of cultural differences. In one interview it was noted that it was difficult to work together with Liberians in UNMIL, in the government, with local contractors, and in training the police because, it was argued, they seemed to lack motivation to perform the designated tasks.<sup>54</sup> A senior UNMIL official put it bluntly: “The government set the priorities, and we respect that very profoundly. Actually, we would have liked to see a stronger involvement from the government. We ended up doing most of the work.” Another UN official noted that they had to be very persistent in getting their local counterparts take on responsibility: “We have to talk to them

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51 Interview, UNDP official, Monrovia, 3 October 2009.

52 Ole Jacob Sending 2009, “Why Peacebuilders are ‘Blind’ and ‘Arrogant’ and what to do about it”, NUPI/TfP Report.

53 Timothy Donais 2008, “Peacebuilding and the Dilemmas of Local Ownership: The Case of Haiti”, paper presented at the ISA Annual Convention, San Francisco, 2008.

54 Interview with international staff, UNPOL, 3 May 2009 Monrovia.



about the national security systems, *to make sure that they set up these systems.*<sup>55</sup> A third argued that ownership is and should be conditional on responsibility. Asked about the challenge of securing ownership, the official said: “Well, with ownership comes responsibility. Often, they [Liberians] don’t take it.”<sup>56</sup> What can explain this (perceived) “lack of motivation and responsibility”? In response to the claims that the locals lack motivation, one local NGO expressed that international organizations often set up meetings, and ask for cooperation, but that the internationals always end up carrying out all the work, relegating the local NGO to the sidelines. “Cooperation” is always one-sided, the respondent argued, and added that the sheer quantity of regulations, assessments and routines was discouraging for local actors not accustomed to such ways of operating.<sup>57</sup>

It might seem that heavy international involvement without proper consideration for local involvement can be one of the causes of what is seen as lack of motivation and perhaps unwillingness to take on responsibility. A clear expression of this came during an interview with a government deputy minister. When asked about ongoing projects in his ministry, he eventually heaved a sigh, and instead referred us to an international consultant working in the ministry, saying that that person would know a lot more about what was going on in the ministry than he did himself.<sup>58</sup>

*Lack of consultation and involvement:* Ownership is often defined as a right – as an operationalization of state autonomy derived from the institution of sovereignty. In this view, ownership means involvement in setting the agenda and priorities from the moment that hostilities cease. One Liberian politician expressed this view as follows: “Rather than starting with the people, and how they feel about decentralization and what kind of decentralization they want, you begin with trying to negotiate their view into a UN document that becomes very attractive because it comes with a 15 million dollar fund. So you are starting on a wrong footing. In the document, they will say ‘we will do everything to ensure local ownership’. Well, you begin to defeat it right from the start!”<sup>59</sup> A milder version of this argument also resonated amongst some UN staff, as when it was argued that ownership is not given priority within the UN system, and that the organization is often far too arrogant about its own ability to deal with (particularly local) issues, without paying attention to actually “being of service” or “sitting in the back seat”.<sup>60</sup>

*Lack of capacity:* Lack of capacity was the most frequently heard explanation given for why ownership was difficult to establish in practice. The argument is that real ownership cannot be established before “the people are ready” to govern and to assume responsibility. In effect, this interpretation sees ownership as the outcome of the efforts of external actors. One interviewee expressed this view very strongly, arguing that the country must be rebuilt in line with international standards. Ownership is established in Liberia, he argued, but only to the degree that it *can be* at this point in time. Ownership is responsibility, and to assume responsibility you have to be “mature”. There must be “rules and regulations to govern them”,<sup>61</sup> the critical point for capacity building is when “they can decide what is good for them”.<sup>62</sup> According to this view, ownership without capacity is a rather “hollow” concept, used for strategic reasons by national counterparts in order to acquire resources and money and to strengthen their position. Ownership as consultation and participation given a set of international standards is a good idea, but ownership in terms of actual

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55 Interview with senior UNMIL official, Monrovia, 4 May 2009.

56 Interview with UNMIL official, Monrovia 2 October, 2009.

57 Interview with staff from Liberian Peacebuilding NGO, Monrovia, 1 May 2009.

58 Interview with a deputy minister, Ministry of Justice, Monrovia, 1 May 2009.

59 Interview with central Liberian politician, Liberia, 4 May 2009.

60 Interview with UNPBF staff, Monrovia, 2 May 2009; Interview with UN official, Monrovia, 3 October 2009.

61 Interview with local UNMIL employee, Monrovia, 30 April 2009.

62 Interview with UNDP staff, Monrovia, 29 September 2009.

control and autonomy is here rejected on the above grounds.<sup>63</sup> Participants at a retreat for the UN Country Team and UNMIL senior management in 2008 identified such lack of “capacity and will” on the part of civil society and the government of Liberia alike as central obstacles that needed to be addressed in order to “improve the impact of the UN”.<sup>64</sup>

Peacebuilders generally think in terms of the lack of ownership, justifying and explaining what they do by reference to the lack of capacity and responsibility on the part of local actors. Local actors, in government and in civil society, typically lean on an interpretation of ownership as an unconditional right, using it to criticize the external actors’ meddling, forward-leaning mode of operations. It is not surprising that lack of capacity or responsibility informs practically-driven interpretations of ownership within the prevailing liberal peacebuilding model. After all, a central assumption of this model is that local actors must be capacitated and learn new skills – they need to be trained and educated to govern in accordance democratic mechanisms and through the rule of law. However, what “skilled” means and when an individual or institution has sufficient “capacity” are defined and assessed very much with reference to how *external* actors judge progress against given (liberal) standards.

## Conclusions

Our findings indicate that there are some major structural constraints involved in how the UN is set up that make it very difficult to uphold and live by the principle of national ownership. Key among these structural traits is, first, the accounting rules emanating from fears of corruption – a tendency that has become much stronger in recent years – which seem to seriously inhibit, structurally, efforts to establish national ownership. One example is how the UNDP operates in Liberia under the DEX modality. It puts the UNDP in a position where they, not the national government, call the shots. That is not to say that the Liberian government now has the necessary power and strength. By invoking the principle of ownership, a level of autonomy and leverage can be gained from the UN, and it can be put to use for different purposes, some of which may conflict with stated goals. But the government is seen as invoking ownership for the “wrong reasons” – precisely because the trust in international templates for building capacity, advice, and establishing a well-functioning state is so strong. Rarely, if ever, did we hear that external actors saw a project, or a priority, or a law, as being *improved* by virtue of the national government, or the legislature, claiming ownership by saying “no” or by dismissing the plans or suggestions of the external actors.

Then there is the sheer weight of the rules and regulations set up to structure relations between the UN and the various national authorities. Here we find a heavily UN-oriented system of governance, with priorities and key decision making authority almost always located either in the UN at the country level, or with the UN in New York. To the extent that plans and priorities are accessible to the national government, the government is seen as an implementing partner that must team up with a UN entity which will serve as fund administrator. Moreover, the contents of applications show a systematic bias towards a certain type of “UN-speak” – a language that puts all but UN entities at a disadvantage. We also find that because of the rules and regulations, and the mechanisms for governing, emanating from UN entities in New York, there is no good institutional interface for establishing ownership: Bureaucratization and universalism trump efforts to be context-sensitive and to secure local ownership. As one interviewee noted, there is ample room for local actors, both government and non-government, to be included as implementing partners. There is also room for consultations, etc. But when it comes to the actual drafting and formulation of priorities and plans, that is done by UN and international actors, not locals. As implementing actors, they are involved –

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<sup>63</sup> Interview with UNMIL official, Oslo, January 2009.

<sup>64</sup> (UN 2008b: 2).

but they have not been involved in deciding what to do, or when or how. They look to others, often the UN, for decisions about what to do.

Concerning ownership, we identify three ideal-typical interpretations. One model of ownership sees it as a goal or outcome of peacebuilding efforts. Ownership concerns getting local actors to “internalize” to “make their own” the values and goals that underwrite the liberal peacebuilding model. As such, *how* ownership is to be achieved can be thought of as persuasion, socialization, incentives, discipline, etc. In this prescriptive understanding, ownership is a modality for achieving “sustainability”. The second model sees ownership as a right – a question of domestic sovereignty and thus autonomy. A third model operates with ownership not as a goal, nor as a right, but as a conditional right, one that presumes capacity and responsibility. Factors that hamper such a model, in addition to faults in capacity building, are often seen to be a lack of motivation or a lack of will to take on this responsibility. Peacebuilders tend to think in terms of this third model, justifying their own actions by reference to what they see as lack of capacity and responsibility on the part of local actors.

# Sudan

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## Context

In January 2005, a Comprehensive Peace Agreement (CPA) was signed between the Sudan Government and the Sudan People's Liberation Movement (SPLM), thereby ending 22 years of war, most of which had been in the southern part of the country. The agreement provided for the establishment of a largely autonomous Government of Southern Sudan (GoSS) in Juba, while a Government of National Unity (GoNU) was formed in Khartoum with the participation of the SPLM but with the ruling National Congress Party (NCP) having an absolute majority. As part of the CPA, national elections are scheduled for April 2010 and a referendum over the future status of Southern Sudan (unity or secession) will be held in 2011.

The international community has given massive support to the implementation of the CPA, and the rule of law (RoL) has been singled out as an important area despite the difficult conditions for promoting it. This brief report deals with RoL promotion as carried out as part of peacebuilding efforts by the international community.

In the North, there are established and functioning governance structures and active civil society organizations. However, the government is autocratic and the NCP has used its majority, also in the Parliament, to limit independent voices and liberalization. There is lack of democratic governance; poverty and corruption are widespread, and social services are deteriorating and inaccessible. The NCP rulers have also used Sharia law to control the economy, to enforce cultural conformity, and to restrict social interactions of communities at the centre. In the peripheries, they have manipulated ethnic diversity and local issues to control groups and strengthen their own power. Marginalization and underdevelopment have led to a political and humanitarian crisis in Darfur, as well as severe problems in many other parts of Sudan.

Regarding RoL, problems in the North include: politicization of police, judiciary and the entire justice sector; unequal distribution of resources; spread of corruption; disrespect of law by leaders and politicians; violation of human rights; and laws constraining the work of journalists, civil society organizations and the public interaction of people, especially women. Monitoring and accountability mechanisms in the correctional system are abusive to vulnerable groups, including displaced women and juveniles. Access to justice is further constrained by the low legal awareness and the high costs of legal procedures. For women, the cultures of many ethnic groups restrict them in seeking legal rights.

Southern Sudan has been a war zone for a long time. There is lack of basic infrastructure, systems and services, except in the few areas that were controlled by the Khartoum government. The South lacks human capacities and skills; it is commonly held that work will have to start from scratch in all areas. Regarding RoL, there has been a lack of structures and systems. Only the informal system of justice were functioning, using customary laws that differ among groups and with discriminatory

components against women. Promoting RoL, then, presents different challenges in the North and in the South.

## Rule of law activities

UNDP, DFID and USAID provide the bulk of the support for RoL in Sudan (USAID only in the South). Activities in the North have aimed to improve the independence, transparency and efficiency of legal institutions and professionals. Activities targeting the police have included strengthening training institutions and curricula and building trust in the police service by promoting “community policing”. Support to the correctional sector has included training of the forces as well as rehabilitation of prisons. Support to the Ministry of Justice has been limited, focused mainly on the human resources department for formulation of strategies and systems and strengthening legal aid services. Assistance to the judiciary has included building up infrastructure and training of judges and judiciary administrative staff. Concerning access to justice, activities have focused on internally displaced people (IDPs) in Khartoum and other communities impacted by the war. Work has included human rights awareness, establishment of justice and confidence centres, training of paralegals and the provision of legal aid services. RoL forums have been organized. Activities within customary law have included support to some studies and to a customary law working group, and raising awareness for traditional leaders. The experiences of rape in Darfur served to heighten the concern for violence against women and resulted in activities to reduce violence and provide greater protection.

In Southern Sudan, capacity-building initiatives have included support to the police, prisons, the South Sudan Judiciary Commission and the Ministry of Legal Affairs and Constitutional Development (MoLACD). Main activities have been needs assessments, strategy formulation, construction of infrastructure, and provision of equipment. Basic training has been conducted for the police and prison forces; training of judges, state attorneys and staff of MoLACD has aimed at providing relevant skills and knowledge to the Southern Sudan context and needs. Furthermore, technical advice has been provided for the police and the MoLACD. Activities concerning access to justice have focused on legal awareness, establishment of confidence centres, training of paralegals and the provision of legal aid services at the county level, as well as piloting the formation and training of community policing groups. Some activities (mainly studies) have been carried out on customary law, and support to the Customary Law Working Group in the MoLACD has been considered by some donors. Some efforts have been made to address violence against women, and retrospective justice issues have been studied and discussed.

Legal drafting has also been done in the South, as all basic laws had to be drafted. The international community provided technical assistance for the drafting. Approaches have differed. While some consultants drafted the laws and presented them for discussion, others used participatory processes.

## Ownership

Local actors for rule of law are mainly government officials in the legal institutions at federal and local government levels. Local communities tend to be seen as recipients, rather than actors to be involved in decisions. The role of civil society organizations in RoL programmes is not clearly articulated by the government or the international actors, but local experts may be consulted at various stages and will often act as brokers with international institutions.

Regarding “ownership”, the concept is understood differently by different actors. In general, local actors understand ownership as meaning their rightful participation in decision-making and implementation of projects, including budgetary matters (ownership as a right). According to Aisha

Faroug, “local ownership entails that donor-funded projects are for the interest of Sudan and that Sudanese have a say in it”.<sup>65</sup> But while officials and some politicians stress the legitimate role of the government in representing the interests of citizens and in leading and controlling the process<sup>66</sup>, members of civil society organizations focus on the role of citizens and often consider local ownership to be constrained by the lack of democratic transformation.<sup>67</sup>

While local ownership is seen as a key principle for aid effectiveness (according to OECD/DAC) and a core value for UN agencies, it is not set as a priority goal in most project documents; nor is there any obligation to consider or report on local ownership.<sup>68</sup> The main concern is with processes that can ensure approval of the project or programme, and these are usually carried out with a minimum of participation by local actors.<sup>69</sup> Ownership is not a core issue in the induction courses for international staff coming to Sudan, and promoting ownership depends on individual rather than institutional initiatives.

Some of the international actors (including donors, advisors, consultants and staff of UN Mission and agencies and international organizations) see ownership as the involvement of local actors mainly in project implementation.<sup>70</sup> To others, local ownership is ensured by taking a participatory approach, helping local communities to identify their problems and solutions, and training actors to build their capacities for doing things themselves.<sup>71</sup> The latter reflects the assumption that locals are not knowing and in need of help to participate. Experts with international experience, however, often hold that ownership entails that nationals lead the process.<sup>72</sup>

Asymmetrical relations between international and domestic actors are fostered by the widely held assumption that all local actors have limited capacities and that all international actors are in a position to lead, educate and strengthen local capacities and skills. This is noted by local actors, who often argue that there can be no ownership as long as the current situation of dependency persists.<sup>73</sup> Studying the interaction between international and local actors, one is struck by its superficiality. Any encounters (typically planned, organized and funded by the international organizations) serve primarily to ensure that local partners are informed, which leads to the latter

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65 Interview with Aisha Faroug, UNDO Officer, Judiciary Project; Khartoum, 16 February 2009.

66 “Ownership means to be in the driver’s seat, not to give way to the donor to do things according to their perceptions and interests. We do things on our own as Sudanese taking in consideration our indigenous knowledge, norms and practices. We decided what training we want and they support us and we participated in the training” (Deng Piong riktig navn? Head of Training Unit, Ministry of Legal Affairs and Constitutional Development, Government of South Sudan). Interview, Juba, 9 April 2009. Also Interview with Dr Adil Alagib, Sudan Deputy Police Commissioner, Ministry of Interior; Khartoum, 31 March 2009; Interview with Asma Tiya, Director of Development Planning, Ministry of Economy and Investment, Kadugli, 12 August 2009.

67 Interview with Manot A.Awet, Parliamentarian, National Assembly, Peace & Reconciliation Committee; Khartoum, 16/2/2009; Interview with Hassan Abdel Atti, EGDE Consultancy; Khartoum, 16 March 2009.

68 Interview with Toby Bonnini, Senior Program Officer, Rule and Law Unit, UNDP; Khartoum, 12/2/2009; Interview with Safwan Ahmed, Legal Officer, Judiciary Project, UNDP; Khartoum 16 February 2009.

69 Yasin Eisa, Senior Official, Ministry of International Cooperation asserted that although the Ministry’s responsibility is to coordinate donor-funded projects, still there are RoL projects implemented without knowledge of the Ministry; interview, Khartoum, 16 March 2009. El Fatih Alsadig, Undersecretary in the Ministry of International Cooperation, added that “the police project supported by DFID is implemented with no cooperation or knowledge of the Police Training Directorate in the Ministry of Interior”; interview, Khartoum, 7 November 2008.

70 Interview with Staff of Rule of Law Unit, UNDP, South Sudan, 9 April 2009.

71 Interview with the staff of the Rule of Law Unit, UNDP Juba; interview with Kevin Macquire, UNDP, Judiciary Advisor, Khartoum, 15 February 2009; interview with Zaman, Kudus, Legal Specialist, UNDP, Kadugli, 12 August 2009.

72 Interview with Ferdinand von Habsburg, Senior Advisor Peace, UNDP; Juba, 9 April 2009; interview with Fred Yiga, Senior Police Advisor, UNDO,SS. Juba 10 April 2009; interview with Sue Taten, Teal Leader, Rule of Law Unit, Juba, 9 April 2009; interview with Edward Christow, ATOs Consultancy, Khartoum, 7 February 2009.

73 Interview with Jermaya Swaka, Senior Legal Advisor, Ministry of Legal Affairs and Constitutional Development; Juba 8 April 2009. His Excellency, Abdoun Ago, General Secretary of the Government of South Sudan, noted in this connection: “Local ownership of peace is difficult and we need to consider the political, social and cultural factors related to law enforcement as substantial elements in promoting local peace” (interview, Juba, 8 April 2009).

becoming marginalized.<sup>74</sup> However, it should also be mentioned that representatives of the government, particularly in Khartoum, have often no interest in RoL programmes, as these may challenge current power structures, financial policies and practices.

## Key findings

The RoL programmes implemented in South Sudan have resulted in a number of outputs – as evidenced by the laws approved by the parliament, functioning or embryonic legal institutions, police stations and a Ministry of Legal Affairs and Constitutional Development. This means the start of building up the supply side of the justice sector. Still to be considered are the dynamics of the cultural diversity of the country. According to Young Nyang, Senior Security Officer, “Police training needs to be considerate of the cultural diversity of the South and should help the policemen in managing their own ethnic identities in official context.”<sup>75</sup>

In the North, international support has met with resistance and scepticism and has had limited results. Despite training of police and judges, discriminatory and restrictive practices remain prevalent. There are also some specific challenges. First, the community-based policing model introduced by UNMIS and UNDP was accepted by the Police Directorate. Committees are to be formed in villages and urban neighbourhoods, but in the North they are to be paid and held accountable to the Directorate. There is fear that the model will be used by the government to exercise even greater control over local communities. Among IDPs in Khartoum, community-based organizations were satisfied with their new knowledge of legal issues and human rights, yet recognize that access to justice remains constrained by the police and the security forces being under the ruling party. The Chief (*omda*) of Al Atmur Village east of Kadugli, in South Kordofan State, explained: “A group from UNDP visited the village some time ago and gave orientation on the opportunities for the legal aid services, but we have no legal problems because the native administration deals with the small problems and we have police station to deal with big ones.”<sup>76</sup>

In the North, the low performance and early closure of the judiciary project have been attributed to inadequate design and a failure to appraise the political and other constraints under which the judiciary operates. Greater access of women to justice, combating violence against women, ensuring the involvement of women in activities, and gender-sensitive justice services were issues mentioned in the documents. These were “added” in the orientations and trainings, but without any specific targets for addressing gender injustice in laws and legal practices. Kaltum Dawalbait from Al Atmur Village mentioned that she had attended the workshop conducted by the UNDP project on legal aid, but that her real priority is a road to link the village to Kadugli.<sup>77</sup> No assessment or studies have been made of the needs of women and the poor regarding access to justice. While partnership with civil society organizations for legal education and legal aid services has been promoted in some projects, there have been no serious attempts to involve women in decision-making and reviews of the justice sector programmes.

On the general level, the RoL programmes in Sudan have had a limited focus on the demand side of justice sector reform. GoSS, GoNU and the donors have all given priority to rebuilding the justice

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74 Zenab Hamda, UNDP Officer, Human Security Project with IDPs, Khartoum, noted, “We mobilized the IDPs communities to give them information about the project activities but they had had no chance to participate in any decision-making at any level”; interview, Khartoum, 12 February 2007.

75 Interview with Young Nyang, Security Officer, Juba, 15 May 2009.

76 Interview conducted by Research Assistants Farida Kuku and Mohamed Ahmed with James Kjori, Omda of Atmour Village (identified by UNDP officials as a site for implementation of the Strengthening of Access to Justice Project); interview, Atmour Village, South Kordofan, 16 August 2009.

77 Interview conducted by Research Assistants Farida Kuku and Mohamed Ahmed with Kaltum Dawalbeit, Alatumour Village, South Kordofan, 16 August 2009.

sector through state-delivered RoL and access-to-justice programmes. Little attention has been given to the informal justice institutions and customary practices that are the choice for most people in most parts of the country.<sup>78</sup> Significantly, activities have not been designed to establish effective systems to empower the poor and women.

Regarding “ownership”, the process of programme/project design is mainly carried out by the international actors. In rare cases, mostly in the South and South Kordofan State (which was included in this research), needs assessment and consultation on priorities have been done with local actors from the justice sector. Forums and dialogue sessions have been organized mostly in Southern Sudan between Sudanese officials and grassroots representatives. These are spaces for communities to discuss their problems, but no learning processes or mechanisms have been considered to promote an understanding of the post-war situation in the justice sector. Where ownership is mentioned in the documents, it is mostly related to the role of the steering committee (or the project board) – which, according to most review reports, is neither functional nor effective.<sup>79</sup>

Ideally, local ownership involves the participation of local actors (government and the citizens) in the decision-making and implementation process of donor-supported programmes/projects. It means that local actors are to take responsibility for producing results for RoL reforms, and for sustaining them. Local ownership entails that the justice reform is built on existing legal systems and traditions, and supports cultural values that promote human rights.<sup>80</sup>

We found that local ownership of RoL projects is weak in Sudan, for three main reasons. First of all, the post-war situation (specifically in the North), is characterized by lack of popular power and participation, weak governance, pervasive inequalities, poverty, corruption among the ruling leaders and elites who may not be interested in addressing priority issues or involving other local actors for legal reform. Second, the internationals have interests, approaches and practices that prevent the coordination of their assistance; moreover, they tend to share stereotyped perceptions of competence and capacities that are deemed lacking among local actors and that create asymmetry between international and local actors. Finally, there has been neglect as to the involvement of the population and recognition of the long-functioning informal justice systems – the main resort of the majority of the people in the South.

## Summary

Perceptions of “ownership” differ, but our review of the RoL programmes in Sudan has revealed that understanding is limited among local as well as international actors; moreover, that local ownership is not a priority or major concern among international actors. The RoL programme has remained dominated by the internationals. The interactions between the international actors and justice sector local actors have not been used for learning and sharing of knowledge to understand the political and socio-cultural dynamics, or to create a vision of shared responsibility for implementing the results of programme activities. There are various reasons for this, including what is seen as an intransigent government in Khartoum and a government without capacity in Juba. The

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78 The youth in Rejaf Payam in Juba, trained by UNDP’s community policing, stressed that the training helped them to develop capacities for resolving disputes and their role is recognized within their group and the neighbouring ones – but that their role would not continue long, as they are working voluntarily and will soon have to stop that and try to find income-generating activity. Group discussion undertaken by Thomas Laku, Research Assistant, with Youth Group from the Rejaf Payam.

79 See for example, “Strengthening access to justice and human security in the transitional areas (Abyei, South Kordifan & Blue Nile)”, Phase 2, 2006. UNDP, Khartoum.

80 Adapted, with minor additions, from Anika Hansen and Sharon Wiharta 2007, *The Transition to a Just Order: Establishing Local Ownership After Conflict: A Policy Report*. Sandö – Stockholm: Folke Bernadotte Academy.



political will to implement RoL reform is particularly weak in Khartoum. Other important factors include the lack of donor coordination and the lack of commitment to principles laid down by OECD/DAC.

RoL efforts in Sudan are fragmented. Projects tend to be isolated components and have not been planned as a comprehensive, coordinated programme, nor integrated with ongoing governance and livelihoods programmes. Different international organizations have projects with the same Sudanese institution, without coordination. Parallel structures for the execution of projects are both cost-ineffective and limit the prospects for local ownership.

As in many other post-war situations, governments and donors have given priority to rebuilding the justice sector through state-delivered programmes for the rule of law and access to justice. In practice this has meant ignoring the fact that the vast majority of the population, particularly in Southern Sudan but also in many other parts of the country, rely on non-state, local justice networks. Given the intensity and duration of the civil war, the GoSS has been overwhelmed by the task of reconstructing state institutions. This includes the state-provided justice framework, which remains severely deficient, while local justice networks as primary purveyors of service delivery receive hardly any support or recognition. In practice, then, the existing, legitimate providers of justice are almost totally neglected.

Despite obstacles and challenges, there are opportunities for promoting local ownership of RoL programmes. This applies particularly in Southern Sudan, where the coordination mechanisms are stronger and where there exists a degree of mutual trust between GoSS and the international community – which is not the case in Khartoum. In the course of this review, we encountered a growing willingness among the staff of donor agencies to learn from past mistakes. Let us hope that this will result in new approaches and strategies. In the North, the result of the 2010 elections may generate more obstacles, or new opportunities for promoting the rule of law in Sudan.

## Policy Implications

Donors have traditionally approached RoL reform using a “democratization” lens, attempting to strengthen the independence of the judiciary in the face of an overpowering executive branch, and to provide assistance in drafting laws and constitutions. The approach has also included support for civil society organizations – as a means to increase the demand for better justice, monitor human rights, and provide legal assistance. Over the last 10 to 15 years, more and more elements have been added to the RoL agenda. However, the focus has remained on building more effective institutions.

In the late 1990s, poverty reduction became the main objective of development. This was associated with a commitment to change how official aid is to be provided, using a “partnership approach” and the “ownership” of reform by local actors, and aimed at improving coordination, harmonization and alignment. The debate on aid effectiveness also emphasized that major goals (reduction of poverty and inequalities, building capacities and accelerating the achievement of the UN Millennium Development Goals) could not be attained without progress on gender equality and empowerment of women. The RoL area was initially not much affected by this agenda, which implies using a “poverty” lens and a greater concern with social outcomes. However, some donors (like Britain’s DFID) adopted an integrated approach that involves putting at the centre of the analysis how poor people themselves experience insecurity and injustice.

In post-war situations, there is often a division between aid and politics. The RoL area seems to fall between two stools – democratization vs. poverty lenses. For such reasons, efforts are fragmented, and attention is placed on “getting things done”, often with little reflection on whether the

objectives are suitable or the impacts sustainable. State-centric approaches still dominate. The gap between the resources available to donors and those of their national partners means that donors may easily become excessively influential in deciding what to support.

Post-war situations are also politically demanding, with consequences for effective partnership and ownership – as is clear from a comparison of Juba and Khartoum. Because governments in post-war situations (as in Khartoum) often have the coercive capacity to repress courts, helping the courts to function more efficiently may serve to further entrench anti-democratic governments and even increase cynicism among local populations about what the rule of law means in practice. And a community policing programme that is successful from the viewpoint of national (i.e. government) ownership may prove to have adverse consequences by increasing control over local communities.

These examples show the need for a more sophisticated and detailed understanding of the internal politics and socio-cultural dynamics of the country in question. This knowledge will suffer if organizational turnover is high, as is often the case, and if there are no strong and sustained learning mechanisms. But this also gives rise to questions about the concrete policy implications of ownership.

“Ownership” refers to the exercise of control and command over development activities. A country or an organization can be said to “own” its development programme when it is committed to it and is able to translate this commitment into effective action. However, since the purpose of development assistance is to benefit the population of a country, not the government as such, control over policy should arise in a context of credible consultation with national stakeholders. Recipient ownership is not a goal that develops automatically or that can be nurtured “later” out of a programme that is initially donor-driven. On the other hand, recipient governments and stakeholders may not have the capacity to assert ownership. In such cases, “fostering” ownership will imply the gradual re-negotiation of partnership, making it less unequal with regard to bargaining power, and more tolerant of differences in views, based on the recipient government and national stakeholders driving the development process, and donors assuming a more flexible policy approach. The evolving outcome is to pass control of development assistance to governments and stakeholders. Ownership does not require of donors that they should suspend judgment; rather, it implies that those judgments arise out of an interaction with national and local stakeholders.

Efforts to facilitate stakeholder ownership (e.g. over sectoral programmes rather than projects where beneficiaries can be easily traced) will increasingly occur within the dialogue with a government. This means that the dialogue over shared values is of central importance to the ownership agenda. In the absence of shared values, or progress towards shared values, ownership cannot be transferred. Again, in Sudan we may note a difference between Juba and Khartoum, in the sense that the GoSS in Juba will at least express their sharing the set of values underlying the promotion of RoL reform, while the Khartoum regime has remained openly opposed to several of these values.

In order to enhance the rule of law in such situations (Khartoum), donors should: (a) focus reform on issues or sectors that increase legal pressures for political accountability; (b) emphasize issues such as education (including the curricula of law faculties), freedom of the press, and popular access to diverse, international media and opinions that may be prerequisites for respect for the rule of law; and (c) generally support local activities and initiatives. Also, donors need to better understand and develop more effective working relations with two sets of institutions: the traditional, customary, and informal mechanisms that offer community-based justice or security and are used by the vast majority of people in conflict-affected countries; and second, NGOs and other more formal bodies. While serious concerns about informal justice systems may often be valid, ignoring them altogether is not a viable option.

Policy recommendations can be more effective if our understanding is based on disaggregating the external/ internal distinction of structures and actors. Developmental outcomes are not simply a function of the relations between the “international community” and “the state”, but a product of highly complex coalitions on either side of and across the internal/external divide. Here it will be important to consider non-state actors and institutions performing state-like functions on the periphery; how policy interventions are mediated through and translated by various state and non-state actors; and the impacts of international actors on the places and processes of negotiations.

## Conclusion

Local ownership has long been recognized as a fundamental principle for peacebuilding efforts, but implementation at the country level is still problematic, with varying degrees of international commitment. This report has tried to unearth how ownership is conceptualized and acted upon at the country level in four countries. A central objective has been to highlight the difference between the polished language of mandates and policy documents and the level of implementation of peace building efforts. This is important because without ownership, peacebuilding efforts are rarely sustainable. To improve the track record on this crucial dimension of peacebuilding, therefore, it is important to identify what different actors do rather than what they say. On this basis, it is possible to suggest avenues for improvement.

The social transformations involved in peacebuilding typically challenge existing privileges and power. It is for this reason that ownership to such changes is so difficult to establish. A number of dilemmas present themselves here, including that of competing claims to ownership made by different local groups. To adjudicate between such claims and to find ways to accommodate such differences it is necessary not only to have extensive knowledge of the society in question. It is also necessary to offer frank assessments of what external actors can reasonably expect to achieve. On this basis, we highlight the following core policy implications.

## Policy implications

- Local ownership is particularly difficult to achieve in programs that initially are heavily donor-driven. Fostering ownership in such cases requires gradually re-negotiating the partnership to make it less unequal, more openness to different views, and the establishment of more flexible approaches.
- A thorough understanding of internal politics and socio-cultural dynamics of a country is essential for effective assistance to peacebuilding. Such knowledge enhances the international community's choice of assistance strategies as well.
- Rapid turnover of staff is undesirable in at least two respects: It undermines the creation of strong and sustained learning mechanisms, and reduces the ability of staff to build and sustain good local contacts, thereby limiting the capacity to adapt goals and methods of operation to local context.
- Support for greater transparency and accountability in local legislative processes can open up space for competing local parties to access the process and thereby contribute to ownership in a broader, national sense.
- International actors should give greater consideration to enable local civil society to mobilize politically for social change. This would help to create genuine local ownership and reduce the conflicts that a more direct international role is likely to produce, above all in sensitive religious, legal and cultural issues.
- Greater emphasis should be placed on developing administrative procedures that encourage local actors' involvement in planning, prioritizing and implementing reforms.

- Organizational rules, reporting procedures and incentives should be restructured towards greater emphasis on local sustainability, rather than program outputs, as criteria for success.

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Lack of local ownership is seen as a central explanation for why peacebuilding efforts often fail to yield sustainable peace dividends. But how is local ownership understood and acted upon by those who are engaged in peacebuilding efforts at the country level? Based on research in four countries – Afghanistan, Haiti, Liberia and Sudan – this study finds that the way ownership is operationalized by external actors at the country level is quite different from how it is defined in policy documents. The most prevalent operationalization is ownership as a conditional right with external actors seeing ownership as theirs to give to local actors when certain conditions (such as capacity or responsibility) are met. The result is often that reform efforts are unsustainable. This report suggests some concrete steps that can be taken to render ownership an operational principle.