Chapter 13

Internationalisation, Consultation and Local Ownership

Ownership has often been described as the key to successful reconstruction. The question is, however, how local ownership can be ensured in the absence of a functioning government and administration. UN-led administrations as well as foreign (military) occupation are generally considered as contravening local ownership, as they lack democratic legitimacy, whereas the Afghanistan ‘light footprint’ approach is generally perceived as enhancing local ownership. The observation however is erroneous. Such a statement is inaccurate since, if ownership were possible, there would not be a need to establish an international administration. We will analyse what needs to be understood by local ownership, before turning to an examination of the question of local ownership and internationalisation in the judicial sector.

A. Local Ownership: Aim or Method?

When discussing the post-conflict scenario in Iraq, Vieira de Mello emphasised that democracy needed to evolve from within Iraqi society. He stressed that the empowering of the provisional institutions was essential to ensure ownership of the reconstruction process until the election of a representative Iraqi Government. While it is true that democracy is difficult to impose on a society, it is questionable whether the creation of national transitional authorities is sufficient

---

1251 Chesterman, supra note 104, p. 239.
1252 Presentation of the report of the Secretary General by Mr Sergio Vieira de Mello: UNSC Meeting Record, UN Doc. S/PV.4791 (22 July 2003) and Report of the Secretary-General, UN Doc. S/2003/1149, supra note 163, para. 2.
to ensure local ownership. This is the major problem in post-conflict settings. In the cases of Kosovo and East Timor there was simply no Government. In the cases of Afghanistan and Iraq authorities had emerged from the post-conflict peace agreements, but they obviously lacked experience, financial resources and arguably the necessary legitimacy among the population. Empowering national institutions to take a leading role in reconstruction while they lack legitimacy is therefore not always the solution, although they certainly have more legitimacy than purely international or foreign administrations. In general, we saw that the national interim or transitional institutions have not necessarily been more able to maintain control over the territory and that they often lacked the capacity to implement much-needed reforms. As observed in the case of Afghanistan, reliance on purely national institutions which have little legitimacy – in this case the Ministries of Defence and Interior – may delay the implementation of important measures such as DDR programmes and security sector reform.

In line with our discussion on the exit strategies, ownership must be the goal of international administration. This does not preclude the consultation of local actors during the administration, be it UN-led or based on occupation. Local ownership must indeed not be confused with consultation. The lack of consultation with local actors has been a recurrent and perhaps well-founded criticism. Former UNTAET transitional administrator Vieira de Mello explained that “[t]he more powers conferred on local representatives, the closer power is to the people and thus the more legitimate the nature of the administration. But conferring power on non-elected local representatives can also have the undesired effect of furthering a particular party. The inclination of the UN is thus to be cautious about delegating power in the interest of avoiding furthering any particular political party. There is consultation, but all essential decision making and executive authority remains with the UN.”1253 But the former transitional administration questioned the appropriateness of such an approach.1254

For these reasons, consultation aimed at taking into consideration the local context in which reconstruction is conducted is paramount, and the necessary local institutions have been created in all four cases. However, this has not always led to the effective inclusion of local actors in the decision-making process. Consultation with the Kosovars would, for instance, have avoided an uncomfortable applicable law dispute under UNMIK. In the case of East Timor on the other hand, the Timorese National Consultative Council had endorsed all UNTAET regulations.

1253 Vieira de Mello, S., ‘How not to run a country. Lessons for the UN from Kosovo and East Timor’ (June 2000).

1254 Ibid.