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e-journal of International Relations

# LEARNING TO BUILD A SUSTAINABLE PEACE: "LOCAL OWNERSHIP" AND PEACEBUILDING PRACTICES. THE CASE OF JUSTICE REFORM IN HAITI

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## Abstract

The debate on local ownership in peacebuilding policies is relatively recent, inherited from the reflection on aid efficiency and sustainability. When focusing on its application at the field level, like in the Haitian case, it becomes evident that its inclusion in the peacebuilding doctrine of all major donors has not had a correspondence at the strategic and operative levels. This article is the result of a research in the field on how the concept of "local ownership" in peacebuilding efforts is put into practice and perceived by different stakeholders. The authors focused on the on-going Justice reform in Haiti before the Earthquake of January 2010 to better understand the dynamics between international and local actors, from the policy definition stage to their application at the country level.

## Keywords

## How to cite this article

JANUS.NET, e-journal of International Relations
ISSN: 1647-7251
Vol. 2, n.º 1 (Spring 2011), pp. 53-69
*Learning to build a sustainable peace: "local ownership" and the peacebuilding practices.*
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# LEARNING TO BUILD A SUSTAINABLE PEACE: "LOCAL OWNERSHIP" AND PEACEBUILDING PRACTICES. THE CASE OF JUSTICE REFORM IN HAITI[1]

## Amélie Gauthier e Madalena Moita

Haiti presents an interesting case study of the progress of international intervention in violent conflicts. Haiti exemplifies how international intervention has changed with the nature of war from the onset of the first peacekeeping operation in the early nineties, to the multidimensional integrated peacebuilding mission of the new millennium.

Despite the new approaches, in the last two decades the return of violence continues to highlight the limitations of foreign intervention in peacebuilding efforts. The debate among scholars and professionals associates its lack of sustainability with the fact that the strategies and policies attempted are fundamentally encouraged by foreign entities (usually strong regional or international powers or multilateral bodies) incapable of being sufficiently sensitive to the nuances of each specific situation.

When policies imposed from the outside fail to yield good long-term results, in the absence of commitment by local governments and acceptance by the people, the disproportionate relationships between national and international players are brought into question. The need for greater participation by locals in decision making processes is also questioned and becomes a priority. Under such circumstances, the concept of "local ownership" emerges not only as the source of international legitimacy, but also as a solution for making international intervention more effective.

Today, the debate over this concept is present in the dialogue between the main players in this area, from the big multilateral organizations to the main contributors of development assistance. However, it has been focused on the refinement of a political peacebuilding discourse absent from an ensuing reflection on ways to implement such processes on the ground. The goal of this study is to take the discussion to the ground level in order to try to understand how general guiding principles, such as "local ownership", become routine practices.

In general terms, this study aims to encourage reflection about how the concept of "local ownership" is understood and applied at the political, strategic, and operational levels. The study seeks to better understand the dynamic between local and international players, from an early phase of policy definition to its application at

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national level. It attempts to ascertain to what extent peacebuilding policies are "*locally conceived and led*" (Bendix and Stanley, 2008: 95) and how local and international players interpret this concept.

In more concrete terms, the study focuses on the policies protecting Rule of Law in Haiti: a specific collection of peacebuilding policies which has been a priority of foreign players in the country. From the multiple Rule of Law reform policies, the authors elected to focus on legal reform, which is fundamental for contributors as the unequivocal pillar of state rebuilding.

Today, legal reform in Haiti follows a path based on the November 2007 National Strategy for Growth and Poverty Reduction Document (DSNCRP, the French acronym)[2] which identifies five reform priorities:

1. Restructuring and modernization of the Ministry of Justice and Public Safety;

2.  Overhauling the legal system;

3. Improving access to an efficient judicial system and to the courts;

4. Consistent development and rehabilitation of the prison system; and

5. Modernizing legislation.

The acceptance of the Document as a starting point for reform exemplifies a paradigm of international application of the concept of "local ownership" when, in fact, it translates a narrow perspective of the concept. In this study, the authors attempted to discover the limitations and the opportunities in the peacebuilding process in Haiti, stemming from some of the issues raised by this international approach to the advancement of local ownership.
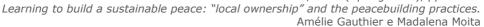
To begin with, "Haitian local ownership" may assume many different meanings, from ownership limited to its political leaders, to a broader ownership by the people. In Haiti, government instability and the constant change of these policies suggests a need to search for other sources of ownership: from the ownership of professionals in the justice sector and the officials who will apply such polices, to ownership by the population who must obey those policies daily. Since "ownership" itself comprises several dimensions (namely in the three levels mentioned above: political, strategic, and operational), when studying its application in a specific context it is essential to consider the heterogeneity and complexity of both aid beneficiaries and *peacebuilders*.[3] Likewise, "international approach" must be considered as a series of cultures and work practices by widely different participants, from those who lean towards cooperation for development to those who give priority to the consolidation of peace and safety in its strict meaning.

At the start of a dialogue regarding ownership, the combination of these different variables must be taken into account, without any ambition to idealize the concept, and the focus must be on the possibilities it may present to the materialization of more sustainable peace building processes.

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2     *Document Stratégique National pour la Croissance et la Réduction de la Pauvreté* available at: http://www.mpce.gouv.ht/dsncrpfinal.pdf

3     Peacebuilders is a term used in several documents on this topic to describe professionals who work in a post-conflict environment in specific areas of peacebuilding such as the Rule of Law, safety, reconciliation, etc.

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## Methodology

In this study, the authors combined different approaches in order to analyze the dynamic of local-international interactions in the shaping and implementation of legal reform in Haiti, and followed four of the five priorities defined in the DSNCRP. Following a previous bibliographic review, the authors prepared a set of semi-structured open interviews directed at the representatives of the main international entities in their respective headquarters. In the second phase, they prepared a trip to that country to conduct the interviews.[4]

- National judicial system players;

- Main Haitian contributors to Justice reform: MINUSTAH,[5] UNDP,[6] the United States, the European Union, and Canada.

- The implementation agencies: the National Centre for State Courts (NCSC), the International Legal Assistance Consortium (ILAC) and the *Organisation Internationale de la Francophonie* (OIF)].

- Civil society organizations.

This article will start by presenting the normative context of the concept of "ownership", followed by a brief diagnosis of the judicial system in Haiti and some reflections on how the concept is interpreted by those who apply it and those who benefit from it.

## a.    Normative Context

The general discourse on peacebuilding inherited the concept of "local ownership" from the cooperation policies for development when it emerged from the realization of the lack of success associated with assistance efforts of the early 1990s. In 1996, the CAD OCDE[7] document *Shaping the 21st Century: the Contribution of Development Co-operation* stated the need to respect "local ownership" in the development process (Kuehne, 2008). At that time, the term was used in the sense of "local participation" or "local empowerment".

In recent years, the debate over the effectiveness of assistance has stressed the importance of local participation as a factor of both legitimacy and sustainability of international interventions. The main entities and nations contributing to development assistance assert that local beneficiaries must partake in devising policies that will change their way of life, not only because it is more ethical to abandon the types of paternalistic relationships inherited from colonialism (Donais, 2008: 6), but also for reasons of long-term efficiency.

Strategic documents and peacebuilding doctrine already include references to local ownership. However, in operational terms, this concept is not clearly defined.

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[4]    The authors' participation in a parallel project provided them with the opportunity to participate in a seminar in Port-Au-Prince on the political challenges facing the reform of the judicial system, which was organized following research on the ground (June 2009).
[5]    United Nations Stabilization Mission in Haiti.
[6]    United Nations Development Program
[7]    Development Assistance Committee of the Organization for Economic Development and Co-operation

For this study, the authors adopted the definition suggested by Annika S. Hansen and Wiharta Sharon:

*"local ownership embraces the recognition that a justice and security sector reform process is of integral concern to the local population and that local actors should have a say in formulating the outcomes of the process [...]It should, wherever possible, build on existing judicial systems and legal traditions and reflect the culture and values of the country in question. It should also reaffirm international law, norms and standards. Local ownership cannot be treated as an absolute but instead must be implemented to different degrees that range from local acceptance and support for the reform process to local control over decision-making."* (Hansen and Wiharta, 2007: 17).


## Diagnosis of the judicial system and reform plan

This section analyzes and responds to one of the main questions featured in the interviews: how would you describe the central problem or challenge  in Haiti and, more specifically, in the legal sector?

One of the main problems stressed was the interference of the Executive Power, of politicians, and other groups in the legal system. The absence of an organ independent from the government, with its own budget to manage the courts, appoint judges and magistrates, and oversee their conduct, leaves the judicial system vulnerable to all types of interference.
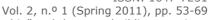
There was also mention of conflicts of authority between the President and the government over control of the Ministry of Justice.[8] Control of the legal system is coveted by many, which turns this sector into a highly politicized and corrupt arena.

Another frequently mentioned aspect is the weakness of available infrastructures. The courtrooms are very run down, with little furniture and few essential tools for work, such as civil and criminal codes in French and Creole, and computers and archives for storing information on the trials.  Material resources are easily funded by the international community but they alone are not enough to allow the legal system to start functioning in an adequate and effective manner. Some contributors are hesitant to finance material resources directly without the development of a standard and a sustainability plan. In fact, the issue of material resources is a point of division between local and international players. Haitians defend the need for resources and equipment to carry out their work; international players recognize such needs but argue that material resources will not make justice more effective and transparent.

The lack of assets is particularly serious when it comes to human resources.  The majority of judicial players are not qualified enough to perform their duties and were most likely appointed due to personal or political connections. The problem is so serious that in some remote areas of Haiti some judges are illiterate. This problem is not specific or limited to the legal system and affects the whole country. Brain drain is a complex challenge that has rendered the country highly dependent on foreign technical expertise.

In the specific context of this study, justice administration and the operation of courts are very affected, particularly in the area of criminal cases, where there is a tendency

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

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for cases to be blocked by multiple judicial pronouncements over civil issues, resulting in long periods of pre-trial detention that render cases extremely long. Some non-governmental organizations (NGO) in Haiti are working to gather detailed information on every detainee and on the legal proceedings applied. This exercise will help identify difficulties in detention and trial cases and the specific situation of each detainee. Despite the large number of reports about problems in the judicial system, it appears there are still important holes in the information available for each case, regarding both judge profiles and statistical information about courtroom proceedings.

The lack of information is further aggravated by the lack of connection between city and rural areas. Some of the larger local NGOs, such as *Réseau National de Défence des Droits de l'Homme,* have representatives in every province who act as key informers of the situation in each region. The *Réseau National de Défence des Droits de l'Homme*, created in February 2009 by presidential decree, also includes officials in every province, which has, no doubt, improved relations between the capital and more remote areas. However, at the national level, MINUSTAH is still the best informed participant as a result of its stable presence all across the country.

The inequality in access to justice is a critical issue, particularly for the 60% of Haitians who live in rural areas. For many, access to a police station or courtroom requires several hours or days of travel. Conflicts are resolved locally: citizens place their trust in the police leadership, in the locally elected community representative (when they are present), or in a religious personality, whether Catholic, Protestant, or a member of the Voodoo hierarchy. Though it is difficult to label such methods of resolution as typical cases of "informal justice", as is the case in the African nations,[9] the methods of conflict resolution in these rural areas are definitely outside the official judicial parameters established by the civil and criminal codes. The legitimacy of deliberation derives from the prestige of the person granting the decision or the sentence.[10] However, at the same time that it contributes to peaceful coexistence (cases of violence in rural areas are sporadic incidents when compared to the occurrence of such cases in the capital), the methods and rhythm fall outside the legal framework of respect for human rights.

The feelings expressed by Haitians over formal justice are fear and distrust. It is common knowledge that judges, as state civil servants with the responsibility to serve the people, often serve their own interests. There are no professional ethics, pride, or principles to guide judges and their work, and they are often accused of corruption. Distrust, lack of respect, and suspicion between citizens and judicial institutions are alarming; developing a minimum level of trust seems, in itself, like an enormous challenge.

## b. The reform plan

The DNSCRP is the most relevant document in the sense that it establishes reform priorities and, further more, it allows foreigners to intervene within the framework of a government programme. However, it has several limitations. On the one hand, the priorities are excessively broad and the document does not establish a strategy for reaching goals. On the other hand, since the Ministry of Justice and Public Safety

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9   African informal judicial systems are usually characterized by  strong tribal structure where the hierarchy is well defined, the supremacy of the chief is recognized, and his decision is respected.
10  Interview with a lawyer, Port-Au-Prince, March 31, 2009.

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manages a budget for the three reforms (police, justice, and prisons), the large part of the budget is destined to police reform, which has yielded positive results and led to a certain consensus among Haitians and international contributors.

Within this general setting, the main contributors in Haiti have their own plans, visions, and strategies regarding reform. Coordination efforts are constant and different instruments have been put in place. Unfortunately, there are still many gaps in terms of coordination. MINUSTAH, UNDP, OIF, NCSC, ILAC, the United States, and the European Union are the primary international contributors in the area of legal reform. There is a certain division in the work areas in an attempt to reduce juxtaposition, but the separation between the activities of different entities has led to a reduction in the impact of actions as a whole. Sometimes projects are funded to meet immediate needs, but are frequently isolated from other projects and disconnected from the final objective of a more efficient legal system.

From the very start there is lack of consensus on the part of contributors, who disagree regarding what reform model to adopt (French, Latin American, and North American), favouring their own in detriment of others. There is also great division among Haitians and consensus is difficult, or nearly impossible, to reach. The Presidential Work Team, which follows the reform and functions independently from the Ministry of Justice and the other commissions and their teams, portrays a good example of the divisions that exist at the very centre of Haitian society. In this climate of disorder regarding the fundamental direction of reform, small progress requires constant dialogue and effort, consultation, and mediation. Such is the case, without mentioning the activities of groups that totally oppose any reform and benefit from the current state of dysfunction of the legal system.

Some progress has been made in the area of reinforcement of judicial power as the result of the passing of a law that establishes the legal framework for the statute of competencies of the Superior Council of Judicial Power. The opening of the School of Magistracy will also help fill the gap in the training of judges and magistrates.[11] Access to legal assistance has improved substantially with the Assistance Bureau programme which was established in nearly every province. The efficiency of courts and the reinforcement of the Ministry, with the help of United Nations volunteers, have resulted in improvements in certain areas. In spite of significant progress, there is no noticeable difference in reaching efficient, accessible, and credible justice. Besides, the sustainability of these small reforms is also questionable.


## How do peace contributors and local players interpret "ownership"?

## c.    From the political sphere to the ground

In the case of Haiti, the study of key documents of the policies of major contributors makes it easy to identify the inclusion of the term "local ownership" as the fundamental directive in the establishment of international relations between locals and international contributors.

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[11]    Several magistrates have already completed basic courses; a complete series of specialized courses is available through the Director of the School of Magistracy, with support from the International Francophone Organization. Interview in Port-Au-Prince, April 2009.

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On the political level, where the priorities of contributors are established, general documents are usually developed, some very elementary that establish a clear and simple starting point to be later adapted, at strategic level, to each specific context. It is common for contributors to present a standard framework for international peacebuilding interventions. The five pages of European Commission guidelines on policies for reinforcement of the Rule of Law (CE, 2009) are a good example of that. This type of document is usually prepared by international generalist experts at their headquarters.

The 2004 report on Rule of Law by the United Nations General Secretary also mirrors this reality, as it includes "ownership" as a core directive. In mentioning this concept he stresses: "*We must learn as well to eschew one-size-fits-all formulas and the importation of foreign models, and, instead, base our support on national assessments, national participation and national needs and aspirations* (UN, 2004)."

However, it is a long way from these declarations of intent to the actual application of "local ownership" at strategic and operational levels. Perhaps due to the fact that it is essentially an agent for development, the UNDP is, in fact, one of the contributors with clearer guidelines for peacebuilders on the ground with regard to ownership. In a report on the reinforcement of policies of Rule of Law in conflict and post-conflict scenarios, it states:
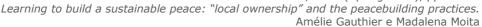
"*[As] a development agency, UNDP Rule of Law programming is not only guided by national ownership, as a principle, but this principle is also embedded in UNDP execution modalities. Nationally-owned needs assessments are central to UNDP programming design. Partnership and coordination with national partners is essential to this process* (UNDP, 2008)*.*"

However, in legal terms, when we move from the political to the operational level, the contributors' literature regarding ownership is more ambiguous. USAID, for instance, created a guide that establishes procedures for its officers to conduct previous studies of a country in order to devise specific policies for the reinforcement of Rule of Law. This guide states:*" 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"* (USAID, 2008)*.* Further along, the same guide offers recommendations about the best way to obtain information about the historic and political context of the country or the roles of the main contributors, so that its officers may conduct a proper evaluation of the legal sector. The dilemma arises when the same report states that: "*if the rule of law is a universal principle, then supporting the rule of law is not necessarily imposing foreign ideas on a society*".

In some way, this example demonstrates an often problematic application of "local ownership". Rather than learning about priorities from local players, foreign experts on the ground make an effort to attain specific knowledge of each country in order to understand how to better promote "local ownership" - generally meaning *acceptance* and *assuming responsibility* of international policies.

In effect, the strategic level corresponds to a difficult transitional phase that requires the conciliation between the principles of contributors and the demands of developing countries. In that moment of transition, specialists who benefit from a deeper knowledge of the country must carry out basic  flexible manoeuvres to adjust policies designed at the headquarters to the real situation, and vice-versa - what Schlichte and

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Veit call "policy bending" (Schlichte and Veit, 2007). The solution contributors came up with to simplify this correspondence is to encourage the formulation of a local development plan in a strategy document for each country, which will guide assistance policies. In Haiti this document is the DSNCRP.

At this point it is, no doubt, relevant to mention that, during the interviewing process, the authors were constantly asked to explain the meaning of "local ownership", which reveals a general lack of familiarity with the expression.

However, in the interviews with contributors, alignment with the DSNCRP emerged as one of four main indicators of ownership. Along with this cardinal rule, policies were considered as "local" if they met one of the following criteria:

a) the government signing off on a specific agreement,

b) the government's partial contribution with resources (human or financial) or

c) the government's commitment to assure the continuity of the project.

In fact, the three criteria listed presuppose that the government may "*appreciate the benefits of the policies and to accept the responsibility for them*" (Boughton and Mourmouras, 2002: 3). After all, they suggest that "local ownership" is more of a consequence, rather than the point of departure for the process and, furthermore, that it is exclusively centred on the state, dismissing the will and participation of the people.

In effect, the fundamental instrument of local ownership - the DSNCRP - is now perceived by some national players as the product of an unsuccessful executive power: the 2007 administration of Jacques-Édouard Alexis, which was ousted. Haitians do not recognize the document as a truly national plan, but rather as an external product or, in the best scenario, as a mixed product devised by Haitians and the international community.[12] Besides, few local players recognize the document as adequate and the current government hardly accepts it as the primary plan from which to devise specific public policies. The search for a standard guideline is further complicated by the emergence of new documents, such as the recent report by Paul Collier to the United Nations General Secretary (Collier, 2009) with suggestions for economic alternatives for Haiti, which clouds previously established national priorities.

Calling "local ownership" a success, when following an orphaned plan like the DSNCRP, raises the issue of *which* ownership is being safeguarded.  Governments are constantly changing and do not have a coherent and consensual development plan. Today, no one assumes responsibility for the implementation of the DSNCRP and it is primarily a starting point for contributors. The lack of government continuity chips away at local ownership, mainly if international players face restrictions at procedures level to search for more permanent partners, such as justice professionals or even larger platforms of civil society could well be.

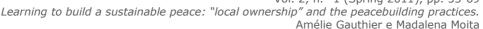### d.    What is, then, the government's perspective on local ownership?

When confronted with this question, government and its national officers appear to be even less familiar with the concept, possibly because they have less access to the specialized language of development than international players. However, when asked,

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[12]    Interview with a high ranking government official, Port-Au-Prince, April 3 2009.

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more specifically, if they felt that justice reform policies were basically initiated by outside contributors or devised by Haitians, they were less hesitant in stating that decisions were always ultimately made by Haitian nationals.

With an orphaned guide in hands and a weak global strategy for legal reform, the government maintains a permanent dialogue with the contributors to select the international offers that better serve the more immediate needs for improving the system. Several outsiders interviewed stated that such negotiations are conducted until international players persuade the government to accept their proposals. This duplicity of perception is also is quite contradictory: Haitians see themselves as the main players in decision making, while international players see themselves as convincing Haitians one way or another.

In the end, in some sort of balance between national sovereignty and international constraints,[13] without sufficient financial means, the government ends up accepting the proposals of contributors. In Haiti, this gives rise to a dispute among international players, who have the essential resources and are under pressure to see results, and a kind of national resistance that reflects a lack of strategy and political will, which attempts the tactic of making national independence prevail over international imposition.

## The opinions of civil society

In terms of civil society, the large majority of those interviewed were not consulted regarding the DSNCRP and, generally, do not have any knowledge of the document's contents.
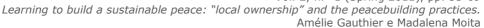
The interviews with civil society organizations (CSO) also showed that their priorities in terms of Rule of Law are definitely different from those established by the DSNCRP or the visions of international players. When asked what the priorities in terms of justice should be, the CSOs expressed concerns related to social and economic rights, such as gender equality or the people's right to feed themselves, many clearly absent from the international contributors' programmes of reinforcement of Rule of Law. They also pointed to the vicious circle of corruption and impunity, which tears away at the credibility of institutions, as the main obstacle to the development of a solid legal system. These are two topics generally avoided by contributors.

The CSOs feel that, to some extent, they are sidestepped by legal reform since they were not consulted by either national or international players in the process of defining priorities for that sector. Some contributors acknowledged that they subsidized the government to consult with civil society, but room for dialogue between the government and organized citizens is either extremely weak or nonexistent. It is also true that CSOs did not always accept to work with the government and acted more as an opposition force than a strategic partner working toward a common good. This tendency may be founded on several factors: an historical tradition of not-so-democratic practices and deep-seated political divisions, and a cultural difficulty on the part of Haitians in extending links of solidarity beyond family circles. Both can be

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[13]   Haiti generates only 11% of the GDP in revenues, which makes it very dependent on foreign financing. Country Report, The Economist Intelligence Unit, November 2008, p. 8.

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explained by years of dictatorship and behaviour rooted in survival and encouraged by competition for international cooperation funds.

This phenomenon of self-exclusion is even more aggravated when it comes to working with MINUSTAH. Haitians' reactions to the United Nations Mission vary greatly: while the large majority of those interviewed  share the belief that it must remain on the ground to guarantee the security of the country, many, however, question the profile of that presence with regard to topics of greater political sensibility. All, however, claim the ultimate imperative of national sovereignty. Under theses circumstances, some question whether that presence must remain of primarily military nature, since the most radical opinions refuse any presence and accuse the Mission of being an occupation force.

In terms of the Rule of Law and legal reform, MINUSTAH shares the international leadership with USAID, both recognized by the great majority of those interviewed. However, the fact that, in Haiti, the Mission is shifting away from its primary maintenance and security functions toward  a more extensive role of institutionalization and state empowerment, while assuming a routine closer to development support, have led to some difficulties in its relations with Haitians.

As far as organizational issues go, the fact that MINUSTAH is trying to change its role, while simultaneously maintaining a significant military component and a DPKO (Department Of Peacekeeping Operations of the United Nations) work culture, also affects its image. It met with challenges in attempting to articulate two different work cultures and languages, between the tools of peacebuilding and those of development, in what is called an integrated mission.

This duplicity of cultures is also reflected on the exercise of "ownership". While the majority of a series of legal agents at multiple levels and from all regions appeared to be satisfied with the "harmonious" collaboration with PNUD officers, this was not, however, the general rule for the United Nations system in the country. In fact, generally speaking, different entities also employ very distinct practices, from *doing the work* to *working with*.

This question was raised regarding the distinction between peacebuilding and development practices. If, these days, sustainability and ownership are preferred principles in the sector of cooperation, in the area of  peace promotion short-term measures and quick solutions have had negative effects and have been criticized for their unsustainable nature and counter-producing effects.

## e.    The experience of the implementation agencies

At an operational level, and in the context of the implementation agencies that carry out the projects funded by contributors, familiarity with the concept of ownership reflected a slightly different reality. Representatives of the three largest institutions - the *National Centre for State Courts* (NCSC), the *International Legal Assistance Consortium* (ILAC) and the Organisation *Internationale de la Francophonie* (OIF) – stated that they were familiar with the concept and, furthermore, used it as a fundamental guideline in their work.

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The majority were selected by contributors as a result of their past experience in the area of legal reform in developing nations. They all admitted their financiers allowed them considerable flexibility in formulating rules for implementing each project; some even mentioned  they were contacted prior to project planning on account of their specific technical expertise. All developed a certain familiarity with the Haitian reality since, despite the primarily short-term duration of individual projects, they have been in contact with the country for several years.

They have been developing innovative projects all across the country in a close relationship with reality on the ground, such as the creation of a legal filing system or providing motorcycles for judges of peace to grant them access to remote areas in order to solve small legal problems.

For these organizations, the main indicators that the process is locally driven, and that there is ownership, consist of a profound consulting system and the guarantee that, gradually, the government will assume the financial cost of such projects. However, all three organizations admitted that their basic criteria for success is the response to goals set by contributors, even when the government, as is often the case, fails to give continuity to the projects.

Despite it being easier to apply the concept, some of the representatives stated, however, that when the Rule of Law is questioned, specifically in technical areas, ownership becomes a relative priority and international players must take up the initiative to make sure progress in legal reform is carried out.
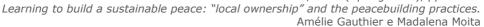
## Main obstacles to ownership

A contextual analysis of the interviews in the light of the very specific political and social scenario, not only of the country but also of the role of each of the players and the synergy created among them, allows the formulation of some of the main challenges to the application of the concept of ownership.

### f.    Local limitations

Haitians are historically used to the presence of a significant international presence. The political elite accumulated knowledge about the way peace operations work and about the role and interests of contributors.  The interaction with international personnel has facilitated a culture of dialogue and sharing, making coexistence possible and negotiations more fluid. However, the failure of prior international interventions created a feeling of frustration and distrust. It must be mentioned that MINUSTAH is the 7th United Nations Mission in Haiti. To some, this presence may have created a *quasi-resistant* passive attitude among the Haitian elites.

The first factor identified as an obstacle to ownership is the limited local capacity. The first option for professional Haitian youth who graduate is to either leave the country or go to work for international entities offering higher pay. The capacity deficit of local human resources finds its origin in a poor educational system, from basic education to university level. The result is that local organizations, either from civil society or governmental organs, suffer from severe lack of qualified human resources.

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Another factor that has been stressed is the difficulty in making decisions and in implementation on the part of Haitian personnel. This procrastination may also be seen as a way of resisting international predominance in devising policies in the arena of legal reform. In his work *Pays en dehors*, Bartholomy mentions the early openness and empathy of Haitians in the negotiations with foreigners, but international players learned that, just like the author states, that attitude does not necessarily mean they will approve or follow up on an agreement.

The lack of continuity inside the government has proved to be an obstacle to the reform process. In the last four years, there have been five Ministers of Justice and Public Safety. The new ministers tend to modify, ignore, or reinvent the policies of their predecessors. The absence of a national consensus which, with the help of civil society, could have been maintained during the times of government change leaves international efforts vulnerable to change and to the exercise of democracy.

There is still no fluidity in the relationship between civil society and parliament. Without any type of instruments for accountability and control over government and members of parliament beyond elections, democracy is restricted. Civil society is characterized by its weak capacity to work with sovereign powers and advance proposals and solutions.

Another obstacle to ownership and to a larger process of social transformation is the lack of political will of the President, the government, and the elite. "The President does not believe in the State"[14] and uses tactics such as "divide to conquer" with contributors in order to complicate and difficult the coordination of efforts, on a multilateral basis. An efficient legal system would make Haitians equal before the law and would endanger the elite and their current schemes of corruption and clientelism. For example, the President has been pressured by the international community to select the president of the Supreme Court, which, since November of 2007, could have given a boost to reform and to the creation of the Superior Council of Magistracy. However, the sector is still waiting for that decision.
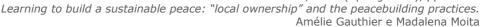
### g.   International limitations

In a complex situation of transition toward democratic functioning of the state involving the creation of institutions, qualifications, and a Rule of Law culture, participants in peacebuilding and development must work together (Hansen and Wiharta, 2007: 5).

It has been demonstrated that post-conflict periods are politically and socially more volatile. In that sense, Haiti's recent political scenario is fascinating. In the last three years the government fell twice and, along with it, the Minister of Justice who had worked side by side with MINUSTAH on laws about independence of the legal system. Every time there is a new government, a new Minister is appointed who, through inertia or indifference, rejects previous advancement measures. Simultaneously, two presidential commissions, along with two other within the framework of the Ministry of Justice, were created. Split between supporting the government or the President and discouraged by so many political manoeuvres and insufficient capacity for implementation, the international community must deal with the increasing number of players. In face of these challenges, the international community is forced to work with

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14    Interview with a United Nations employee, October 20, 2009.

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personalities rather than institutions. In this unstable environment, the sustainability of its programmes is extremely complex.

In this complex scenario, contributors face important technical and financial limitations. The pre-eminence of quick results has been denounced as highly prejudicial due to the pressure applied by contributors to the implementation agencies. Consequently, results are quantitatively measured and do not take into account other variables of success, such as ownership. Often, it is sacrificed in the name of results.

Programmes may work for a few years but since, in time, the priorities of contributors change considerably (they, too, are affected by public opinion, voters, and a larger international context) depending on the results they yield, these programmes are often discontinued. A specific example is the case mentioned earlier of the itinerant judge of peace in the southern provinces of Haiti. Judges were provided with motorcycles to reach populations in remote parts of the country. The actual demand for judges by the populations far exceeded expectations, but unfortunately the programme was shut down because its financing did not include funds for paying for petrol. Getting the population used to these services, but lacking a plan for sustainability of the projects, creates a set of necessities while failing to safeguard the means to continue to meet those needs.

When it comes to instruments for accountability and assessing transparency, there is a total discrepancy between international and local players. International players demand strict control of funds and transparency from locals. However, most locals interviewed stressed they lack access to instruments that go beyond an assessment of results carried out by contributors in function of the goals set by them. Therefore, locals request national instruments for accountability of the contributors' intervention. In the words of a person interviewed: *"how many more expensive and ineffective projects must we tolerate?"*[15]

It has been stressed that ownership appears in the majority of peacebuilding doctrine documents of all major contributors. However, it remains blocked in political discourse as a concept and a best practice without effective translation into the implementation of strategic measures on the ground. This was symptomatically illustrated by the lack of familiarity with the concept on the part of international peacebuilders. Likewise, when referring to Rule of Law, some peacebuilders really took it as a universal democratic principle and, deliberately, ignored the need for ownership.

A considerable part of the problem resides in the lack of consensual definition, in the controversy around the concept, and on the lack of guidelines on how to apply it on the ground. It is not an absolute concept and not all ownership makes good ownership: it is fundamental to select local partners and to identify those who are, in general, true representatives of the will of the people. International players have primarily focused on collaboration with the government for reasons of functional feasibility. However, policies of strict "governmental initiative" that resulted from this partnership have not matched the real expectations of the population and have undermined government and international credibility. Although government reinforcement is fundamental, the lack of complementary *ground-up* approaches leads to a decrease in people support. In terms of sustainability, an approach strictly based on the government has its costs since, in

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[15]    Interview with a representative of civil society, Port-Au-Prince, 13 April 2009.

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the end, it is the people who must maintain or reject peace and the processes of statebuilding, as a democratic state has no power without consent and acceptance by the people.

The most used methods to promote ownership were consultation processes, and even these appear to have been limited and merely incidental. Some contributors supported consulting with populations, and stated they had funds set aside in case the government wanted to conduct consultations about legal reform. Later, however, they declared there was no room for consulting, which was good since the Haitian people were poorly prepared for such an exercise.[16] In some instances, local players felt that consulting and participation in the design of a document served more as a way to lend legitimacy to international policies than to actually seek the opinion of broader segments of the Haitian people.

The intervention of contributors through implementation agencies with the capability to execute large-scale programmes is also a way to bypass ownership and avoid working directly with civil society. In this manner, it takes away from the people and CSOs their right to participate in legal reform and exercise their role in shaping public policies.

The obstacles to ownership are manifold, ranging from hidden political will to technical limitations and political volatility. The concept should be developed not only at political level, but also at strategic and operational levels, to reflect the complex nature of transitional periods. International peacebuilding efforts must not be limited to a self-fulfilling prophecy; they must constitute a long-term commitment with tools adaptable to each context.

## Conclusions

This study on how "To learn to build a sustainable peace" had the objective of analyzing the way key-concepts of policy, guidelines, and best practices are interpreted and applied in real situations on the ground.

Several factors were identified as challenges to ownership. These were primarily centred on the capability and political will of Haitians, on the one hand, and on procedural restrictions by international players, on the other.
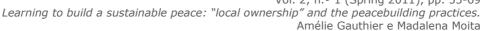
At the root of these technical and ground issues, a fundamental question was raised: is the international community really prepared to allow local players to determine the results of reform processes? Real ownership means accepting not only the solutions, but also the processes that may not be in agreement with Western models (Hansen and Wiharta, 2007: 5). It implies abdicating the false premises that universal knowledge is more important than local knowledge, and that international legitimacy is more important than internal legitimacy (Sending, 2009).

The fact is that the solution for ownership dilemmas which emerged from this study is not easily found. A feeling of frustration emanates from the verification of the current incompatibility between international standard procedures and the need to allow development and post national rebuilding processes to evolve. The quest for quick results came out as one of the main factors of divergence: considering that in a country like Haiti peacebuilding interventions are still designed for short-term periods, and that

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16    Interview with a representative of a contributing nation. Port-Au-Prince, 30 March 2009.

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rapid solutions are not conceivable or viable due to the poor state of institutions, support and long-term commitment are fundamental. Ownership requires identification of needs, definition of priorities and strategies, participation in the formulation of policies through active contribution in consultation processes, and development of instruments of accountability. The progress of the peacebuilding discourse is positive but will not be enough if not followed by a solid institutional reform of the United Nations and the development agencies. Such a reform will allow exchanging a uniform and strict paradigm for a series of sensitive and flexible approaches to each specific context.

In the context of legal reform, the international community could redirect its strategy and practices to achieve indispensable legitimacy to the future sustainability of results. Some factors to consider include improving the relationship between citizens and the legal and state apparatus and gaining a better understanding of the needs of citizens. Reinforcing ownership may be a very important way to reach these objectives and safeguard some of the progress made in Haiti so far.

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