Department of Economic and Social Affairs
Division for Public Administration and Development Management

Building Capacities for Public Service in Post-Conflict Countries

United Nations   New York, 2007

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DESA

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Notes

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Preface

The theoretical underpinnings and actual practice of reconstituting and reframing government structures and institutions after conflict has long been a matter of grave concern to the United Nations and its Member States. The Division for Public Administration and Development Management has for a number of years been gathering and expanding the knowledge base on this subject, and on the particular subset of revitalizing the post-conflict public service. Through its Governance and Public Administration Branch, the Division has sought to share the expertise of practitioners on this subject worldwide through specialized expert group meetings, capacity-building workshops, publications, and on-line dissemination of information.

This publication on '***Building Capacities for Public Service in Post-Conflict Countries'*** represents a more nuanced contribution to the discourse on post-conflict reconstruction by focusing on some of the most fundamental and earliest elements to be addressed in the conflict/post-conflict/reconstruction spectrum, namely: constitutional enshrinement of the character of government institutions; political will and leadership; and the necessity of inclusive and participatory processes for the articulation of national aspirations followed by their translation into an organizational structure for the new public service to fulfill them. The volume presents side-by-side a conceptual approach followed by in-depth descriptions by practitioners of how this has been achieved in a variety of post-conflict situations.

Having the vantage point of the United Nations, the Division has the opportunity to meet and convene national authorities, practitioners and experts from across the globe and distill the particular and universal wisdom that their experiences have elicited. Among the strongest insights that come through the experiences shared in this volume, there are two, which we hope will be added to the international community's ledger of pre-requisites in post-conflict situations:

(1) the centrality of the public service as the life force, or as one of the authors calls it, 'the heartbeat of government,' and

(2) the need for national leadership and full national ownership of the process of reconstituting the whole of government and in the public service, and for trust in the leaders of governments and implementers in the public service, an essential to achieve sustainable post-conflict stability and progress.

We hope that the reader finds this collection of viewpoints and experiences a useful addition to the thought, debate and practice of post-conflict reconstruction. The Division for Public Administration and Development Management considers the 'nuts and bolts' of capacity-building for public service in post-conflict situations to be one of its foremost areas of concern and will continue to undertake further in-depth research and data-gathering in this area.

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December 2007

Introduction

John-Mary Kauzya

In a post-conflict and/or crisis situation, the establishment of credible governance and public administration institutions and systems is a critical determinant of sustainable recovery, peace, and development. It needs to be emphasized that at the center of credible public administration is an effective Public Service, whether understood as an institution, an organization structure, a cadre of public officials, or simply as the service provided by a public authority. Therefore, a capable public service has a greater bearing on recovery than is generally recognized, both in terms of delivering aid and basic services and in rebuilding national cohesion and the credibility, legitimacy, and trust of government.

International actors may be needed to deliver emergency and relief aid in humanitarian operations during and in the immediate aftermath of crisis. But, in the rush to supply peacekeepers, food, or shelter and the corresponding measurements of success in tonnage delivered or lives saved, it is easy to forget that the external intervention predominant in this phase is very transitory. It soon becomes apparent that the internationals need local knowledge, networks, and support which are ultimately the only sustainable foundation for reconstruction. Institutions, systems, structures and processes, as well as the actors that constitute the public service as the human component of the national public administration system, are the only dynamic and sustainable factor that can provide initial support and eventually take over and implement emergency as well as longer-term reconstruction activities within all sectors of society. The public service is particularly important in planning, implementing and sustaining service delivery, revitalizing the economy, and ensuring security. But, one of the key, and perhaps under-appreciated elements of recovery, involves the human and social dimensions of rebuilding trust in government. How the public service is restructured and how it is redesigned to function becomes one of the most visible ways in which government interfaces with its populace. This gives the public service a much greater role in and influence on social cohesion and development. Post-conflict recovery greatly depends on the capacity of the public service.

It needs to be recalled, however, that the public service is not external to a conflict or crisis situation. It is part and parcel of the socio-politico-economic and cultural conditions that interplay to fuel the conflict and more often than not it is itself a casualty of the destruction engendered by the conflict. As a central actor in the reconstruction process, therefore, the public service is called upon to be the agent of change and to ensure that it undergoes transformation to manage the changed and changing overall socio-politico-economic and social governance terrain.

Whether as an institution, an organizational structural arrangement, a cadre of officials operating in the pubic sector or a set of rules, laws and regulations governing public officials' action and behavior, the public service serves as an instrument of government action which must be targeted for effectiveness in overall development and public service delivery. This is true whether one is referring to post-conflict and crisis situations or in normal circumstances. The United Nations General Assembly emphasized this in its resolution 50/225 of 1996 by recognizing that "there is a need for public administration systems to be sound, efficient and well equipped with the appropriate capacities and capabilities……." However, challenges of building the capacity of the public service in a post-conflict and crisis situation are more daunting precisely because in many respects the public service is a causality of conflict and yet the same badly injured public service is expected to spearhead its own reconstruction and the recovery of all the other aspects of the socio-politico-economic governance including the delivery of services. An important challenge facing government leaders as well as all development partners in post-conflict and crisis situations is not only how to put back a public service but especially how to restructure it in such an

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inclusive, transparent, and comprehensive way that it "incorporates or reinvigorates desirable traditional public service values, such as impartiality, integrity, and dedication to serving the public while at the same time promoting management innovations and efficiency improvements as well as encouraging more open and responsive forms of administration"[1] in order to create and sustain a transformed public service situation that will ensure that there is no slide back to conflict and violence. In addition, there is the challenge of making sure that the public servants themselves are part of the participatory change process so that it can be a transformative process that allows them to become the most effective contributors to and champions of their country's recovery. The composition and functioning of the public service represents a microcosm of a society's overall recovery and mirrors the larger governance environment. Thus, a representative, merit-based, service-oriented public service can provide a model for participation, inclusive decision-making, reconciliation and social cohesion, and proactive peace-building. Building the capacity of the public service to enable it meet the challenges of recovery and development in a post-conflict and crisis situation requires it to be looked at from the following angles: (i) in terms of the institutional arrangement through which the public service is managed; (ii) in terms of the systems through which operations of the public service are streamlined to create predictability and consistency; (ii) in terms of laws, rules, and regulation that are just, fair and equitably applied to all public servants; (iv) in terms of the networks through which public servants engage in constant communication among themselves, between themselves and the citizens as well as with collaborators and partners external to the public service; and (iv) in terms of the competence of the cadre of public officials (public servants) constituted by their knowledge, skills both cognitive and interpersonal, values and norms, attitude, motivation and commitment as well as behavior.

The public service is constantly operating at the contact point between government and the people where trust or mistrust is generated. In this respect, even if there are other factors that may impact on trust in government, people will most likely trust government when public servants effectively deliver the desired services in a timely manner, behave transparently with accountability and integrity, act in an ethical manner, are responsive to the needs of the people, and can be identified with the people they serve. Above all, in a post-conflict and crisis situation the public service must be seen to be fundamentally and positively different from the previous government in all its respects.

But the general tendency of taking all post-conflict situations to be similar and to require the same approach in rebuilding the capacity of the public service needs to be avoided. Not every post-conflict situation starts on a point of mistrust in government. Some post-conflict governments start on an almost clean plate in terms of trust being considered as liberators. Then depending on the way the same governments behave they progressively lose the trust and get in situations of "Not yet Uhuru"[2]. Other post-conflict governments come into power with mistrust from the people but depending on their behavior and achievements progressively win and build trust from their people. Yet other post-conflict governments (they are probably the majority) come to power with a mix of trust, mistrust and indifference from various sections of their people and then progressively, depending on their behavior and achievements, either widen the circle of trust and narrow the size of mistrust and indifference, or widen mistrust altogether. In all this, generally critics tend to pay attention to the political leadership. However, at a practical level, at the contact point between the people and government, the behavior and actions of public servants dominate in the shaping of trust or mistrust the people have in their government.

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[1] See UNDESA, Unlocking the Human Potential for Public Sector Performance: World Public Sector Report 2005, (UNDESA, New York, 2005 or www.unpan.org)

[2] Not yet Uhuru is an expression which became popular in Africa's political literature following the book *Not Yet Uhuru* by Oginga Odinga, the famous Kenyan Opposition politician who alongside Jomo Kenyatta fought for the independence of Kenya and later in the book expressed his disillusionment with the independence won in 1963. It means not yet independence.

In restructuring itself in post-conflict situations, the public service confronts numerous challenges and it is realistic to assume that the task is not simple. A number of issues are critical in confronting the challenges. Some of the prominent issues include the following: redefining the missions of the public service; redesigning the institutional and organizational structure of the public service; developing and strengthening the human capacity of the public service; ensuring transparency and accountability; and respecting and tapping the potential benefits of diversity in the public service. The assumption in all this is that strengthened capacity of the public service will lead to two critical outputs, i.e. improvements and increase in the delivery of services, and enhanced trust in government from the people. If these can be achieved, it will ultimately solidify and consolidate peace and provide a conducive playing field for all actors to engage in development. Let us briefly take a look at each of these issues.

Redefining the missions and objectives of the public service: The first challenge the public service faces in a post-conflict and crisis situation is to define its missions and objectives in light of the aspirations of the people as expressed in the vision, mission and objectives of government. It is at this point that the beginning of fundamental change takes place when the public service asks and answers the question: *"Public service capacity building for what?"* Whether this question is answered in terms of wider global or regional objectives and commitments such as the Millennium Development Goals (MDGs), or in terms of more specific national objectives expressed as in a number of national development strategic programmes, it boils down to having a public service that is seen to pursue missions and objectives that are synonymous with the development aspirations of the population. It is always better to have these missions and objectives defined in close collaboration and with participation of the population to ensure coherence and shared ownership. A post-conflict public service needs to endeavor to take the public as a collaborator and a partner to work with and not as a subject to be administered. A public service that starts off in this direction in a post-conflict situation stands better chances of not only succeeding in recovery and development but also in building trust in the new government from the public. The critical question here concerns the 'how'. How can a public service emerging out of conflict and crisis define itself, its missions and objectives to align them with the aspirations of the people? Through what processes can the people be engaged in the process of defining and agreeing the missions, objectives, and the nature of a restructured public service? Are there cases around the world that can serve as reference points in discussing this critical question?

Redesigning the institutional and organizational structures of the public service: The institutional and structural arrangement of the public service will be determined by the missions and objectives it takes on and the way it defines its relations with the public. Realistically, the natural tendency is to fall back to the traditional design of the bureaucratic public service. However, after conflict a government that is genuinely concerned with avoiding the mistakes of the past (the mistakes that had lead to the conflict in the first place) will avoid putting in place the same public service, especially its institutional and structural arrangements. The questions on 'what new institutions, what new structures, what new laws, rules and regulations, what new systems, processes, and procedures' need to be determined through a painful consultative process that requires patience and technical know-how. The difficulty is that these two (patience and technical know-how) are often most lacking in post-conflict or crisis situations. The key questions are: How have some countries avoided the temptation of doing the easy thing and re-establishing the traditional public service which would have reproduced the mistakes of the past? What are the experiences of overcoming the penury of technical know-how in the immediate post-conflict situation? What are the examples of institutional and structural arrangements that have been put in place in some post-conflict situations that can serve as reference points for those still grappling with this challenge?

The human capacity of the public service: Institutional and structural arrangements of the public service can only be operationalised by human beings. Therefore, there is strong need for enhancing the ability of individuals to perform responsibilities effectively and to realize their potential. Although training is the basic engine for capacity, it needs to be supplemented by other capacity building activities. Knowledge, skills, values and attitudes of staff at all levels need to be re-adjusted to match the functions, responsibilities, and tasks as well as the new work methods. In a more complex and demanding working environment such as in post-conflict situations, public servants increasingly need more high level competencies and skills to relate to politicians, other government departments, key stakeholders and external actors in order to advance the public interest in a globalizing world. At the same time, there is great need to invest in capacity development of administrative support staff to promote more efficient public administration. Public servants also need greater understanding of the complexities of political and administrative decision-making processes. Clear understanding of roles and responsibilities in the administrative system is essential for efficient and responsive delivery of services. Transparent, responsive and equitable administration of public policies is increasingly a clear expectation of citizens and politicians alike. Effective administration of public policies will therefore require a combination of technical, policy-making, administrative and managerial skills, which need to be systematically developed. The challenge of attracting, developing, motivating, and retaining high caliber individuals in the various political, managerial, administrative, technical and professional fields of the public service in a post-conflict situation cannot be understated. This leads to questions such as: Are there some experiences across the globe that can serve as reference point for those trying to rebuild the human capacities of the public service in a post-conflict situation? What public service systems need to be put in place in which situations to adequately manage the human resources? How can public servants of high caliber be attracted in situations that are mostly unattractive especially in terms of living standards and working conditions? How can training take place in situations where the institutional arrangement for carrying it out has been disrupted? How can public servants be motivated in conditions of poor pay dictated by high levels of poverty as is the case in most post-conflict and crisis conditions? What measures can governments put in place in post-conflict and crisis situations to stop or slow down the brain drain from the public service? What kind of leadership is required to deal with the challenges of the public service in a post-conflict situation and how can such a leadership be developed and sustained both at political and administrative levels?

Transparency and accountability: Finally post-conflict and crisis situations are known to be breeding ground for lack of transparency and accountability in public offices. Sometimes this may be because institutions, systems, and procedures of ensuring transparency and accountability have been ruptured by the conflict and crisis. Often in the rush to handle emergencies and humanitarian relief they are overlooked. But also often under stress and duress, the baser instincts in man take over during conflict and crisis, and public servants that would otherwise act ethically succumb to the temptation of taking advantage of public offices for personal gain. After the conflict and crisis this remains as an acquired habit difficult to do away with. Moreover, a post-conflict public service is dealing with a situation of high expectations of the public which is also impatient and likely not to see the achievements of the government. Such a situation would best be handled through transparent sharing of information with the public. But often systems for sharing the information are not in place. In addition, the need for integrity, ethics and professional conduct in the public service in post-conflict and crisis situations is more acute to restore confidence in government. But again the real questions are on how to ensure that the new public service behaves ethically, professionally, and integrity in a situation of socio-politico-economic stress? How can new systems of information dissemination be designed and operated to ensure transparency and accountability? What rules, regulations and codes of conduct need to be instituted to guide the behavior of public servants? How can recruitment, induction, and control of public servants be done to ensure that only individuals with the moral aptitude and attitude that is conducive to appropriate ethics, integrity and

professionalism are recruited and retained in the public service especially in socio-politico-economic situations that tend to impose compromises in recruiting public servants?

Respecting and tapping the potential benefits of diversity in the public service: It is known that in most post-conflict and crisis situations there are tensions among the various socio-politico-cultural and religious groups. In most cases instead of tapping the virtues and potentials of this diversity, it is used to fuel conflict. First, there are issues related to inclusiveness and the need to embrace all groups in the country to avoid feelings of exclusion which fuels further conflict. Second, there is the need to tap the potential of every individual to contribute to the performance of the public service. But often this is more said than done. There is need to look around the countries that have successfully managed such situations and turned the seemingly conflict-prone diversity into an opportunity for a variety of potential from which high performing public servants can be picked, especially that diversity in a workforce is more of a strength than a weakness. We hope that this volume will contribute to a positive search for answers to such issues.

In this volume, a number of experts and practitioners have come together under the coordination of the Division for Public Administration and Development Management (DPADM) of the United Nations Department of Economic and Social Affairs (UNDESA) to exchange views, knowledge, and experiences on issues including the above mentioned ones related to building capacities for public service in post-conflict countries. The first and the second chapters of the volume which is written by John-Mary Kauzya and P. H. M'cleod respectively, treat issues related to the role of political leadership and indicates that the evolution of the situation after conflict in many respects will be determined by the way the leadership that emerges after the conflict will behave, their outlook in terms of socio-politico-economic development and how they engage the rest of the population in shaping the destiny of the country. The chapter clearly points out that leadership capacity building in post conflict countries is critical to ensure that the country remains under capable leadership in all sectors. The chapter benefits from a general discussion on the role of political leadership in reconstructing capacities for public service after conflict as well as another on illustrated by the case of case of Sierra Leone.

The third chapter contributed by Sakuntala Kadirgamar-Rajasingham focuses on constitutional making processes and how they can reshape the public service. It discusses the critical issue that as part of institution building and establishment of rule of law, the public service after conflict must be buttressed in a constitution. In this way the approach and direction that the public service takes, the shape and values it adopts are determined by what has been constitutionalized.

The fourth chapter by Prof. James Katorobo, which is the one that addresses the central theme of the volume, discusses how to restore the public service as the heartbeat of government. It argues that when everything is said and done, running a government whether under normal circumstances in a post-conflict situation is done by and with the public service whether public service is conceived as a structure, services rendered or a group of public servants. It further emphasizes the need for awareness, disposition and capacities to undertake processes of inclusive visioning and participation as critical ingredients for a successful, sustainable recovery.

The fifth chapter by Mohamed Latiff Wahab, with an introduction by Anita Ernstorfer, discusses how to reform the security and law and order sector after conflict, taking the security and safety of person and property as a central critical service on which almost everything thrives. The challenges involved in reforming the law and order sector after conflict are discussed in reference to the case of South Africa which gives the chapter a practical relevance.

The sixth chapter written by Jakob Finci focuses on the challenges of reconstituting conflict-sensitive governance institutions in the public service, illustrating the discussion with the case of Bosnia Herzegovina. In this case, issues of managing ethinic diversity in the public service, engaging various parties after conflict and dealing with problems carried from the past are brought to the fore.

Chapter seven , written by Roxana Zyman, with an introduction by Heather Hilsinger, deals with consolidating State legitimacy through citizen engagement in post-communist transition, and supports the conclusions with lessons from Central and Eastern Europe. In the eighth and concluding chapter, Prof. Jide Balogun brings together the main findings in the volume to distill critical lessons for the public service in post-conflict societies.

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PART I

THE ROLE OF POLITICAL LEADERSHIP IN PUBLIC SERVICE

RECONSTRUCTION AND RECOVERY

CHAPTER ONE

THE ROLE OF POLITICAL LEADERSHIP IN RECONSTRUCTING CAPACITIES FOR PUBLIC SERVICE AFTER CONFLICT

(*John-Mary Kauzya*)[3]

Introduction

All post-conflict countries are in a complex development situation in which they are pushed by very many forces including two strong socio-politico-economic waves. The first one which is the strongest wave is the desperate need to restore peace, security, develop their people and get them out of the claws of abject poverty associated with consequences of violent conflict. The other is to become effective players in global governance, tap the benefits of globalization for their people and avert the threats it poses in their development process so as to be counted among legitimate and viable nations. One critical prerequisite for success in this regard is adequate capacities for public services – exactly the very capacities that the violent conflict destroyed! Provision of public services (understood in broader terms to include: security of life and property, justice, education, health, roads and other physical infrastructures, etc) is the basis for people's trust in a post-conflict government. All efforts of developing capacities for public services need to be premised on some level of trust. Just like one would trust an architect to design a new house after fire has destroyed one's home, people need to have some level of trust in a leadership that emerges after violent conflict to lead the country into designing a new government and governance system. Therefore, discussing the role of political leadership in reconstructing capacities for public services is pertinent.

For purposes of simplicity and brevity the paper will not dwell on discussing the semantics associated with the term "trust". Trust will simply be understood to refer to the faith which a citizen or a development player/actor/stakeholder puts in government as a whole or its agents (political leadership, Public servants including local government officials, public enterprise managers etc.) to act on their behalf, make fair decisions, and provide services in a predictable and equitable manner. Trust in government must be regarded as, on one hand, internal trust among the various institutions and employees of government and on the other hand as external trust between the government and the people it serves. But also trust within the context of global governance needs to be perceived in terms of the trust the international community, whether bilateral, multilateral, international civil society organizations or private sector multinational corporations have in the government in question. In a post conflict situation, where in most cases trust in government is among the casualties of violence, all these perspectives of trust are critical in the performance and legitimacy of public sector institutions. In short, trust from the people is one intangible but critical element of capacities required for public servants to perform. Therefore, one of the initial roles of political leadership in reconstructing capacities for public service is to cultivate and sustain trust which is critically required in the difficult task of rebuilding a country after violent conflict.

However, trust in political leadership is a double edged sword. On one hand it is important that the people and indeed all stake holders and key players in the reconstruction of a country after violent conflict trust the leadership that emerges. But on the other hand putting all the trust in only the political leadership, especially in one person (e.g. the Head of State as is often the case) is very risky specifically because it is

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impossible for one person or only the political leadership to have solutions to all the problems confronting a post conflict country. In addition we need to bear in mind that not every post conflict political leadership comes with a problem of lack of or inadequate trust from the people, stakeholders or key players. It always depends on the situation in context. There are post conflict situations where the leadership starts with a clean plate of trust whereby they are taken as liberators and have sufficient trust capital. But depending on the way they spend this trust capital (e.g. by quickly consolidating peace and security of person and property, re-establishing effective delivery of public services, respecting and protecting human rights, democracy and rule of law, accountability etc) they may gain more trust or lose all of it. There are other post conflict situations where the political leadership is trusted by some sections of the people and by others and they have the task of winning the trust of those who do not trust them without losing the trust of those who trust them. This is not a simple balancing act. There may also be situations where the political leadership that takes power after violent conflict is not trusted at all and it has the difficult task of convincing everyone that they have good intentions and win their trust. The point to bear in mind is that if the political leadership that emerges after violent conflict does not cultivate a minimum of trust it becomes difficult to succeed in the reconstruction of capacities for public services.

Trusting government can be perceived in various ways. When we say people trust government we may be talking about trust in the sense that the institutions of government are working well and in a predictable way. We may be talking about trust in the sense that people trust the employees of government. We may also be talking about trust in the sense that people trust government because services rendered by the government are well appreciated and equitable. The bottom line is that a government that cannot provide the basic services to its population cannot win the trust of the people. And government services are always provided by the human resources of government. Which ever way trust in government is looked at, the role of the human resources is determinant. However, "the human resource" is a wide encompassing term especially when one considers the variety of knowledge and skills required to successfully undertake technical, managerial, administrative, entrepreneurial, technological, political and integrative activities of government. Even if it is true that all Public servants or government agents have an influence on the way people trust government, the most influential part of the human resource in engineering trust in government after conflict are the top political, managerial and technical leaders in the public sector. In this paper we will focus on the role that political leadership plays in reconstructing capacities for public services after conflict. Our argument is that the quality and outlook of the political leadership at national and local levels that emerges after conflict will make or break the success of reconstructing capacities for public services. The paper underscores the critical role played by human resources in the Public Sector. "Relying on our peoples, we can take giant steps towards reform and pave the road for human perfection"[4]. "What we need to develop is people, not things, and people can only develop themselves"[5] But the emphasis is on political leadership as one aspect of the critical human resource requirement for successful post conflict reconstruction.

Ensure a shared understands of the reality, hard tasks and the challenges confronting the nation and the hardship that must be faced in order for these challenges to be overcome.

Post-conflict situations are challenging and cannot be treated as normal public management situations. If a country is to overcome the risk of sliding back into violence, there has to be fundamental change that demonstrates to all stakeholders and key players, especially the people of the country that the path the

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[4] Iranian President, Mahmoud Ahmadinejad, in his speech at the United Nations General Assembly, Septmeber 2006 (quoted in Time magazine , October 9, 2006 page 58)

[5] Julius Nyerere, Former President not Tanzania see www.infed.org/thinkers/et-nye.htm

country is taking will lead to positive response to the aspirations of the people, which aspirations are diverse. Post conflict situations require that leaders challenge the people to ask hard questions and expose the socio-politico-economic realities of the country. Successful post-conflict leaders ensure that they do not give people false assurance that the end of violence is the end of poverty and misery and that the leadership alone will find solutions to every one's problem. In a post-conflict situation leaders are not shepherds leading the people (sheep) to calm clean waters and green pastures. If they pretend to be, then the reality will hit every one very quickly, disillusionment will set in and most likely violence will erupt again. While it is true that people will be looking up to their leaders for comfort, peace, security and stability and all sorts of solutions to all sorts of problems, leaders should not fall into the temptation of making unattainable promises. It needs to be clear that the work of leadership in a post conflict situation cannot be equated to baby sitting.

If a new world has to be created, the old one must be shaken profoundly, deep beliefs must be challenged, old values must be questioned, old behaviors unlearned, certain characters changed, competing perspectives must be exposed and debated, hopes must questioned, and everyone must be challenged to recast their outlook in light of the new aspirations. In other words, one of the critical roles leaders have to play in reconstructing capacities for public services after conflict is to ensure that every one understands the hard tasks and the challenges confronting the nation and the hardship that must be faced in order for these challenges to be overcome. People must be mobilized to deploy their collective intelligence and not to rely on the individual cleverness of the leaders or public servants. Leaders have to mobilize the people and the public servants to withstand the uncertainty, anguish, and often frustration that accompany the slow and often painful pace of change in a difficult post conflict situation which can easily derail the otherwise good plans of reconstructing capacities for public service. The role of political leadership here is to mobilize people to be hopeful but not blindly so and to motivate people to trust in their potential rather than in some external or divine intervention for their development. In order for this to happen, people must be lead to assess the reality of the situation that faces them and, hard as it may look, resolve to deploy their collective effort to face all the challenges it entails.

Mobilize people's voice and mind to design and agree a national vision and strategy that provides a guiding framework and rationale for reconstructing capacities for public service

Reconstructing capacities for public service in a post conflict situation requires that these capacities be mapped against what the country intends to achieve in the immediate, short term, and long term. However, the leadership and the public service itself should not design these alone. Therefore, one of the roles of leadership in this regard is to mobilize the voice of the people to contribute to the determination of the vision and strategy of the country. At least one of the questions that would be answered concerns what kind of public service the country should have. The temptation to put back the public service that existed before violence should be resisted. It may look to be the simpler task but as we indicated above challenges of post conflict situations cannot be addressed by undertaking simple tasks and the hard solutions of the problems of the future cannot be found in the simple tasks of yesterday. Determining and agreeing a national vision and strategy that provides an appropriate answer to the question of the public service the country needs for the future must be based on a hard, harsh, and brutal diagnostic analysis of the reality of the situation, not only as it presents itself currently, but also as it presented itself in the past and as it will present itself in the future. Mobilizing the population to put their voice and mind into finding today the solutions of the problems of tomorrow is one of the critical roles of leadership after conflict. People must be lead to scan the past and future environment, scratch through the ashes and ruins left behind by the violence, and examine the painful socio-politico-economic wounds and scars to determine what kind of country they want to live in, what needs to be done to create that country, and what type of public service the country should have and how capacities of such a country can be

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constructed. Put in these terms, collective visioning sounds simple. But it is not simple both in concept and in practice. Designing and agreeing a national vision and strategy in post conflict situations often means cutting open some people's secret ambitions and persuading them to abandon all or some of them, abandoning socio-politico-economic comfort zones for some people, questioning values and beliefs of others, and creating compromises along the way. Leadership needs to do this to provide a platform and a framework to guide the reconstruction of the capacities for public service. When this is missing it is most likely that the capacities that are reconstructed are not in line with the aspirations of the country and the hopes and aspirations that emerge after violence are likely to be shattered and the country thrown into another round of violence.

Sustain development-oriented leadership and nurture future leaders for the country[6]

Leadership is not a once-in-a-time activity. Leaders who emerge after conflict must understand that good leadership will not start and end with them and that what ever capacities will be reconstructed for public service, they cannot be sustained without continuous supportive development-oriented leadership. Developing leaders that will ensure that the country will remain on the path of capacity development for public services and indeed play a leading role in the world is an important role for political leaders in a post conflict country. We must add that developing leaders for the future is a function and role of any leader anywhere. But it becomes a critical one in a post conflict situation. The focus in this should be on developing motivated, effective and responsible young leaders in the public, private, and civil society sectors that are capable of guiding their country as they struggle to align the post-conflict demands with development visions and strategies. The first aspect of this challenge concerns succession planning which in effect is preparation for leadership relay in the affairs of managing a country. Every leader at any level, in any sector, or any institution has the cardinal duty of ensuring that capable, effective and trusted leadership does not end with him or her. "In the leadership relay, it makes no difference how fast you run, if you drop the baton."[7] The capacity to develop future leaders and ensure effective succession planning at all levels needs to be developed. Political leaders who emerge after violent conflict tend to adopt the attitude of conquerors and take themselves as invincible and imperishable. This attitude needs to be resisted. Physically leaders come and go. A political leader who truly wishes to leave positive prints on the history of the development of his/her country needs to embark on an ambitious program of developing an inexhaustible pool of capable leaders for the country. In this way the reconstruction of capacities for public services will be premised on sure ground of sustained supportive political leadership.

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[6] The following understanding of leadership which was developed by the United Nations Ad Hoc Expert Group Meeting on New Challenges for Senior Leadership Enhancement for Improved Public Management in a Globalizing World held in Turin (Italy), from 19 to 20 September 2002, has informed the discussion of leadership in this paper: "Leadership is a concept that encompasses personal or group attributes, organizational structural arrangements, positions, functions, responsibilities, knowledge, skills, actions and attitudes that are shaped by the past and current socio-politico-economic and cultural conditions in pursuing a shared common vision/ goal/ purpose/ objectives. Thus it's a road and a vehicle leading from the past through the present into the future. Leadership needs to be conceived as something people do and not only in terms of what people are. We also need to bear in mind that leadership as a function happens at various levels of society. We have to be careful of the concept of leadership as the "Lone Hero at the Top". In order for the whole government administration to function many people have to exercise leadership skills at many levels.

[7] James L. Garlow, *The 21 Irrefutable laws of leadership tested by time: Those who followed them….and those who didn't.* (Thomas Nelson Publishers, Nashville, 2002, page175)

"Succession is one of the key responsibilities of leadership. Achievement comes to someone when he is able to do great things for himself. Success comes when he empowers followers to do great things with him. Significance comes when he develops leaders to do great things for him. But a legacy is created only when a person puts his organization into the position to do great things without him."[8] Looking closely at the leadership situation in a number of post conflict countries, especially at the apex of political leadership the critical issue of developing leadership for smooth succession has not been priority.

It needs to be emphasized that leadership as an aspect of energizing the human potential for performance and trust is critical. Leadership is not a personal isolated activity done by one greatly endowed person. It is an endeavor of collective community action that leaders and followers who trust enough to jointly achieve mutual goals undertake. The task of creating a culture conducive to interactive trust is perhaps the preeminent leadership task[9]. In this respect leadership is probably the greatest aspect of the human resource in government and it occupies the best position for engineering and sustaining trust in the institutions of government. Causing confusion in leadership succession at the apex of a country's leadership causes mistrust to cascade through all the levels of government and mix up the plans for reconstructing capacities for public service. In other words, in a post conflict situation, if the political leadership is not in order the public service cannot be in order either.

Provide framework for managing diversity and inclusiveness in the public Service

One of the causes of violent conflict in many countries is leadership that excludes certain members of the population from participating in the development process at decision and strategy setting level, production level as well as at levels of consumption and livelihood. After violent conflict one of the promises that political leadership needs to give to the people and follow it up with positive supportive action is the inclusion of all members of the population (women, youth, the disabled, all ethnic groups, political groups, religious groups, traditional and cultural leaders etc) in all aspects of socio-politico-economic development processes. Since the Public Sector in a situation of poverty is often the biggest employer, many groups will be vying for positions (jobs) not only in government but in the Public sector in general. This is where political leadership is called up on to live by example in ensuring that there is no feeling of exclusion in employment in the Public service. Managing diversity in the Public Service is critical in post conflict situations. If not well handled, it will disrupt any efforts in reconstructing capacities for Public service. Political leadership needs to take an integrative and strategic stand on this issue providing a political framework as well as a strategic objective of tapping and utilising the full potential and contribution of all segments of the population for development. The way political leadership positions in all levels of government are filled will provide a hint to the public on the way diversity will be managed in the public sector. The political level therefore needs to set example of how diversity should be managed across the board in the Public Service. But most importantly, political leadership needs to spearhead the efforts of putting in place a strategic policy and legal framework that will guide the management of diversity in the public service to create a situation of equity, fairness, and predictability instead of always relying on the whims of political leadership. Once the strategic policy and legal framework is put in place it is the role of political leadership to ensure that managing diversity is always according to the legal framework. When political leadership diverts from what is provided in the legal framework, every one else tends to follow suite hence recreating feelings of exclusion once again.

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[8] John C. Maxwell: *Leadership 101: What Every Leader Needs to Know*, (Thomas Nelson Publishers, Nashville, 2002, page 104-205)

[9] See Gilbert W. Fairnholm; *Leadership and the Culture of Trust*: (Praeger / Greenwood, Westport Connectcut, USA, 1994)

Resource mobilization for start up, survival, and sustainability of public service reconstruction

Reconstructing capacities for public service after violent conflict is a very costly task requiring large amounts of funds as well as dedicated and capable human resources. These are the two things that are not readily available after violent conflict. One of the important roles played by political leadership in reconstructing capacities for public services is mobilising the requisite resources for the task. While mobilising external funding for reconstruction programs is always expected of a leadership that emerges after conflict, this needs to be done without creating a beggar mentality in the population which would perpetuate dependence. The message that needs to come from leadership to the population and indeed to public servants should be of self-reliance and trust in building the country's potential rather than counting on external aid. Here the political leadership may have to play a double game whereby to the external partners the message is "we need help to kick-start the country" while to the Public servants and the population, the message is, "we cannot rely on foreigners to develop our country and each of us must tighten our belts and work hard from scratch to overcome the challenges that we are facing". It is a very important requirement for successful reconstruction after conflict that people develop a feeling of self reliance, a determination to sort out their difficulties, and a confidence to face challenges. It becomes easy to mobilize external support when a country has a population that is prepared to face its future despite the challenges being faced. External aid may be critical for start-up of programs and projects for reconstructing capacities for public service. It may be require for survival of such programs and projects in the short and medium term. But for sustainability of public service capacity reconstruction, there must be a strong internal will for self-reliance and effective programs and projects for mobilizing internal capacity to sustain the provision of public service. The beginning point is to have a political leadership that puts this challenge to the public all the time to cultivate the necessary internal commitment to self determination.

Political leadership capacities required in a post conflict situation

There is need to reflect on the kind of combinations of leadership capacities required to manage a development processes and support the reconstruction of capacities for public service in post conflict situations with their complexities, intricacies, paradoxes and contradictions. When dealing with paradox and contradiction all players/stakeholders and beneficiaries need thorough understanding of the intricate components of the paradoxes and contradictions. Such understanding can be promoted through operating with transparency, information sharing, effective communication, partnerships and collaboration, participatory problem analysis and planning, as well as consistent feed back on achievements and shortfalls. This means political leadership needs to shift to participatory methods to bring the people on board and make them understand the paradoxes and contradictions under which they are operating. The role of political leadership in this regard is to galvanize consensus on such issues. When this is not done the people will put too much pressure and too many contradictory demands on the public services and thus constrain their capacities even further.

In the diagrams below, the paper conceptualises and summarises the capacities and competencies that are required for effective leadership if post conflict countries have to build and sustain trust from the people and successfully reconstruct capacities for public services. To be effective political leaders, people need to have a composite capacity of knowledge, skills, attitudes, character, values, and networks working within a facilitating cultural and governance environment, institutions and systems. Political leadership needs to have deep rooted values of integrity, respect for diversity, service to the public, selflessness, and professionalism. Shortfalls in such values complicate further the difficult task of

developing local communities in many post conflict countries and erode the trust people have in government. For example, lack of integrity leads to corruption and lack of accountability thus undermining development projects by diverting resources from them. Lack of respect for diversity in circles of political leadership can cause serious diversity problems in the entire public service, including neglect of women and the disabled. Inadequate respect for the public good among political leaders can lead to wide spread squandering of the public resources including funds that would have other wise gone into making life for the people better.

Moreover when such values are lacking there is no push for creating and sharing knowledge and information necessary for building skills and networks to support the work of serving the public at local level. It is a well established fact that effective leadership is possible only within a framework of institutions, systems, and a conducive policy and cultural environment. Political leaders at all levels need to pay particular attention to building institutions and systems, as well as enhancing their knowledge, skills, and networks in order to be able to operate successfully. The knowledge should not be localised but globalized to enable leadership to look ahead in time and scan the environment for solutions to current and future problems. If one was to study and analyse the leadership capacity requirements one would have to pay particular attention to concerns such as those illustrated in the diagram below.

Figure one: leadership capacity analysis framework

The task of developing communities that have lived in poverty imposed by violence for long, such as those in post conflict countries is a heavy one especially because poverty is deep and the communities are relatively resigned to it as a matter of fate. Poverty reduction is multi-disciplinary as well as multi-sectoral, and needs a combination of multi-competency approaches. Therefore political leaders in such situations are tasked to adopt a harmonious balance of integrative, entrepreneurial, administrative and operative abilities/powers.[10] Whether in the public sector, private sector, civil society, at local, national, regional, or international levels, those concerned with developing leadership capacity in post conflict situations need to ponder very closely the question of how the leader should look like for the post conflict country. This paper proposes the following abilities that should exist in a leader in a post conflict situation.

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[10] An interesting discussion on the structure of powers can be found in Yves Enregle: *Du conflit à la Motivation,* (Les Éditions d'Organisation, Paris, 1985)

Integrative ability is required for ironing out conflicts due to diverging interests, competition for resources, cultural and religious differences, and diverging values and outlooks as well as concerns of minority groups. In the context of globalization, integrative power is required to lead a post conflict country to redefine itself and integrate in the global village but without losing itself. In other words, integrative leaders are required to make the post conflict country accepted by the rest of the world as an equal player in globalization and also to accept itself as a proactive participant and beneficiary in the global economy. Without integrative leaders in the public, private and civil society sectors, post conflict countries are likely to be caught in a perpetual situation of conflict and mutual mistrust not only in government but also in all the other sectors. An integrative leadership will see the national interests and galvanize support for pursuing them rather than pursuing parochial localized interests which are divisive and prone to building mistrust. Integrative leadership is most likely to distribute equally the fruits of development across the country thus creating an environment that builds trust. Finally an integrative leadership will ensure inter-generation equity by paying attention to the way resources are utilized today so that the generations of tomorrow do not suffer the consequences of the actions of today. This may be in the way the environment is exploited or preserved, the way the country manages external debt, the way the government invests in education, health, transport infrastructure etc. Future generations will be predisposed to trust government if they enjoy the fruits of the action of the government of today. On the other hand if they suffer because of the actions of governments of past generations their general outlook to government will be of mistrust. This is how important integrative leaders are in building trust in government. It is not only for the purposes or benefit of today but also for the future generations as well. Without integrative political leadership reconstructing capacities for public service will be operating in a situation of mistrust and therefore cannot succeed. Integrative leadership is more over required for effectively managing diversity the public service to avoid further conflict over jobs and resources.

Entrepreneurial ability is required for visioning and strategizing including analysis of the past, current and future environment in order to map out viable and feasible policy alternatives for development. Entrepreneurial leadership is needed desperately by post conflict countries because the countries are mostly lagging behind the rest of the world in development and therefore need not only quick gains in development but also sustained correct directions that find the solutions of the problems of tomorrow today. There is a tendency to take entrepreneurial leadership only in reference to private sector enterprises and the profit motive. This is wrong. There is a bottom line for everything in every sector and organization. Post conflict countries need leaders who can pin-point this bottom line and pursue its realization. It is imperative to realize that within the public sector, as well as civil society also, there is need for foresighted leaders who can discern the horizons of the requirements of the future from the standpoint of today; pragmatic dreamers who realize that development will not be wished. It must be planned and implemented. Such leaders are the ones who will be able to propel development. Entrepreneurial ability is necessary to make people participate in planning for and believe in their future. In other words, people are also likely to trust governments, even in their conditions of poverty, if the leadership is seen to make people have hope in the future through the development policies and strategies the government puts in place. It is these development visions, policies and strategies that can guide and give rationale to programs and projects of reconstructing capacities for public services. But at the same time, it is imperative that people accept that in order for the turbulent development process to be a little bit orderly and cause as little conflict as possible to ensure sustainable positive change; there is strong need for leadership which has administrative ability.

Administrative ability is necessary for following and respecting laws, rules and regulations, codes of conduct, procedures, due process and prudent utilization of scarce resources especially for accountability purposes as well as orderly productivity. There is acclaimed need for sustained rule of law in post conflict countries. But everyone must accept that rule of law does not descend from heaven tethered on a
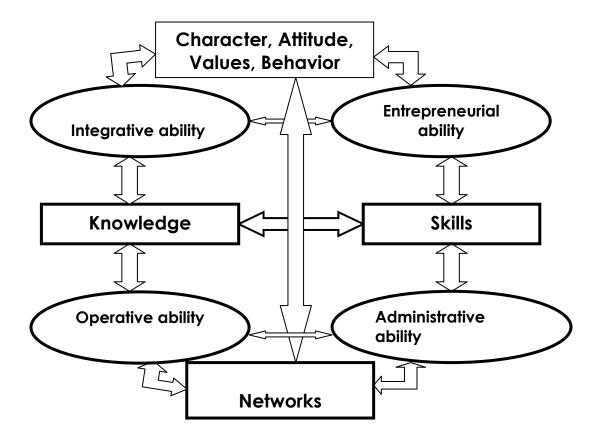
thunderbolt. It is planned, implemented and sustained by leaders who have the propensity for order, discipline, regulation, acknowledging and accepting limits and boundaries in every relationship and action, as well as belief in controlled power. When administrative ability is weak, as is the case in post conflict countries, it lets lose unlimited use of discretion in the public service and other bureaucracies, chaotic political competition, corruption, lack of accountability, and a situation of "survival for the fittest" which leaves many individuals in society vulnerable to all sorts of selfish forces and eventually to violence. This is not good for development. When administrative ability is not mastered to ensure effective rule of law, the ugly and negative side of the human factor manifests itself in chaos destroying development achievements and prospects. Administrative ability is therefore very necessary in building trust in government by creating an environment of order and predictability through disciplined and impartial action of public servants including political leaders. Successful political leadership in a post conflict situation needs to put emphasis on administrative ability because without rule of law, discipline, order, and respect for institutions, a post conflict country cannot be reconstructed and capacities for public services cannot be effectively put in place.

Finally **operative ability** is critical for action. Development is not a result of only policy and strategy. It is also a consequence of action or production. Whether it is provision of health services, education, water, roads, electricity, name it, the quantity as well as the quality are a result of some one doing some hands on. "Let us do it" is not only a command, but above all, a gesture to dip one's hands into the mud of the job. This is the operational side of leadership. It is based on execution. When everything is said and done, what are visions, missions, strategies, action plans without execution? Any leader that can not show execution will show negative results. And it is the action that builds or destroys trust in government. There is the argument that political leaders are not involved in implementation or execution. True. But a political leader that is conscious of the fact that strategies with no implementation are useless, will always insist on and encourage implementation and follow-up to ensure that the plans for reconstructing public service capacities are put into action.

Conceptually, each individual leader has dozes of each of the above mentioned powers in unequal amounts. It is the dominant doze that will make him/her integrative, entrepreneurial, administrative or operative.

However, below and working with high level political leaders, because they believe in them and support them, there is a multitude of other leaders in the public, private and civil society sectors with various dozes of integrative, entrepreneurial, administrative and operative powers who accompany and translate the leadership powers of these famous men into sustained action. While Machiavelli thought that the power to change kingdoms and societies rested with the superior talents of great men, the Princes, our view is that the power to transform and develop communities in post conflict countries lies in the leadership provided by simple men and women including those in various positions in the public service. In as far as reconstructing capacities for public service in post conflict situations is concerned one of the roles of political leadership is to catalyze and mobilize this power into sustained collective action. The diagram below summarizes the combination of the powers and the capacity analysis framework we presented in the first diagram. Clearly a leadership capacity building effort needs to take all these aspects and many others into consideration. Note that the institutions, culture, and systemic aspects are not included in the framework because the framework below is based on the abilities of individuals.

Figure2: Leadership power harmony framework

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                    ┌─────────────────────────┐
                    │   Character, Attitude,  │
                    │     Values, Behavior    │
                    └─────────────────────────┘
        ╔═══════════════╗           ╔═══════════════════╗
        ║  Integrative  ║           ║  Entrepreneurial  ║
        ║    ability    ║           ║      ability      ║
        ╚═══════════════╝           ╚═══════════════════╝

        ┌───────────────┐           ┌───────────────────┐
        │   Knowledge   │           │       Skills      │
        └───────────────┘           └───────────────────┘

        ╔═══════════════╗           ╔═══════════════════╗
        ║  Operative    ║           ║  Administrative   ║
        ║   ability     ║           ║      ability      ║
        ╚═══════════════╝           ╚═══════════════════╝
                    ┌─────────────────────────┐
                    │        Networks         │
                    └─────────────────────────┘
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From the above framework a well balanced leader will have an appropriate mix of integrative, entrepreneurial, administrative, and operative abilities supported by adequate knowledge, skills, networks, in a character and behavior driven by appropriate values and attitude. There has always been a debate on how socio-politico-economic development can be effected within an environment where there is generalized inadequacy of human capacities. Some times this debate paralyses initiatives in development and puts actors in a perpetual lack of capacity. The truth of the matter is that one of the prerequisites for developing leadership capacity is to put in place institutional arrangements and structures that provide opportunity to the actors to progressively acquire the necessary knowledge and skills in development-oriented leadership through practice and interaction. It is not possible to develop comprehensive leadership capacity without instituting some form of development oriented structures. It is always possible to find people with integrative leadership power, but for them to fully develop their administrative, entrepreneurial and operative powers they need to be put in institutional structures that provide opportunity for these to be put into action. Management knowledge and skills such as those shown in the framework above cannot be developed in the absence of a supportive institutional infrastructure and a conducive governance and policy environment. In post-conflict situations, therefore, it is the role of political leadership to put in place institutional arrangements that support the reconstruction of capacities for public service.

In short, the task of getting post conflict countries out of their difficult situations within the context of globalization in the twenty first century will continue to be tough and complex and it will require complex leadership at all levels, in all sectors and in all organizations. But the political leadership in the Public sector and especially in government is critical. It is a situation that demands a leadership that is tailored to its exigencies. We cannot model leadership in post conflict countries based on leadership archetypes from the past and from other conditions and expect to meet the countries' challenges in the twenty first century. Such countries need "warriors" who combine the above powers, values and virtues, and who are willing to fight for the achievement of peace, stability, and development with passion, determination, foresight, and versatility in approach, knowledge, skills, and mindset. When the situation demands they will be iron fisted and bark orders and ensure strict discipline, ethics and integrity in the execution of these orders. They will also be able to take responsibility for consequences of these orders. But they will also be adaptable, have people skills, be collaborative, decisive, and very purposeful, innovative and exemplary in behavior and prepared to continuously learn and unlearn while ensuring that the organizations they lead are actually learning organizations. In this way they will engineer and sustain momentum for reconstructing capacities for public services. When such political leadership is lacking, reconstructing capacities for public services gets severely challenged. What remains a teasing problem for many of the post conflict countries is how to develop the requisite leadership capacity for socio-politico-economic development. The paper addresses this issue in the following sections.

Leadership Capacity Building Strategies

Given the diversity of politico-administrative cultures, and the great variety of societal environments, each post conflict country's leadership has to be open-minded and look at all of the potential solutions to their own problems. The key element is to develop a sense of direction for the public service of a given country which takes into account its history, its environment and its position in the global world as well as the strategic development path selected by the country in a realistic manner. In this sense, the basic guideline on strategies, approaches, techniques and methodologies for leadership capacity development is that each situation, the needs it imposes as well as the composition and nature of the targeted audience, should dictate the approaches, techniques, thematic content and training methods to be adopted. In designing, planning, implementation, monitoring and evaluation of leadership development programs – whether they be in the immediate, short term, medium term or long term – organizers should adopt a participative approach involving the beneficiaries and target groups of such programs. Each of the target groups would require a strategy, an approach and methodologies that are congruent with their needs. Even the thematic content for the program would vary depending on the target group. The contents of a leadership development program can be specified only after careful participative analysis of target identification and needs assessment. This is not true only in post conflict situations but in all cases of leadership capacity development efforts.

There are some opinions to the effect that top political leaders (e.g. Ministers, Parliamentarians, top executives etc) can not be trained and are therefore beyond leadership capacity building initiatives. Accepting such opinions is defeatist and borders on arrogance. Both from conceptual and practical considerations, current and future political leaders can have their leadership capacity developed. It is a matter of adopting the appropriate approaches and methodologies. In fact the more the top political leadership in a post conflict situation are ready to undergo capacity building activities the more they are likely to be seen as honest and realistic in accepting their capacity limitations and therefore worth the trust of the people. What are the approaches and methodologies that can be applied in developing the capacities of the current post-conflict government leadership? Below we mention only visioning workshops, coaching and staff exchanges and study visits.

Visioning workshops/Retreats: I will cite a personal experience to illustrate how powerful visioning workshops can be in developing the capacity of top government leaders in a short time and in a very pragmatic way. I will not mention the country in which this experience took place. I was hired as a consultant by an International Organisation to implement a two weeks training for top civil servants of a country that was emerging from severe internal conflict. It had been realised that the mostly newly recruited top civil servants did not have management knowledge and skills for their jobs and they needed to undergo training in basic management subjects including: organisation theory, administrative communication, accountability, delegation, supervisory management, planning, organisational control, motivation, etc.

I had not been consulted in designing the program and the time table. When I arrived at the venue, I checked the profile of the participants and the topics on the timetable of the training and immediately realised that while it was true that most of the participants had neither knowledge nor skills in basic management, this training would not help them much. First, due to the conflict the country was just emerging from, there was a thick mist of mistrust among the public servant and their leaders who could not talk to each other even during training like this one. Second, again because of what the country was going through (run down institutions, structures, etc) essentially these top leaders did not have what to do because they had not had occasion to plan together what to do. I immediately decided that more than exposing these leaders to basic management knowledge and skills as outlined in the program, the two week training should create a situation where they would learn and practice talking to one another and planning things together as well as making specific plans that would serve as basis for their action once back in office. In other words, I realised that what they needed most was experiential learning in integrative and entrepreneurial leadership.

However, since I had already signed a contract with the International Organisation to conduct this training I could not change the content of the program. I only decided to change the approach and methodology to include brief conceptual presentations on the topics outlined on the time table, group discussions built around specific questions that I designed to make the groups diagnostically analyse the situation they were operating in, and finally planning sessions where I requested the groups to propose actions that would address the problems they had identified, the centres of responsibility in implementing the actions, the resources that would be required, the indicators that would show success in implementation, and the timelines to guide completion as well as the obstacles they expected to encounter in implementing the proposals. After the first three days of the program, owing to the group work approach, people started talking to each other with confidence. We started witnessing very lively and constructive arguments about the future development of the country, and why things seemed stuck at the time. By the time the program moved into the phase of diagnostic analysis of problems and making plans, the course had shifted drastically from a short course in basic management to a high level visioning and strategic planning workshop. It is about twelve years since, but up to today in the country that training is still being referred to as the turning point in the country's leadership capacity development. The public service development strategies that were outlined during the training are still being implemented albeit in a more refined form.

At the end of the training, the top public servants proposed that the same program should be extended to Ministers and Parliamentarians. Two months later, the Ministers and Parliamentarians undertook a visioning workshop that built from the one attended by the top public servants. The visioning workshop has been now turned into an annual compulsory event where Ministers, Top Civil Servants, Parliamentarians, and prominent civic and business leaders as well as chief executives of public enterprises meet to review the achievements of the country and plan for the following years.

Visioning workshops are a very useful tool for training top leadership. When they are done by bringing together sectors (public, private, and civil society), they enhance trust in government through collaboration and information sharing as well as ownership of objectives and understanding of the various obstacles that face government in its work to develop the country. In this particular case and in other many other cases which I know, the planning of these visioning workshops is done by the Ministry responsible for Public service with officers charged with human resource development and personnel administration taking the lead.

Leadership coaching: Another approach that could enhance top leadership capacity is coaching. Personal leadership coaching is becoming one of the most rapidly growing approaches to leadership development and organizational change in both the public and the private sector. It can improve self confidence, unlock leadership capabilities and potential and how to apply it in the work place, improve listening ability, enhance teamwork and communication skills, and improve learning of new techniques to manage change in difficult conditions. For top busy government leaders it can provide opportunity to step back and learn to take an objective look at the big picture and at their own abilities and obstacles. We know that for busy top government leaders, it is easy to get caught up in one aspect of the government activity or political engagement demanding most of the time and energy. Being involved in coaching enables such leaders to express plans, thoughts, and ideas in a neutral environment. It is a way to re-evaluate current communication and management methods and look for new ways to approach old issues and problems. Being involved in a leadership coaching program is a sign of strength and dedication and indeed an indicator of a top leader worthy of trust who is able to recognize shortfalls in required skills and bridge the gap through coaching. Coaching programs that are designed following needs that are identified through wide consultation mechanisms such as the 360 degrees assessment can contribute to the trust people have in their leaders because it takes humility to subject oneself to 360 degrees assessment especially when you are a top leader. In a post conflict situation where there is need of lots of capacity building activities in reconstructing capacity for public service, when top political leaders are involved, they provide example that breaks resistance to change and learning.

The question however, in the context of some of the post conflict countries is who will be the coaches? Is it possible to identify a pool of leadership coaches that can now and then be relied up on to coach leaders and effectively develop their capacity? We believe this should be one of the tasks of those concerned with developing leadership capacity in post conflict situations. Coaching is not only an act based on superior knowledge and skills. It is first and foremost an act that thrives on mutual trust and built reputation. It is like in professional soccer. Most successful coaches have been very successful soccer players. Knowledge, skills, experience, supported by positive reputation, are key to successful coaching.

Staff exchanges and visits: Staff exchange and visits can help leaders to develop their capacities through meeting and conferring with their professional counterparts and to experience first hand different ways of doing things. This is another approach that post conflict countries can promote together to share experiences and gain quick learning.

There are many strategies, approaches and methodologies in developing leadership capacity. In this paper we intended only to discuss briefly those targeted at top political leadership as well as top public servants and especially those such as the visioning workshops that enhance trust, integrative and entrepreneurial leadership. We know that there is a lot of effort at national, regional and international levels aimed at developing leadership capacity post conflict countries. These efforts are galvanised at the level of many universities, Management Development Institutes, and other tertiary institutes. We also know that there are many human resource development managers post conflict countries who are engaged in efforts to

develop leadership capacity in the public service. These are best placed to discuss this issue. We will therefore not over dwell on it here. We would wish to make three observations in conclusion.

Two Historical Faults that Need to be Corrected in the Process of Public Service Reform and Modernization

In order for some of the proposals we made above for developing leadership capacities in post conflict countries to be put into effect, there are two fundamental historical faults that have been made in reforming the public service in many countries which must be corrected.

First fault: The seriousness with which public Service Reform Programs in many countries were planned and conducted somehow did not consider that Human Resource Managers are the most strategic partners in reforming the Public Service. Neglecting issues related to the undeveloped professional status of Human Resource managers in the Public Sector and relegating the Human resource managers to non core and non strategic functions when they are supposed to be the top advisers and leaders of public service reform and leadership capacity development programs was a huge mistake. It resulted into a ridiculous situation where Public Service Reform programs in some countries are designed by external consultants whose terms of reference are designed by external consultants and consultancy reports and outputs evaluated by external consultants. The end result is perpetual dependency on external consultants for making reforms in the public sector. Yet it is known that reform as a change phenomenon is an on-going process and should consequently be driven and directed from the inside. How could such countries develop public sector leadership capacity by neglecting the planners, implementers, and evaluators of capacity building programs? This situation needs to be immediately reversed by repositioning the function of Human Resource Management as a strategic function. In the whole effort of reconstructing capacities for public service after violent conflict, Human Resource managers should given top priority in order to create impetus for sustainability of such efforts.

Second fault: The zeal with which public service reforms including civil service reforms aimed at strengthening performance capacities of Public sector institutions were implemented was in many instances not applied to strengthening the institutions that would be responsible for building and sustaining the capacities: Institutes of Public Administration (IPAs), Management Development Institutes (MDIs), and relevant University Faculties should have been given equal if not more attention. Countries have pushed reforms successfully (for example Uganda and Ghana) also managed to raise the profile and capacity of their IPAs (for example the GIMPA and the UMI) which underwent fundamental transformation as capacity building institutes in the Public Sector as reforms took root. In such countries it was possible to sustain human resource capacity development because the reforms had also paid attention to strengthening the capacity of the Capacity builders.

CHAPTER TWO

THE ROLE OF POLITICAL LEADERSHIP IN POST-CONFLICT RECOVERY:
THE CASE OF SIERRA LEONE
(*H P M'cleod*)

Introduction

The quality of political leadership is critical for fragile states like Sierra Leone that emerge from conflict and is obliged to go through a transition phase to the stage of sustainable development. Ideally, political leadership should articulate the collective vision of the people for the future of the country and thus lay the foundation for the strong social capital that underpins stability and shared aspirations. It should also be capable of aligning the population and the country's resources behind that vision. However, vision without concrete actions and visible results will quickly lead to disappointments and the vision itself could eventually atrophy. Thus political leadership must also be able to design and implement programmes and policies that make a difference to the lives of the citizens. For the trust and confidence of the citizenry to be sustained, visible results in terms of equitably and effectively delivering basic goods and services to the population are essential. Fragile states like Sierra Leone face the triple challenges of having to meet urgent needs of a population emerging out of conflict, avoiding re-emergence of social tensions, while undertaking reform measures and making necessary tradeoffs needed for long-term growth and poverty reduction. Doing so from a lower resource base, and weaker capacity is usually the hallmark of post-conflict countries.

The paper will describe some of the challenges facing the political leadership in Sierra Leone, and how it attempts to meet those challenges. Focusing on the period after the official cessation of hostilities, the paper will examine how these challenges have affected the provision of public services and simultaneously the process of maintaining or rebuilding trust by the people. With capacity weaknesses throughout the economy, it will asses whether and how political leadership can be strengthened so that the population can have the confidence in the public service's ability to deliver services equitably, optimally, and transparently over time. The issue of trust is important in a post-conflict situation, since loss of that trust, combined with the inability to effect change in the political leadership peacefully, will encourage if not trigger, recourse to violence and conflict.

I. Country Context and Background

Sierra Leone is entering the second cycle of elections for all tiers of government since the end of the conflict. The second Presidential and Parliamentary elections were scheduled to take place in mid-August 2007. The elections held immediately after the conflict provided a landslide victory

for the ruling party. This was an expression of great hope and expectation in the leadership. Two years later, the local elections provided signs of erosion in the trust displayed earlier. The Western Area, the capital city, was won by the opposition, in addition to three councils in the North. The ruling party still won fifteen out of the nineteen local councils.

What happened in the intervening period? Was this a case of unrealistic or unfulfilled expectations? What obstacles did the leadership encounter in its efforts to deliver public services? Did the usual post-conflict tensions emerge and reduce the overwhelming trust manifested in the earlier elections? If not, what was responsible for the change?

The paper reviews the factors that constitute the key elements for maintaining trust in the political leadership. In addition to the issue of service delivery, there was also some post-conflict tensions that arose during the time, and that was different from the normal tensions found among former belligerents. The situation was further complicated by the tremendous influence of external actors in the actual and perceived performance of the leadership.

The description and analysis of the role of political leadership in Sierra Leone, suggest that the legacy of past leadership practices, influenced strongly its current capacity. The key challenges that the leadership has had to face include; the very high expectations of the citizenry, the pressure for quick results, the influence of external actors, the shortage – not absence - of local capacity to formulate and implement appropriate reforms, and resource limitations. Reinforcing existing capacity is definitely a first step. However the analysis suggests that managing people's expectations, combined with a very effective communication strategy are equally important. The reforms underway by the political leadership will take time to yield fruits. Early judgments of failure by other actors – especially foreign partners can be fatal. Given the very fragile nature of the current peace, it's preservation is essential in order to give space for the longer term actions by the leadership to address the underlying problems that generated the conflict in the first place. However these underlying problems require decisive measures that are bound to upset the status quo. Strong political leadership, backed by a large mandate is the only option for taking the difficult decisions required.

Sierra Leone is a small country in West of Africa, with access to the sea, and extensive unexploited mineral deposits. It is better known recently, for the diamonds that fueled the war, and for the atrocities committed by the rebels during the conflict. This conflict lasted ten years from 1991 to 2001. The country's human development index worsened during the war that destroyed the social fabric and the economy in general. All economic activity declined significantly and in some cases, such as export of commodities, operations ceased completely. The destruction of physical infrastructure, displacement of people, rupture of social relations etc left the country as a failed state, with widespread poverty. The intervention of the international community, ECOWAS, UN, and the UK, combined with widespread civil disobedience led to a restoration of a democratically elected government in 2002.

It is important to understand at the outset that in Sierra Leone, political leadership cannot refer only to the head of the party, or only to those in active party politics. The very long period of

economic decline in the country preceding the conflict had resulted in different actors from the private sector and technocrats, having to enter the political arena in order to survive and directly influence the behaviour of politicians in the country. This was more than just the creation of alliances with the political leaders in order to survive; it was virtually overt participation. Thus in Sierra Leone political leadership often has within its ranks a good number of seasoned administrators as well.

A brief review of how the nature of political leadership has evolved in Sierra Leone will provide a useful backdrop to the analysis. The assumption to power of the All People's Congress led by Siaka Stevens in 1968 marked a major milestone in the political history of the country. This was a first case in sub-Saharan Africa where an opposition political party took the reins of government through the ballot box – notwithstanding the delay due to an intervening period of military rule. The APC then proceeded to consolidate power and carefully even legally – through a referendum - abolished the opposition in 1977. From then on there was increasing intolerance of dissent. At the same time policies and how they were applied were determined within the party, thus excluding others, and precluding the opportunity for widespread ownership. This dominant role of the party meant that the appointments to key positions in the administration, the judiciary, parliament, and even academia, were increasingly determined by affiliation to the ruling party. However, it should be pointed out that political affiliation was a necessary but not a sufficient condition for appointment. There was always a dominant group within the party, mainly of similar ethnic origins, that inevitably determined and doled out appointments. Similarly, in the case of parliament, under the one-party state regime, the party selected who got the symbol for the elections and therefore who got elected into parliament. Consequently even from this source, dissenting views were hardly forthcoming.

Throughout the periods of non-military rule, (1957 – 1967, 1968 - 1992 …,1996 – 1997,), leaders whose appointments were politically influenced were expected to remain loyal to the political system in all its forms. The result was that the majority of the leadership consisted of those who had been able to draw from, be protected by, and therefore form part of, the political party in power. To survive in the pre-conflict era, one had to be politically correctly associated. Thus, while some leaders were more politically active than others, almost everyone in leadership positions had the "correct" political affiliation. By the time the new post-conflict government led by Kabbah assumed power, the practice had become almost a tradition.

This nature of leadership in Sierra Leone was quite similar to that of other fragile states in Africa; the almost two decades of one-party politics had left a legacy where many in the higher echelons of leadership were seen as party stalwarts or defenders of the political party in power. To survive, a leader had to be part of the interlocking networks of informal groups. The problem with this system, which is akin to clientelism or patronage, is that it did not necessarily yield the best talents for technical positions. Furthermore it encouraged impunity, condoned inefficiency, and allowed mismanagement and corruption to persist. This system also triggered the exodus of highly trained and qualified personnel from Sierra Leone to seek greener pastures elsewhere.

Emergence of Multi-party democracy after conflict

A challenge facing the incoming leadership was how to replace this tradition with a system of meritocracy. Similarly, how to encourage the emergence of grass roots leaders for national positions in the party was a problem. Linked to this was the political will to dismiss officials for non-performance, abuse of power, misconduct, or other shortcomings. It must be pointed out that to do this successfully, in the case of the administration required the presence of a cadre of technicians with the appropriate orientation and ethical guidelines. However most of the successful technocrats and even businessmen had developed and prospered in the previous era of distorted incentives and inappropriate practices. Their experiences and knowledge, that had become second-nature were not the most appropriate for carrying through the policy reforms envisaged. Hence while everyone decried the corruption, inefficiency and graft that prevailed, few if any refrained from using the same practices to survive, and even prosper.

The provision in the new constitution that allowed the President to appoint his cabinet from outside Parliament was a most welcome aid in breaking the tradition. This gave him freedom to search outside party stalwarts and activists. The first appointments therefore contained a few of non-party activists in key positions. The persistence of a high degree of patronage and clientelism within the system meant that appointments to technical positions, at best were influenced as much by political considerations as by merit. Accountability suffered, as very few of such appointees were relieved of their duties for non-, or poor performance. There is no doubt that this has had a negative impact on the leadership's ability to deliver services promised or expected. The parastatal institutions were the worst hit. This, more than any other reason would explain any erosion of trust by the population. The inability to resolve the electricity, transport – roads, tele-communications, and water supply affected the leadership's credibility even more than that of complaints about corruption. In fact the latter is inextricably linked to the former. When roads or other public works, are slow to be rehabilitated or built, when there is a major shortage of water supply, the attention is directed at the responsible head of the relevant entity. Delays to remove, or otherwise sanction, such situations have been partly responsible for some of the criticism levied against the leadership.

It has been argued that the political leadership was subject to pressures that rendered dismissal of party stalwarts difficult. Others argue that the landslide victory gave a virtual carte blanche that could have been used without negative consequences, to dismiss for non-performance. In other words the wider public would have been sympathetic to such moves, which in turn would have been in the longer term interest of the party.

It is recognized that appointment of party stalwarts is not unique to Sierra Leone[11]. For the system to function without negative results, the political leadership should be prepared to dismiss

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11 The USA is the best example.

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appointees who fail to perform. However this is rendered more difficult because of the system of informal networks that dominate social and even economic relations.[12]

Conflict and Political leadership

Another issue concerns whether the conflict itself destroyed political leadership and if so what form has the emerging political class assumed? To answer the question, one should examine what constitutes political leadership in the country now. As resources and opportunities dwindled in the period preceding the conflict, politics influenced if not determined successful leadership in most spheres of life. Political leadership therefore, cannot be confined to leaders of political parties or similar organizations. The Sierra Leone experience shows that when a conflict lasts as much as ten years, following many more years of economic decline earlier, the distinction between political and other forms of leadership especially, administrative leadership becomes blurred. So the examination of the role of political leaders embraces a wider spectrum of leadership. Political leadership was not destroyed by the conflict. The resumption of party politics after the conflict suggests that at worse the leadership was in hibernation during the conflict. As in cases of external threats, all parties virtually were united in the face of the enemy and there was a convergence around the goal of ending the war and repelling the rebels. The current preparations for the elections confirm that the leadership was not destroyed by the war. The old leaders still have a strong influence in the main political parties. Besides, the new leaders emerging have not demonstrated any significant differences from the earlier ones. The major difference about current leadership is found in the systems that have now been, and are being put in place for better governance and management. Although it is still early, there are signs that these are beginning to affect patterns of behaviour.

II. Policy reforms and political leadership

Policy reforms from this leadership group, possessing the characteristics mentioned earlier, have proven to be very slow to implement*.[13] The evidence on the ground is instructive. There has been considerable progress in adopting policies and systems, particularly in financial management at the national level, in governance, and in the setting up of some key institutions. Yet this has not led to the fundamental changes that the implementation of these reforms should produce. It can be argued that the visionary leadership of the President forced the adoption of these systems but deficiencies at the lower levels of leadership resulted in a slow trickling down of the effects of these reforms or their application. It must be admitted that five years may be quite short for

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12 Informal networks exist in every society. In Sierra Leone, there is a tendency for them to replace formal structures thereby marginalizing the latter.

13 Balogun and Gberie, Assessing the Performance of the long Term Partnership Agreement between the Government of Sierra Leone and the UK DFID 2005

results to be evident. Nevertheless, the attitudinal changes expected from those who are to implement the reforms are still not yet visible, and the improvements in service delivery slow to appear. The vast majority of state-run institutions are running at a loss and not providing efficient services. Yet they continue to be led by the same people. The much talked about civil service reform is not yet underway. All of this is to suggest that the nature of leadership, its history and evolution posed serious problems in the adoption and implementation of the policy reforms urgently required in a post-conflict economy.

The provision of efficient and effective service by the political leadership is often a function of the capacities of those in authority, political will, and the instruments and mechanisms available for exercising such leadership. In the case of Sierra Leone, what were the levels of capacity and what remedial measures were taken or could have been taken, are questions that may provide answers useful for applications in other situations.

Capacity issues

Turning to the level of capacity of the leadership, it should be pointed out that the declining fortunes of the country that spanned a decade and a half, 1980 -1996, had acted as a push factor to the best of its trained personnel and part of its leadership as well. The system in place, especially in the administration, effectively de-skilled many of those who had not emigrated, due to the absence of challenges and incentives for improvement, combined with limited exposure to modern management systems and practices. The politicization of the administrative leadership cadre described earlier, resulted in a reduction of the capacity levels of the public servants who in turn were expected to deliver the services promised by the political leaders. In this context, the challenge of the political leadership is therefore how to reinvigorate and unleash the latent capacity in the public service that may have been marginalized in the process of politicization. This may well be more a matter of political will than capacity per se. Nevertheless recognition and understanding this phenomenon, as well as designing appropriate solutions, can only come from good political leadership. In Sierra Leone, there is room for reinforcement of the capacity of the political leadership, and training in modern methods of good leadership for different roles is sorely needed.

In recognition of this lacuna, there was and still is, a plethora of seminars, workshops, etc. on leadership that are organized by Civil Society funded externally. This is combined with de facto unstructured and ad hoc accountability measures taken by the same CSOs to hold leaders to account. The successes of these initiatives are limited because of their haphazard nature, the sources of funding, and the actors involved.

It is argued that leadership will have to be reinforced from outside, or that the injection of a good dose of expatriate leaders is therefore necessary for launching and sustaining reforms. Two options are possible; donor-inspired and funded technical assistance, or the return of Sierra Leoneans from the diaspora. It is now accepted that the introduction and successful application of reforms from outside fail when these are primarily donor directed. The Structural Adjustment

carrot and stick approach failed. The earlier free flowing technical assistance supported aid of the sixties and seventies did not produce much either.

In Sierra Leone, despite the efforts to press for reforms by donors, using "benchmarks", with some aid as the carrot, the results have been less than expected. This is partly because of over-ambitious targets, partly due to flawed approaches imposed from outside, partly because of ownership issues, partly due to capacity constraints, and partly due to low levels of commitments by the local bureaucracy. In all cases, the political leadership has a responsibility to ensure that reforms are carried through.

Beginning with the issue of local ownership and commitment, the extent of the entrenchment of the networks that thrived on siphoning state resources was consistently underestimated. The same actors, who benefited from the dysfunctional institutional and other arrangements, were expected to dismantle these networks and apply more modern transparent and effective policy reforms. This is not to say that there are no change agents in the administrative leadership class, rather they may not constitute a critical mass to take reforms through. By and large, the overwhelming majority was satisfied with the status quo, or is finding ways of compromising new arrangements. It is therefore not surprising that change has been slow.

This leaves the option of returnees from the diaspora, with a change agenda. There is evidence that in Latin American countries in the 80s and 90s, the architects of successful reforms were those educated abroad who had returned home.[14] However, this is not without its own challenges. Resentment and rejection can quickly occur when the returnees fail to adopt a humble approach, or are unable to exercise patience with the slow pace and relatively old methods of doing things. Local sensitivities including ethnic origins can easily derail well thought-out plans for the injection of new ideas by expatriate nationals. Also not all expatriate nationals can perform public sector duties.

There is now growing evidence of an alliance emerging between the potential agents of change, scattered in various institutions on the one hand, and a group of expatriate returnees some from international organizations, some from the private sector, on the other, which together may well constitute this critical mass to carry reforms forward. So far this is not organized and occurs by coincidence at various levels. The dilemma is that if it is organized, it would be considered a threat. Yet not organizing the group reduces its effectiveness. Events in the next year or so will determine how it will unfold.

Turning to political leaders in the strict sense, a growing divide is becoming apparent. Consistent with the demographic profile of the country XXX, political leadership appears to be divided into the young, forty years and below, and the older generation of well known names and who are generally around fifty five years and above. While the younger group is anxious for change, their

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14 Robert Guest, 2004, *The Shakled Continent*

limited exposure to modern methods and policy making may generate its own problems. The young feel that the older leadership has failed and now the young should be given an opportunity. The traditional authority of the Chief in the rural setting may well alienate some of the young in the rural population. At the same time the shift away from centralization of authority in Freetown to decentralization has left some grey areas in district and chiefdom administration etc. These issues are likely to have an impact on political leadership at the local level.

Thus five years after the conflict may be too early to speak of a change in this tradition. In reality however, leadership still includes some of those who wielded power under the old regime as well as those who are sympathetic to the new political leadership. This in turn results in some tensions, the old versus the new, that when combined with the tensions, produced by change, that inevitably arise during the recovery process itself, the effectiveness of the Public Service is reduced.

In short, the politicization of non-political leadership positions contributed to the tensions within the public service that affected the speed and effectiveness in implementing reforms.

Tensions

In general, after a conflict, tensions arise from the behaviour of the former belligerents. A case in point is the recent event in the DRC. In the weeks that followed the elections, there were skirmishes and tensions surrounding J-P Bemba, a former rebel leader who had lost the elections and had accepted the results.

In the case of Sierra Leone, the RUF were given free access and allowed to occupy the posts agreed on at the Peace conference. The time between the cessation of activities and the holding of the general elections was short. In a way this reduced the possibilities for the usual tension to become deep-seated, particularly as the rebels were not very popular and had not had time to develop a mass following.[15]

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15 In the case of the DRC, had the elections been held much earlier, the rebels would have had little hopes in the polls. The long period before the elections for example gave Bemba the space to regain support in,for places like Kinshasa which was a Kabila stronghold – a place the former had refused to go to after the peace deal because of fear for his safety.

Instead, the old party divisions are appearing again and it is instructive that the current elections are being contested along the earlier party lines.[16] This further confirms that the conflict was not rooted in political divisions; indeed all political groups suffered.

The Sierra Leone case presents some interesting departure from the normal path of recovery and its related tensions. To illustrate, the establishment of a Special Court led to new tensions emerging from within the pro-democracy and anti-rebel groups. There was a strong view that the establishment of the Court was superfluous since there was already the Truth and Reconciliation Commission. The arrest of the Kamajor leaders, who had resisted the rebels and so supported the government, by the Special Court was seen as ingratitude to those who had taken up arms to defend democracy and the state. So that the challenge of managing tensions, took a form different from the normal case of the tensions between the former belligerents. In the case of Sierra Leone, the tension which arose broke the ranks of one group. There was the difficult choice between impunity and gratitude for the heroism of the resistance, and the importance of sending a strong message that would also be a deterrent for the future.

III. External Actors and local leadership

The challenges posed by the increasingly sophisticated current global economy to the leadership of a post-conflict developing economy also affected or influenced the challenges of managing tensions arising from within the country. In fact it can be argued that a proper understanding of the interplay of forces in the international economy and how these affect the fortunes of a small state will enable local politicians to manage externally induced tensions. Furthermore the actions of the international community, as represented locally also affected both positively and negatively the performance of political actors.

Parliament increasingly has to approve laws on the environment, patents, WTO participation, the extractive industries etc. These require adequate briefing of politicians by staff. There is only a handful of staff for the entire parliament. Library facilities or access to the internet are all extremely limited, if any. The result is that the debates on such matters are hardly profound. Consequently, presenting the decisions in terms that illustrate how the longer term interests of local groups have been taken into account becomes difficult. Low salaries and inadequate or no logistics support for staff in parliament do not help either.

Another area of concern are cases where the international community inadvertently create space for spoilers in the guise of leveling the playing field, at such an early stage in the re-creation of the state. One practice with serious implications is the interference with the natural process through which political leaders emerge and succeed. This takes the form of financing and the creation of space for elements in the so-called civil society to play what are essentially political

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16 This further confirms that the conflict was not rooted in political divisions; indeed all political groups suffered.

roles. Young and promising nationals are recruited into externally well funded NGOs, both local and international, with resources and facilities unavailable to government staff. Depending on the nature of the subject matter, these NGO leaders are suddenly thrust into the national scene to discuss issues with the political leaders. The problem is that often the issues are political in nature and whereas the political leader has a constituency of the population whose interest he/she represents, this is not so for the NGO leader. The latter submits reports to the financiers and to its members only. This is creating an anomalous situation in which the role of the elected leader and that of the leader of the CSO is getting increasingly unclear.

The issue of donor influence on policy and the extent to which it introduces distortions to the vision of the political leadership is worth mentioning. The high degree of dependence on donor funding has led to a high dependence on donor policy prescriptions and their related "benchmarks". There are several cases of unrealistic benchmarks accepted by the nationals, in order to access funds. Obviously, failure to achieve these benchmarks is then trumpeted as failures of the political leadership. A case in point concerns anti corruption activities. The lack of convictions for high profile cases in court is seen as lack of political will, when in fact the reason appears to be more related to capacity weaknesses in the police and judiciary. Another example is the case where the leadership tried to secure support for immediate action to deal with youth unemployment[17]. Donors created bureaucratic obstacles arguing that only longer term solutions should be applied. But longer term solutions relate to the revitalization of the economy, a long and slow process! Frustrated, the government had to depend on its own resources to launch a Youth Employment Scheme. The paradox is that donors are quick to incite incantations of "national ownership", "alignment of donor support with government policies" etc. The reality is that the negotiation across the table is between unequal partners, and the party with the purse strings always considers its views the correct one.[18] The political leadership has had to contend with these issues, and at the same time deal with the impressions created in the eyes of the public when disagreement with donors ruptures donor/government relations.

lV. Leadership and Accountability

A discussion on the role of political leadership cannot be complete without treating the twin issues of accountability and transparency. Here while a number of systems have been put in place to ensure an acceptable degree of both issues after the conflict, questions remain regarding the political will, the administrative capacity, and the resources required to make these systems effective. Before the conflict, the confidence in political leaders had been eroded by blatant evidence of abuse of power, nepotism and a general lowering of integrity and ethics. When the then head of state, Siaka Stevens remarked that a cow is expected to feed where it is tethered, this was the green light for widespread pilfering of public assets. Combine with this, the

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[17] The rate of unemployment is estimated to exceed 70%, and includes ex-combatants.

[18] It is interesting to note that for countries classified as in crises, there is tremendous difficulty in getting outstanding staff from donor institutions to be assigned there. This is because such duty stations are considered difficult, families are not allowed etc. Thus the staff representing donor institutions is not always the best of the crop. Yet they are the ones wielding almost supervisory authority over a government plagued with capacity weaknesses.

impunity of the leadership that spanned a long period of time – over thirty years – will give an insight into the extent of the crisis of leadership in the country. The election of the former UN official led to the adoption of measures to deal with issues of integrity, ethics and accountability. There was a Commission set up to deal with Corruption; there was a clear attempt to deal with impunity as some high officials were arraigned in court; the police force was given a face-lift by the appointment of British Technical Assistance officer until a Sierra Leonean was hand picked and trained to replace him; and above all there were impressive strides in public financial management. These measures are taking a long time for the effects to be felt and are therefore seen by some as inadequate and unappreciated by the population, not least because they have not been accompanied by a major improvement in the delivery of key services. Thus although there were major improvements in the number of schools built and teachers received their salaries, other areas experienced major shortfalls. Electricity production fell to an all time low of 130 GW hr in 2005 and declined to less than 30GW hr in 2006. Sanitation was a problem until the end of 2006, the decentralization was experiencing teething problems, etc. The relative ineffectiveness of the anti corruption measures taken so far can be explained partly by capacity weaknesses in the police and judiciary. In 2006, successful high profile cases of corrupt officials were few and far between. Although new procurement laws have been adopted, compliance to the new rules is increasing only slowly.

Information systems for accountability

There are a number of systems being put in place for better economic governance. These include the system of Results Based Management that requires all MDAs to report quarterly on the development results being achieved. The submission of the reports is followed by full-day meetings in which the Ministers and their heads of departments present their reports for discussion with the Vice President in the chair. As the system matures and the offices become computerized, this will provide a comprehensive instrument for information dissemination, and for strategic management. Eventually it is expected that this will also be used for effective performance assessment and output-budgeting. In addition there is a Public Expenditure Tracking Survey that traces, through surveys, the path of public expenditure and the extent to which the services reach their destination. This is still in its early stages. Similarly, a comprehensive Monitoring and Evaluation system is under preparation. Again this is not yet fully operational. These and other systems are only now being installed. Nevertheless they all represent a potential for major strides in transparency and accountability.

Some rules and codes of conduct have been instituted to encourage ethical behaviour, transparence, and greater accountability. One such measure is the requirement for disclosure of assets to Parliament by senior public officials. Here is another example of an excellent system but rendered ineffective because of the absence of a monitoring mechanism. All the above systems require a level of capacity to function effectively. This is not yet available.

The bottom line, however, is that full democracy requires that all the aspects of democracy; institutions, practices, etc., function reasonably well. The judiciary must be independent; there must be freedom of speech and association, reasonable expectation that governments can be

changed through the ballot box and so on. However the importance of the degree of interdependence of all dimensions of democracy is often under-estimated. Isolating one or a few anti - democratic practices etc in order to apply remedial measures often fail and sometimes can even be counterproductive.

Anti-corruption efforts are unlikely to lead to large scale success in the short run because the independence of the judiciary, the capacity for prosecutions in the law officers department, the ability of the police to investigate thoroughly etc are all in the process of rehabilitation, with a long way to go. This explains partly the relatively large number of cases that do not lead to convictions in Sierra Leone. The dilemma then lies in the necessity to deal with all aspects at the same time yet without the resources being available to do so. Sierra Leone's leadership is faced with this challenge; an onslaught on all fronts versus targeted interventions. At the same time there is pressure for accelerating the speed of reforms. What has become clear is that, the attack must be maintained for a long time. Recent impatience by a key donor and threats to terminate support to the Anti Corruption Commission is an error that could be disastrous to the onslaught on corruption.

V. **Managing Expectations**

How has the government handled the high expectations from a population that enjoyed the lowest level of human development even before the war, and now expects that after the war their situation will see a marked improvement? The landslide elections victory enjoyed by the leadership immediately after the conflict was not only a reflection of trust, expectations were very high. But were these realistic? The restoration of civilian authority after the conflict encouraged IDPs and refugees to return to their communities that had been destroyed during the conflict. At the time there was abundant aid flowing into the country. As the aid dried out, their disillusionment became apparent. This is particularly true in the largely cosmopolitan Western Area which had experienced a massive influx from the rural areas.

A parallel with the post independence optimism may be drawn here. After independence there was a belief that massive transformation will occur based on the existing post-colonial framework. The structural weaknesses in the foundation for socio economic growth quickly gave way to declining growth rates about fifteen years later. Similarly after the conflict, everyone expected that the economy which had been in the doldrums for over two decades could be magically revitalized. While so far, 2002 -2006, the growth rates have been impressive averaging over 7% in the last five years, the macro economic projections from the IMF have turned out to be too ambitious. Announcements of programmes launched and agreements signed offered as signs of success are, in fact, a source of confusion – that is, confusion of process with goals, and of policy instruments with targets. There were very few attempts at managing people's expectations. At the same time the real progress and transformation taking place in agriculture, education, health and financial management, were not proceeding fast enough to make a visible difference to the lives of the urban population.

The reality was that the huge capacity shortcomings in the public service; the culture of corruption that had prevailed long before the war; the dilapidated nature of the economy and its almost complete destruction during the war, all combined to render the task of meeting the people's expectations and therefore of sustaining the election's trust and euphoria impossible. As is usually the case, during and immediately after the conflict, several NGOs and even bilateral organizations flood the country with generous humanitarian support. When the time period for such supplies endures, an inevitable culture of dependency develops. Sierra Leone has been no different. The humanitarian agencies, complemented by the largest UN force at the time, created a superficial social and economic system where goods and services were provided free and relatively efficiently. However this situation was unsustainable. Once the support dried up, and the NGOs left, the new government was expected to step in. The latter neither had the resources nor the organizational capacity to do so. Worse the public service system, and officials in place still exhibited the characteristics of the pre-conflict culture; rent-seeking behavior, operating cozily in a system of weak enforcement of law and order. This was particularly evident in the urban areas where unemployment reached astronomical proportions, augmented by the newly migrated population from the rural areas.

By 2005, criticisms of the political leadership were becoming open, particularly in the urban areas. As elections approached in 2007, the position of the ruling party came increasingly under threat, and popular songs were getting more and more anti-government. The oncoming elections and the real likelihood of losing, spurred the political leadership to accelerate action and to take on and explain some of the difficult decisions confronted. By the end of the 2006, sanitation in the capital had been improved; the level of transfers to District Councils had increased, measures were put in place for water supply and energy to be provided to the large towns in the provinces etc. The forthcoming elections will confirm whether the trust of the people in the political leadership is still maintained. What is clear beyond question is that unless radical measures are deployed to deal with the civil service, the reform agenda of the political leadership will not progress – at least not at the speed expected.

There is one area where the political leadership failed, and to its own detriment. This was in the area of information and communication. Failure to maintain a constant and structured dialogue with the population provided space for opposition and other groups to imaginatively create the worst possible scenarios for every issue. The political leadership was too often on the defense because the media and the opposition frequently had brought issues to the attention of the public. The poor standard of journalism explains the many wild and unsubstantiated rumours – usually sensational but incorrect. In this communications age, where information can be diffused globally within seconds, it is important for any leadership to send out regularly the information on its activities. Delays in doing so often result in distorted, usually incorrect, information having already poisoned the minds of the population, before the truth is revealed. Detractors of the political leadership search for every opportunity to discredit the government. Failure to give priority to a well crafted communication and information strategy in Sierra Leone partly contributed to the population not fully appreciating the results achieved by the leadership.

It is not very easy to gauge whether political leadership has maintained the trust of the population in post-conflict Sierra Leone, because of the level of access by the majority to mass media, the absence of a credible polling of the electorate etc. The true test should occur at the elections, assuming this to be free and fair. Nevertheless proxy indicators can be used to asses the extent of continuation of the trust that was manifested in the landslide victory of the last presidential elections. The first is the extent to which the promises made at elections were achieved or perceived to be achieved[19]. On the political front, decentralization has brought government closer to the grass roots and potentially empowered local leaders; there is a high level of political tolerance and freedom of speech and association; state authority has been restored throughout the country; the social sector has witnessed significant improvements in schools built, clinics and hospitals rehabilitated etc, On financial management, the systems are now in place for dramatic changes. The macro economy has been stable and registered respectable levels of growth rates etc. The slow headway in dealing with infrastructure rehabilitation, the persistence of poor performance in some public sector enterprises that provide public services such as water supply and electricity, the perception of the continuation of impunity, and the rumours of corruption among senior officials, may be seen as unfulfilled promises, and may lead to erosion in the trust of the population.

VI. The future of political leadership

It is evident that weaknesses in the public sector reinforced capacity weaknesses in the political leadership; ranging from managerial, to policy and strategy. The deficits observed in leadership relate to managerial skills, institutional arrangements, and other practices that could easily become the accepted practice if left to persist eg, corruption, impunity and lack of accountability. No doubt the conflict had exacerbated the shortages of skilled public sector officials, and perhaps the emergence of new political leaders, but on the other hand it provided the possibility of a clean slate to start afresh. New activists could have and did try to set up new political parties. The problem is that launching a political party is quite an expensive affair. And in a country with a GDP that is below $1.5 billion, there is not a lot of resources that can be mobilised easily. Budding politicians have to secure a place for themselves in one or the other main political parties, in order to have a voice in policy formulation. To the extent that political leadership refers to those leading political movements, only the well entrenched traditional parties have the machinery to mobilise the support needed to be considered seriously. New third parties have not done very well in the entire history of the country. To be realistic then, the chances for effecting change is greater if it emerges from within the existing parties, than through a new party. The lesson here is that the best choice is to approach change from within. Identify change agents in the leadership and complement them with change agents from abroad.

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19 Although proxy indicators do not provide unequivocal evidence, nevertheless they can suggest trends. In this respect elections will be a useful proxy. Admittedly voting will be a function of not only past achievements but on the perception of what lies in the future, the alternatives available, the traditional patterns of voting etc.

Conclusions

A number of challenges face the political leadership in post conflict Sierra Leone. The most important is arguably the delivery of services expected by the population. Capacity issues ranging from managerial to institutional as well as the historical evolution of leadership in the country, affect the degree of the leadership's success in this domain. In turn this influences largely the extent to which the trust already conferred by the population on the current leadership is maintained. Maintaining that trust is vital, if the country is to avoid a relapse to violence. The forthcoming elections in a few weeks will provide a pointer to the pulse of the population.

Sierra Leone's experience over the last five years does offer some lessons. The new leadership will have to study these carefully in order to build on the successes, and devise solutions to deal with the setbacks. Unfortunately the new regime will not have the time or the luxury of a honeymoon period because once the memories of the conflict wear off, and it seems to be; there will be more agitation for development results. At the same time the goodwill and interest of the international community will also decline. The choice therefore should be for results that will make a visible difference in the lives of the people, and quickly. Priority must go to implementation capacity since the basics have been set; policies adopted, plans formulated, and programmes launched. To do so, the leadership will have to contend with the challenges related to the installation of modern systems of management and controls, the reduction in the influence of informal networks, and the introduction of skilled and experienced personnel in strategic positions. This means tackling Civil Service Reform urgently. The task is rendered even more difficult in the absence of external resources. Donors should not let slow implementation generate despair among them at this point; rather this is the critical time for greater engagement. On the side of the new leadership, it should be capable of, and be prepared to take quick and firm corrective measures. Time is of the essence. The hordes of young people hanging around idle in the capital and other towns need to be given hope. Failure to do so will lead the country to the irreversible slide to anarchy as crime, indiscipline, and disenchantment will become the order of the day. Looking for a solution at that point will cost far more, and last much longer than the last conflict.

This paper must end on an optimistic note. The foundations have almost been completed, in the form of laws passed, institutions set up, and good governance practices set in motion. What is now required is the construction of the edifice beyond the foundation level – the part that will be seen by all, the structure that will clearly and visibly project the benefits to the population. The composition of the team constituting the new political leadership will indicate whether this can become a reality.

CHAPTER THREE

THE ROLE OF THE PUBLIC SERVICE IN POST-CONFLICT COUNTRIES AND IN CONSTITUTION BUILDING PROCESSES

Sakuntala Kadirgamar-Rajasingham[20]

Introduction

Conflict destroys the infrastructure as well as the lives and livelihoods of individuals and communities. What it does not destroy completely it damages and scars profoundly. The engagement of many actors is needed in post-conflict reconstruction and it must be sustained over a long period of time. Post conflict reconstruction must be broad in scope and vision, go deep to address both the root causes of the conflict and the results of the conflict. Political leadership is needed to conceptualize a new vision and chart a course of new political, legal, economic and social relationships and this must be supported by administrative and implementation capacity of the public sector. Legal, political, economic institutions have to be put together - either re built or created from scratch and administered; refugees, be they internally displaced or returning from neighbouring countries need to be rehabilitated and immediate support must be provided for them and livelihoods must be created to make them self supporting. The security sector is required to maintain the peace to ensure that there is no further lapse into conflict; and that warring parties are decommissioned, demobilized and rehabilitated. Sequencing post conflict reconstitution to ensure that the legal frameworks are in place to manage the reconstruction project and that personnel are trained before managing these processes are luxuries that are rarely available in a post conflict context.

While the lawyers and diplomats engaged as peace negotiators and deal makers receive the spotlight, the implementation of peace deals through constitutional, legal and administrative processes receive less attention – although this is where the journey to recovery truly begins. It is in this context that I propose to look at the challenges facing the public service in post-conflict reconstruction, including in the post-conflict constitutional processes as they are among the foot soldiers who can determine the sustainability of post-conflict transformation.

I. What is the Public Service?

The public sector manages services provided by government to its citizens, either directly or by financing the private provision of these services. The term 'public service' implies a belief that certain services should be available to all, regardless of their ability to pay for those services.

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Public services are considered so essential to modern life that their universal provision should be guaranteed. Some of these services, such as the right to education, health, water, may be associated with fundamental human rights. Living in an environment where the rule of law prevails and there is basic security is also such a right. A public Service may sometimes have the characteristics of a public good or of services which may be under-provided by the market. In most cases, public services are services that may be provided by local or national agencies.

Public service may involve outputs that are hard to attribute to specific individual effort and are difficult to measure in terms of quality and efficiency. The public service often require high levels of training and education and ideally should attract people with a public service ethos who wish to give something to the wider public or community through their work and are prepared to work harder for less pay as a result. There should be accountability and transparency in the delivery of public services and the expenses incurred in their delivery. Thus, public service depends on civil servants or public servants. The term public service always includes the (sovereign) state's employees—whether regional, or sub-state, or even municipal employees. It is a highly formalized and bureaucratic apparatus.

In modern, developed countries, the term public services often includes broadcasting, education, electricity fire services, gas, health care, public transportation, social housing, telecommunications town planning, waste management and water services. It also includes the protection that comes from the military and police service.

II. The Role of the Public Service in Post Conflict Countries

The public sector in post-conflict societies faces particularly complex and challenging tasks. The legacy of conflict include devastated communities, traumatized populations, depleted human resources (through lost lives and mentally and physically injured people), increasing number of internally and externally displaced persons, shattered infrastructure, and bankrupted treasuries. A generation or more may be deprived of education and training due to the conflict. These are the tangible legacies. Hatred, mistrust, suspicion, and lack of confidence between citizens and communities, on the one hand, and the state, on the other, are among the intangible legacies of conflict.

The public sector is often one of the first casualties of conflict. In armed confrontations, public institutions, programmes, and facilities are likely to be destroyed. The career public service may be politicized, or manipulated by warring factions, leading to the erosion of the ethos of public service. The human resources who staff the public service may be subjected to attacks – though ethnic cleansing, pogroms and genocide as in the case of Rwanda.

The public service may also be a contributor to conflict, exacerbating tensions where it is captured by one or other interest group or is seen to be partial, and a provider of goods and services in a biased and conflict-provoking way. In some conflict areas the public service crumbles entirely or is non-functional in conflict zones. In times of conflict the formal institutions of state may mutate and take on different characteristics and be supplanted by

informal institutions and practices reducing the capacities of the public service or rendering it to be an empty shell.

Countries emerging from conflict are faced with the twin challenges of state building and nation building at the same time. The public sector is one of the key institutions required for the elaboration and success of the state / nation building project. Yet time and patience and the option of sequencing priorities are luxuries that are never available in such charged contexts. Besides, building the capacity of the public service as well as the infrastructure for it to operate efficiently is a priority that is not always recognized. While peace treaties attempt to bring an end to the fighting, the roots of the conflict go deep and need a longer time span, and may take at least a generation to address.

Conflicts have many causes and they also generate symptoms which are not easily distinguished from the causes of the conflict. Access to resources and economic opportunities, perceptions of deprivation and insecurity are often at the root of what appears to be identity and ideology based conflicts. Demands for power sharing are both demands for recognition and the means for allocating and managing resources. The challenge for peace treaties is to lay the foundations for a constitutional order and a governance framework that can be used to navigate the society out of this quagmire and create conditions in which communities can build political, economic and social relationships and develop the state. The priority is to ensure that a better standard of living with human security at its core is attainable by all. It is thus important for national actors and the international community to take those concepts and ideas and give them meaning through concrete actions at both the macro and micro levels – by way of legislative and administrative policies, and the implementation of those policies through service delivery.

The role of the public sector in supporting conflict transformation, and in operationalizing peace treaties through constitutional reform, legislative and administrative reforms and through service delivery is not given sufficient consideration. In many identity and regionally based conflicts, power sharing and resource and revenue sharing arrangements are posited through constitutional reform. However, federal and other decentralized decision making arrangements and revenue sharing arrangements that stem from them require both a neutral and efficient public service to ensure their operation. Often referred to as "economic constitutions"[i], they depend on legislators and peacemakers for their conceptualization but also depend on the public service to make them operational. This needs to be factored in at the early stages if these peace treaties are to be effective and the ensuing constitutions are to endure.

While peace treaties are commonly brokered by key national actors and factions with the assistance of the international community, they must be communicated broadly to national constituencies and their buy-in must be ensured. Most importantly the state building processes that flow from a constitutional settlement must have broad-based understanding and support. This requires communication with and collaboration of central authorities (and decentralized ones, where they exist) and with civil society. Here again, the role of the public service is important. The public sector can contribute to restoring the credibility of the state – citizen relationship but must also be open to learning how to interact positively to community based

civil society organizations – seeing them as partners in re-construction and development and not as challenges to their own authority and spheres of influence.

III. Post conflict challenges

Post conflict societies are not homogeneous in that the type of conflict that the society is emerging from may also influence the challenges it faces in the future. For instance, Eastern Europe faced a specific set of challenges in the aftermath of the collapse of communism and the discrediting of the all encompassing Communist Parties. South Africa's challenges stem essentially from how to make a transition from the Apartheid regime to democracy, and are, therefore, deep rooted, and identity based. Nigeria and Chile faced different challenges at the end of their military dominated regimes. These in turn have been very different to the challenges faced by Cambodia, Rwanda, Afghanistan and The Democratic Republic of Congo.

Post conflict state building must accommodate the return of refugees and internally displaced people (DRC, Congo) and creating new laws, rules and structures to address the documentation of people, housing, land allocation and the creation of livelihoods. It would also require demobilizing, disarming and reintegrating militias into society, dealing with the special problems of child soldiers and broader security sector reform. While laying the foundations for a new social and political order it must also deal with the crimes of the past and this includes dealing with the challenges of reconciliation – healing through truth telling, restorative and retributive justice. Post conflict nation building would require sensitive policies that build community linkages along with ensuring that underlying insecurities that initially led to the conflict are dealt with. These tasks are to be met not only by politicians, the executive and legislators but also by the public sector and civil society.

Re-building the state in post-conflict countries in the 21st century frequently goes in tandem with economic and political liberalization, as well as globalization. The public sector must be able to cope with these additional pressures. Public administration reforms usually take place in the context of reinforcing or building the rule of law and consolidating democratic institutions, decentralizing and de-concentrating administrative structures and functions, modernizing (or in cases of post conflict societies, rebuilding) the civil service while also meeting international obligations (imposed through peace treaties, etc). Training and motivating personnel and remunerating them appropriately to ensure that they serve the public and not their self interest or meet their own survival needs is a further challenge.

IV. Role of the Public Service in Post Conflict Constitution building

Today the area of constitution building is not seen as a matter only for jurists and politicians but as a project that should engage the broader public. It should engage experts, (mostly national), civil society organizations, interest groups, minorities and a range of actors. In this context, the expertise of public servants should also be fully utilized as a resource in this process – not only on defining their own terms and conditions of service as an independent and impartial bureaucracy but on thematic and sector issues as well.

Where a participatory process of consultation and civic education around the constitution is envisaged the public service, especially at the regional and local levels can be very usefully deployed – not only in securing the logistics but in identifying stakeholders and also by engaging in the processes as part of the local elite.

When it comes to discussing sector issues, policies on health, water management, decentralization, and land become very salient. Land policy is a particularly important element of peace building, in conflict recovery and transformation. However, it is seldom carefully addressed. In post conflict states a functioning system of land administration needs to be developed. Land policy must also lead to the creation of institutions and laws that provide a framework for meeting claims for property restitution, as well as a clear land policy that shapes future social and economic structures. It should address a broad range of issues: whether there should be a collective, cooperative, or an individual basis of land ownership, restrictions if any on private property, and land reform to address social justice issues. Inputs from the public service in this arena at the formulation stage would be useful.

In post conflict countries the international community plays an important role and often provides both material and technical assistance both in the area of constitution building and in the recovery process which must be absorbed by the public service. Donor coordination as well as optimizing the opportunities of international assistance are among the critical tasks that must be performed by the public service in post conflict countries.

V. The Role and Effect of Conflict Sensitive Constitutions on the Public Service

In as much as the public service can be a resource (that makes inputs into the constitution making process) it can also be impacted by the constitution. Constitutions are born out of a context and are inevitably shaped by it. If violent conflict has a deep historical root the constitution is likely to be shaped by this history. Conflict-sensitive constitutions tend to be both rooted in the challenges they were born from and react to the very challenges which they seek to transcend.

The constitution will likely shape the economic direction of the country. It also defines the relationship between the state and the citizen, between citizens and communities as well as the relationship between the different branches of government (executive, legislative and judicial branches) as well as the bureaucracies that operate under these branches.

Where a constitution contains a set of Directive Principles of Social Policy (e.g. India, or Nigeria) it may set a moral and ethical tone of government and a developmental agenda that may impact the public service.

The constitution may be creating an entirely new public sector or revitalizing an existing one and the principles and powers affecting the independence of the public sector, as well as its relationship to ordinary citizens, may be outlined through the constitution.

For instance, the constitution can indicate if it is a priority to control corruption in the government and the public service through the creation and empowerment of anti corruption bodies. It can ensure that public servants have obligations to offer timely and courteous service to citizens and therefore mandate the creation of an effective office of the Ombudsman. Likewise, the enshrining of the right to information in the constitution empowers the citizen in his or her relationship with the government and the public service, and signals real commitment to transparency and accountability.

Most importantly, a strong Bill of Fundamental Rights can secure a range of rights for the citizen and impose responsibilities on the government and by extension the public sector. Where a constitution contains a range of safeguards and protections (*freedom from arbitrary arrest, torture*) as well as positive rights (right to equality), political rights (to vote) and economic rights (to employment, dignified life etc) it creates a layer of responsibility for the government and the public sector to provide an environment for the realization of those rights. Implicit in the constitution may be the requirements that public officials "do no harm" and perhaps even have obligations to "provide a duty of care" or to actually deliver services.

Constitutions have an additional role in charting the nature and scope of the state and its economic philosophy. Does the constitution envisage a minimalist view of the state or a paternalistic welfare state? Does it promote the market and liberalization, or a centralized, planned economy, or a combination? These broad parameters also imply differing roles for the public sector.

Furthermore, does the constitution provide for Planning and Finance Commissions, Public Service Commissions and Central Bank autonomy? How does it define the relationship of these commissions to Parliament and the Executive? Does the constitution provide for the guardianship of natural resources? Does the constitution express commitment to principles of natural law and justice including respect for due process of the law? Does it create a framework for institutional change? Does the constitution provide for a public service that has a regulatory orientation or a service orientation?

In administrative law systems the judiciary is part of the public service. This fundamental choice will chart the direction of the relationship between the judiciary and the public service.

Critical is the constitutional choice of whether there is to be decentralization and if there is to be a public service at the local level. Is the public service to be controlled by political power or completely independent of it and what are the accountability channels?

It is important to sensitize the public service the to the gender dimensions of conflict and the legacies of those conflicts which often create a larger pool of victims among women, more female-headed households and arrange of unanticipated developmental and rehabilitation challenges.

It is also necessary to alert the public service to the realities that managing political transitions, distributing humanitarian assistance as well as development aid may even be harbingers of

additional conflict. It is therefore necessary to train and empower the public servants to respond to these challenges.

In post-conflict countries there is often the creation of shadow economies and governments which poses additional burdens on the public sector. The public service is vulnerable to co-option, corruption harassment and intimidation. Funding transitions through a legitimate economy and a tax base are among the many challenges that governments and the public service face.

On the one hand, there is a tendency for post conflict constitutions to legislate detail and trump common law – as it is framed in an atmosphere of distrust and fear. This can have a negative impact on the autonomy and morale of the public service. On the other, the public service may have been complicit on the excesses of the past conflict and a process of de-constructing the public service may well take place. This was the case in Eastern Europe where the public service was heavily implicated in the old communist order and accountability of the public service was demanded.

Sometimes the reconciliation / retribution processes are part of the constitution making processes or are so closely linked to it that it is perceived as part of the process even if not incorporated within it. The constitution making process in South Africa was closely followed by the Truth and Reconciliation Commission, linking the two processes in popular consciousness. Moving forward meant holding to account the structures and institutions of the Apartheid regime. In other transitions too the demand for retributive justice has been widespread and where the public service is heavily implicated in the excesses of the previous regime it may have to contend with demands for lustration. Where there are no clear policies of where to draw the line and at what level to exclude culpability within the public service and how to factor against the negative impact of disruptions (that occurred in Iraq with the de-Baathification policy that led to the dismantling of the army, and the sacking of teachers implicated in the Staasi in East Germany) the public service may find itself greatly undermined.

To sum, while the public service is essential to development, to state building and conflict transformation a dysfunctional public service may also be an obstacle to these processes. Since the public service can not be sidelined , due attention must be given to how to reposition it for the challenges of the post-conflict era. A constitution can set out expectations and a framework for achieving these aims. However, to give effect to the constitution's aspirations for a better society, it is imperative that various actors be encouraged to make inputs. Engaging the public service at the stage of transition from conflict to peace and involving it in the constitution making efforts, are an important part of this process of realizing the lofty objectives set out in post-conflict constitutions.

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PART II

RE-STARTING, REVITALIZING AND RE-FOCUSING THE

POST-CONFLICT PUBLIC SERVICE

CHAPTER FOUR

RESTORING THE POST-CONFLICT PUBLIC SERVICE TO ITS POSITION AS THE HEARTBEAT OF GOVERNMENT

James Katorobo[21]

Introduction

In a stable, normal, and peaceful environment, the public service constitutes the heartbeat of the government. It is the instrument on which the government and the people rely for the delivery of vital services. These are mostly public goods, and include services such as defense against external aggression or enslavement, police protection and containment of breaches to public order, adjudication of disputes between and among peoples and communities, environmental sanitation and garbage disposal, infrastructure development and maintenance, delivery of mail, and provision of an environment conducive to gainful and legitimate pursuit of the good life.

Conflict, especially of the violent and devastating kind, wittingly or unwittingly targets the public service, the heartbeat of government. At the height of conflict, government literally and figuratively suffers a cardiac arrest, and needs bypass surgery more than anything else. While the conflict lasts, this complicated procedure is out of the question since efforts and resources would of necessity have to be directed towards bringing the war to a successful conclusion – that is, victory over the enemy. As soon as the conflict ends, delaying the surgical operation risks taking the society back to the conditions that ignited conflict in the first place – or even worse. To stem the precipitate decline in the capacity of the public service and restore a modicum of normalcy, it is imperative that immediate attention be given to public service capacity at the end of conflicts.

The success of a new government in a post-conflict society in any case depends on the performance of the public service. Unless the public service demonstrates the capacity to provide critical services to the population, it would be difficult for state authority to be re-established and for trust in government to be restored. This poses a momentous challenge for the simple reason that the post-conflict public service from which much is expected is probably among the first institutions to be destroyed and their capacities greatly diminished by months, if not years, of conflict.

The structures and functions to be rebuilt are presented in Fig. 3A as the post conflict public service capacity building paradigm. The most critical element in the framework is the "people", (customers, citizens, refugees, displaced persons, ex-combatants, civic and economic actors and others that need to be provided with public services). The range of skills (political leadership, policy analytic, managerial, professional, technical/vocational, law enforcement and security) needed to serve the people expeditiously and without bias, constitutes another element that warrants attention in post-conflict capacity building efforts. Equally important is the flow of capacities from appropriate organizational and institutional structures and functions. It should also be remembered that during conflict, tools and equipment get destroyed. Re-equipment and re-tooling are thus essential components of a post-conflict capacity building strategy. Finally, and as Fig. 1 indicates, a sound legal and financial system ought to be

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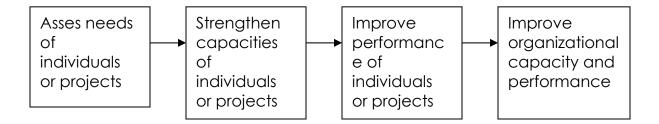[21] Professor Katorobo has held a number of senior posts in UNDP and UNDESA as governance advisor, peacebuilding specialist, and chief technical advisor on public sector management both at UN Headquarters and in field operations in Rwanda, Somalia, Uganda. He has worked and taught throughout sub-Saharan Africa.

designed to support other post-conflict capacity building interventions. In the paragraphs that follow, this paper examines the various topics as they relate to the success of efforts at restoring the public service to its position as the heartbeat of government. The paper begins with an overview of approaches to capacity building and the lessons for post-conflict societies. It then focuses on the challenge confronting the public service in post-conflict environments. The institutional and human capacity building choices open to post-conflict societies are discussed in the rest of the paper.

Towards A Holistic Approach to Organizational Capacity Building: An Overview of Lessons for the post-conflict Public Service

This paper takes the view that one major reason why capacity building efforts have not been very fruitful, particularly in the African public service, is the overdependence on the traditional approach to capacity building. This traditional approach focuses on building the skills, knowledge of individuals and of specific project teams. According to Douglas Horton, the process most frequently used to develop an organization's capacity began with assessing, or sometimes even assuming, the needs of individual staff members or the needs of individual projects or units. As soon as these needs were identified, individuals were trained and capacities developed within the project or unit. These capacity development activities at the individual or project level were assumed to contribute to improved capacity and performance of the organization22. Figure 1 illustrates this traditional linear approach.

Fig 1. The traditional linear approach to capacity building23

The traditional, linear approach to capacity development assumes that the development of individual and project-level capacities will lead to improved organizational capacity and performance. A recent global assessment has shown that this approach does not build capacity at the organizational level. This is the model that has been followed in Uganda in attempting to build the capacity of the Ministries of Public Service and the other Ministries, Departments and Local Governments. Yet building human capacities this way will not necessarily guarantee a noticeable impact on performance. A recent global study has found that while the traditional approach is popular and managers believe that upgrading the capacity of the individual will lead to better individual performance, and that this will automatically translate into improved organizational performance of the organization, this is not necessarily the case24. The studies established four reasons why the approach does not work. First, individual staff or project-focused support seldom addresses the organization's priority needs. A focus on individuals or projects misses the 'big-picture' issues facing the organization. Second, a focus on individuals and projects may even

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22 Douglas Horton, et. al, Evaluating Capacity Building. IDRC: CD Disk 2 Bookcase 2005

23 Adapted from Douglas Horton, et. al, Evaluating Capacity Building. IDRC: CD Disk 2 Bookcase 2005

24 Douglas Horton, et. al, Evaluating Capacity Building. IDRC: CD Disk 2 Bookcase 2005

undermine the organization's capacity. Trained Individuals may not find an environment conducive to the use of their new knowledge, skills, and attitudes.

The most effective strategy is to start by moving from a focus on individuals, to a full appreciation of the strategic objectives of the Ministries, Departments and Local Governments as a whole. With the strategy of the organization as a point of departure, the capacity building effort could then proceed to answer the question what are the existing internal capacities which should be mobilized to achieve it and what internal weaknesses need to be overcome - if the overall objective is to be achieved? This assessment should be comprehensive, continuous and logical. Analysis can focus on the operating capacities to improve service delivery, in the interim, and on adaptive, transformational, and self-reforming capacities in the long run. The Ministry of Public Service can build its own strategic management practice and then promote the methodology across the rest of the Public Service. Evidence that there is continuous strategic management would be that Ministries, departments, and local governments hold quarterly strategic reviews and undertake monthly follow up of strategic work plans.

Ministries, departments, and local governments can ensure that the strategic mission is what guides and motivates workers and at all levels. Periodic evaluation should focus on the extent to which the mission has been internalized in the mind of all the workers, and manifested in the decision process. Successful strategies are never formulated hierarchically, but with the full participation of the rank and file. And emphasis on hierarchy and status are inimical to the team spirit and the organizational cohesion needed to achieve the goals of Ministries, departments, and local governments.

A holistic approach requires a creative work force - one that does not fear taking risks. This means that Ministries, departments, and local governments should cultivate an atmosphere that rewards innovativeness and takes a lenient view of mistakes arising out of calculated risks. Since information and knowledge become obsolescent very rapidly and are quickly replaced by new concepts and practices, the Ministries, departments, and local governments must become truly learning organizations. Most staff in public service should have skills to write well-researched and data-supported policy papers. The Internet has revolutionized access to information and created a global level playing field. But civil servants are behind in the mastery and exploration of this free information gold mine.

In order to overcome internal weakness arising from slow response to the adoption of new technologies and innovations, there should be a powerful unit in the Ministries of Public Service to drive the process of identifying and promoting capacity building innovations.

In their recent global study25 of capacity building Douglas Horton and his colleagues identify principles underlying effective capacity building interventions. First, strategic planning and management should be in hands of local people who should take ownership and responsibility for the decisions and the actions. Outsiders may help with ideas and resources but the capacity building should not, as is often the case, be supply-driven by donors and development partners. Second, the focus should be on the objectives of the Ministries, Departments and Local Governments as a whole. Third, the key processes should be properly analyzed and understood. Fourth, rather than being an afterthought, monitoring and evaluation should be made operational right from the design and inauguration stage.
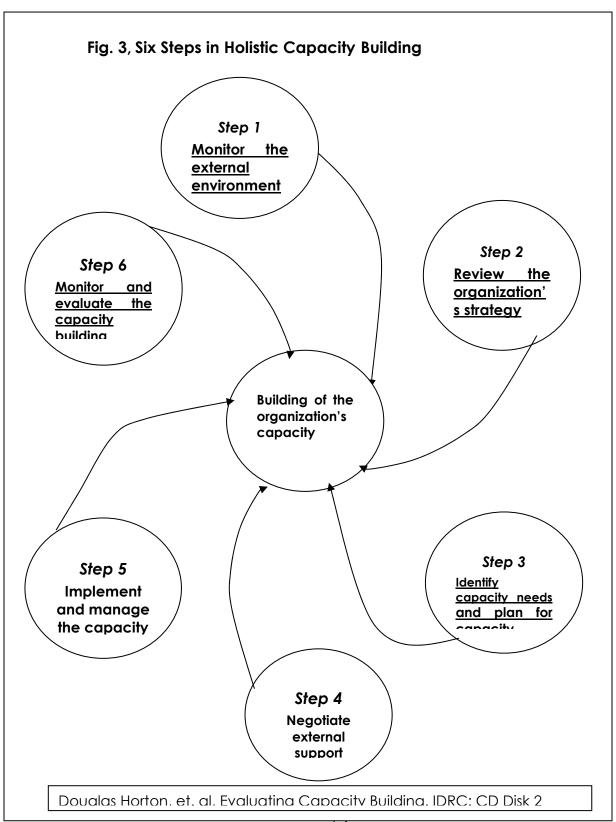
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[25] Douglas Horton, et. al, *Evaluating Capacity Building*. IDRC: CD Disk 2 Bookcase 2005

It should also be emphasized that capacity building is a permanent and continuous activity. This is because goals, innovations, and technologies are constantly changing. Capacity building thrives in a permanent and continuous learning environment. Ministries, departments and local governments should promote and encourage effective knowledge management networks in the public service. Stakeholder mapping should generate the information that would be useful in constantly engaging all interested parties and in designing capacity building programmes that respond to their needs and concerns. Managers of Ministries, departments, and local governments need skills to support capacity building initiatives for the political decision makers who approve funding.

The six steps (Fig. 2) outlined below summarize the essence of the holistic approach to capacity building. The steps include determining the objective(s), searching for the resources required to achieve the objective(s), working out a detailed action plan and assigning staff to activities for which they are qualified, supervising the implementation of the activities, and monitoring and evaluation of progress in the achievement of outcomes.

Fig. 2: STEPS IN THE IMPLEMENTATION OF A HOLISTIC APPROACH TO ORGANIZATIONAL CAPACITY BUILDING	
Step 1: Monitor the external environment to identify needs and opportunities for organizational change	Ministries, departments, and local governments must begin the process of designing capacity building by conducting an assessment of the external environment focusing on threats and opportunities. This should enable them to revise their current strategic objectives.
Step 2: Review the organization's strategy	The results of the first step may lead the Ministries, departments, and local governments to keep its current strategy but more often it will lead to a new revision.
Step 3: Identify capacity needs and plan for capacity building	The Ministries, departments, and local governments then review their internal capacities and resources in relation to the achievement of the strategy. This will pin down the capacities which need to be acquired or built
Step 4: Negotiate external support	The Ministries, departments, and local governments then engage in mobilizing and negotiating external support and resources to supplement its own.
Step 5: Implement and manage the capacity building process	The Ministries, departments, and local governments direct the activities to achieve the objectives. The internal teams and groups engage in actions guided by effective management systems and styles.
Step 6: Monitor and evaluate the capacity building process	The Ministries, departments, and local governments have to set up a continuing monitoring and evaluation system which generates feedback which is used to redirect and guide implementation.

Fig. 3, Six Steps in Holistic Capacity Building

Step 1
Monitor the external environment

Step 6
Monitor and evaluate the capacity building

Step 2
Review the organization's strategy

Building of the organization's capacity

Step 5
Implement and manage the capacity

Step 3
Identify capacity needs and plan for capacity

Step 4
Negotiate external support

Douglas Horton. et. al. Evaluating Capacity Building. IDRC: CD Disk 2

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II. Impact of Conflict on the Public Service

During decades of civil strife in Uganda (1966-1986), the public service was decimated. Many skilled public servants were killed; a large number escaped into exile and have been too traumatized by the experience they left behind to contemplate returning – even after the cessation of hostilities in 1986. Those who remained behind but were viewed as agents of the collapsed autocratic Idi Amin and Milton Obote regimes were not trusted by the new government. The feeling (of suspicion and mistrust) was mutual, as the remnants of the discredited regimes believed that they did not quite fit in under the new dispensation. Still, the National Resistance Movement which took over the reins of government in 1986 pursued a policy of co-opting and integrating diverse armed groups. This is the essence of mixture of patronage with merit in constituting a broad-based government.
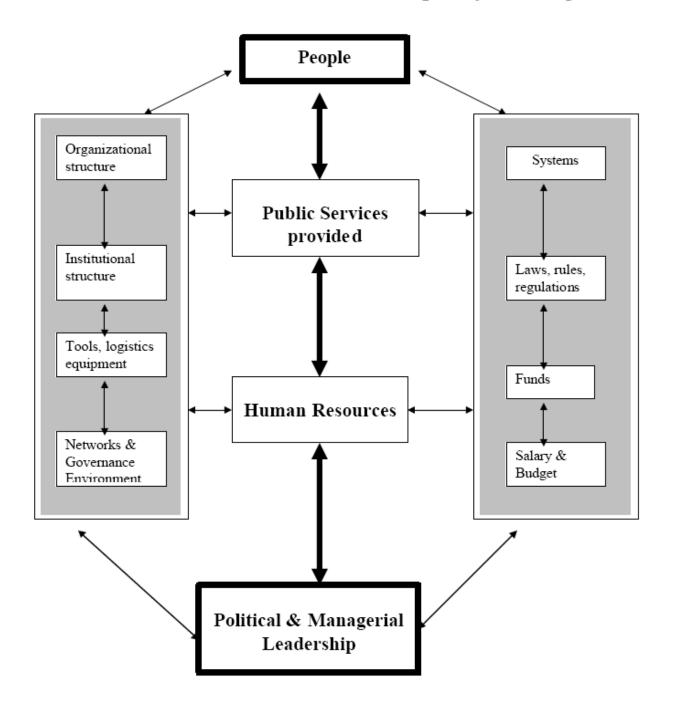
It must also be born in mind that while Uganda's conflict lasted, the public service's reporting and accountability system broke down. A few crooked public officials eventually took advantage of the abnormal situation by stripping government assets and carting them off for sale at local and external black markets.

Similarly, in Rwanda, the majority of civil servants (particularly those implicated in genocidal acts) escaped to Zaire carrying files, other vital records, and any movable public service assets. The attitude of the returning exiles did not help much either. Without waiting to be posted or to have their postings properly documented, they moved into government offices vacated by those who fled. This act of indiscipline created a major problem for the incoming administration, especially, that of how to eject the new self-declared officials and ensure that vacancies were filled in an orderly fashion.

In East Timor, the key Ministries were located in Jakarta, and the middle and lower civil service positions were occupied by Indonesians, rather than by Timorese nationals. When Indonesia's colonial rule collapsed, the field service personnel (the skeleton staff out-posted to East Timor) returned en mass to Indonesia, their country of origin. The result was that when the UN took over the administration of the territory there was no such a thing as the "East Timor Public Service". In such circumstances, the public service had to be built from the ground up. Initially the UN relied on volunteers from member States, pending the time that the new East Timorese civil servants would complete their training and take over from the expatriates.

Fig. 3A

Post-conflict Public Service Capacity Paradigm

People

Organizational structure

Institutional structure

Tools, logistics equipment

Networks & Governance Environment

Public Services provided

Human Resources

Systems

Laws, rules, regulations

Funds

Salary & Budget

Political & Managerial Leadership

Disruption in the life of the people and in access to essential services

In post-conflict Rwanda, not only did public servants flee the country but also ordinary citizens, indeed, entire communities, crossed into Zaire as refugees. A large number of those who remained in Rwanda (the majority Hutu) were suspicious and hostile to the Rwanda Patriotic Front (RPF) government that they perceived to be largely Tutsis-dominated. This perception was contrary to the facts, and must have been encouraged by the memory of how things used to look. Under a Hutu President (President Bizimungu) the Hutus occupied over 90 percent of government posts.

In East Timor a large percentage of the indigenous population sought refuge in West Timor. Those that remained in East Timor were deeply divided, with some belonging to a group alleged to have collaborated with the Indonesia occupation force, and others to the resistance or pro-independence group. The Indonesians and their allies were accused of perpetrating massive arson and looting (the notorious scorched-earth policy) before retreating home.

In South Africa decades of apartheid and of armed rebellion created a tense and hostile post conflict environment. Elements of the public service (the white supremacists) who could not accept to work under a black-led ANC Government left the service and the country. The new government led by Nelson Mandela, pursued policies to accommodate the whites (as well as other racial groups) and to allay their fears. These policies went a long way in creating an atmosphere of trust and confidence between the government and the people. The Truth and Reconciliation Commission provided an opportunity for those oppressed under apartheid to air their grievances, and for the collaborators of the racist regime to own up to, and apologize for, past misdeeds. This again helped in no small way in assuaging assuage bitter feelings, and healing traumas.

In Southern Sudan, a government has been set up in Juba and in regional federal States. However, most civil servants are still in exile. A good number of former civil servants who are exile carry the additional stigma of having collaborated with the Khartoum government. More than 50 percent of former inhabitants of rural communities in the south are still in the slums of Khartoum awaiting repatriation. After living in Khartoum for several decades, it is unlikely that they will gladly return to the rural areas where they came from. This has major implications for the participatory systems that may be contemplated in post-conflict environments. Such systems should be approached pragmatically, and should reckon with the possibility that it would take time for the various constituent groups to be ready for dialogue and for participation.

Insecurity and the Post-conflict Public Service

In most cases, a government in a post-conflict environment tends to control the capital while large areas of the country remain insecure. In most post conflict settings, therefore, the public service is initially setup in the capital. It then gradually extends its services into the countryside, as refugees and the internally displaced are resettled.

In Uganda the government, even after succeeding in absorbing large numbers of armed groups, has had to cope with a highly disruptive armed rebellion in the north, and the west of the country. During the first years of the post-genocide Rwanda, many of the country remained no-go areas. In East Timor there were many areas that could not be visited without armed escorts. In Southern Sudan armed conflicts break out once in a while, even in Juba, the capital. Sporadic gun fights are common in the outlying districts.

Redefining the Mission and Strategy of the Public Service

One of the consequences of protracted conflict and the collapse of civil order is the loss of credibility and sense of purpose in the public service. In post-genocide Rwanda, a UNDESA[26] expert based in the Ministry of Public Service realized that government Ministries and Departments, including the Ministry of Public Service, were not driven by properly defined goals and objectives[27]. Senior civil servants were spending most of their time on routine and mundane tasks, such as checking on drivers and vehicles.

The UNDESA expert organized workshops in Ministries on the review and refocusing of ministerial goals, objectives and strategies. Strange as it might sound, the Ministries and Departments were unable to determine their goals and objectives and were likely to shift the blame to the Government. "The Government, and in particular the cabinet, should pronounce the overall mission of the Government and the individual Ministries" the workshop participants asserted. The UNDESA Expert reminded them that much of the initial groundwork – e.g., review of policy and options, conduct of beneficiary surveys, collection of data, construction of performance models and scenarios, and drafting of cabinet memoranda - had to be undertaken by career officials. It was only after the public service had discharged the function of "serving as the Government primary adviser on policy" that it could reasonably claim to have done its duty.

Unfortunately, this vital function of redefining government mission tends to be left unperformed by the public service, due to lack of capacity, and the omission for long goes undetected by the political class, for precisely the same reason – lack of capacity. During the first training workshops for newly appointed Permanent Secretaries attention focused on the national vision on which the Ministerial Missions were to be based. In a follow-up workshop for Ministers held in May 1996, no less a personality than the President, President Paul Kagame, chaired a working group to define the mission of the Rwanda State. Even if was still premature to determine the mission of the Public Service, the seed planted at the Ministers' workshop served an important purpose. When the time was ripe, and the Public Service was properly reconstituted, the Government of Rwanda invited a consultancy firm, The Monitor Company, based in Boston, to assist the country draft a competitive strategy and mission[28]. The lesson from this example is that in the immediate aftermath of a civil strife government is not the best time to redefine the missions of the public service or to push the service towards turbulence. However, there is nothing wrong in spending the initial months 'thinking loudly" about the way forward and sensitizing the key actors to the need to begin to ask questions about agency missions, the impact on the internal and external clients (or "customers"), and about how all these fit into the government's long-term vision.

Leadership Development for the Public Service

During the immediate post conflict period there is a need to impart skills to Ministers who are responsible for policy formulation and steering it through cabinet, but also the senior and middle Public servants who implement them must be trained.

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[26] United Nations Department of Economic and Social Affairs

[27] James Katorobo, Ph. D. (MIT), UNDDSMS/UNDP, Mission Report on Organisational Analysis of the Structure and Functions in the Rwandese Public Service, Kigali: Ministry of Public Service, Government of Rwanda, 1996.

[28] H.E. Paul Kagame, President of the Republic of Rwanda, Opening Remarks at the Opening of the Prosperity-Creation Workshop, Kigali: June 20, 2000

In post conflict Rwanda, both the political and administrative leaders had returned from exile without experience in managing the Public Service. They retained remnants of the old public service, who did not run away and appointed them Director Generals. Although they were not trusted, they knew the system and could teach the loyal, but inexperienced cadres of Director du Cabinet. But the long term solution was to revamp management training institutions.

In Uganda the universities have played a major role in broadening the educational horizon of their students. However, management skills have been imparted at the Uganda Management Institute. It is to be noted that technical assistance plays a key role in developing leadership capabilities in the post conflict public service. In Uganda, donor funded capacity building has played a key role in training parliamentarians and building leadership skills among Civil Society Organizations.

The South Sudan is facing a unique challenge in building leadership. For example, most magistrates were trained in Khartoum and in Arabic. However, the South has adopted English as its official language. So South Sudanese Magistrates are undergoing crash training in English language in Nairobi, Kenya. The government of Southern Sudan is not yet in a position to set up a high level centre for executive leadership development. The best they can do as of now is to set up vocational centers for the training of middle and lower level cadres in the public service. These can be supervised by training centers of Uganda and Kenya. They may also utilize private consultancy and training institutions.

Redesigning the Institutional and Organizational Structure of the Public Service

During the period of protracted civil strife, the institutional and organizational structure tends to succumb to decay and neglect. In most cases a government that comes after conflict finds the inherited institutions inadequate to challenge of the new era. In post-apartheid South Africa the public service institutions and structures had to be dismantled and drastically restructured to cope with new demands and meet growing expectations from the previously marginalized demographic groups. In Uganda the autocratic public service inherited from the Amin and Obote regimes had to be be completely overhauled in line with the policy of the National Resistance Movement.

In the specific case of Uganda the reform of the public service was assigned to a Public Service Review and Re-organization Commission (PSRRC) which designed a programme supervised by the Ministry of Public Service. The reform measures subsequently adopted were comprehensive, leaving no unit or function of the public service untouched. A new Democratic Constitution[29] was adopted in 1995, followed in 1997 by a radical programme of devolution and decentralization[30].

One of the reform measures set out to limit the size of ministries of cabinet rank to 22. This provision was inserted in the 1995 Constitution. Prior to adoption of this constitutional provision, it was not unknown for ministries proliferate, with between 70 and 80 of them existing at any one period. While the immediate post conflict period required large and unlimited ministerial posts to be used to co-opt large number of armed factions, the patronage-based system was soon partially discarded to allow institutional arrangements and organization structures to be re-designed with an accent on effectiveness, efficiency, and impact.

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[29] The Republic of Uganda Constitution 1995

[30] The Local Government Act 1997

In Rwanda, the Arusha peace accords had provided for the sharing out of ministries among rival political parties31. The Ministry of Finance and Public Service were, for instance, given to different political parties. This created a major problem. With the two key agencies falling under separate political bosses, it proved increasingly difficult, if not impossible, to co-ordinate the payroll in Ministry of Finance with the public personnel register in the Ministry of Public Service. In any case, personnel recruitment in each Ministry was based on party membership. Sensing the risk to the esprit de corps, performance, and credibility of the public service, the UNDESA expert advised government to abandon the Arusha Accord on allocation of ministries to political parties32. The government accepted this recommendation, and proceeded to repeal the policy on allocation of ministries to political parties. Rwanda has since reaped the benefits of this policy turn-around. Today, its public service is noted for its capacity to deliver quality service at minimum cost.

Re-equipment and Retooling of the Public Service

During protracted civil strife, not only is government personnel disrupted and dispersed, but public assets and facilities are destroyed. This creates the need for a comprehensive programme of re-equipment as part of the process of post conflict reconstruction. In the immediate aftermath of civil strife the re-tooling requirements are likely to be office space and office equipment but as the public service is gradually rebuilt, the re-tooling requirements are likely to become increasingly sophisticated. Instead of searching for office desks and typewriters, the increasingly confident post-conflict public service would be dreaming of computer-based information networks such as LANS and WANS, internet, websites and home pages. Advances in technology will in any case create new re-tooling requirements.

In Uganda armed rebellion raged in the countryside, particularly within the Luwero Triangle, leaving the capital largely untouched. Consequently, public service assets around the capital were spared while those in the theatres of combat were badly destroyed. However, to recoup the loss suffered by the war-affected areas, funds desperately needed to re-equip and revitalize the entire public service had to be diverted to the war effort – specifically, to effort at suppressing the rebellion. The Public Service Review and Reorganization Commission (PSRRC) conducted a survey and indentified massive retooling requirements which, due to resource constraints, took some time to be met.

In Rwanda the fleeing civil servants did not actually flee until they looted the treasury, and carted off all the movable assets (including files and documents) they could lay their hands on. They also ripped off telephone receivers from their sockets, and did as much damage as necessary to make life hell for the incoming administration. In East Timor, the retreating Indonesians conducted a 'scorched-earth' policy targeting public service buildings, assets and equipment to ensure that any government that succeeded them did not have the benefit of starting with its heart beating normally, that is with a functioning public service.

Somalia's case is unique. Whenever peace was established in any area, donors would go in and re-equip the public service. Then as soon as the task appeared to have been completed, a new warlord would emerge to dislodge the existing one, but not before the recently installed equipment and assets have been destroyed or forcibly removed. The new government would, like its predecessor, return to the external donors with pleas for assistance.

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[31] James Katorobo, Ph. D. (MIT), UNDDSMS/UNDP, Mission Report on Organisational Analysis of the Structure and Functions in the Rwandese Public Service, Kigali: Ministry of Public Service, Government of Rwanda, 1996.

[32] Ibin

In South Sudan, under a peace deal between the Sudan Peoples' Liberation Army (SPLA) and Khartoum government, a new government was installed in Juba in January 2005. Ten federal governments were set up in the regions. All these governments are handicapped by shortage of staff. They operate from makeshift premises, most without toilets facilities. They lack office equipment and stationery as well as communication tools and facilities. Computers are a rarity, and advances in information technology are too remote from individual consciousness to impact on the way the embryonic governments conduct business. The operations of the public service in Juba, and in the federal states are hampered by poor road and communication infrastructure.

Strengthening the Human Capacity of the Public Service

Where a substantial percentage of personnel has been inherited from the outgoing regime, strengthening the human capacity of the public service may entail changing their attitudes to correspond with the needs and priorities of the new government. A comprehensive training and skills upgrading programme is vital where the post-conflict public service has to cope with a massive influx of returnees – individuals that were in exile in different countries, but whose education and training did not match the requirements of the new order. Examples of public services that relied heavily on citizens in the disapora include Zimbabwe on independence in 1980, Namibia, South Africa, and post-genocide Rwanda.

As earlier stated, Rwandan Ministries were allocated to political parties which in turn recruited their loyalists to their ministries, especially to positions at the lowest levels. Fortunately, the inherited rules (based on the French system) required that appointment to posts at the officer level be gazette, and the selected candidate be issued with a letter (or instrument) of appointment. Since the Ministry of Public Service was itself allocated to a party just as other ministries, recruitment became a political and controversial issue. In order to streamline the system and render it relatively objective, the processing of applications was sub-contracted to a Canadian firm that prepared shortlists for vetting by parliament.

When the allocation of ministries to political parties was abolished, the Ministry of Public Service itself had to undergo a make-over. It gradually began to acquire the capacity to manage the public service personnel system. Another measure taken at the same time as the restructuring of the Ministry of Public Service is the redefinition of Ministry's mission, a process which was soon replicated and mainstreamed in and across other Ministries and Departments. The third measure is the initiation and institutionalization of systematic review of capacity building needs, and the integration of those needs into the Ministries' strategic planning frameworks.

Public service motivation in a period of fiscal downturn

Under normal circumstances, employee motivation is a powerful instrument for promoting esprit de corps and enhancing productivity. It is indispensable to the success of efforts at restoring the post-conflict public service to its glorious role as the heartbeat of government. As indicated in the subsequent paragraphs, however, motivation goes beyond financial incentives, and sometimes entails imbuing the employee with a sense of purpose and mission.

In Rwanda's post genocide period the civil servants were mostly returnees imbued with a spirit of nationalism. This ensured loyalty to the government and strengthened the average public servant's determination to contribute his/her own quota to national reconstruction efforts - even when they are paid very low salaries.

In Uganda, by contrast, there was a massive brain drain from the public service to "green pastures" abroad or to the well-paying private sector. It is important to note that during the first ten years of post-conflict reconstruction (1986-1996) the impact of the brain drain was severely felt and the country had to depend on technical assistance to meet the resultant skill gaps. Since then many universities have been established, and there is now an excess supply of trained and skilled personnel. A large number are now unemployed and a policy to export them has been put in place. Indeed, remittances from Ugandans in the diaspora now rank third as a source of national income.

In response to the situation earlier created by brain drain, the Public Service Review and Re-Organization Commission (PSRRC) had reviewed the salary structure, undertook a comparative study of public service pay systems in the region (Kenya and Tanzania), and recommended gradual pay rises that would move a civil servant from what was termed a "killing way" to "a living wage". The rise would be gradual depending on increasing government revenue.

A key specific reform strategy was to narrow the wide gaps between and among salary levels, based on the calculation of Gini co-efficient or the compression ratio. It was noted that the demoralization of civil servants was due not only to the low "take home" pay, but also the perceived huge differential between salary grades. This as generally perceived as unjust. Another source of declining motivation is the salary differential comparable jobs – that is, jobs with the same functions carried out at more or less the same level of responsibility. The differential tended to be magnified, and the discontent exacerbated, by salary top-ups on donor-funded projects. Such top-ups ended up creating an island of well paid staff within the generally lowly remunerated public service. It was not unusual for employees on donor-funded salaries to earn more than their government-paid supervisors.

Another human resource challenge facing post-conflict Uganda, and probably other similarly placed countries, was how to handle the expectations of university graduates. The National Resistance Movement inherited a policy founded on the assumption that all graduates were to be employed in the public service. This clashed with the regime's policy, which was to maintain a small, streamlined, and adequately paid public service. In recent years, the latter policy has taken a firm hold, as automatic absorption of graduates from the expanding universities has ceased. Recruitment is now based on the public service's demand for specific skills and competencies.

Diversity in the Public Service

Many conflicts are triggered by real or imagined exclusion from participating in the organs of the state, including the Public Service. Such a sense of exclusion can be reduced through a policy of affirmative action, i.e., the appointment to public service positions of hitherto excluded demographic groups. This may entail relaxation of qualification requirements. In South Africa, the post apartheid public service had to be opened up to allow the black majority to be adequately represented in the public service. In Uganda because schools and modernization influences began in Buganda, the Baganda were dominant in the Public Service. Arising out of the British army policy of recruitment from North, the Acholi and the Langi dominated the army. The lack of a proportionate reflection of social and ethnic diversities in the public service has been responsible for conflicts and instability in the country. Since regional and local administration units tend to include heterogeneous groups, decentralization is likely to increase the participation of diverse groups in the public service. In Uganda the policy of opening schools in areas characterized by diversity and of allocating university scholarship slots on the basis of district quotas has ensured equal access to education. Affirmative action for gender is also being enforced.

Transparency and Accountability in the Post-conflict Public Service

During the period of civil strife the normal accountability and reporting systems break down. In the case of Uganda, the situation was confounded by the fact that the auditing of government accounts had fallen into arrears. One possible cause of the back log was poor book keeping. If books of account are not properly kept, the Auditor General's mission becomes impossible.

The second cause was absence of a legal and institutional framework for the management and auditing of accounts. An Act of parliament was required to establish the accounting profession, and to provide for the training, certification and regulation of the profession. The legislation was delayed because many uncertified and unregistered accountants actively lobbied to be exempted from the proposed accounting examinations. When finally the laws were enacted, and the institutions were created, a large part of the backlog was exempted by establishing a realistic starting date.

A major requirement for improving transparency and accountability is the establishment of an independent office of the Auditor General with the power to report to parliament. In Uganda, the Auditor General's reports are scrutinized by the parliamentary accounts committees.

Transparency through the Institution of the Inspector General of Government (IGG)

One of the instruments used in Uganda and Rwanda to promote transparency in Government is the office of Inspector General of Government (IGG) modeled after the Scandinavian institution of Ombudsman. The IGG has power to investigate cases of corruption in Government and prosecute alleged offenders. However politically powerful offenders can in practice render the IGG's interventions ineffectual. All the same, the actual documentation of corruption cases in IGG reports is itself a great achievement and can lead to prosecution when the government musters the necessary political.

The IGG and the Office of the Auditor General are instruments (agencies) for controlling and ensuring transparency and accountability. However, some actions to be taken may require the formulation of new policy, the enactment of new laws and regulations. In Uganda, there is a Ministry of Ethics and Transparency. This is responsible for new policies and new laws, which are then passed on to anti-corruption agencies for implementation.

Reform of public tendering and procurement

Autocratic regimes frequently consolidate their power by personalizing procurement and tendering. In the post-conflict setting, there is a need to rapidly restore open and transparent tendering and procurement system. In Uganda the Government Central Tenders Board served for long as a conduit for corrupt tendering and procurement. A new independent and professional agency has been put in place, the Public Procurement and Disposal of Public Assets Authority (PPDA). It seems to be working well even though there are still loop holes (including exemptions from open tenders) in the disposal of public assets. Kampala City Council is one of the agencies frequently accused of allocating plots and leasing markets without tendering.

Information and Communication Technology (ICT) and the quest for Transparency and Accountability

In Uganda, many instances of embezzlement of funds depend on lack of information. It was realized that when salary warrants sent to pay masters in the regions were published in the newspapers, the pay masters had no choice but to pay the field staff (teachers, nursery) on time. In the past when there was no such announcement, funds tended to be diverted and salary payments were frequently delayed for many months.

Information disclosure is a major weapon in improving transparency and accountability. This is why the installation of ICTs in the public service has been resisted by a number of officials and sabotaged by others. However, installing LANs[33] and WANs[34] and ICTs is very expensive and mostly beyond the financial capacity of governments in post-conflict societies. This is thus an area in which donor assistance would prove most useful. As a sign of commitment to use ICTs to revolutionize the management of public services, the Uganda government has set up a Ministry of Information and Technology. The Ministry's role will be to spearhead the establishment and widespread use of Information and Communication Technology in the public service.

Conclusion

The post conflict public service capacity building paradigm includes the critical structures, institutions that must be rebuilt to ensure the restoration of delivery of services to the people. This rebuilding must be properly timed and sequenced so that the changes are practical and feasible.

As a matter of urgency, returning refugees and the internally displaced should be resettled. This calls for the application of fairly sophisticated logistics and operations research techniques. It is also essential that in the early days of institution renewal that threats to security be removed, and that the authority of the state be re-established. The tiny window provided by the immediate post-conflict period must close before efforts to reconcile warring factions and disarm private militias succeed.

One of the immediate needs of the public service in the aftermath of conflict is for technical assistance to bridge gaps at senior management levels – especially, gaps in logistics and operations management, conflict management and team building, strategic planning, economic and financial management, as well as establishment of basic records and archiving services.

At the early stages it is unrealistic to attempt to introduce sophisticated public service management systems. But the seed must be planted for such systems to take root when normalcy returns. As soon as security has been restored, the missions and strategies of the post-conflict public service should be re-examined, re-defined and re-focused. This will guide the creation of appropriate and well streamlined public service structures and functions.

The institutional renewal strategy should begin with the establishment of a small but well-paid and highly motivated public service. The issues of diversity and inclusiveness must be addressed right from the beginning, so that the composition of the public service reflects and represents the various population groups. It is also important to ensure that the public service is set up with the processes well-defined, bottlenecks eliminated, and appropriate information technologies applied.

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[33] Local Area Networks

[34] Wide Area Networks

CHAPTER FIVE

REFORMING THE LAW AND ORDER SECTOR AS A KEY ELEMENT OF THE PUBLIC SERVICE TRANSFORMATION: LESSONS FROM THE SOUTH AFRICAN POLICE SERVICE

Mohamed Latiff Wahab[35]
(with contributions from Anita Ernstorfer)[36]

Introduction

It is often forgotten that the single most critical service rendered to the public by the State is the protection of life and property. It is so critical that if it is not adequately delivered the rest cease to matter. Therefore ensuring safety, security as well as law and order after conflict constitutes a service up on which all the other services depend. The importance and notion of 'security' in a broader development perspective goes beyond its common and more traditional understanding within security, defense and intelligence policy. The starting point is to sustainably overcome the structural causes of conflicts, crises and insecurity and to ensure human security. Security in this regard comprises the existence of a legal framework, political management and control mechanisms, efficient and transparent governmental institutions and capacities as well as an established cooperation between a strong civil society and the state, and in particular the security sector.

The guarantee of safety and security for the population and the re-establishment and reform of the security sector are preconditions for restoring stability in post-conflict situations. Security as the basis for sustainable peace is a crucial public good and provides the ground for development in a post-conflict country. People need strong, efficient and transparent institutions of the justice and security sector to provide basic levels of physical security. "*Ironically, those most in need of professional and well-functioning justice and security sector services, the poor and socially vulnerable, are generally those not only most suspicious of them, but also most likely to be unable to obtain the public service that the sector is supposed to provide.*"[37]

The security sector encompasses a variety of institutions and actors on different policy levels:

- Security sector oversight bodies such as legislative bodies, parliamentary committees, ministries and control and oversight bodies concerned with security issues (such as civilian review bodies or ombudsman office)
- Parts of the judicial system and the penal system
- Executive bodies and core security institutions like the police, armed forces, intelligence services, border police forces, etc.
- Non-statutory security actors such as guerrilla, para-military groups or private security companies

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[37] UNDP, Security Sector Reform and Transitional Justice. A Crisis and Post-conflict programmatic approach, March 2003

An efficient security sector is legitimized by representative political decision making processes according to the rule of law. The security sector needs to be transparent and accountable to the legislative, the executive, and to the public.[38]

Security sector reform (SSR) addresses security issues through institutional reforms. This comprises internal structures and management. Responsible and accountable security forces are a prerequisite for conflict prevention, post-conflict reconstruction and for the provision of an enabling environment for sustainable development. Security is a key public service and a prerequisite for stability, recovery and development. Thus, security sector reforms need to be initiated and implemented within a wider and long-term governance and peace-building perspective; it cannot be a stand-alone effort.

Although the preconditions and necessities in security sector reform may vary among post-conflict countries because of unique political, social and historical legacies, there are often several common characteristics of the post-conflict security sector: (1) inflated military apparatuses draining economic resources; (2) politicized and corrupt military and police forces with lacking capacities that frequently play a major role the economy, (3) the influence of armed groups, militias and para-military groups, or (4) dysfunctional/non-existing civil - military relations.

Restoring trust in the security sector is crucial for both the political and social as well as for the economic recovery and development of a post-conflict country. The security sector has the responsibility of protecting an environment of trust by the citizenry, the private sector and the international community which is a *sine-qua-non* condition for launching a process of growth and investment creation. Thus, the security sector as one of the key determining factors deciding whether a country will be able to cross the threshold from post-conflict into long-term development or back into conflict.

Key elements, actors and strategies in security sector reform in post-conflict countries

Security Sector Reform needs to be seen as a framework to address diverse security challenges through more integrated development and security policies.

Security sector reform initiatives address political issues (such as legitimacy, representation and civilian oversight), economic dimensions (allocation of human and financial resources) and questions of institutional reform and human security. Security sector reform in a post-conflict reconstruction environment is faced by specific challenges and legacies by the conflict, such as oversized and corrupt armed forces; disarmament, demobilization and reintegration; anti-personnel landmines and a large number of perpetrators that need to be prosecuted.

There are four priority areas for security sector reform in post-conflict countries:

- The restructuring of the military
- The integration of armed groups into national army and police
- Training of the military and the police to build their capacities for post-conflict settings
- The re-integration of ex-combatants: short term livelihood opportunities need to go hand in hand with long-term capacity-building[39]

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[38] See also GTZ, Sector Project on Security Sector Reform, http://www.gtz.de/en/themen/uebergreifende-themen/krisenpraevention/7027.htm

The objective of security sector reform should be the establishment of a security sector ensuring "[…] *adequate capacity to respond to the threats facing the nation whilst facilitating the provision of an enabling environment for socio-economic development and poverty reduction through growth and promotion*"[40]. It is essential that the reform introduce transparent management mechanisms as well as accountability of the security sector to the government. This can preferably be ensured through a democratically accountable civilian oversight ensuring a balanced allocation of state resources to the security sector in line with those of the other strategic institutions. Civilians need to be encouraged and empowered to participate in oversight processes and public dialogue needs to be stimulated to create locally-owned democratic norms and human rights principles. Security sector reform also requires a delicate attention to institutional capacity building. This is more important than effecting a drastic reduction of budgetary allocations or of the "size and shape" of the armed forces.

In order to rebuild trust and the confidence of people in the security sector as one crucial service of the government, democratic oversight and transparency and accountability need to be ensured. This can be achieved by capacity-building and human rights training and by a sensitization of the population on the new role of the police.

However, many governments dread security sector reform and necessary downsizing of the military because of the many benefits it provides to its soldiers. Being a member of the military provides livelihoods, the loss of it represents the risk of turning to crime. Thus, governments often seek alternatives to drastic downsizing of the size and shape of their armed forces and to reduce budgetary allocations for the security sector. They look for a reorientation of the soldiers (e.g. support during complex humanitarian emergences) or for the creation of reintegration programmes for ex-combatants. "*Security sector reform should also take on board the creation of 'force multipliers' in lieu of huge redundancies inherent in such reforms.*"[41] In post-conflict situations, governments need to strategically plan short- and long-term to avoid a relapse into conflict: Short – term livelihood opportunities need to be created to keep people off the streets and to keep the peace; capacity-building then needs to prepare people for long-term opportunities, which will then sustain the development of post-conflict peace development. [42]

Ethnic tensions within the security forces amongst representatives of different ethnic groups, who might have been former war enemies, are as much of a problem in the security forces as in any other areas of public administration in post-conflict countries. It has proven to be crucial (e.g. in SSR efforts in Nicaragua) to integrate a gender perspective into SSR approaches.

SSR needs to go hand in hand with a broader development approach in post-conflict countries. It provides opportunities to link post-conflict recovery strategies with other targeted programmes supporting

[39] John Ohiorhenuan, UNDP – Bureau for Crisis Prevention and Recovery, Presentation during the 7th Global Forum on Reinventing Government, Vienna, 26-29 June 2007.

[40] Al-Hassan Kharamoh Kondeh, Sierra Leone Ministry of Defence, Reforming the security sector for its effective contribution in a post-conflict state, prepared for the 7th Global Forum on Reinventing Government, Vienna, 26-29 June 2007.

[41] Al-Hassan Kharamoh Kondeh, Sierra Leone Ministry of Defence, Reforming the security sector for its effective contribution in a post-conflict state, prepared for the 7th Global Forum on Reinventing Government, Vienna, 26-29 June 2007.

[42] John Ohiorhenuan, UNDP – Bureau for Crisis Prevention and Recovery, Presentation during the 7th Global Forum on Reinventing Government, Vienna, 26-29 June 2007.

economic recovery, legislative and public sector capacity-building and civil society empowerment. However, trust in the security sector does not ensure trust in other areas of the government such as legislative, executive, or judicial authorities and it does not prevent and reduce problems that may result from the lack of democratic and accountable institutions.

How to find the right partners for security sector reform in post-conflict settings?

Security sector reform is an issue both for the development donor community as well as for peacekeeping missions. In particular as matters of national security and national security forces are sensitive with regards to state sovereignty, it is the primary responsibility of every country to identify national strategies in security sector reform and to mobilize political will accordingly to implement these strategies. "*The most critical task facing countries embarking on SSR processes is to build a nationally-owned and led vision of how the security system should be constructed and function.*"[43] However, countries emerging from crisis often lack the political, human and economic capacities to implement policy and institutional reform. Thus, international development partners are crucial to support these processes and provide external monetary flows in the transition periods after conflict to deter a resurgence of instability.

"Security sector reform embraces values and principles that lie at the core of the United Nations. The practical involvement of the UN in security sector reform has been shaped by decades of peacekeeping in post-conflict environments."[44] The role of the international community is to promote coherent and coordinated international support to nationally-owned security sector reform programmes.[45]

Although the funding might come from external sources, it is essential to ensure that security sector reform processes are nationally driven and owned from the very beginning. Even though the crucial role of security sector reform is recognized for the long-term development of a country, post-conflict countries are very often caught up in the dilemma that development partners are nervous of funding security forces and that the governments of the post-conflict countries themselves are cautious about international support as it might interfere with the national sovereignty. Often, donor countries are internally caught up in between their own development, foreign and security policy when it comes to SSR. This leads to quick policy commitments for SSR, but also very often to slow implementation.

Partnerships within the security sector, in particular in post-conflict settings, are politically more sensitive than other technical assistance in development. "*Security sector actors have often played dubious roles that might disqualify them. For instance, is co-operation for reform possible with the former military responsible for the genocide in Rwanda? Is the bloody history of the military in Latin America a reason to remain cautious in co-operation even today, or to turn it down? Can co-operation in the judicial sector work with Islamic fundamentalists*? […]. *Nevertheless, there are usually opportunities to strengthen and support primarily those elements responsible for democratic control of the security sector.*"[46]

External donor assistance needs to be provided within a holistic, long-term approach that addresses wider governance concerns (see above), even though a broader approach might seem overwhelming for (non-)

43 OECD DAC Policy Paper ' Security System Reform and Governance : Policy and Good Practice'

44 UN Secretary-General Ban Ki-moon, UN Security Council debate, 20 February 2007
45 See also the speech of Ambassador Peter Burian during Slovakia's Security Council presidency, Security Council Debate, 20 February 2007.

[46] Security sector reform in developing and transitional countries, Herbert Wulf, Berghof Research Center for Constructive Conflict Management 2004, p. 13

existing governance structures in post-conflict situations. It should also take into account the linkages between the different parts of the wider security system and the possible indirect effects of donor assistance.[47]

It is crucial to adopt a regional and sub-regional perspective in SSR. Security challenges often include cross-border aspects such as small arms or child soldiers. Responses to such (sub-) regional dilemma require a collective response from national, regional and international partners.

The international community has made a big step forward in recognizing the crucial relevance of security sector reform in post-conflict recovery and its importance for development and democratization in the interdependence between peace, security and development. The Development Assistance Committee of OECD has elaborated Guidelines on 'Security System Reforms', which stress the governance dimension of SSR and argue for a holistic and integrated approach.[48] The United Nations will put the topic in the center of international attention by the 2008 report of the Secretary-General on Security Sector Reform.

The following **case study on SSR in South Africa** focuses on the challenges encountered in implementing the reform of the country's police after the dismantling of apartheid. It is important to understand the transformation of the South African Police Service in the context of the country's unique political environment and transitional path to democracy. In 1994 South Africa's first democratically elected government initiated one of the largest post-conflict recovery processes every occurred. The South African Police Service was transformed into a democratic institution reflecting the demographic diversity of the country and serving the interest of all South Africans in accordance to the needs of the citizenry, carrying out its mission in consultation and co-operation with the people and upholding and protecting their fundamental rights.

Resulting from the fact the South Africa was previously divided into independent states and self governing territories, each with its own police force, and that the Interim Constitution prescribed the rationalisation of the 11 police forces into one national police service, the transformation process was managed in three phases:
1. Rationalisation: to ensure effective administration at national and provincial levels of government as prescribed by the Constitution.
2. Amalgamation: of the various existing policing agencies into one national police service.
3. Change: transformation into a professional, representative, efficient and effective, impartial, transparent, and accountable service.

Other key aspects of the reform process included issues of demographic representation (ethnic and gender equalities); the introduction of a system of accountability and the regulation of police conduct (parliamentary oversight, a civilian oversight agency and an independent complaints directorate); the improvement of access to police services particularly in communities previously disenfranchised and adopting community policing as the operational philosophy to address previous community hostility; as well as the introduction of a new selection system, a human rights training programme within a reformed training curriculum, and a code of conduct.

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[47] For more extensive guidelines on donor policies and approaches in SSR see OECD DAC Policy Paper ' Security System Reform and Governance : Policy and Good Practice'

[48] www.oecd.org/dac/conflict/ssr

Out of the South African experience, it became obvious that transformation must have clear parameters, i.e. the process required to reshape the Police for its role in the new dispensation as part of an integrated strategic plan for combating crime. Participatory processes are decisive and there is need for an objective evaluation before anything is changed to avoid rejecting policies and practices simply because they come from the past. Finally, an exit strategy is needed for personnel whose services cannot or should not be used in a new and democratic dispensation.

CASE STUDY: SOUTH AFRICA

Introduction

The objective of this paper is to highlight the transformation of the South African Police Service as a background paper on "Reforming the Law and Order Sector as a Key Element of the Public Service Transformation." The maintenance of law and order and its importance cannot be emphasized enough in post-conflict recovery and transformation of societies to ensure security and the creation of conducive conditions for the relevant role players to create sustainable development. The South African Police Service played a critical role in the transformation of South Africa during the transition to democracy; and, even after the advent of democracy, it continues to play a vital role in ensuring our democracy matures. The South African Police Service itself underwent a painful transformation, while at the same time maintained safety and security of the country.

The year 1994 marked a milestone in the history of South Africa. It ushered in not only a new democratic order, but paved the way for revolutionary change in public service. During the years 1994 to 1998 extensive change was evident in South Africa and nowhere in the country was this change more dramatically felt than in the public service. The pressure for change in the public service was to a large extent self-propelled by the new democratic government, but it also came vociferously from citizens, many of whom had voted for the first time in 1994, and had expectations of improved life conditions. Against this backdrop, South Africa faced many challenges and massive expectations. Among these were the needs to reduce poverty, redress historical imbalances, create employment, economic growth, create peace and stability, and develop investor confidence. In order for these needs to be realized, there needed to be a disciplined, honest, productive, and integrated public service committed to the process of reform.

The reform of the public service out of necessity had to focus on legislative as well as administrative reform. The legislative reform agenda had its roots in the principles drawn from the Interim Constitution of 1993, and the Constitution of 1996. Administrative reform focused on replacing the rule bound, command and control legacy of the Apartheid regime with one that focused on reorienting public servants to serve the public in a customer focused way.

Without transforming the public service, it was impossible to transform the government and therefore the State. The new era of true democracy ushered in a paradigm shift as reflected in the 1994 Reconstruction and Development Programme and later the White Paper on Transformation of the Public Service and the Constitution of 1996. The Reconstruction and Development Programme put in place a policy framework, which underpins the transformation of the South African society, while the Constitution of 1996 brought into focus the principles that should inform the broader transformation process.

Prior to 1994, there were eleven public administrations in South Africa, each with its own ethos, rules, conditions of service, and salary structures. With the birth of the new democratic order these eleven administrations had to be amalgamated into one unified public service. This was achieved by means of

promulgation, and all the former administrations have successfully been integrated into one public service. The service is now divided into 32 national departments and nine provincial administrations each comprising about ten or eleven provincial departments. Another sphere of public service is the local government system.

In transforming and reforming the public service, it was vital that the process was guided by a clear, comprehensive, and commonly accepted vision of the fundamental principles that should shape the new public service. To this end, the government adopted the following vision : "The Government is committed to improve the lives of the people of South Africa through a transformed public service which is representative, coherent, transparent, efficient, effective, accountable and responsive to the needs of the people" and the following mission: "The creation of a people-centred and people-driven public service which characterized by equity, quality, timeliness and strong code of ethics" which is reflected in the White Paper on Transforming Public Service 1995. Therefore the government was committed to transforming the State from "an instrument of discrimination, control, and domination, to an enabling agency which serves and empowers all the people of the country in a fully accountable and transparent way. These goals are also entrenched in the Constitution of the country.

In the new democratic order, South Africa demanded and deserved an accountable, effective, and service orientated police service. The rights enshrined in the Constitution, enacted in 1996, were to ensure safety by protecting citizens who came into contact with the law, and by obliging the state to provide adequate security from those who perpetrate crime. In the past, the majority of citizens were concerned with the abuse by the agencies of the state. With the advent of democracy, the public now also demanded the effective provision of safety. This meant that policing in a democracy now required a concerted effort by the government, in partnership with civil society, to prevent crime before it occurs.

The immediate challenge of the new government in 1994 was to create a legitimate police service out of eleven police forces that were constituted under the Apartheid regime. Furthermore, an additional challenge was that political leaders had to affirm that the police service would support the new democracy, rather than oppose or undermine it. Key to this process was ensuring that the police in the future would act in ways which won the trust of citizens whom had once feared them.

The first democratic election in 1994 did not bring a system of policing which was well placed to meet these objectives. Policing in South Africa was traditionally highly centralized, authoritarian, and of para-military form. While these characteristics ensured that the police were effective under the Apartheid regime in controlling the political opponents of the government, it meant that they were poorly equipped for crime control and prevention in the new democracy. Under the Apartheid rule the police force faced legitimacy concerns and functioned as an instrument of control rather than as a police service dedicated to ensuring the safety of all citizens. Thus, historically, the police have had little interest in responding to crimes within "black" areas, and in 1994, 74% of the country's police stations were situated in white suburbs or business districts.

The police who were situated in "black" areas did not aim to provide greater safety and security for their inhabitants. The police presence in townships was used to anticipate and respond to collective challenges to the Apartheid regime. Such interventions typically involved the targeting of police resources for short periods of time in response to resistance to Apartheid rule. This mode of policing necessitated the mobilization of force, requiring skills and an organization very different from the skills needed for a police service in a democratic order, in which a government sought to ensure the safety of all citizens. This inheritance has had a number of important consequences that have weakened the ability of the Department of Safety and Security to combat crime immediately.

I. Background

Police reform in South Africa must be understood within the unique political environment of South Africa's transition to democracy. This was shaped by a negotiated settlement, which saw the liberation movement agreeing to retain all Apartheid civil servants (including police officials) in their previous positions, the creation of a power-sharing Government of National Unity for the initial post-democracy period; and the establishment of a Truth and Reconciliation Commission which dealt with some Apartheid police abuses. While the final, critical stages of the negotiations were under way, the police were already involved in negotiating new arrangements for public order management and election security, under the auspices of the multi-party National Peace Accord, which gave them some early experience in the style that would be required by a democratic government.

The police reform process saw a greater priority in the early transition period to the priority of creating a new legitimacy for the state institutions, rather than to the challenge of making those institutions more effective against crime. For Mandela's government, the critical challenge was to build a basic relationship of trust between citizens and state agencies such as the police, which had been strongly associated with Apartheid repression, lending them the legitimacy of being associated with the new regime, and thereby building a police-community relationship which would allow for basic functionality of the police institution. The initial approach to the institution reform of the police in South Africa was informed by a clear strategic decision by the ANC-led Government to achieve political control of the police by the new government, with a correlating strong emphasis on accountability and oversight. It was only in the second term of the democratically-elected government, after political control and legitimacy had been achieved, that the government began to strongly emphasize the role of the police in crime-combating.

The process in which the South African police reform was conceptualized and executed began during the multiparty negotiations which led to the first democratic elections. At that stage, the majority party (the ANC) did not have significant expertise on policing policy matters, and made significant use of input by domestic policing researchers, lawyers, peace workers and human rights activists to supplement the views of its own military and intelligence cadres. Civilian advisors to the first ANC Minister responsible for policing were drawn from these same sectors. With so many issues to attend to in the initial phase of police reform, the new South African government attached great importance to various strategic priorities and policies, leading to a situation in which there was a multitude of excellent policy on paper, but inadequate capacity to implement the policies within the police institution itself.

The following description of the process of police reform in South Africa does not adequately capture the human experience of the process. While the South African experience of police reform is often cited as a model for other African states, it is important to keep in mind that the process was laborious and often agonizing for the members of the police organization.

Historical and political context

The system of Apartheid was designed to entrench white minority rule and racial segregation in South Africa. It was characterized by highly racist economic inequality and by large-scale social engineering to ensure the subjugation of black South Africans who make up 80% of the country's population. Although the Apartheid system only existed formally from 1960 to 1990, it was built on a legacy of 200 years of

white colonial rule, and rested on strong foundations of racial exclusion and economic exploitation, which had been established by successive generations of Dutch and British colonists. Popular resistance to colonialism and Apartheid was led by the African National Congress (ANC), which was formed in 1912 and banned by the Apartheid government in 1960. Apartheid was declared a crime against humanity by the United Nations, and a large-scale international campaign developed to isolate the South African government and support the ANC and other liberation movements.

One of the key features of the Apartheid system was the racial organisation of the state, with the security institutions similarly organised - the South African Police and judiciary were dominated by white officers at the senior level. South Africa under Apartheid was notorious for the brutality of the security forces and the widespread violation of human rights. Over the 30 years of formal Apartheid (1960 - 1990) an estimated 78 000 people were detained without trial by the police, because of their political activism against Apartheid, and 73 deaths in police detention were recorded. In the last years of the system, security forces were responsible for high levels of torture, extra-judicial executions, and disappearances of pro-democracy activists.

The enforcement of racist and unpopular laws created a profound crisis of legitimacy for the criminal justice system in South Africa. In many respects, the police played a military role, by crushing popular protest in South Africa's de-facto civil war, as well as being deployed in support of white regimes against independence struggles in neighbouring states. Under successive Apartheid governments, the police, intelligence service, and the military vied for political dominance and greater slices of the national budget. By the late 1980's, the Apartheid state was in severe crisis, forcing the police, the military, and the bureaucracy to devise joint strategies to defeat the liberation movements, and an integrated National Security Management Systems (NSMS) was established to oversee the successive 'States of Emergency' that were declared after 1985. By 1986 the police and the army began to implement their counter-revolutionary strategy, with the aim of destroying the ANC and its allies, and restoring initiative to the state. The strategy entailed establishing a firm police and army presence in the townships and suppressing protest and or resistance; 'taking out' leadership through mass detentions, trails, harassments and assassinations; re-establishing intelligence networks; the 'counter-organisation' of communities through setting up groups with links to the security forces, the use of vigilantes; and the alleviation of socio-economic grievances through the upgrading of selected trouble spots... nearly 30,000 people were detained in 1986.

The period of repression further cemented the alienation of the police from the majority black population. Police officers were not just unpopular; they were the targets of abuse and violence from pro-democracy supporters. In some places, police officers and their families were unable to live in ordinary residential areas for fear of attack; and special barracks were provided alongside police stations.

In late 1987, the Apartheid state took its first public steps toward a negotiated settlement with the liberation movements, when it released ANC veteran Govan Mbeki from prison. This was a 'test case', and the security elites had not anticipated the massive popular reception Mbeki received. Shortly afterwards, a new wave exclusion and repression began, with police and courts charging thousands of people with political offences.

At the same time, international isolation of the Apartheid state intensified as sanctions took effect. In early 1988, the South African military was defeated in battle in Angola for the first time - a crucial symbolic moment. The repressive strategy had resulted in virtual civil war in South Africa's cities and rural towns, high levels of militarization, fear and conflict between its citizens, and the alienation of an

entire generation of black children from schools and most other institutions and symbols of authority, including their families and traditional social structures.

The influence of the security agencies began to wane within the Apartheid government, and a new breed of 'enlightened' Afrikaners began to emerge, advocating reform and dialogue with black leaders. In 1989, a more liberal wing of the ruling National Party took control and F W De Klerk was appointed State President. The following year he un-banned the African National Congress (ANC) and the other liberation movements, releasing ANC leader Nelson Mandela and other imprisoned leaders. This marked the commencement of a protracted period of negotiations towards democracy.

One of the features of the lengthy negotiated transition in South Africa was the breakdown of racially exclusive and repressive Apartheid structures responsible for administering various material aspects of life - notably systems of law enforcement, education, and welfare provision - without immediate replacement by legitimate or effective alternatives. This 'deregulation of social control' during the end of Apartheid and the negotiation period facilitated increased levels of criminal and social violence, notably during the early 1990's. The period leading to open elections in 1994 was characterised by brutal domestic conflict and rising crime rates. Writers on the South African transition argue that, because of maintaining or obtaining political power. This acceptance of violence penetrated all spheres of life.

When negotiations began, the South African government and its homelands had eleven police agencies, five different armies, and various intelligence organisations and branches of the judiciary. The ANC, on the other side of the table, had their 'armed wing', and an 'intelligence department', and there was a smaller 'armed wing' in one of the other liberation movements - the Pan Africanist Congress (PAC). The government elected in April 1994, dominated by the ANC under President Nelson Mandela, faced a monumental task in reconstructing all the inherited criminal justice and security agencies into agencies that would be acceptable to all South Africans and that could address the complex problems facing the country.

The Scope and Scale of Police Reform

In post-conflict, the scope of police reform is qualitatively different from what is usually understood by the term in conventional northern debates on the topic. In the context transitions that take place amidst or in the aftermath of violent conflict, the depth of the reformist endeavours required to reform police agencies (in the image of their democratic and service-orientated western counterparts) is usually underestimated. In this regard, the concept of fundamental police reconstruction probably serves to better capture the potential scale of the reformist enterprise.

These case studies demonstrate that the reforms envisaged often involve changes in structure (from centralised to decentralised structural arrangements), function (from an emphasis on defending regime security to the protection of citizen security), and in the basis of legitimacy (from regime-based legitimacy to legitimacy based on popular consent and participatory modes of democracy). Yet while this goal of fundamental change may be one that the police leadership and practitioners must keep in mind, it is one that seems unreasonably demanding in situations where governments themselves have very limited capacity. This demonstrates the need for on-the-ground pragmatism. This point was made by Eric Scheye in referring to post-conflict countries such as Sudan, Liberia, and Sierra Leone.
In such countries, he argues:

"The objective is to get the justice and penal systems (and police) up and running ; no more, no less. It is not about long-term development, but short-term 'getting the systems working in some form'. To try to do too much leads to failure. To be over-ambitious is not financially, politically, or culturally viable and there will be no real national control or ownership. In prisons that means getting the prisons functioning: basic security perimeters and mechanisms; ensuring that prisoners are not beaten or killed; getting rudimentary records of who is (in) the prisons for how long and for what; and food, clothing, shelter and healthcare for prisoners that is no better than what the 'average' person outside the prison experiences. In the justice system it means how to file and register a case; ensuring that the case file is sorted and can be retrieved; having the judges/lawyers/police know what the law actually is... and above all resurrecting the linkages between traditional and official law and legal resolution..."

The intricacy of police reform

Given the institutionally underdevelopment nature of most police agencies in Africa, institutional change is a multilayered affair. It includes reconstruction of the material base of the police organisation, human resource capacity development as well as more 'cultural' aspects of reform. A reconstruction of the basic police infrastructure may involve re-building police stations, supplying paper, pens and uniforms, putting communication systems in place, providing vehicles and petrol, or developing more specialist infrastructure involving forensic laboratories and so forth.

All post-conflict police agencies require investment in the process of recruitment, selection, and training of police personnel. The human resource development needs are great at all levels of the organisation, from foot patrollers to middle-level managers and executive officers. The needs tend to far outstrip the resources available. This in turn requires a prioritization of needs in the light of what is feasible - which assumes a police leadership with the capacity to undertake such strategic planning. Beyond infrastructure and human resources, lies a further critical area of development. Equally important, and difficult, is the forging of a new ethos for policing in which the basic democratic values of the rule of law, equality before the law, and accountability to democratically elected institutions are protected. Human rights training, for example, is a standard feature of interventions in transitioning police institutions.

Beyond the realm of basic democratic values, other reform principles also receive attention. New public management ideas are now routinely applied in the course of state reconstruction in Africa. This has resulted in an emphasis on 'fiscal discipline', 'value for money' and efficient 'service delivery' to the 'clientele' of the police. The reconstruction of security sector institutions under the direction of trans-national institutions (World Bank, UN) and donor agencies bears evidence of the current demand for efficiency and economy in the delivery of police services in addition to an emphasis on rule of law and human rights. Most of the case studies allude to the gap between what is and what should be.

 The generalized state of despair and disrepute exuded by post-conflict police agencies stands in sharp contrast to the expansive demands for modernization of the police machine, the needs for further training of its incumbents, and the democratization of both the formal rules and the attitudes and practices of the informal police culture. Whilst the discipline of police studies has long insisted on the importance of the police subculture, little is known about the sub-cultural dynamics of African police institutions caught in the throes of political and organisational change.

As if the preceding problems were not enough, the dynamics of the transition to peace and early democracy usually provoke new realities that challenge police capacity. The national capacity to shape the agenda of police reform and translate policy into operational reality varies from one case to the next.

At the national level, two ingredients are critical: political will at the centre, and civil society capacity at the extremities. The re-eruption of old conflicts; the emergence of new patterns of conflict (so often the by-product of democratic reforms) and the rise in crime more generally (a common feature of transitional societies) create social contexts within which the difficulties of sustaining reform efforts multiply.

The rise in crime, together with the emergence of new forms of organized crime and the increase in public insecurity produce complicated democratic reform efforts. In such contexts, as the comparative record stretching from Latin America to Eastern Europe to Africa suggests, more punitive and militarised responses to criminality are evoked. Crime policies often oscillate toward short-term crime control strategies at the cost of longer-term crime prevention objectives. Perhaps the most that can be hoped for is that the parties involved - the political and the police leadership in particular - accept that the institutionalisation of professional policing is a long-term goal that should not be sacrificed even where immediate circumstances create obstacles.

II.   Transformation of the South African Police Service

Need for Transformation

It was common knowledge that the socio-political transformation that the country underwent on 27 April 1994, together with prevailing levels of crime and violence, necessitated a new vision for fundamental changes to policing in South Africa. Elements of this vision for policing were entrenched in the Constitution, the policies of the Government and the policy statement of the Minister of Safety and Security for South Africa.

The elements of this vision are that policing must create a safe and secure environment. This vision formed the essence of the transformation process. The development of this vision into a vision shared by all was a lengthy process which formed part of the transformation process. Externally the community and all role players also needed to share in this broad vision for future policing, in order for the community to understand the role of the police, their role, the difficulties of policing, and thus to generate support from the community for the new police service.

Internally the vision needed to be shared to facilitate the development of a 'vision-driven organisation", to facilitate understanding of the true role of the police and the community. The vision also needed to be shared, so the support of the community and role players, which was desperately needed to create trust in the police was enhanced.

In this regard, the development of a shared vision, augmented by a mission and shared values was introduced by the top management of the police. The shared vision was developed through consultation and communication with internal and external role players. An analysis of policing in South Africa reflected that even in the absence of a fully shared vision, much improvement was still needed. Further analysis of constitutional requirements, the nature and style of policing, and the culture, structure, management style and policies and practices with the police environment led to an identification of a variety of areas which needed to be urgently improved.

This finding was further strengthened by the prevailing crime levels and the lack of government funds at that stage. Although the development of a shared vision and value system was the first priority in the process of transformation, the critical issues were identified so that a broad consensus, that community

policing be fully implemented, in South Africa, warranted a process whereby a broad range of areas in policing be addressed immediately and simultaneously.

The South African Police Service underwent a process of fundamental change that was a result of the direct outcome of the political transformation and whose goals were:

- increasing the effectiveness of the police service;

- meeting the requirements of the Constitution;

- meeting the objectives of the government with regard to service delivery, as reflected in the white paper on Reconstruction and Development guidelines and the White Paper on Transforming Public Service;

- meeting the policy vision of the Minister of Safety and Security;

- satisfying the needs of the community, and;

- satisfying the needs and expectation of the members of the South African Police Service.

Change Management Team

Due to the existence of eleven different policing agencies in South Africa, and in response to the Constitutional obligations placed on him, the Minister of Safety and Security appointed a change management team shortly after the first democratic elections of 1994, to facilitate the rationalization, amalgamation, and transformation of the South African Police Service. This change management team initiated the transformation process in consultation with the Ministry of Safety and Security, Ministerial Advisors, Members of Executive Councils of the nine provinces in charge of Safety and Security, Commissioners of various international police agencies, and later the National Commissioner and Management Forum of the new South African Police Service (SAPS).

Although a lack of clarity existed with regard to the responsibilities of the various role players, particularly in the provinces, the Members of Executive Councils for Safety and Security in the provinces played an important role in making capacity available, through guiding and monitoring the process within the nine provinces. A formal change management team was then established in the South African Police Service on 1 June 1995.

Given the fact that line functionaries were to be held responsible for the transformation, the change management team was seen as a resource to all functionaries. This team was attached to the Office of the National Commissioner and was assigned to assist and keep the National Commissioner informed of all developments on the terrain of transformation. It was also necessary that such a team exists independently of the Divisions and Provinces of the South African Police in order to ensure that all endeavours are aligned toward transformation objectives.

The role of the change management team was to monitor, evaluate, intervene, develop, and to align new principles and objectives, to assist where capacity does not exist, activate participation, create a climate conducive to change, and to manage resistance. It was with this in mind that the responsibilities were to be allocated and that the change management team was to be seen and utilized as a resource. In the

pursuance of transformation objectives, the members of change management team were committed to assisting all functionaries and not to take over their functions or to interfere, but to develop capacity and to offer guidance where necessary.

The process and strategy for transformation took a similar form of a conventional and strategic planning process. This was necessary to form the foundation upon which the new police service was to be developed, to guide managers on transformational objectives and priorities, and most importantly to form the foundation which the management of change can take place.

Approach to Transformation

The approach and methodology, which of necessity included a preliminary process of strategic planning was as follows;

- environmental analysis and needs determination which included an analysis of the legal and policy framework, the environment, and the determination of the obvious needs and expectations of the various stakeholders in the country;

- analysis (audit) of the state of policing;

- development by the change management team of a vision for policing in terms of the analyses, and facilitation of the development of a new vision, mission and values system by the leadership of the South African Police Service;

- formulation of principles whereby key transformation areas (key events) were to be managed and on which new policies were to be developed;

- gap analysis, the difference between pre 1994 policing and future policing in order to clarify what was needed;

- identification of focus areas which needed to be addressed;

- allocation of responsibilities to line managers (after it was initially allocated to technical teams comprising of mainly members of the various policing agencies);

- prioritization of key focus areas.

General Principles relevant to Transformation

In terms of the guiding methodology principles, they were developed whereby transformation areas were to be addressed and structures: police, practices, cultures, and management styles were designed. Such principles were embodied into guidelines which were developed and made available to each responsible manager. The following principles were also set:

- all actions were aligned with the Constitution, the policies of the government, reconstruction and development guidelines, the white paper on transforming the public service and the vision of the South African Police Service;

-       top management/leadership led the process and was responsible for the relevant focus areas, and for the communication of developments in his or her respective field of responsibility;

-       all relevant role players and stakeholders were consulted both internally and externally;

-       transparency (all actions and endeavours were communicated to the relevant role players and stakeholders);

-       reconstruction and development principles and related projects were integrated into the activities and the functions of the police service.

The dynamics of the changing environment and the expectations of the community and members of the police service showed a systematic and inflexible approach to the areas to be addressed were not fully able to be implemented. The wide range of forces that influenced change and the changing priorities within the environment did not allow a planned approach. Various changes were continuously taking place in a "natural" manner, aided by the spirit of reconciliation and goodwill that prevailed during the election.

Due to the fact the South Africa was previously divided into independent states and self governing territories, each with its own police force, and since the Interim Constitution prescribed the rationalization of the eleven police forces into one national police service, the transformation process was managed in three phases. These were:

Phase 1 -   Rationalization

To ensure effective administration at national and provincial levels of government as prescribed by the Constitution;

Phase 2 -   Amalgamation

The physical amalgamation of the various existing policing agencies into one national police service;

Phase 3 -   Change

The transformation of the South African Police Service into a professional, representative, efficient and effective, impartial, transparent, and accountable service.   The new police service was to uphold and protect the fundamental rights of all people, which carries out its mission in consultation and co-operation with, and in accordance to the needs of the community (principles embodied in the vision and mission)

Rationalization

Interim finance and logistical boards, and procurement and provisioning systems were established at both national and provincial levels.   These interim structures were phased out and replaced with more permanent structures after the appointment of senior personnel. The different budgets for policing were integrated. Minimum requirements for the establishment of effective administration at both national and provincial levels in terms of the Constitutional requirements were met by 1 April 1995.

A proclamation for the rationalization of the South African Police Service (No 16239-R5.1995) was promulgated on 27 January 1995 to strengthen the South African Police Service. Six schemes for the rationalization, reorganization, and consolidation of the South African Police Service were determined and issued by the Ministry of Safety and Security. These schemes created an enabling organization and post structures for the South African Police Service.

The enabling organisational structures and post structures from the level of Deputy Director (Senior Superintendent) and above were first finalized. This resulted in new rationalized posts that were created and filled after being advertised both internally and externally of the police service. This was done according to the newly designed selection and appointment criteria and appointment process, whereby members in management posts were appointed according to skills, competence, and potential rather than seniority. This resulted in the establishment and appointment of an entirely new management echelon and an increase in the demographic representation (Blacks, Indian, coloured males and females) although small.

These organizational structures, although seen as enabling structures for the purpose of rationalization, established: a sound basis to secure empowerment and greater accountability at the lower levels, the phasing out of superfluous levels, shorter communication lines and given the facts that a new police service was being established, the transfer of as many resources as was possible to lower levels to enable the greatest effect on crime.

Post structures were developed for the levels of captains and superintendents and these posts were advertised. After the selection and appointment process of these officials into rationalized posts, the remainder of the personnel were transferred into rationalized posts of the police service. Further rightsizing and continuous optimizing of the service prevailed and was dealt as part of the transformation and reform of the police service.

Amalgamation

The standardization of systems, policies and procedures necessary for the amalgamation of the eleven police agencies was completed and received continuous attention until it began to operate effectively. Where possible issues dealt with were aligned to the Interim Constitution, the Minister's policy statement and transformation guidelines. Policies which required substantial work or extensive consultation or negotiation was dealt with in phase three. In this context, certain policies and practices were retained as interim policies and practices to be reviewed during the change (transformation) phase. The physical amalgamation of the eleven policing agencies was successfully completed.

Key Areas of Amalgamation

-        Legislation

Proclamation R5 of 1995 (Par 3.1 above) was promulgated to provide for senior appointments and transitional arrangements for the command and control of the Service during the amalgamation phase.

A new police act, the South African Police Service Act, Act no 68 of 1995 was promulgated on 4 October 1995 to provide for the establishment, organisation, regulation, and control of the South African Police Service, and to provide for matters in connection therewith. The promulgation of the act was preceded by a lengthy consultation process involving a wide range of interested parties.

-        Personnel Issues

The personnel issues of all members of the Service were computerised on the centralised personnel and salary system. Salaries of all members were paid from a centralised system.

-        Conditions of Service

The standardisation of service conditions with regard to salary, allowances, and benefits were concluded. A new salary structure that provided improved remuneration, particularly at the lower level was implemented.

-        Medical Aid Scheme

A revised medical aid scheme was implemented.

-        Personnel Acquisition

Standardised recruitment policy and procedures were developed and implemented to remove discriminatory measures and to ensure uniform standards for the employment.

-        Police Reserve

The call up system for ex-police members was abolished due to the discriminatory manner in which it was managed and the mandatory military training was also eliminated (white males were given a choice to do compulsory military training or join the police service to serve their two year term pre-1994).

Administrative Transformation

A newly designed, standardized police appointment certificate was introduced for all the personnel. The Transitional Arrangement Acts of 1995 standardized discriminatory practices with regard to issuing of firearms. Forms and registers from the eleven policing agencies were standardized and new forms and registers were phased in. A new management information system for loss control was implemented and a new uniform with new police insignia was introduced in a phased approach.

A new logistical support that provided for more efficient and effective support was introduced and sub-committees were established to investigate the effectiveness and efficiency of the procurement, accommodation, warehouses, mechanical services, radio technical services, and maintenance of arms and policies.

Information technology was investigated and the feasibility of alternative models/frameworks for rendering the most cost-effective and efficient information technology were investigated.

Change

Although transformation was originally defined as the process consisting of rationalisation, amalgamation, and change, it has with the adoption of the White Paper on Transforming Public Service

Delivery, become necessary to redefine the process in order to align it with the approach adopted more generally in a government, which is contained in the White Paper on Transforming Public Service.

Transformation was seen as a dynamic, focused and relatively short term process, designed to fundamentally reshape the public service for its appointed role in the new dispensation in South Africa. This is complemented by the process of reform, which is considered to be a broader and longer term and ongoing process than transformation, which is required to ensure that the South African Police Service keeps pace with the changing needs and requirements of the domestic and international environment.

It is against this background that the status of the transformation process was set out and the overall transformation of the objectives for the public service as prescribed by the White Paper on Transformation of the Public Service was carried out.

 The White Paper focussed on six areas as follows:

- 		Restructuring and Rationalisation;
- 		Institution Building and Management;
- 		Representativeness and Affirmative Action;
- 		Transforming Service Delivery;
- 		Human Resource Development and Training;
- 		Promotion of a Professional Service Ethos;
- 		Democratizing the Workplace.

Key Elements of Police Reform in South Africa

a)		In South Africa the new police service was created out of 11 police services that were established in terms of Apartheid policy and this required that questions of integration and reorganising command structures and personnel be given priority. Other key aspects of the reform process included:

I)		Addressing issues that discuss the demographic representivity of the police service in terms of representation of different population groups as well as of men and women;

ii)		The introduction of a new system of labour relations;

iii)		Improving accountability and the regulation of police conduct including provision for parliamentary oversight, the creation of national and provincial secretariats, and the creation of an civilian oversight agency, the Independent Complaints Directorate;

iv)		Addressing community hostility to police through the creation of community policing forums and the adoption of community policing as the operational philosophy of the South African Police Service;

v)		Changing police symbols such as the rank system, uniforms, insignia and the colour of police vehicles;

vi)		Improving access to police services particularly in communities that had previously been discriminated against under the Apartheid regime;

Vii)   the introduction of a new selection system; the revision of the basic training curriculum; introduction of a human rights training programme; introduction of a code of conduct; development and introduction of an anti - torture policy; and the reorganisation and retraining of public order police and introduction of new weaponry.

III.   Origin of Community Policing in South Africa

In order to form a coherent understanding of community policing in South Africa, it is necessary to look back at the pains of its birth. In the vicious political violence that engulfed the country shortly after the liberation movements were no longer restricted in February 1990, the shape of South Africa's community policing was set.

During the first months of 1991, increasing violence was destabilising Kwa-Zulu Natal and large areas of the Transvaal (now Gauteng), and evidence of police collusion in the violence was mounting. To address this, the African National Congress (ANC) began to advocate for a peace summit at which a formally binding agreement between themselves, the Inkatha Movement, and the government could be struck. Following long and often bitter negotiations, the ANC, Inkatha, and the government signed a National Peace Accord on 14 September 1991. The agreement contained 'general provisions' which included the following:

"The police shall endeavour to protect the people of South Africa from all criminal acts and shall do so in a rigorously non-partisan fashion, regardless of the political belief and affiliation, race, religion, gender, or ethic origin of the perpetrators or victims of such acts... the police shall be guided by the belief that they are accountable to society in rendering policing services and shall there conduct themselves so as to secure and retain the respect and approval of the public. Through such accountability and friendly, effective, and prompt service, the police shall endeavour to obtain the co-operation of the public whose partnerships in the task of crime control and prevention is essential." In addition a code of conduct for the police was included in the provisions of the National Peace Conduct.

The provisions of the National Peace Accord and Code of Conduct went a long way in providing a vision for the fundamental transformation of policing in the country. The key principles in the document were accountability, integrity, impartiality and an effective service. This accounted for the willingness of the police to accept the provisions of the National Peace Accord and the Code of Conduct. Faced with a major and growing legitimacy and credibility crisis, senior officers saw the need for change, and before the Peace Accord was signed began to implement a new approach.

The Peace Accord established structures by which a more representative and legitimate input from political and community organisations could be acquired at local, regional, and national levels. These included Regional and Local Dispute Committees which reported to a National Peace Secretariat, as well a Police Board. The mandate of these structures was essentially one of monitoring and advice. Despite this limitation, these structures provided the means for the first time, by which political and community organisations could make an input, albeit limited in policing planning. Thus the Peach Accord initiated, for the first time in South Africa's history, a structured framework for police accountability; however, the issue of the legitimacy of the police remained one that required attention.

Community Policing Policy

The first formal reference to 'community policing' as the prescribed approach, style, or methodology for policing in a democratic South Africa is found in the Interim Constitution (Act No 200 of 1993). In Section 221 (1) and (2), the Constitution directed that an Act of Parliament was to "provide for the establishment of community police forums in respect of police stations", which would include the following functions:

a)   the promotion of the accountability of the service to local communities and co-operation of communities with the service;

b)   the monitoring of the effectiveness and efficiency of the service;

c)   advising the service regarding local policing priorities;

d)   the evaluation of the provisions of visible policing services, including:
-        the provision, sitting and staffing of police stations,
-        the reception and processing of complaints and charges,
-        the provision of protective services at gatherings,
-        the patrolling of residential and business areas,
-        the prosecution of offenders; and
-        requesting enquiries into policing matters in the locality concerned.

In section 22, the Constitution directed that the act was to provide for the establishment of an independent complaints mechanism to ensure that police misconduct could be independently investigated. Thus, the political prerogative informing community policing was one of democratic accountability. The police were to be democratized and legitimized by enhancing oversight and accountability generally, and particularly by enhancing, interaction, consultation, and accountability at local or police station level.

The emphasis on accountability was continued with the publication of the new government's first formal policy statement on safety and security, the Minister's draft policy document entitled Change, in mid 1994. It placed emphasis on the democratic control of the police service and community involvement in safety and security issues. In doing so, the policy statement conceptualized the transformation of the police within the ambit of community policing.

These principles were subsequently entrenched in the South African Police Service Act (No 68 of 1995) which formalized the rationalization and amalgamation of the eleven existing police agencies into a unified national South African Police Service (SAPS) with a single budget and command structures. The Act formally established a civilian secretariat for Safety and Security with oversight and monitoring functions and created an independent Complaints Directorate to ensure independent investigation of complaints of police abuses.

The act formally established and detailed the functioning of Community Police Forums (CPF). In terms of this act, the functions of the CPFs remained as those outlined in the Interim Constitution. It became the responsibility of the police, particularly Station, Area and Provincial Commissioners, to establish Community Police Forums at police stations, and Area and Provincial Community Policing Boards. Community consultation and input were therefore structured throughout the command structure of the new South African Police Service.

In 1997, the Department of Safety and Security published its formal policy on community policing, the Community Policing Policy Framework and Guidelines. Developed through a consultative process over a three-year period, the Policy Framework defined community policing in terms of a collaborative partnership based approach to local level problem-solving.

Diversity and Transformation of South African Police Service

The transformation of the South African Police Service (SAPS) was started by the country's first democratic elected government in 1994. During that period the police was confronted with a huge legitimacy problem with the majority of South Africans as a consequence of decades of Apartheid policing, use of brutal force, and racist policing practice. The organisation carried out the government's racist policing policy and non-white officers were primarily used and exploited as cheap labour. With the inception of democracy, one of the biggest transformations took place; the police force was transformed into a democratic institution that reflected the demographic diversity of the country and served the interest of all South Africans.

During 1999, when the second democratic election took place, an independent inquiry took place which found that structural racism still existed in the South African Police Service. Following the appointment of a new commissioner in that same year, SAPS pursued employment equity and affirmative action policies with renewed vigour. By 2005, SAPS looked significantly different in terms of its racial profile. Diversity programs were put in place and it became compulsory for all races and cultural groupings to attend this diversity program. This assisted in the transformation of the police with regard to diversity, however, it must be understood that this has not necessarily eliminated structural racisms completely, because the organization had other priorities to attend to at the same time. However, the diversity program is still in place and SAPS members still attend these workshops to date.

IV.   Mechanisms for Police Oversight in a Democracy

The transformation of the South African public sector, the criminal justice system, and specifically the police, was critical for the democracy of the country. Good governance demands that a sound judicial system operates in an environment where the services are rendered in a manner that is transparent, accountable, and responsive to the citizens' needs, while at the same time ensuring equal treatment. The bodies responsible for civilian oversight of the police had an important contribution to make.

The three primary mechanisms of civilian oversight are Community Police Forums at the local level, Secretariats for Safety and Security at National Level, and the Independent Complaints Directorate (ICD) which also operates at the provincial and national level. The above mechanisms of civilian oversight are provided for in relevant pieces of legislation and/or the Constitution.

In addition to the provision of civilian oversight at the local, provincial and national level, the legislation allows for oversight over police operations. The legislative provisions relating to CPFs permit them to encourage members of the public to work with the police in order to build good relationships and trust between the police and community.

Similarly, the Independent Complaints Directorate was established as an independent body, which investigates cases of abuse of force and misconduct in relation to the public, and makes policy recommendations in this regard. The role of the Secretariat for Safety and Security was more focussed on monitoring the SAPS and conducting oversight at the policy and strategic level.

The rationale behind establishing civilian oversight institutions was primarily to ensure that the police would never again be used as they were prior to 1994. Oversight structures would hold the police accountable for their actions and civilian oversight centred on the appointment of people from the community. Many of the people staffing the secretariats had worked in non-governmental organisations, which influenced the nature of the secretariats and how they went about their business.

The first national Secretary for Safety and Security was appointed in 1995, and the national and provincial secretariats were established thereafter. The Constitution directed that a civilian secretariat for the police must be established under a Cabinet Minister responsible for policing. The mandate of the secretariats is spelt out in the South African Police Services Act 68 of 1995.

This directed that the Minister of Safety and Security in the exercise of his powers, and promoting democratic accountability and transparency in the secretariats was to ensure police compliance with transformation. To achieve this they needed to overcome resistance from senior ranking officers and place transformation at the centre of the police service.

There was a need for improved relations between the South African Police Service and oversight bodies. The police and the oversight structures had to engage in activities to find common ground and recognize that their roles were complimentary. It was important for all structures to realize that they were aiming for a professional police service that effectively combats and prevents crime while treating all people with respect within the law.

Ultimately, both the SAPS and oversight structures could only benefit from supporting and promoting professional policing and removing or correcting the behaviour of problematic officers. This relationship between the external structures and the SAPS remains part of the challenge to transforming policing in South Africa.

V. Key Lessons Learned

Some important lessons were learned during the initial phases of police reform in South Africa:

■	Clear political direction on key transformation issues is essential, in order to prevent delayed implementation of changes;

■	The main focus of the police must remain combating crime. Police managers must find a balance between delivering on combating crime, service delivery and transformation/development issues;

■	There must not be a "separate" police transformation plan. There must be one unified integrated strategic plan for combating crime that contains the plan for transformation (reform);

■	Transformation must be clearly defined. The ideal definition in a post-conflict context might be "the process required to fundamentally reshape the Police for its appointed role in the new dispensation;"

■ Do not try to fix everything at once. Do not tackle too much. There must be a process of careful prioritization of issues key to re-shaping the police for its new role;

■ Stick to the basics. Keep it straight and simple;

■ Everything from the past is not bad. Do not reject policies and practices simply because they come from the past. There must be an objective evaluation before anything is changed;

■ There should be a provision for an exit strategy for personnel whose services cannot or should not be used in a new and democratic dispensation;

■ You cannot transform from the outside. Although the drivers for change are normally from outside the police, the change process must be driven and managed from within the police leadership, but with the supported of a small team of change agents, some of whom may be drawn from within the police and some appointed from outside;

■ Militarism is not discipline. Discipline is essential in an accountable and democratic police service, yet it does not need to take military form. However, all police services inherently have some form of militarism in their culture, which can be used positively in pursuit of transformation, if managed correctly;

■ Manage the transformation so that successes are visible on a regular basis;

■ Relevant personnel should, as part of creating a climate conducive to change, be sensitised / trained to understand and manage labour relations/ trade unionism in the police in accordance with the new democratic environment;

■ Communicate, consult, and explain (again and again)!

VI.   Managing Uncertainty and Resistance to Change

Any process of transformation/reform brings with it uncertainty and in many instances resistance, which must be managed.

The following tactics (among others) were used to manage uncertainty and resistance among police officials, during the transformation of the SAPS:

■ A consistent and clear vision of the new government's policies and its vision for the police were articulated regularly by the Minister who was the political head of the police;

■ The process of developing a shared vision was important - this was manifested in the mission and value statements of the SAPS, and the new code of conduct;

■ A participative management style, an involvement of, as far possible, of all members of the SAPS in the transformation processes,

■ Clear and regular communication to all levels within the police, labour unions and society (using all possible mediums - both formal and informal),

- ■ Displays of strong leadership by the new SAPS Management;

- ■ Creation and use of clear goals and actions with the achievement set out in a planned orderly fashion - visible to all;
- ■ Change agents must identify obstacles to change, and address them with a sense of urgency;

- ■ Build sound relationships with entities such as labour unions, NGO'S, parliamentary committees etc - in order to broaden the support base and facilitate communication;

- ■ Reward positive attitudes and initiatives;

- ■ Impose sanctions (and where applicable exit strategy) for those police members who were not adaptable to change or who were undermining change or transgressing the new code of conduct;

- ■ Resistance was redirected towards negotiable issues and away from key non negotiable issues (e.g. rank and insignia, where there was some negotiations, versus implementation of community - based style of policing.

Conclusion

The South African case illustrates that a wide range of role players both internally and externally played a role in the successful transformation of the South African Police from a paramilitary organization into a service. Domestically, police reform drew on inputs from political parties across the political spectrum, key NGOs, research-based institutions, the corporate sector and from within the police itself. The political will from both the political spectrum, and the police played and continues to play a role in the transformation process of the evolution of the new South African Police Service.

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CHAPTER SIX

RECONSTITUTING THE PUBLIC SERVICE IN POST-CONFLICT SOCIETIES: BOSNIA-HERZEGOVINA'S EXPERIENCE IN INSTITUTION RENEWAL AND DIVERSITY MANAGEMENT

Jakob Finci[49]

Historical Background

The most important events in last fifteen years for Bosnia Herzegovina are the referendum held between 29 February and 1 March 1992, the Bosnian voters' decision to opt for independence from Socialist Federal Republic of Yugoslavia, the war that erupted after the referendum, the conclusion of negotiations on the Dayton Peace Accord, and the parties' decision to sign the Accord in Paris on December 14, 1995.

The Dayton Peace Accord contains several annexes, including Annex IV which sets out the new constitutional arrangement for Bosnia Herzegovina. "Dayton's Bosnia" is the term frequently employed to distinguish the situation after the signing of the accord from the one prevailing before.

Special powers in Dayton Peace Agreement were given to the institution called the Office of the High Representative (OHR), representing the international community in Bosnia Herzegovina, and being the ultimate power in the country. The OHR were given, by the Peace Implementation Council, what are colloquially known as "Bonn Powers", after the meeting that took place in Bonn, Germany in late 1997. At the time, the principal international actors involved in the peace-building process in Bosnia Herzegovina decided to endow the OHR with authority to remove all obstacles to peace implementation and development. These powers, among other things, allow the high representative to remove any local official, including directly elected politicians, whom OHR deems an obstruction to the peace process.

Consisting of two entities, or better to say divided into two entities – Republika Srpska and Federation of Bosnia Herzegovina, the State is named "Bosnia and Herzegovina" (BiH) without any prefix.

The unsolved part in Dayton's agreement was the status of a town, Brcko, on the northern border of Bosnia. After a long arbitration process, it was decided that Brcko be declared "District of Bosnia Herzegovina", with full independence from both entities, but under the supervision of the State institution and State laws, with ample self rule. As on the state level, just a few basic laws have been adopted by the District. Besides, the District adopted special local laws, under strict supervision of the Office of the High Representative.

General elections were held in 1996, 1998, and 2000 - under the strict supervision of OSCE. It was only in 2002 that the Bosnian government, for the first time, organized elections, with international monitors controlling the electoral process. The last general elections took place in October 2006.

From the first democratic elections in November 1990, three main political parties have fielded candidates. These are the SDA (Party of Democratic Action, primarily embraced by Bosniack – Muslim followers), the SDS (Serb Democratic Party –supported predominantly by Serbs) and HDZ (Croatian Democratic Union – covering Croatian population in Bosnia Herzegovina).

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On independence, Bosnia Herzegovina was accepted as a full fledged member of United Nations, and in 2002, it also became member of the Council of Europe. In the year 2006, Bosnia joined the Partnership for Peace, and in 2005, started negotiations with the European Union on Stabilization and Accession agreement which has not been signed until the present. Also, negotiations with WTO are underway. The Head of State in Bosnia and Herzegovina is a three-member Presidency, one Bosniac and one Croat, each directly elected from the territory of the Federation, and one Serb directly elected from the territory of the Republika Srpska.

Parliamentary system of Bosnia Herzegovina is bicameral, with House of Representatives comprising 42 members and House of People with 15 delegates. Passive and active voting rights are given to every citizen over 18 years. Persons with dual citizenship may vote in Bosnia and Herzegovina, but only if Bosnia Herzegovina is their country of residence.

In the House of Representative, two-thirds of the delegates, i.e. 28 of 42 should be elected in the Federation of Bosnia and Herzegovina, and one-third, i.e. 14 in Republika Srpska.

The House of People is comprised of 15 delegates, two thirds from the Federation, including five Croats and five Bosniacs, and five Serbs are elected in Republika Srpska. The Croat and Bosniac Delegates shall select delegates from the Federation respectively, and Delegates from Republika Srpska shall be selected by the National Assembly of the Republika Srpska, without a chance for Serbs from the Federation or Croats and Bosniacs from Republika Srpska to be elected. Other citizens making personal and independent bids for legislative slots are not eligible to be elected in the House of People.

Members of the Council of Ministers consist of the Chair and eight Ministers. They should be from different constituent people, and include three Bosniac, three Serbs and three Croats. Provision in the Law of the Council of Ministers reads that if none of Ministers or deputies is from the group of Others, then the Secretary General of the Council of Ministers should be from the group of Others. However, this is not the case at present.

The Chair is appointed by the Presidency, and he appoints the Ministers and Deputy Ministers. The Council appoints between the Ministers, two who become Deputy Chairs, from different constituent people than a Chair. The Chair also has the power to dismiss the Minister or deputy, but this power has not been exercised up till now. Also, each Minister or Deputy can resign without explanation.

This is the main picture of Bosnian political scene after the end of this devastating war, one which cost this small country over 100.000 lives, witnessed the perpetration of horrendous war crimes, including crimes against humanity. A crime of genocide was also committed in Srebrenica in July of 1995.

Against this background, and particularly, after the Dayton Peace Accord, the challenge was how to proceed to build a functioning democratic state, reactivate the destroyed public institutions, and prepare BiH for Euro-Atlantic integration, and membership of the European Union and NATO.

I. Challenges to Reconstituting a Democratic State

Vetting of the Police

Of the two vetting experiences, the vetting of the police proved the most challenging. Police officers were deployed as soldiers during the 1990s wars, often serving at the front lines of ethnic cleansing alongside military and paramilitary battalions. A thorough purging of the country's police forces was, therefore, necessary in the post-Dayton era. Helpfully, the Dayton Accords provided that civilian law enforcement agencies would have to operate "in accordance with internationally

recognized standards and with respect for internationally recognized human rights and fundamental freedoms."[50] It also required the parties to the Agreement to ensure the "prosecution, dismissal or transfer" of police officers and other civil servants responsible for serious violations of minority rights.[51]

By the end of the war, there were tens of thousands of police officers in the Federation and the Republic of Serbia – far more than at the beginning of the wars and far more than are needed in a democratic state the size of BiH. In the early post-Dayton years, police officers continued to operate with relative impunity in ethnically homogeneous forces that served nationalist agendas. Although there were some early efforts by the UNMIBH to vet police in the Federation, the results were disappointing and the operations were terminated by 1998. In the Republic of Serbia during the same period (i.e., 1995-1998), there was essentially no vetting at all due to resistance by Republic's authorities.

Subsequent vetting efforts were far more successful. The UNMIBH Human Rights Office established a fifty-person Local Police Registry Section made up of international police officers, local lawyers and administrators, and two UN professional staff, all of whom were supported by the Human Rights Office and by two ICTY liaison officers. The vetting process itself consisted of three steps: mandatory registration (which involved completion of a detailed registration form), pre-screening (which in most cases resulted in provisional authorization to continue law enforcement work) and certification (which involved more extensive background checks, performance monitoring and a final determination on whether there were "grounds for suspicion" of wartime violations). Any one decertified was barred from serving in law enforcement anywhere in BiH. Decertification decisions were subject to an internal appeal only and no oral hearing was provided. In the end, approximately two thirds of those vetted were granted provisional authorization to exercise police powers. Of those provisionally authorized, over 90 per cent were granted full certification.[52]

The vetting process is generally regarded as successful. The police forces are smaller and more diverse now, and attacks on minority returnees are less common. However, public perceptions of the process appear to be mixed. The process has been criticized as having been too slow and too closed. Within the police service itself, opinion is less charitable. Many, but particularly those decertified, question the fairness of the procedures, and as many as 150 former police officers challenged their decertification in domestic courts after the departure of the UNMIBH.[53] Regrettably, the vague and non-legislated criteria employed by the UNMIBH, and the fact the vetting files were sent away for storage at UN headquarters in New York City, have complicated the resolution of these cases. In his March 2004 briefing to the Security Council, High Representative Lord Paddy Ashdown, discussing the legal challenges to certification, stressed that there was a danger that the UNMIBH's vetting efforts could unravel and endanger the rule of law. It is, however, rather late to sound such an alarm. The vetting procedure needed greater scrutiny during its operation.

Vetting of the Judiciary

The other major vetting process in BiH concerned the appointment of judges and prosecutors. In the early post-Dayton years, the judiciary was especially weak, given its lack of independence during the prior communist era, the ensuing years of war, and the continuous influence of organized crime and nationalist leaders. In May 2000, the High Representative promulgated laws on judicial and

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[50] Annex 4, Constitution of Bosnia and Herzegovina (Art. III Para. 2(c)) and Annex 11, Agreement on the International Police Task Force (Art. I Para. 1).

[51] Annex 7 Art. I Para. 3(e).

[52] *Report of the Secretary-General*, U.N.S.C., U.N. Doc. S/2002/1314, Para. 11 (2 December 2002).

[53] OHR, *Speech by the High Representative for BiH Paddy Ashdown at the United Nations Security Council* (3 March 2004), available online at http://www.ohr.int. The European Union Police Mission replaced the UNMIBH in 2003.

prosecutorial services to improve the independence of both.[54] These laws established commissions comprising Bosnian judges and prosecutors who assessed the performance of their peers over a period of eighteen months. But the process was never adequately supported with resources and it ended in failure. The vast majority of complaints against judges were dismissed as unsubstantiated.

In late 2001, the Independent Judicial Commission, the lead agency on judicial reform, developed a new strategy. It aimed to reduce the number of judges and make the judicial and prosecutorial services more ethnically diverse through a formal re-application and appointment process. Three High Judicial and Prosecutorial Councils – one for each of the BiH, the Federation and the Republic of Serbia – were created by the High Representative in 2002. The Councils are permanent bodies comprising, for the most part, elected and appointed members from the legal and judicial professions. The High Representative also appointed international members to serve during a transitional period. The Councils have jurisdiction to appoint, transfer, train, remove and discipline judges and prosecutors.

Under the re-application and appointment process, judges and prosecutors were required to submit detailed application and disclosure forms which included, among other things, questions about wartime activities. A considerable number of complaints were also received from the public. Once a file was considered complete, a Council nomination panel would review the application, interview the applicant, and make a recommendation. Unsuccessful applicants could file requests for reconsideration.

Because the re-appointment process ended only a few months ago, it is too early to assess its overall impact. Some initial concerns may, however, be noted. The most significant concern is that the goal of restoring the multi-ethnic character of the judicial and prosecutorial services appears not to have been fully achieved, particularly in the Republic of Serbia where there was an insufficient pool of minority candidates. Another concern is the limited nature of the investigations conducted into applicants' alleged or suspected wartime activities. This leaves some doubt about the sufficiency of the purge. Lastly, the exceptionally high cost and staff size demanded by the procedure sparked off public criticism.

On the positive side, however, the procedure has the virtue of permanence. With the completion of the re-appointment process, the Councils will continue to operate as the standing appointment and discipline bodies for judges and prosecutors, and will be run entirely by nationals of BiH.

Revitalizing the Civil Service

Article 64 of the Law on Civil Service in the Institutions of Bosnia and Herzegovina, promulgated by the High Representative in May 2002, and subsequently adopted by the Bosnian Parliament, provides that all existing civil servants are subject to review by the Civil Service Agency. The review is basically controlled to find out whether the civil servants have been appointed in accordance with Law on Public Administration, and whether they fulfil the law's basic requirements.

The process of verification of existing civil servants at the state level was completed by September 2004. The completion of these vetting activities indicated that Bosnia and Herzegovina had surmounted the main hurdles to its ambition for European integration.

It is equally significant that in March 2003, three Prime ministers (State level, Federation of Bosnia and Herzegovina and Republika Srpska), signed in Brussels, in the presence of the Peace Implementation Council, a joint statement, promising to citizens in Bosnia Herzegovina a reform of public administration service

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[54] The laws are available online at http://www.ohr.int.

In particular, the Prime Ministers pledged to:

1. make public administration cost-effective and well organized,
2. ensure that the taxpayers' money is spent economically and transparently,
3. ensure that the Civil Service is professional and representative of the citizens it serves,
4. make public administration work in accordance with EU Best Practice, and
5. ensure quality-driven and citizen-friendly public service.

This reform is supervised by international institutions and the Government of Bosnia Herzegovina, and it is expected to be completed by the end of 2009. Naturally, the task is difficult and the challenge, daunting. While BiH is trying to adopt best practices from other countries, it is not always easy to find counties with similar challenges and experiences.

Background context

Over the past few decades, the question of the real purpose, position and objective of public administration has been constantly asked and repeated. Traditionally, it was a pure symbol of power and an instrument of those in power. However, this is no longer the case, especially in the most developed, western societies. During this period, public administration faced endless and constant demands for radical change. While some of these criticisms were directed towards older bureaucratic systems of public administration that were in need of modernization, others concentrated more on advocating a comprehensive decentralization of governmental management. The constantly changing society challenged public administration, requesting redefinition of its principles and practices in accordance with new demands. It was just a matter of time that such changes would have to take place in developed, western democracies. Thorough reforms that were implemented in the past two decades, in particular, significantly changed the role of public administration and the "behavior" of its representatives. Under pressure, public administration had no alternative but to start acting in a more effective, accountable and transparent manner. Even now, after significant improvements have been introduced, surveys and media reports in Europe are showing that the public's faith in governmental authorities is rather low.

The situation in those societies that are undergoing rapid change is by no means better. These societies, driven overnight to switch to systems of parliamentary democracy, multiparty elections and an open market economy (with some of them additionally suffering conflict and wars in the process), are still far away form achieving more advanced standards in public sector. The universal reorganization of transitional countries' overall structure, including detailed reform of administration, became yet another challenge to face.

Any reform of public administration has to start with radical changes in the behavior of civil servants, its main representatives. To introduce such changes with a special emphasis on applying fundamental principles such as impartiality, neutrality and meritocracy, was an important step for the former socialist countries, which are seeking to find their place in the process of European integration. Redefining, and sometimes creating accountable, client-oriented public administration is achievable by inducing principles of modern and advanced human resource management, which primarily aims "to develop knowledge and understanding of the techniques, processes and procedures which are required to ensure the efficient and effective use and deployment of human resources, and consequently to use the human resource to the fullest possible benefit of the organization."[55]

Bosnia and Herzegovina, in addition to its struggles with the above-mentioned radical and "overnight" changes (including its devastating and brutal war), in the last decade found itself in a position to reinforce its sovereignty.

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[55] Managing People – ACCA, "Foulks Lynch" Publications – page vii

II Pre-reform situation in Bosnia and Herzegovina

During the socialist era in Bosnia and Herzegovina, human resource management in the public sector was never sufficiently developed to meet changing requirements. Recruitment, career progression and the dismissal of civil servants, especially at the higher levels of government, was thoroughly controlled and dictated by the Communist Party. The possibility for non-party members to attain managerial positions in the civil service was minimal. The link between governmental officials and civil servants was strong, but the link between those servants and ordinary citizens was far from satisfactory. Exercising discipline and pursuing the goals set out in the basic documents and doctrine of the Communist Party, civil servants were instructed to protect so called "common interests", while service delivery itself was marginalized. Next to the Party and State involvement in all aspects of public life in Socialist Republic of Bosnia and Herzegovina (the situation was similar in all other republics of ex-Yugoslavia), corruption, nepotism and pursuit of private interests became ramptant, as the country faced political and economic crises that ultimately led to its disintegration. While exercising their right and interests, individuals were increasingly forced to resort to bribery or search for possible family or friendly connections among representatives of the public administration. The sudden development of nationalist tendencies, noticeable in all aspects of public life, was the final feature that will continue to determine events in years to come.

Nevertheless, the civil servants in pre-war Bosnia and Herzegovina were better educated, better trained and more efficient than their successors in the last decade of the 20th and a very beginning of the 21st century. Raised in the decades of peace and schooled in a comparatively advanced education system, they learned to protect and promote public/common interests, and were able to run daily businesses in a relatively effective, rational and efficient manner. The war brought not only devastation to human lives, but also to the national infrastructure and the economy. It was also the beginning of totally unacceptable behavior and practice in the public sector. The protection of ethnic and religious interests, largely promoted by the nationalist political parties in power, as a determining factor in the struggle for the survival of whole communities, was put on a pedestal of primary criteria during the exercise of any civic, individual rights and interests. Corruption and nepotism flourished so quickly that the citizens of Bosnia and Herzegovina were forced to learn a new lesson practically overnight such as – do not communicate with administration officials in order to protect your rights and interests unless you have some powerful personal connections or unless you can pay for it. Furthermore, ethnic and religious background could turn easily into an insurmountable disadvantage if the individual was a member of "minority group" in an ethnically divided country.

The end of the war did not bring any improvements to public administration. The country was divided in two entities (the Republic of Srpska and the Federation of Bosnia and Herzegovina, which is further divided into 10 Cantons), with exclusive rights being granted to each "constitutive" ethnic group to dominate and govern the territories under "their" control. In the post-war period, the human resource management system in the state-level institutions of Bosnia and Herzegovina was supposed to be governed by the Law on Public Administration of Republic of Bosnia and Herzegovina passed in 1993. However, this Law was applied only among those forces in common institutions that recognized the Republic during the war. The division based on ethnic background and existing political conditions led to the creation of an untenable situation, which posed a formidable obstacle to the functioning of the State. The reinforcement of common institutions in Bosnia and Herzegovina, by far the weakest layer of power in the country, has been foreseen as a precondition for any future attempts to establish the rule of law. Logically, all activities aiming at building a strong, self-sustainable state that is capable of running its own functions and obligations should begin with the firm, consolidated regulations of the relations in its institutions, in spite of the negative political atmosphere. Therefore, the creation of the new environment in the common institutions, in spite of negative tendencies, was inevitable. It was only a question of when the public administration reform process is going to start and to what extent it going to be guided.

III The New Law on Civil Service

A. Enactment of the Law

Voices demanding fast and radical changes in public administration, coming both from the citizens of Bosnia and Herzegovina and the international community, were growing stronger and stronger in the late 1990s. The adoption of the Law that would provide a legal basis for the selection, management and clearly defined rights, obligations and benefits of the civil servants was a *conditio sine qua non* in setting a solid ground for any further steps. The Peace Implementation Council at its meeting held in Madrid in December 1998 insisted on the "creation of a professional and apolitical civil service as a vital component of any effectively functioning state." Similar, even stronger demand had been repeated at the meeting of the Peace Implementation Council held in Brussels, in spring 2000. The adoption of the Civil Service Law was even a requirement referred to in the Road Map of the European Union for Bosnia and Herzegovina. Its adoption became an obligation for Bosnia and Herzegovina to meet the guidelines of European Union.

Following the general elections in Bosnia and Herzegovina that took place in fall 2000, and after the so-called non-national parties took power for the first time since parliamentary democracy was introduced in the country, reform became a political reality. Twelve political parties, mostly center and left-oriented, formed a State-level government known as the "Alliance", for a period of two years. Those two years were marked by what have been the strongest attempts to redefine Bosnia and Herzegovina in a more effective, sustainable and rational way. The "Alliance" regarded the adoption of the Law on Civil Service in the institutions of Bosnia and Herzegovina as a top priority. But the political forces, opposing and undermining all attempts on consolidation of the State, were still very strong.

Finally, the working group for development of the Law on Civil Service was established in October 2000. The group was organized and supervised by the Ministry of Civil Affairs and Communications. Both local and international experts were engaged in the creation of the legal document that was envisaged as a legal base for further reforms in public administration, particularly in the area of human resource management in public sector. After almost eight months and over 250 working hours, the Draft of the new Law was completed. The representatives of the State-level Council of Ministers held another round of consultations with the Office of the High Representative, before the Council confirmed the Proposal of the Law sending it into the regular parliamentary procedure in September 2001.

Both houses of the Parliamentary Assembly of Bosnia and Herzegovina (the House of Representatives and the House of Peoples) adopted the Law in early 2002, but with different amendments. The situation allowing the two Houses to adopt one legal document in different texts, is not unusual. To settle the incongruity the Parliament usually establishes joint bodies in order to harmonize the substance of adopted legal acts. The Civil Service Law was no different. The Joint Parliamentary Commission for Harmonization was established in order to clear differences and produce an identical and consolidated version of the Law. Obstructions that followed were largely interpreted as another political attempt to block (or at least postpone) planned reforms. The Joint Commission held four sessions, over a period of three months, failing to reach consensus about disputable items. After all these fruitless efforts of the Joint Commission to finish the task, the High Representative for Bosnia and Herzegovina decided to exercise the powers vested in him by Annex 10 (Agreement on Civilian Implementation of the Peace Settlement) of the General Framework Agreement for Peace in Bosnia and Herzegovina[56] and by the Conclusions of the Peace

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[56] Article II.1. (d) of the Agreement gives a power to the High Representative to "Facilitate, as he judges necessary, the resolution of any difficulties arising in connection with civilian implementation"

Implementation Conference held in Bonn on December 1997[57] - he imposed the Law on 23 May 2002.

The Law was published in the Official Gazette of Bosnia and Herzegovina No. 12/02 on 6 June 2002, and entered into force eight days later. It is interesting that the Parliamentary Assembly of Bosnia and Herzegovina supported this Decision by adopting the Law in due form, without making any further amendments. The Law, using the same text as that approved by the High Representative, was published again in the Official Gazette of Bosnia and Herzegovina No. 19/02 on 25 July 2002. Since then, the Law was amended four times, but never changed in its real structure, purpose or substance (even though, the last amendments were made by the Parliamentary Assembly of Bosnia and Herzegovina, wherein the three secretaries of this legislative body were pronounced to be non-civil servants, can be judged as a step backwards, contrary to the previous three amendments that were commonly evaluated as improvement of the Act). The adoption of this Law announced the start of a process to establish a professional, merit-based civil service, aimed at providing unbiased expertise and professional continuity in the State-level institutions.

Several more legal acts, adopted in following years, are important tools and preconditions for finalizing efforts to create clear relations among the institutions of Bosnia and Herzegovina, in a manner that will meet the best European standards. Among the acts that fall under this category are: The Law on Administration of Bosnia and Herzegovina (from September 2002), The Law on Ministerial Appointments and other Appointments in the Institutions of Bosnia and Herzegovina (from November 2003), The Law on Labor in the Institutions of Bosnia and Herzegovina (from June2004), The Rulebook on the Disciplinary Responsibility of Civil Servants (from July 2003) and The Rulebook on the Procedure for Assessing the Performance and Promotion of Civil Servants in the Institutions of Bosnia and Herzegovina (from May 2004).

Nevertheless, the Law on Civil Service in the institutions of Bosnia and Herzegovina, with all the innovations in human resource management that it introduced, will be remembered as a benchmark in the process of reforming public administration, in spite of all of the difficulties that will come with its implementation.

B. General Overview of the Civil Service Law

This Law was created to regulate the legal status of civil servants in government institutions in Bosnia and Herzegovina in all aspects such as recruitment and the professional career advancement, positions, rights and responsibilities, conflict of interest, termination of the civil service office, remuneration and allowances and disciplinary responsibilities. Provisions of the Law cover all civil servants in state-level institutions, more precisely servants of the Presidency, Council of Ministers and Parliamentary Assembly of Bosnia and Herzegovina, as well as of the Constitutional Court and the Court of Bosnia and Herzegovina. The only civil servants that are exempted from the Law are those employed at the Central Bank of Bosnia and Herzegovina and the Office of the Human Rights Ombudsmen in Bosnia and Herzegovina. A possibility for partial exemption is given to staff of Diplomatic and Consular Services and the Border Service whereby the Council of Ministers of Bosnia and Herzegovina may decide, with prior consent from the Agency, not to apply certain provisions of the Law.

Elected and appointed functionaries (such as Members of the Presidency, Ministers and Deputy Ministers of the Council of Ministers, Members of the Parliamentary Assembly, Judges of both Courts on the state-level, the Auditor-General and the Deputy Auditors-Generals, Governors and Vice-Governors of the Central Bank of Bosnia and Herzegovina, Members of the Standing

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[57] In order to facilitate the resolution of any difficulties, High Representative was given a power to make "binding decisions, as he judges necessary"

Committee on Military Matters and the Ombudsman of Bosnia and Herzegovina) and the "other employees" (mostly support staff with lower level qualifications), are not subject to this Law. Advisors to the above-mentioned functionaries are defined as non-civil servants, however, several provisions of the Law are dedicated to defining this group of employees in order to clarify and determine their status as well. This Law also aims to determine which responsible bodies and institutions are to be given the task of carrying out the duties of civil service reforms.

General principles laid down in the Law are legality, transparency and publicity, accountability, efficiency and effectiveness and professional impartiality. Also, a principle of a proportional representation of ethnic groups is introduced through the provision demanding that the structure of civil servants within the civil service shall generally reflect the ethnic structure of the population of Bosnia and Herzegovina in accordance with the last census. This requirement is just one of the legal actions taken in spring 2002, to ensure the equality of the three constituent peoples (Bosniaks, Croats and Serbs) and the members of the group of Others throughout the Country, which was not the case right after the war. Intensive constitutional amendments in both Entities of Bosnia and Herzegovina were conducted to insure annulment of ethnic division, caused by so-called "ethnic cleansing" during and after the war.

In addition to the general norms of scope, subject and principles of the act, summarized insight into other provisions, such as those regarding civil servants' positions, their rights and duties, process of recruitment and evaluation, remuneration and allowances, termination of service, disciplinary responsibilities, with a special emphases on provisions related to management of civil service, will contribute to a better understanding of the quantity and quality of innovations introduced through this reform initiation.

Civil Servants' Positions

All servants in the institutions are divided in two main groups – managerial and non-managerial civil servants. Managerial civil servants are Senior Executive Manager, Senior Executive Manager with special assignment and Assistant Minister. The group of other civil servants consists of Head of internal organizational unit, Senior Advisor, Senior Official and Specialist.

During the development of the Law, there were political forces lobbying to preserve the old order by which managerial civil servants were political appointees. However, the views of the reforming forces, supported by representatives of the international community in Bosnia and Herzegovina, prevailed. The obvious reason for protecting managerial servants by determining their status through the law was to ensure that "the crown of the administration" is selected in an independent, merit-based manner and that those servants carry out their duties impartially, on the basis of their knowledge, professional skills and experience. Moreover, it was felt that the only way to preserve institutional memory was to prevent changes on managerial level over and over again after the elections. Furthermore, the Law determined that the categories within these positions should be defined by by-laws, giving general description of duties and responsibilities for each position.

Rights, Duties and Conflict of Interest

The Law prescribes general duty for all civil servants to perform tasks as assigned by their job descriptions, to abide by all other duties as provided in this Law and to protect constitutional and legal order in Bosnia and Herzegovina. In case that the servant receives suspicious, allegedly illegal order, he/she is required to draw attention to the issuer. Should the order be repeated, the civil servant is obliged to ask for a written confirmation identifying the issuer and the precise content of the order. Finally, if the order is confirmed, the civil servant shall notify the order to the immediate superior of the issuer of the order and shall be compelled to perform it unless the order does constitute a criminal offense (in which case he/she will refuse to perform it, denouncing the matter to the competent authority). It is required that a civil servant shall be impartial, refraining from any action of public manifesting his/her political or religious belief or pursuing and accepting any gain, benefit and

advantage other than those given by the Law. A further legal requirement is that all civil servants shall be guided by the public interest during the performance of their duties, serving and assisting the public interest in a transparent and accountable manner. A special provision of the Law is dedicated to protection of property rights of refugees and displaced persons. According to this provision, civil servants are not allowed to occupy real estate property which is owned by a refugee or a displaced person, nor to occupy an apartment claimed by a refugee or a displaced person, a so called, "occupancy right" (based on a system of "social" property, introduced during the Socialist era).

The right to receive a salary and other compensations in accordance with the Law and secondary legislation, to use an annual leave and other permitted form of absence and to work until retired, (unless otherwise is provided by laws) are the main rights of civil servants. Additionally, all servants are entitled to be supported in advancing their career and professional development, to be treated by superiors with respect and dignity, entitled to a right on protection of their physical and moral integrity, the right to join a Trade Union and to go on strike. Equal treatment in all aspects of personnel management regardless of ethnic or social origin, entity citizenship, residency, religion, political or other opinion, sex, color, birth, marital status, age, property or handicapping condition are also granted to civil servants. They are also exempt from all military obligations after their appointment.

This Law prohibits exercising a function or holding a position that constitutes a conflict of interest. They are not allowed to any additional remunerative activity without prior authorization issued by the head of institution in which they are employed. Also, a civil servant cannot be a member of governing or other boards of political parties and cannot follow instructions of a political party. Last incompatibility is further evidence of a firm intention of reformists to separate civil servants from the interests and goals of political parties. Additionally, provisions on conflict of interest regulate situations when a civil servant is a candidate for a public office which is directly or indirectly elected or the conditions upon which a civil servant can join the enterprise over which he/she exercised regular supervision. The disclosure of information on his/her property as well as the property of the closest family members comes under provisions of conflict of interest as well.

Recruitment, Evaluation and Promotion

The following provisions of a new Law are seen as a ground for changes of traditionally wrong practice on selection of civil servants and, automatically, as a pre-condition in supporting introduction of successful human resource management in the future. Detailed system set forth was evaluated as enormous step forward and important element of a public administration reform. There are three possibilities to fulfill vacant position in civil service that are following each another. First, if there is a vacant post in an institution, the vacancy shall be advertised internally, through the Agency for Civil Service. If there is no possibility to fill the vacant position internally, the Agency will attempt to fill the position through an external transfer (transferring a redundant civil servant occupying a similar position in a different institution). Finally, if an external transfer is not possible, the vacant position shall be advertised for open public competition. The Law prescribes general directives in cases of internal advertisement (for internal and external transfers) and external advertisements (for open public competition). The Civil Service Agency will develop acts in future that regulate these processes in details.

Age of majority, Bosnia and Herzegovina citizenship, a university degree, health conditions and the prior fulfillment of military obligations fall among general requirements for appointment to the civil service. Individuals that have been dismissed from civil service as a consequence of a disciplinary measure within three years before the date of the publication of the vacancy are not eligible to compete for civil service vacancies, as well as those who are indicted for war crimes. Also, the person applying for a position should have a certificate that proves absence of pending criminal proceedings.

After the vacancies are advertised, the Agency shall organize and support the work of selection committees, consisting of five members (three from the institution concerned and two from a list of experts approved by the Agency). The Agency is entitled to determine the nature and the content of the open competition and the Council of Ministers shall, upon proposal of the Agency and by by-law, determine the manner of taking the exams and the program for the exams (more about this process in chapter on Establishment of the Agency). After the open public competition is finished, the Agency for Civil Service shall publicize the results and notify each applicant in writing about his/her results in accordance with this Law. There is a slight difference in appointment of managerial and non-managerial civil servants – the former shall be appointed by respective institution, upon prior opinion obtained from the Agency, while the latter are going to be appointed by the Agency, based on the prior opinion of the competent institution. This is a kind of compromise made to the political forces that wanted to keep managerial servants as political appointees. The general probation period (with overall duration of 12 months) has been introduced for all newly appointed servants. Should the performance appraisal be satisfactory, the appointing authority confirms the appointment of the civil servant, while in opposite case, the civil servants are dismissed. The performance appraisals, based on the results achieved and carried out by their direct hierarchical superior at least every twelve months, can also be positive and negative. Positive appraisal is taken into account for promotion, while two consecutive negative performance appraisals lead to dismissal. The promotion of a civil servant to a higher category within the same position is possible, but promotion to a higher working position is not. So, one can, upon positive performance evaluation, be moved from his/her position of a Specialist (salary grade 1, category 1) to position of Specialist (salary grade 1, category 2 or 3), but can, by no means, promoted to a Senior Official. Upgrade to a higher position within service can be undertaken exclusively through open public competition. Additionally, this chapter needs to elaborate the issue of redundancies. It is determined that Redundancy occurs exclusively in the case of reorganization or a reduction in scope of work of an Institution. It is the task of the Agency to declare civil servant redundant, upon proposal of competent institution. In such a situation, the Agency first tries to relocate respective servant or to offer an early retirement if the external transfer is not possible. Should this fail, the redundant civil servant will be dismissed and provided with severance package in accordance with this Law.

Remuneration, Allowances and Working Conditions – Salary system for civil servants is determined by the position they hold – there are six positions going from Specialist (the lowest - salary grade 1) to Senior Executive Manager and Senior Executive Manager with a special assignment (the highest – salary grade 6). The Law prescribes the Council of Ministers to determine coefficient relating to salary grades. Salary initial basis, for calculation through multiplying with the coefficient, has not been changed in last seven years – it is 240 Convertible Marks (123 Euros). In addition, civil servants are entitled to get 0,2% of raise for each year of working experience and up to 30% related to promotion, which depends on their performance evaluation. The civil servants who temporally perform the job of another, unfilled position, can receive an increment of a special salary bonus to the basic salary amount by up to 50%, depending on the extent to which the volume of work has been increased. Civil servants are entitled to salary compensation during the annual and sick leave, as well as for much other remuneration, such as the costs of transportation, daily food rations, holiday cash grant, anniversary rewards, education, etc. Each civil servant is entitled to a compensation of expenses concerning official trips. General labor provisions regulate other rights concerning social security of civil servants.

Termination of Service

Voluntary resignation, retirement, permanent inability, loss of citizenship of Bosnia and Herzegovina and redundancy are some of the main reasons for termination of services for civil servants. In addition, once can loose its position because of unsatisfactory probation period or two consecutive negative performance appraisals, as a result of disciplinary sanction or by being convicted for a criminal offense on a sentence of prison for a period of more than six months. With regard to procedures for termination of services, it is important to mention that non-managerial servants are dismissed by the Agency, upon prior opinion of the competent institution, while managerial will be

dismissed by the appointing authority, upon prior opinion of the Agency. Generally, dismissed civil servants are not entitled to gain compensation, except in cases of redundancy or when retired.

Disciplinary Responsibilities - Some of the most conspicuous loopholes of the Law on Civil Service are related to disciplinary responsibility of civil servants. First, there is no clear link between acts of violation of official duties on the one, and disciplinary sanctions on the other side (this was one of the largest remarks of the Venice Commission in relation to this Law).[58] Second, it has not been determined which body is going to create a set of by-laws regarding this problem within state-level institutions. The list of disciplinary acts is quite exhaustive – scaling from criminal offences against official duty and betrayal of the State, military and official secret to the minor ones like unexcused absence from work, breach of regulations related to the working discipline or failure to execute entrusted tasks and duties in a timely and proper manner. Disciplinary sanctions against these violations are:

a) Written warning;
b) Written reprimand;
c) Suspension of the right to participate in open competitions during the maximum of two years;
d) Punitive suspension of duties and salary during a period from two up to 30 days;
e) Demotion to a lower position or category;
f) Dismissal from the Civil Service.

The Law contains general provisions on disciplinary proceedings, all of which start with the filling of a disciplinary case. These provisions include a description of the role of the Agency for Civil Service, ombudspersons in the institutions and the Civil Service Board. Detailed disciplinary proceedings are elaborated in The Rulebook on Civil Servants Disciplinary Responsibility, which was adopted one year after the Law entered into force. Also, it is regulated that all disciplinary proceedings are suspended in case of initiation of criminal proceedings for the same act. Finally, the Law contains provisions on preventive suspension after the initiation of criminal procedure against a civil servant.

Management of Civil Service

Each state-level institution is required to establish a section in charge of the implementation of the provisions of this Law. Those sections are intended to ensure proper management of their personnel and to coordinate and cooperate with the Civil Service Agency, including submission of an annual report and a plan of activities for the year ahead to the Agency. The Law has introduced a position of ombudspersons, tasked to act as mediators in all issues pertaining to the status of civil servants in accordance with this Law. It is prescribed that all civil servants in each institution will elect one of them to be an ombudsperson. Another innovation of the law represents the establishment of the Civil Service Board. This Board is responsible for reviewing all final decisions, undertakings or non-undertakings of an Institution and/or of Civil Service Agency pertaining to the status of civil servants. The Board can act upon request of the civil servant affected by the disputed decision, undertakings or non-undertakings, respective institutions or the Civil Service Agency. This body is authorized to hear the applicant, call witnesses and experts, obtain all relevant information and undertake all actions when deemed necessary in accomplishment of the main task – reaching the final decisions on status of civil servants. Such decisions, reasoned on legal grounds and properly and fully determined facts, can be only subject of review in front of the Court of Bosnia and Herzegovina.

And, finally, the most interesting and most important novelty represents the introduction of the Civil Service Agency. The Council of Ministers is authorized to establish the Civil Service Agency and appoint Head of the Agency, responsible for managing the Agency. Head of the Civil

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[58] The European Commission for Democracy through Law, better known as the Venice Commission, is the Council of Europe's advisory body on constitutional matters. Established in 1990, the commission has played a leading role in the adoption of constitutions that conform to the standards of Europe's constitutional heritage.

Service Agency will hold the position of Secretary with special assignment for a mandate of five years, with a possibility of reappointment. The establishment of such body within state-level institutions was an absolute novelty with only one main goal – radical changes in human resource management in state-level civil service. Prevailing impression for all those who read this Law is that the Agency is implanted as a sort of a "backbone" and supreme guaranty for its implementation. Numerous competences, task and responsibilities given to it – from realization of recruitment process, establishment of Personnel Central Registry through training and development of civil servants, disciplinary proceedings, up to the assistance to the institutions in realization and development of their human resource policies, can only be seen as an indisputable confirmation of such thesis. The Agency is practically involved in all aspects of the Law and without it, this Law would not have nearly the same structure, purpose or effect. Development, organization and operation of this body are discussed in the following chapters.

IV The Civil Service Agency

A. Establishment of the Agency

The High Representative for Bosnia and Herzegovina appointed the first Head of the Civil Service Agency at the same day when he imposed the Law. This two-year appointment became effective from the day when the Law on Civil Service in the Institutions of Bosnia and Herzegovina came into force. In his Decision, the High Representative noted that he indented the Civil Service State Agency to be an independent body competent for recruiting and dismissing civil servants, deciding upon disciplinary sentences, training civil servants and preparing all necessary legislation and that Head of the Agency would be responsible for the establishment of the Civil Service Agency and the overall implementation of the Civil Service Law. Before issuing this Decision and appointing Mr. Jakob Finci as the first Head of the Civil Service Agency, the High Representative held consultations with the Council of Ministers of Bosnia and Herzegovina. The Council confirmed this Decision two months after its adoption.

In the following months, delegation of the European Commission created a team that run the Project of Support to the Civil Service Agency of Bosnia and Herzegovina for a period of six months. The team consisted of one international and three local experts with various scopes of advisory and exclusive responsibilities, aimed to give comprehensive support and assistance to the beneficiary, Head of the Agency, in all aspects of creation and establishment of the Agency. Those responsibilities can be systematized in a few groups:

1. Creation of the legal acts for establishment of the Agency, required by the Law;
2. Development of the Personnel Central Registry;
3. Setting bases for recruitment processes;
4. Development of basic documents and plans on training; and
5. Dispute resolution.

Creation of legal acts for establishment of the Agency

The creation of legal acts necessary for establishment of the Agency primarily imply drafting of the Civil Service Agency Rulebook together with the Act on Systematization of Posts in the Agency. All other aspects of duties and responsibilities of the EU Support Project Team were also linked to the creation of certain legal documents, but the aforementioned CSA Rulebook with the Systematization Act as its attachment were underlined as a legal basis for establishment of the Agency. Therefore, it would be useful to give a general overview of this document.

The Civil Service Agency Rulebook and the Systematization Act

This Rulebook is written in order to determine an internal structure, number of employees, their basic duties and responsibilities, as well as other issues of organization and management of the Agency. The principles of legality, transparency, efficiency, rationality and professional impartiality are proclaimed as the leading ones in delivery of the services. The Agency consists of five departments:

a) The Office of Head of the Agency;
b) Information Department;
c) Recruitment Department;
d) Department of Education; and
e) Department of the Rights Protection.

The employees in the Office of Head of CSA are civil servants that provide all technical and professional support to the CSA Head itself. They also represent an important link between Head of the Agency, other departments and the Institutions of power in Bosnia and Herzegovina. By insuring internal and external communication, efficient and cost-effective usage of human, financial and material potentials of the Agency and coordination of the Senior Staff Board of the Agency, this unit is meant to be a nucleus of future activities of the Agency.

Management of the Personnel Central Registry and its regular update, together with insuring its correctness and secrecy (the last is required by the existing legislative) is foreseen as the most important task of the Information Department. In addition, Information Department is in charge of trends analyses and collection and analyses of all other data relevant for civil services in general. Last but not least, this unit takes care of requests processing made under the Freedom of Access to Information Act.

The main task of the Recruitment Department is planning and conducting the processes of recruitment, appointment and selection of civil servants upon the requests of the institutions. Advisory role that would help the institutions develop the methodology for classification of the civil service posts and creation of the plans and strategy for its fulfillment is added to the main responsibility. Finally, this cluster is responsible for preparation of various suggestions related to public exams that are one the most important parts of the recruitment process.

In the Rulebook, Department of Education is defined as the one responsible for assessment of the needs, preparation and conduct of the training programs and professional advancement of civil servants. Preparation, coordination and delivery of plans and advices to the users of services of professional staff development was envisaged as an important part of their competences, together with the rational management of the resources allocated for coverage of training expenses and education of civil servants.

The Department of the Rights Protection is responsible for providing support to civil servants while appealing before the Civil Service Board, which is in charge of reviewing all final decisions, undertakings or non-undertakings of the institutions. In addition, this Department has a leading role in disciplinary proceedings against civil servants through the organization and technical support to the Disciplinary Commissions, after the procedures against civil servants have been initiated. Assistance to Institutions on establishment of the alternative mechanisms for dispute resolutions (such as ombudspersons in the institutions or mediation in collective settlements) is also determined as one of the functions of this unit.

The second part of the Rulebook contains provisions on work organization (establishing a clear link on relation: Council of Ministers – Head of Agency – Senior Staff Board of the Agency – CSA Departments) and basic responsibilities of Head of the Agency, its Expert Advisor and Heads of Departments. Further, the basics for planning the work within the Agency, the role of Senior Staff Board and cooperation with personnel units in Institutions are prescribed here. Finally, the last part of

the Rulebook regulates working posts and the working regime. Annex of this document is the Act on Systematization of the Working Posts which determines:

1. The title of the working post (e.g. Head of the Agency),
2. The position/rank of the civil servant in accordance with the Law (e.g. Senior Executive Manager with a special assignment),
3. Detailed job description, and
4. Special requirements for the post.

The structure of the CS Agency is represented by the organigram (see: Appendix 1 - Organigram).

Development of Personnel Central Registry

The purpose for establishment of such a registry is to assemble all relevant data which could be useful to the institutions of Bosnia and Herzegovina as well as to the Civil Service Agency, in examining trends, needs and attitudes in the State Agency. The main goal is to ensure development and better functioning of the Agency, proper human resources management and its standardization, and to guarantee respect and improvement of constitutional and legal principles. This exercise was evaluated as a preliminary condition for any further plans or execution of the policy related to human recourse management in the institutions. The comprehensive, exact and up-to-date data on structure of civil servants (e.g. by age, sex or national belonging), data on educational background, trainings, courses and other form of professional improvements or frequency of promotions are essential for the creation of any personnel policies. Above all, this data register was considered to be irreplaceable a tool enabling the Agency to plan, operate and advise.

The EU Team faced significant difficulties while setting this data base: on the one side there was a clear need to fill the Central Registry with as much information as possible, while on the other there were recent data protection regulations established in Bosnia and Herzegovina. The first step forward in the formal creation of the Central Registry was to plan the future design and content of the Registry for examination to the Data Protection Commission, as required by the Law on Personal Data Protection (adopted in December 2001). The Commission was particularly interested in the purpose of data processing, the type of processed data and the legal basis for data collection, the range of data subjects and data source. The Agency was required to ensure data security, undertaking all technical and organizational measures and developing the rules of procedure on data protection and secrecy. One of the mayor requirements underlined by the Commission was related to appropriate manipulation with so called "special data categories" (as per Law, it is data related to racial origin, nationality, national or ethnic origin, political opinion or party affiliation, trade union affiliation, religious or other belief, health, sexual life and criminal conviction). After the Commission had examined and positively evaluated the Registry, the Council of Ministers made a Decision on Establishment of the Central Personnel Registry for Institutions of Bosnia and Herzegovina. The creation and testing of the software and the preparations for data collection could begin. (see: Appendix 2 – The ain Menu of Centra Personell Registry).

Within its activities on development of the Agency's information management, and next to development of Central Register, the EU Team worked on setting basis for development of surveying capacities of the Agency. Following their recruitment, the Agency staff received a practical introduction to the issue. The induction course was organized by the "Prism Research Agency", an affiliate of the Gallup group and one of the most famous organizations specialized in social surveying and public opinion polls in the Country. Finally, the third component of the info management development was directed towards facilitating access to information. This component comprises of three elements: acting within the line of the Freedom of Access to Information Act, establishment and maintenance of a Civil Service Agency web page and the printing of the quarterly civil service bulletin. While last two elements are rather simple and self-explanatory, free access to information demands a more detailed explanation.

The Freedom of Access to Information Act, adopted in November 2000, stipulates a range of obligations for all public authorities (i.e. State-level institutions, including the Agency). One of the most important obligations stipulated by this Act is the adoption of certain by-laws, such as guides and index-registers, which should explain the access-to-information request procedure to each applicant, in order to make access to information easier. The Act also requires all public authorities to submit regular statistical and annual reports to the Parliamentary Assembly of Bosnia and Herzegovina. Statistics should also be submitted to the Bosnia and Herzegovina Ombudsmen Office. In addition, the Act obliges each public authority to appoint an Information Officer who should process requests in accordance with legal requirements and to take all necessary steps to assist any individual or legal entity seeking to exercise the rights under this Act.

Setting bases for recruitment processes

According to the Law, the Civil Service Agency is the most responsible body among state-level institutions for implementation of the recruitment process, based on the principles of professionalism, political independence and merit. The EU Support Team was in a position to create pre-conditions for one of the key responsibilities of the Agency, but also to test the system by organizing and assisting the first recruitments based on the provisions of the new Law – recruitments of the Civil Service Agency staff themselves. Firstly, the Team was obliged to prepare drafts for a set of regulations and policies and to develop basic evaluation techniques that were going to support the recruitment process. The most important of these documents are: the Decision on procedure and program for the Public Exam for the CSA staff, the Decision on Conducting Open Public Competition for Civil Servants in the CSA, the Decision on Contents of the Public Exams, the Decision on Establishment of the Selection Committees, the Rulebook of the Selection Committees, etc. According to the Law, these By-laws are to be adopted the Council of Ministers, upon proposal of Head of the Agency.

The Decision on procedure and program for the CSA staff Public Exam) determines the way, substance and conditions for taking a general exam, a specialized exam and interviewing (all three are elements of open, public competition), as well as the evaluation standards for those competition phases. The general exam is made up of 42 multiple-choice questions in seven areas of knowledge, which are:

- Basics of the constitutional system of Bosnia and Herzegovina
- Basics of the civil administration system in Bosnia and Herzegovina
- Administrative proceedings and administrative litigation
- Basics of employment relations
- Office management in administrative bodies
- Funding of institutions of Bosnia and Herzegovina
- Basics of European integration

All candidates that passed the general exam (having a minimum of two thirds, which is 28 correct answers) will get a certificate as a valid document for all future involvements in the public competition of the state-level institutions. The second level of the public exam, a so called specialized exam, is organized for successful candidates only. It consists of more complex questions and tasks that the candidate should answer in writing, showing the ability and capacity to hold a specific position that he/she is applying for. The higher the position the candidates apply for, the more complex this part of the open competition. Finally, after the selection committees evaluate each short essay upon methodology determined in this Decision (maximum number of points is 100), the most successful candidates are called for an interview. After completion and evaluation of the interview (maximum of 30 points can be gained for this part of a public exam), the selection committees make a list of the best candidates based on achieved results and submit it to Head of the Agency for the final decision. Initially created only for recruitment of the Civil Service Agency staff, this Decision will become the groundwork for adoption of general rules on public exams in the institutions.

The Decision on Conducting Open Public Competition for Civil Servants in the CSA contains basic elements for the successful completion of the first open competition that is going to be undertaken upon the provisions of the new Law. Next to the basics on the process and conditions of this competition, the Decision contains vacancies for each post in the Agency, together with the job requirements and descriptions.

The Decision on the General Exam Contents

Seven senior managers, prominent experts in their respective field of expertise in the institution of Bosnia and Herzegovina, have been determined by this Decision as an official group to create the list of questions for a General Exam. Each of the members is in charge of submitting 20 questions from the area of their expertise, which are offered to candidates that apply for the posts in the Agency. These questions represent the first set of questions ever created for general exam that is going to be conducted under the provisions of the new Law.

The Decision on Establishment of Selection Committees

There are five selection committees established for the selection of candidates – one for each future department of the Agency. Determining all members of the selection committees, this decision gives clear instructions on how they should act while fulfilling this obligation. One of the instructions reads that each Committee will select the chair of the Committee and will adopt the Rulebook of the Committee.

The Rulebook of Selection Committees

Once established, the Selection Committee is obliged to adopt the Rulebook that will determine all the details about inauguration, work and decision making process of the Committee. The guidelines and the template of such document have also been elaborated by the EU Support Team. It is determined that each Committee will act in line with the principles of legality, independency, efficiency and transparency. Also, it has been determined that the Committees will bring its final findings with a simple majority of votes.

Parallel to development of the drafts of basic documents and acts required for the first recruitment process upon new regulations, The EU Support Team provided all communicational, administrative and technical support to Head of the Agency and members of different committees during the process of selection of civil servants for the Agency. The final round of interviews was finished in December 2002 and the decision on who would be the first servants in the Agency was reached in early January 2003. The similar practice was followed during the process of appointment of three members for the Civil Service Board.

Development of basic documents and plans on training

The development of a general training strategy and the organization, conduction of the induction training for newly appointed staff of the Agency and remedial courses for civil servants, whose position might be endangered during the reviewing process, were primary tasks of the EU Support Unit related to the activities on education of civil servants.

Concept Paper on Training Needs Assessment was created to serve as a general guideline for future activities of employees of the CSA Department of Education, but also among servants in human resource management units of the institutions and their managerial staff. Strategic approach to this problematic was meant to help the Agency and client institutions to secure the rational use of the modest training resources, while achieving the expected results. First of all, the paper underlined the establishment of the Central Personnel Registry as one of the most important pre-conditions for any analyses related to training needs. Also, the proper job analysis, which should be set fort in the Rulebook of the Council of Ministers, is seen as a key link between civil service posts and the

competences given the servants obtaining those posts. Proficiently defined and functioning performance evaluation across the all state-level institutions was assessed as a next step to be made on improvement of the human resource management. Finally, it was absolutely clear that Department of Education within the Civil Service Agency will not be able to run any activities if the proper organizational structure for human resource management is not established and functioning. Such structure implicitly includes that each state-level institution shall establish a human resource section for executing all operational steps on further training, education and development of civil servants. The tasks of these sections (together with senior executive managers) range from supplying necessary input and data on job analysis, legal acts on tasks and responsibilities, to data on performance evaluation. In addition to detailed assessment of needs and activities to be performed in the future, the Concept Paper offers three practical tools that will help future servants in the Department for Education: a) Operational Effectiveness Survey, which may serve to assess what strategic managerial objectives are deemed important, b) Problem Analysis Interview, aimed as a potential help in identifying problems in job performing and whether they can be solved by training and c) The Scaled Comparison, serving to grade the importance of particular skills, competencies and values to be improved.

Induction training was organized and held in the last weeks of the EU Support Project, after the successful completion of the recruitment process for the Civil Service Agency staff. The crucial importance of a proper induction course for the key players in future regime of public administration reforms was not disputable at all. Head of the Agency and the experts of the EU Support Team tried to give an overall and detailed insight to newly appointed Agency staff on all aspects of recently introduced human resource management system in Bosnia and Herzegovina, with special emphasize on what is going to be their main competences. Being trained eight hours a day, in a productive atmosphere with extremely proactive participation, the recently employed civil servants were able to learn more about the efforts related to the reform of public administration in the Country, the Law on Civil Service and the role of the Civil Service Agency as a pioneer with regards changes in the area of human resource management. Also, they were granted with comprehensive and methodical lessons about the functions and competences of each Department within the Agency and their individual task and responsibilities.

"Remedial" courses

The existing civil servants in the state-level institution had never had a chance to pass the Public Exams, since this exam was never organized nor conducted for them since the Dayton Peace Agreement had been signed. Therefore, the EU Support Unit has designed the curriculum and the delivery planning for these courses (misfortunately named "remedial" – "subsequently" courses would be much proper term for it), aiming to train and educate existing civil servant on how to pass the general part of exam and obtain the required certificate. The Team prepared draft Decision on the Civil Service Training Program for the Public Exam, identifying the recipients and a timed plan for actual implementation.

Dispute resolution

This part of the EU Support Project was created in order to elaborate on important area of relation within state-level institutions – the possibility for resolution of all disputes within the civil service. It was designed to assist and set the foundation for Department of the Rights Protection within Civil Service Agency, but it was also meant to be an exercise that will support some aspects of reform in other institutions. The main elements of this part of the project contain the establishment of a Civil Service Board (including the preparation of the Board Rules of Procedures), management of the disciplinary proceedings (including the drafting of the Rulebook on the Disciplinary Responsibilities of Civil Servants and the establishment of Disciplinary Commissions) and the introduction of a special staff representatives in each institution, called "ombudspersons".

Civil Service Board

The first step of the EU Support Team in establishment of the Civil Service Board was to prepare and support the open public competition for three members of the Board, as required by the Law. The Team prepared the text of the Decision on Establishment of the Independent Selection Committee for the Members of the Board. This Decision was adopted by the Council of Ministers on 15 October 2002. After that point, the vacancy for the posts in the Board was announced and the EU Team directed its activities towards technical assistance to the Independent Selection Committee. Since the EU Project was designed to finish its mandate by the end of January 2003, it was absolutely clear that the members of the Board will not be appointed by this date or that they might start without having any assistance in a totally new environment, facing all the novelties prescribed by the Law. Therefore, it has been decided that the local legal expert of the Team prepares the draft Rules of the Procedures, which are going to be offered to the members of the Board for their consideration once they start their new duty. The Independent Selection Committee, supported both by Head of the Agency and the EU Team, finished its task before the end of January 2003. The Council of Ministers appointed the members of newly selected Board on the session from 20 February (this decision was published in Official Gazette no. 6/03 dated 17 March. The members of the Board were appointed for a period of four years. It was expected that the Board would start working approximately at the same time with the Civil Service Agency (there are significant complementary aspects between the two). Although, due to trivial technicalities the Board was not operable before June/July 2003.

Rules of Procedure of the Civil Service Board

This document is created in order to regulate the basic elements of organization, work and decision making process of the Board, based on principles of legality, human rights protection, independency, professional impartiality, efficiency and transparency. Sarajevo is determined as the Head Office of the Board. This body consists of three members appointed by the Council of Ministers on a proposal of Independent Selection Committee, for a period of four years, with a possibility of re-election. The Board has a President and a Secretary. The post of President rotates among members of the Board every four months, whereas the Council of Ministers nominates one of the existing civil servants as the Secretary, whose priority task is to administer professional and technical assistance to its members. The President of the Board is authorized to sign all decisions of the Board and represent them in public. The main duty of the Board, regulated by the Law, is to reach final decisions in the second-degree process (the part relating to the main functions and competences of this body is thoroughly explained in the Chapter on the Law). At this point, it is important to emphasize that each decision reached by the Board has to be issued in a written form, based on legal regulations, contain instruction on legal remedy and has to be delivered to the proponent within the eight days from a day of its reaching. In addition, the Rules of Procedures regulate the issue related to the documentation of the Board, such as: minutes from the sessions, decisions register and archive. The process in which the Board held sessions and made decisions, as well as the type of these decisions, is regulated in the Rulebook on the Disciplinary Responsibility of Civil Servants.

The Rulebook on the Disciplinary Responsibility of Civil Servants

The Law stipulates that breaches of official duties shall be determined by further By-laws, failing to regulate which body is in charge of adoption of such By-laws. After several rounds of consultations among representatives of Council of Ministers, the newly appointed Head of the Agency and the representatives of the EU Support Team, it was agreed that the legal expert from the EU Team would prepare the first Draft of the Rulebook on the Disciplinary Responsibilities on behalf of the Agency. Upon its completion, the Draft will be approved by Head of the Agency and, afterwards, reviewed and adopted by the Council of Ministers. The legal reasoning for such action has been found in the Law on Council of Ministers, according to which the Council is authorized to adopt decisions, conclusions, information and programs, by exercising its right and duties and the Final Provisions of

the Law on Civil Service which envisage the agency for Civil Service as the body in charge of the implementation of the Law.

This Rulebook is a combination of the best legal traditions and achievements in the areas of administrative and criminal postulates and procedures. The general subjects of this Act are: disciplinary responsibility, disciplinary sanctions, disciplinary procedures and the execution of the disciplinary measures. The main failure of the Law has been corrected in this Rulebook by determining exactly which disciplinary sanctions can be imposed on different breaches of the discipline. In a general sense, the Act determines the basic principles, such as presumption of innocence, in dubio pro reo, ne bis in idem, principle of publicity of the disciplinary procedure, principle of urgency and rationality of disciplinary procedure and the right to defense and appeal. The obsolescence of the initiation and undertaking of the disciplinary proceedings, as well as the execution of disciplinary measures is also regulated. The first and the second-degree procedures are thoroughly elaborated, including its entire course – from its initiation, forming of the disciplinary commissions, responsibilities of the ombudsperson, the defender, and public debate to the types of the decisions and their content. Also, the Rulebook prescribes the execution of the disciplinary measures, including the time of the execution and the entry of the measure in the personal files of the civil servants.

Ombudspersons

Launching the election of the staff ombudsperson in each institution and determining its role in more specific manner was a part of the EU Projects' Terms of References. The plans on electoral system and practical organization of election, as well as initial guidelines for these servants with specific focus on alternative conflict resolution techniques were prepared, but the EU Support Unit never completed this part of the project. There were several reasons for the incompleteness of the project, and the prevailing were: lack of interest of the user institutions, the delay in finalizing the recruitment process of the CS Agency staff and a rather short period of time (the Project was organized only for the period of six months) for undertaking and implementing too many activities foreseen in the Terms of References.

The Agency after final establishment

Although one can say that the Agency was formally established after the adoption of the Law and appointment of the first Head of the Agency, it is clear that it can become operational only after its stuff is recruited. After being selected and briefly trained on their new duties, 12 new members of the Agency (three positions remained vacant due to lack of knowledge, abilities and professional capacities among candidates) have taken an oath on the inaugural ceremony organized at the very beginning of February 2003. The host of the ceremony was Chair of the Council of Ministers and it was attended by all representatives of leading International Organizations and Embassies in Bosnia and Herzegovina (including leadership of UN Agencies, Office of the High Representative, OSCE, European Commission, American Embassy and the embassies of European Union member countries). The High Representative for Bosnia and Herzegovina made a solemn speech aimed to encourage Head of the Agency and its newly appointed staff in taking over numerous responsibilities and tasks as it was envisaged.

The start of the new Agency was not quite welcomed among employees of the state-level institutions. There are several reasons for such attitude, but the main one is a simple fact that the process of review of all posts in the civil service, which is to be initiated, led and fulfilled by the Agency, has begun. According to the provisions set in the Law, it has been determined that a legal status of all employees in the existing institutions shall remain the same on the day this Law enters

into force, until the entire review process of their positions is completed by the Agency[59]. In addition, the new staff is facing a huge scale of duties in order to establish proper practice of running daily tasks and responsibilities (to review and, if necessary, amend legal documents prepared by the EU Support Team, to prepare missing by-laws, to start filling data into the Central Registry, to create a final design of the Agency's' Web Site and to handle quite number of requests for recruitment or training). All these efforts and achievements of the Agency for Civil Service can be better understood if we take a look at some activities by departments within the Agency.

Department for Recruitment

During the period of over two years since they have entered the office, civil servants in this Department were required to prepare a set of legal documents and offer it for adoption to the Council of Ministers or to Head of the Agency. Decision on the Conduct and Program for the Public and Special Examination for the persons to be Appointed as Civil Servants in the Institutions of Bosnia and Herzegovina, adopted by the Council of Ministers in June 2003, defined substance and conditions for all candidates for the posts in state-level civil service. The provisions on content and evaluation of the general exam, specialized exam and interview were rather similar to those adopted for the recruitment of the Agency staff. The novelty in comparison to the earlier adopted rules is related to exemptions from general exam, which are granted to individuals who already passed similar public exam, bar exam or to distinguished legal scientist with an academic title of PhDs. The Act introduced provisions on so called reserve list, determining that all successful candidates (except the one who is appointed) will be kept on such list until the appointed candidate finishes its probation period. In the case that selected and appointed candidate leaves the post during the probation period or receives a negative performance appraisal after 12 months, the reserve list is activated and another candidate from this list shall be appointed. Program for Participation in the Public Examination for the persons to be Appointed as Civil Servants in the Institutions of Bosnia and Herzegovina was adopted by Head of the Agency in summer 2003, thoroughly determining areas, subject-matters and literature of public exams. Instruction on Internal and External Transfers of Civil Servants in the Institutions of Bosnia and Herzegovina falls into category of legal sub-acts prepared by Recruitment Department and signed by Head of the Agency. It is a detailed elaboration of the recruitment system of transfers within institutions, introduced in general frames through the Law.

Of course, the organization and realization of the open public exams remains a major task of this Department. For example, the Recruitment Department published 54 vacancies for the open public competition during 2004, followed by appointment of 212 non-managerial and 47 managerial civil servants. Over 1.600 candidates applied for these positions (432 of them passed the general exam). In addition, 13 decisions on internal and 20 on external transfer were issued, as well as 23 decisions on dismissal of civil servants. The Department was facing 16 appeals regarding the public competition process, completed before the Civil Service Board by the final decision in favor of the Agency. It is a general opinion that the Recruitment Department, consisting of only two civil servants and one employee, is successfully facing most of the challenges, controlling basic functions and obligations given to it.

Department of the Rights Protection

Drafting of a range of by-laws required by the Law is significant task of this Department. Among those legal documents prepared by the Department of the Rights Protection, the most significant are two acts adopted in Spring 2004: Decision on Categories Within Civil Service Posts in the Institutions of Bosnia and Herzegovina and the Rulebook on the Procedure for Assessing the Performance and Promotion of Civil Servants in the Institutions of Bosnia and Herzegovina. The former document, adopted by the Council of Ministers as yet another requirement of the Law, introduced three

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[59] The general rules of revision are determined by Articles 64 - 67 of the Law, including the steps within reviewing process, performance evaluation with regards to this process, process of termination of service, right to severance package of dismissed employees and right to appeal.

categories within one post in the civil service. Also, more elaborated bases for promotion, depending on working experience and positive evaluation appraisals, are set in this document. The latter document, signed by Head of the Agency, brings more clarifications into a sensitive area of personal evaluations and promotions within civil service. Performance appraisal reports that are going to be submitted annually have to underline the level of the quality, efficiency and competence of performed duty, professional development of the civil servant, as well as devotedness and diligence during performance. The Rulebook foresees four evaluation grades: non-satisfactory, satisfactory, good and very good. Rating system based on evaluation grades and working experience endorses an opportunity for a civil servant to be promoted. Two negative evaluation grades will lead to dismissal.

The most frequent question raised in relation to this Department is whether it is able to run reviewing process on behalf of the Agency in a successful and professional manner. As it was mentioned above, the revision of all posts within civil service, as ordered by the Law, was one of the most intriguing tasks of the Agency. During the last two years almost 1.000 civil servants in about 75% of the state-level institutions were included in this process. Some facts and conclusions from the findings and reports of the Agency dedicated to revision process are quite interesting. For example, 54 employees, in positions of civil servants, were find to be employed in contradiction with the existing legislation and were subject to dismissal. Almost 20% of personnel files of civil servants were incomplete, some of the documents proving the general requirements for the service. The 30-day deadline is given to those servants to complete their files or to face dismissal. Interesting findings regarding the knowledge of foreign languages and computer literacy where required by job descriptions were made public – over 50% of civil servants do not speak any foreign language and significant number of them does not have basic PC skills. These findings lead to a conclusion adopted by the Council of Ministers, and upon proposal by the Agency, that the Ministry of Foreign Affairs would prepare the proposal of Decision on uniform conditions for evaluation of knowledge of foreign languages, when required by the rules of internal organization and job descriptions. It is also concluded that the knowledge of information technology and foreign languages has to be a subject of more comprehensive activities on education and professional development of civil servants.

Fortunately, the activities relating to the disciplinary proceedings were not as demanding as it was predicted. Since it was established the Agency conducted only five disciplinary processes. The only conclusion that can be drawn after the analysis of these cases is the following: the Agency is capable of caring its responsibilities with regards to disciplinary matters and it lead those processes in line with the Law. At present, one of the cases is subject to the second-degree process before the Civil Service Board. The low number of officially processed disputes among civil servants might be one of the reasons why the activities of dispute resolution segment, including election and support to ombudspersons in each institution are behind schedule.

Department of Education

Almost one hundred different seminars, courses, round-tables and trainings, which included over 1.000 participants, were organized or mediated by this Department since it was established. These activities are based on prior analyses made upon findings of several surveys conducted among user-institutions. According to those findings, the most desirable and needed areas relevant to the improved level of education among civil servant are building of performance capacity of civil servants in public administration, human resource management in state-level institutions and training on public exams for those civil servants who were already in service when the Law was adopted and had no prior opportunity to pass the required exams. Additional analyses show that the activities, such as harmonization of legislation, creation and running of the projects, education on the EU standards in public administration, foreign languages and development of computer skills are priorities in coming period. This Department has developed very strong relations of partnership with domestic and international organizations, using all opportunities for involvement in programs and opportunities for further education of civil servants. The most recent examples of such proactive partnership are developments of programs for civil servants elaborated and/or sponsored by local universities, several embassies in Bosnia and Herzegovina and European Commission. The latter set aside one million

euros for a range of educational activities within public administration in Bosnia and Herzegovina, including professional development for civil servants of Education Department and the post-graduate studies for employees in public administration on all levels of government in Bosnia and Herzegovina. At present, 29 different seminars, courses, workshops and scholarships are at disposal to the civil servants in public administration of Bosnia and Herzegovina.

Information Department

In the meantime, this Department was renamed into Information Technology Unit. It consists of only one long-term employee and one additional supporter engaged through the special service agreement, even though it was planned to organize this cluster with three employees – civil servants (see organigram of the Agency). Unfortunately, the number of IT experts in Bosnia and Herzegovina is quite limited and salaries in civil service are not so attractive. This might be one of the reasons why the Central Registry of institutions in Bosnia and Herzegovina is still not completed (data on civil servants from almost 60% of institutions are still missing). This is one of the most obvious shortcomings of the Agency's performance. Still, the Agency's Web Site, regularly administrated and updated is a significant assistance to all activities of the Agency. Only in 2004, over 130 000 visitors to this Web Site were registered. Also, it is possible for all interested individuals to receive periodic newsletters via e-mail (over 3 000 requests submitted so far). The Unit also developed help desk service as a simple and fast resource of information. All users of this service can raise any questions relating to administrative procedures within Agency. Online answers to those questions are permanently publicized on the Web Site of the Agency. (see: Appendix 3 – Home Page of CSA).

To summarize, the Agency is caring most of its activities and providing most of its services in professional and appropriate manner. It has developed a very good cooperation with similar agencies in two Entities of Bosnia and Herzegovina, as well as with many local and international organizations. Its role of a main coordinator in a sphere of human resource management within state-level institutions is not disputable. Findings of an expert revision team for analyses of implementation of the Law and work of the Agency, initiated in 2004 by the Office of High Representative for Bosnia and Herzegovina, and financially supported by USAID (United States Agency for International Development), are absolutely in line with this conclusion. The expert revision evaluated the work of the Agency as very good and significant, setting a number of proposals that should help the improvement of Agency's work and implementation of the Law. The following lines represent a sort of an attempt to identify the obstacles in further human resource management and propose some of potential solutions to this problem.

V. Obstacles to good management

Some of the most obvious obstacles in further reforms of human resource management in Bosnia and Herzegovina are: the legacy of the former systems, constitutional organization of the country, corruption, improper behavior of political parties, lack of transparency, accountability and efficiency of administrative structures, lack of know-how and lack of interest.

The legacy of the former systems

Both the Communist system and nationalist parties have left their mark on public administration. Instead of clear separation of politics and administration, the two were integrally connected. As a result, the creation of a depoliticised and professional civil service involves not just a structural change, but also a change in the overall concept of public administration.

Complex and unwieldy organizational arrangements

Bosnia and Herzegovina probably has the most complicated organizational structure in the world, compared to its size, population and economic power. Four layers of government (State – two Entities – 10 Cantons in on of the Entities – almost 140 municipalities and four cities) are far too expensive for traditionally underdeveloped and after the last war totally pauperized country. Over half the budget is used to maintain oversized administration. Only one fact – the country has over 150 Ministers on three levels of government – is a sufficient index of an absurd situation. Unfortunately, the political forces opposing any efforts put on constitutional changes with regards to the organization of the state (and simultaneously working on final dissolution of Bosnia and Herzegovina as a state) are too strong and it is questionable not only what is going to be achieved through initiated reforms, but whether the sole survival of the country is possible. International Community is largely seen as a leading force that is going to support redefinition of Dayton Peace Agreement and assist moderate, citizen-oriented forces in building self-sustainable society.

Corruption

Since the war has ended, half of the leadership of nationalist parties is being subjected to different criminal proceeding – from accusations for war crimes to indictments for a range of "ordinary" criminal acts of use of office for personal or private gain. Lately, quite a number of high-ranking civil servants faced accusations and initiation of criminal proceedings against them. It is the fact that the employees of most public administrative bodies are underpaid, searching for additional, illegal means by which they can supplement their incomes. Still, such practice is totally unacceptable and has to be nipped in the bud.

Improper Involvement of Political Parties

The civil servants in this country have been taught for decades to "go and seek for an opinion" from central bodies of political parties (there was even a joke launched, quoting: "I will tell you my opinion as soon as I get it from the Central Committee"). The practice of overall control of social trends has not been changed with introduction of parliamentary, multiparty system. Even though it is not easy to find an appropriate measure to which extent political parties and other organized communities, such as the religious ones, may be involved, it is obvious that civil servants need more space and independence in developing and managing their human and professional potentials.

Lack of transparency, accountability and efficiency of administrative structures

Lack of cost effectiveness, inefficient, ineffective, and frustrating delivery of services are among the characteristics of the existing system. For the money spent on public administration, little value is transferred to the citizens. The citizen is often required to make the process easy for the civil servant rather than the other way around. For example, the complex and lengthy registration process discourages entrepreneurship and business establishment. In addition, administration tends to hide information about its activities from the public, funds spent or benefits gained. The whole range of legal acts, such as Law on Civil Service, Freedom of Access to Information Act or Law on Conflict of Interest are adopted to change this practice. Implementation of these acts will determine whether some of future reports on public sector in Bosnia and Herzegovina will differ from this sub-title.

Lack of know-how and lack of interest

What is, in fact, human resource management? Agency, what Agency? These are some of the question raised by individuals who are in position to manage resources in administration. In reality, there is a general lack of knowledge, even about the elements of human resource management. The country has very few experts in this field and they are rarely among civil servants. In addition, general apathy is prevailing among many civil servants. The fact that civil servants in many institutions never elected their ombudspersons and never replied t the relevant administrative act issued by the Agency it proves a high level of lack of basic interest for developments within public administration. Direct

steps relevant to the education of managerial civil servants (for the beginning) and organization of post-graduate studies for coming generations are important and needed steps forward. One of the conclusions issued by team of experts who reviewed human resources within public administration of the institutions in Bosnia and Herzegovina quotes: "Civil servants expect to receive prescriptions for all aspects of their work through the law. Initiatives to develop creative solutions within the existing legislative framework are very sporadic. Instead, the employees are adopting the role of passive implementers of laws and by-laws. This paradigm needs to be shifted, the sooner the better, if people are to be able to tackle the challenges they face." [60]

VI. Next Steps

Effective legislative reform relies upon genuine enforcement and law implementation through the adoption of the by-laws, revised procedures and policies and general change of practice. It is important to develop an understanding of the provisions of new or amended legislation by public administration employees and citizens to ensure that the community is being served impartially, fairly and properly. In addition to the further legislative efforts and better implementation of adopted solutions, any reform will directly depend on actual development of human resources and potentials. Further education and extensive training of the civil servants are the genuine ways for overcoming numerous obstacles in development of the new civil service in Bosnia and Herzegovina.

Establishment of Rule of Law

All three branches of the power in Bosnia and Herzegovina (legislative, executive and judicial) are experiencing radical changes, aimed at final establishment of the rule of law principle. Numerous reports on situation in the country underline a fundamental lack of compliance with this principle. Inconsistent legislation and general lack of comprehensive and consistent enforcement of existing legislation has to be overcome in future. Also, professional behavior and protection of constitutional and legal system that is entrusted to civil servants is an important element of establishment of this principle.

Proactive citizenry, NGO sector and media

There was a lot of criticism directed to representatives of government and administration in this study. It is not likely to expect that they will change their attitude without extensive pressure coming from civil society. Only several media in the country accepted importance of their role with full understanding of importance of their timely, unbiased and investigative reporting. Also, there are very few politically engaged NGOs that are spreading and increasing awareness among citizens and demanding actions, related to overcoming of a complex and serious political and economical situation in the country. In addition, unionism is absolutely underdeveloped (there is no Union for civil servants on state level), representing one of the worst legacies of previous system. It is no wonder that in such situation there is neither proactive citizenry nor strong and resolute voices demanding changes.

Further development of the Agency

Of course, it is absolutely idealistic to believe that the group of 12-13 people can carry out reforms in human resource management by itself. However, this group will remain one of the most important elements of changes. Therefore, it is absolutely crucial that the Agency is being developed both in qualitative and quantitative sense. Now, when the process of development of numerous by-laws is coming to an end and when civil servants in the Agency are entering the final phase of the activities on post revision or data entry for all institutions, it is a perfect moment for elaboration of the plans and strategies on further internal development.

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[60] Interim report of the Project "System Review of Public Administration Institutions in Bosnia and Herzegovina", supported by European Delegation

Development of human resource management in institutions

It has already been underlined that the institutions desperately need skilled human resources. This is the battle that must be won. It is also one of the future tasks that are accorded high priority by the Agency. It might start with explanation and practical exercises on team building and leadership. If it is true that "team building is the process of removing obstacles that prevent the team from working effectively and planning how to improve the overall performance of the team,"[61] then it must be a solid base to start changes in human resource management of the institutions. Basic lessons on leadership are definitely going to be useful for managerial civil servants, who had rare or none at all opportunities to learn such lessons in the old system of education. To explain the basis of management to the civil servants (as a process of achieving goals through proper planning, organizing and leading) is precondition in any further attempts on reform of a human resource management.

Internal and External Communication and Cooperation

Further steps regarding the reform of human resource management are inconceivable without development of communicational skills and practices of external cooperation. In a part of a paper dedicated to development and training it is written how much external cooperation can support the civil service development. This exercise has to be repeated throughout institutions, especially when we are talking about internal communication. The lack of basic communication (for example, between the Minister and his/her Deputy) was noticed for so many times in the state-level institutions. New services and opportunities developed by the Information Technology Unit of the Agency is only one segment of it. Some institutions have to start from the beginning. Perhaps, the initiation of regular staff meetings and organization of basic flow of information could be a solid foundation for further building of communicational skills and practices for further development of external communication and cooperation.

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[61] Managing People – ACCA, "Foulks Lynch" Publications – page 48

CHAPTER SEVEN

CONSOLIDATING STATE LEGITIMACY THROUGH CITIZEN ENGAGEMENT IN POST-COMMUNIST TRANSITION: AN INTRODUCTION TO THE CHAPTER ON CENTRAL AND EASTERN EUROPE

Roxana Zyman[62]
(with contributions from Heather Hilsinger)[63]

Introduction

Public participation and inclusive decision making are among the critical elements of good governance, and are especially fundamental for the recovery of countries emerging from conflict situations. Citizen engagement in policy making and the public service provides space for diverse societal values and interests to interact. It enables people to come together to debate, discuss, associate, and seek to influence broader society and the formal political processes. These public service efforts and values help facilitate dialogue throughout society and provide community leadership which are an important means to build peace and preclude future conflicts. To promote citizen engagement, public service values in post-conflict countries need to be structured in an inclusive, transparent, and comprehensive way. This process can be influenced by a range of both internal and external factors.

Strengthening local capacities, both of governments and communities, is a concrete entry point for support agencies to engage with local stakeholders on conflict prevention and recovery. Strong and just institutions, strengthened local organizations, increased awareness, networks and political will are all crucial in supporting economic, social and physical development of communities- and in securing peace that is made and sustained by local communities and public service institutions themselves.

Citizen engagement in public service holds a unique potential to support sustainable development and peace. Experiences from different national and international actors show how inclusive decision-making and multi-stakeholder consensus have not only strengthened governance but have also been essential in furthering reconciliation and promoting opportunities for positive change towards peace. However, the impact of such contributions is contingent upon the societal dynamics prevailing within countries as well as the historical contexts of conflict.

The following case study provides an analysis of citizen engagement in Romania, 17 years after the collapse of a brutal communist regime. Within the broader context of attempts at consolidating state legitimacy through citizen engagement in transition, the case study examines transparency, accountability and related governance issues.

The first part of the paper refers to the nature and level of citizen involvement in governance processes in Central and Eastern Europe (CEE). The CEE political culture is experiencing a very dynamic process of reconstruction based on a mix of mentalities inherited from communism, ongoing internalization of European Union (EU) norms as well as other values and norms. Some CEE societies enjoyed a pre-transitional phase which prepared the ground for establishing a democratic society sooner. Although basic EU legislation on public participation has been adopted, actual public participation and citizen engagement in governance processes differ across EU member states and candidate countries.

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The second part of the paper focuses on the case of Romania and the development of its democratic institutions after a violent "revolution". The paper addresses some of the actions of external factors and sectors (primarily globalization forces, the European Union enlargement and foreign donors) and internal factors and players (civil society organizations) in explaining the level of citizen engagement.

According to the case study, the current transformation of the legal framework is ahead of the change in Romanian mentalities. The cultural remnants of the communist dictatorship are still significant for most Romanian citizens. Although a considerable part of the population has started to develop participant orientations, most citizens do not participate in the governance processes as a result of these mentalities: lack of trust in public institutions, cynicism along with unfulfilled high expectations of the populace (impatient to quickly see in Romania the level of Western European public administration development), uneven access to resources and overwhelming individual preoccupation with daily socio-economic problems, and poor knowledge of their rights and fragile democratic skills. Since Romanians' mentalities were formed to expect centralized political decisions concerning all aspects and levels of society, many individuals are still waiting for signals regarding various transformations from the political class (and tend to support authoritarian leaders), particularly when other factors are in favor of this behavior.

There is further room for both the government and civil society organizations to play a significant role in building inclusive governance. Advancing opportunities for citizen engagement will have to continue rapidly in order to have a notable positive impact on policy formulation, effective policy implementation and social justice.

CASE STUDY: ROMANIA

Executive summary

An examination of the challenges that post-communist societies faced in consolidating state legitimacy through citizen engagement should offer lessons to post-conflict societies regarding how to proceed in managing profound disruptions and transformations that frequently accompany transitions from closed to open systems, particularly, systems characterized by diversity. This paper accordingly proceeds from the assumption that the experience of post-communist societies in managing the transition to democracy would be inspiring for states and societies in post-conflict situations. Within the broader context of efforts at consolidating state legitimacy through citizen engagement in periods of transition, the paper in the succeeding paragraphs focuses on transparency, accountability and related governance issues. It discusses actual approaches that were applied in Central and Eastern Europe, in particular in Romania, and lessons that were learned (what worked, what failed, and most important, why?) in connection with engaging citizens in governance.

The first part of this paper refers to the nature and level of citizen involvement in governance processes in Central and Eastern Europe (CEE). As noted in the paper, the CEE political culture is undergoing a very dynamic process of reconstruction, based on a mix of mentalities inherited from communism, contemporary internalization of European Union (EU) norms as well as other values and norms. A few CEE societies went through a pre-transitional phase which prepared the ground for, and facilitated, the establishment of a democratic society. Although basic EU legislation on public participation has been adopted, actual public participation and citizen engagement in governance processes differ across EU member states and candidate countries.

In the second part, the paper focuses on the case of Romania, 17 years after the sudden end of a brutal communist regime. The case of Romania is worthy of note for a number of reasons. Although it has many similarities with other post-communist countries, its transition began after a violent "revolution" and thus the development of its democratic institutions has been more difficult. The paper addresses some of the actions of external factors and actors (primarily globalization forces, the European Union

enlargement and foreign donors) and internal factors and players (the Government and relevant public policies, the legal, political and social framework, citizenry and civil society organizations) in explaining the level of citizen engagement.

In conclusion, the paper explains that notwithstanding the many achievements that occurred in Romania after the fall of Communism (e.g. bilateral and multilateral donors' support for the enactment and implementation of relevant laws and the development of civil society organizations, the national legislation in favor of citizen engagement, creation of institutions and processes to facilitate participatory governance, strengthened capacity of the public service and some improvements in the delivery of services, the increasing openness of the Romanian Government leaders to partner with civil society, and activities of non-governmental organizations in promoting popular participation), most Romanian citizens do not actively participate in governance processes.

Furthermore, the current transformation of the legal framework is ahead of the change in Romanian mentalities. The cultural legacies of the communist dictatorship are still significant for most Romanian citizens. Although an increasing proportion of the population has started to develop participant orientations, most citizens do not participate in the governance processes as a result of these mentalities: lack of trust in public institutions, cynicism along with unfulfilled high expectations of the populace (As well as the impatience with the pace at which Romania is moving compared to the stage reached by Western European public administration), uneven access to resources, and overwhelming individual preoccupation with daily survival needs and socio-economic problems, and inadequate knowledge of civic rights and of how a democracy works. Since Romanians' mentalities were formed to expect centralized political decisions concerning all aspects of life, many individuals are still waiting for signals regarding various transformations from the political class (and tend to support authoritarian leaders), particularly when other factors are in favor of this mindset.

There is certainly room for both the Government and civil society organizations to play a significant role in promoting inclusive governance. Advancing opportunities for citizen engagement will have to continue in order to have a notable and positive impact on policy formulation and implementation, while at the same time, increasing policy effectiveness and advancing the cause of social justice.

Introduction

This paper proceeds from the assumption that the increased engagement of citizens in governance processes will consolidate state legitimacy and will ultimately promote lasting peace, through providing a conducive playing field for all actors to engage in development.

The rationale for choosing this topic (consolidating legitimacy through citizen engagement) lies in the experience of Central and Eastern Europe after the transition from communism to democracy. The profound disruptions and transformations of the post-communist societies suggest lessons that might prove relevant and useful to states and societies in post-conflict situations. The paper focuses on transparency and accountability and related governance issues, in the broader context of discussing the consolidation of state legitimacy through citizen engagement in transition.

Some post-conflict governments generally come to power within a context characterized by a mix of trust, cynicism, and indifference by various sections of society. Depending on how the governments behave and on its achievements while in office, the circle of mistrust (or indifference) may compress or widen.[64] The establishment of credible governance and public administration institutions and systems is a critical determinant of sustainable recovery, peace, and development. An important challenge that political leaders as well as development partners face in post-conflict and crisis situations is not only how to restore the public service to its former state, but especially how to restructure it in such an inclusive, transparent, and comprehensive way that it incorporates or upholds

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[64] Aide Memoire for the Expert Group Meeting on "Public Service Capacity-Building for Post-Conflict Recovery and Development", Vienna, June 2007.

the traditional and desirable public service values. More open and responsive forms of administration should be encouraged in order to create and sustain a transformed public service that will make a contribution to sustainable peace and to avoid a slide back into conflict and violence.[65]

Furthermore, in both developing and developed countries, what politicians can do to establish a stronger relationship of trust between citizens and government is a recurring topic among government officials[66]. Yet, as a result of a cluster of political, economic, and social and cultural circumstances unique to post-communist transformation, the issues concerning popular participation are more complex in Central and Eastern Europe (CEE) than in established democracies.

The paper seeks, among other things, to explore and discuss challenges and successes encountered in rebuilding trust in government and engaging citizens in the governance process during the ongoing post-communist transition in the CEE, following profound disruptions in certain countries in the region and against the backdrop of the deep transformation taking place in societies. It will also attempt to discuss the role of external and internal actors in consolidating state legitimacy through citizen engagement, and to share the successful experiences and lessons learned, by focusing on the case of post-communist Romania
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Amongst other issues, the paper poses a few critical questions: e.g., what specific measures have been taken in order to ensure transparency and accountability in the post-communist public service in Romania? What new systems of information dissemination have been designed and operated to promote transparency and accountability? What are the options, challenges and advantages of integrating a multi-ethnic society into governance processes?

One significant constraint of the paper is the dynamic of the ongoing rapid socio-political change, particularly, the fact that it is difficult and may be too early to offer an accurate assessment of the impact of citizens on governmental decisions in Central and Eastern Europe. With this limitation in mind, the paper includes analyses a few of the approaches and policy processes adopted in CEE, in particular in Romania, and of lessons learned (what worked, what failed and why?) in connection with engaging citizens in governance.

I.   Citizen Engagement in Central and Eastern Europe

The governance challenges facing the CEE countries from 1990 are different from those encountered by states and societies in other regions. This is due not only to the unique nature of post-communist transitions, but also to cultural factors peculiar to the CEE.

Across the CEE, 'transition' has been a complex mix of social, political, and economic transformations of erstwhile communist societies – societies moving speedily along difficult, strange, and twisting paths to modernity and democracy. The word 'transition' has been largely understood by political leaders and analysts as the abolition of a communist regime and the construction of a democratic socio-political order. The social meaning has been identified with the emergence of citizenship in the classic sense, that is, citizenship with all rights and freedoms, as well as obligations and responsibilities. Citizens in democratic societies enjoy the right to development, to associative life, and to full participation on matters relating to the transformation of institutional landscape[67].

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65 Ibid.

66 OECD ministerial conference on "Strengthening Trust in Government: What Role for Government in the 21st Century",
        Rotterdam, November 2005,
http://www.oecd.org/document/11/0,2340,en_2649_34275_35672075_1_1_1_1,00.html

       67 Ciolan, L. (2006), "Towards a Culture of Quality Policymaking in Transition Countries. The Case of Education",
        Center For Policy Studies, http://pdc.ceu.hu/archive/00002799/01/ciolan_f2.pdf

The economic connotation of 'transition' is frequently equated with building a functional market economy. To this end, the European Union (EU) applicant countries have put a lot of efforts in implementing the Acquis Communautaire[68] mandatory for the new EU members and candidate countries. However, 'transition' goes beyond building stable democratic institutions, promoting the rule of law, developing a market economy and fostering economic growth.

The CEE 'political culture', in particular, is still experiencing a very dynamic process of reconstruction based on a combination of mentalities inherited from communism, ongoing internalization of EU norms, as well as other values and norms. The socio-cultural environment of transition has an impact on the transition in each country of the region, making each country's post-communist transition unique. Religion is one of the core factors that can explain why some CEE countries have had more success in the formation of a structured civil society during the communist regime. In some countries (particularly in Poland), the role of religion in strengthening horizontal linkages among citizens has been very strong. While the Polish church has served as a major catalyst for horizontal social capital, the Orthodox Church in Romania, for example, has not played this role.

While taking a broad and general view of the whole Central and Eastern Europe in discourse on post-communist governance reform, it is essential to be mindful of 'variations across the region'. CEE governance reform experience is thus characterized by diversity – especially, in the way people, communities and societies react to the new opportunities brought by the transition and the core players' approaches to citizen engagement. The CEE countries differ from one another due largely to the differences in economic, social and political starting points, in paces and sequences of reforms, and in local cultural traditions, including civic engagement traditions. Nearly all the realities presented in this paper can be found in the whole region at various levels of development – overall. Still, in contrast to Central Europe with high rates of development, the economies of countries in the Balkans are relatively under-developed. Countries in transition share a common policy agenda but the challenges facing them are far from similar. Thus, many of the policies already implemented in Poland or Hungary a few years ago are still being debated in Romania and Bulgaria.

Thus, transition processes are at different stages in the CEE and they are also perceived differently in each country depending on the local culture, the level of development, and the level of EU integration. Transition ended, according to a number EU *candidate* countries, including Romania - after the achievement of a functional market economy and a stable democracy. Yet by claiming that the transition was still ongoing, some post-communist countries that were already EU members have succeeded in keeping foreign aid resources flowing into their economies.[69] In fact, 'the end of the transition' processes from communist to post-communist societies would mean reaching a level of development, stability, and wealth which changes the social perceptions and representations of people about the times they live.[70]

Further, foreign donors (international organizations, Western governments and foundations) have diverse aid objectives: in the Central European post-communist countries some donors aim to boost participatory governance; in the Balkans, particularly in the Western Balkans, in addition to having to put more effort in promoting civic participation (due to lower level of citizen engagement in this sub-region), they also focus on inter-communal relations and aim to reduce the likelihood of violent ethnic conflict.

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68 The Acquis Communautaire is the entire body of European laws. It comprises all the treaties, regulations and directives passed by the European institutions as well as judgements laid down by the European Court of Justice. The candidate countries must adopt, implement and enforce all the Acquis before they join the European Union. In addition to changing national laws, this sometimes means that they must create or change the necessary administrative or judicial bodies which oversee the legislation.

69 De Vera, J., Zyman, R. (2006), "Participatory Governance in Post-communist Transition", UNDESA Working Paper, New York.

70 Ciolan, L., "Towards a Culture of Quality Policymaking in Transition Countries. The Case of Education", Center For Policy Studies, 2006, http://pdc.ceu.hu/archive/00002799/01/ciolan_f2.pdf

Some of the donors, especially international and regional organizations have addressed the specific needs of each country in the region. Among these, the United Nations Development Programme (UNDP) has attempted to build upon the success of civil society organizations (CSOs) by providing technical support and capacity development, undertaking an analysis of civil society organizations within specific countries, strengthening the ability of UNDP country offices to help citizens build relations with the state, and stressing the complementary role that civil society can play vis-à-vis the government.[71]

From the EU perspective, governance must be participatory. The European Commission set up its own concept of governance in the "*White Paper on European Governance*", in which the term "European Governance" refers to the rules, processes and behavior patterns that affect the way in which powers are exercised at European level, particularly with regard to openness, participation, accountability, effectiveness, and coherence. Improving governance in the European Union compels concerted action by all the European institutions, current and future EU Member States, regional and local authorities, and civil society.[72] In all the new EU member states from CEE as well as the EU candidate countries, the European Union provided funds - the Cohesion Fund and the pre-accession funds (ISPA, SAPARD) - to help the development of the region and give citizens the opportunity to get involved in this process. EU and national legislations provide opportunities for public participation with regards to using these funds for social, economic or environmental projects from the programming to the impact assessment stage. Although basic EU legislation on public participation considering these issues is already adopted, actual public participation standards differ across EU member states and candidate countries. National legislation often does not provide citizens with access to timely and sufficient information, nor does it specify clear tools for participation.[73]

Public confidence in government in CEE has risen over the years, even as there is increasing exposure of lapses in integrity, ethics, and professional conduct in the public service. All societies in post-communist transition are generally dissatisfied with the quality of 'public administration' and of the political class. All of the CEE countries are still struggling with widespread capacity problems in public administration. Citizens perceive public administration officials as being incapable of providing satisfactory service, as being liable to abuse their authority and to act only when offered gratifications or other forms of incentive (e.g. higher power status). All the countries in the region have underpaid civil servants that routinely vent their grievances on and mistreat citizens. There is an almost total absence of formal institutions of accountability in the civil service – except those making bureaucrats accountable to the upper hierarchy.[74] According to Mungiu-Pippidi, the higher the degree of communization the greater would be the tendency towards citizen abuse and corruption. In other words, the more intrusive the communist regime, the greater was the arbitrary and unaccountable power of its agents, such as representatives of the administration.[75]

Social dialogue: formal provisions and the realities

After decades of hyper-centralization and authoritarianism, the CEE countries have had to emphasize the rule of law, strengthen the capacity of public institutions, and rebuild trust in government in a developing market environment. In some CEE countries this has happened faster than in others, as some of the countries in the region had a 'pre-transitional phase'. In Poland, for instance, such a pre-transitional phase can be identified with the emergence of the Solidarity movement. An independent self-governing trade union, "Solidarity", started in 1980 to play an important role in preparing the

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71 United Nations Development Programme,
http://europeandcis.undp.org/?menu=p_subpractice&SubPracticeID=101
The paper uses the United Nations definition of civil society, understood as "associations of citizens (outside their families, friends and businesses) entered into voluntarily to advance their interests, ideas and ideologies". The term does not include profit-making activity (the private sector) or governing (the public sector).
72 http://ec.europa.eu/, "Governance in the EU. A White Paper"
73 The CEE Bankwatch Network, http://www.bankwatch.org/project.shtml?s=460581
74 See Mungiu-Pippidi, A. (2003), "Revisiting Fatalistic Political Cultures", Romanian Journal of Political Sciences
75 Ibid.

ground for establishing a democratic system. It overcame the restrictions and defied the rules imposed on labor unions to gain mass support. Therefore, the shift from a "subject political culture" to a participant one was a gradual process in Poland's case[76]. On the other hand, and as indicated in the next section, nothing similar happened in Romania.

During the communist regime, 'labor unions' were integrated into the government and the communist party. There were, however, differences between labor unions in Central Europe and Southeastern Europe. For example, in Poland, Solidarity broke the rules imposed on labor unions and gained mass support. Although in 1981 Solidarity was officially suppressed, labor unrest and strikes by the end of the 1990s forced negotiations between the government and Solidarity, which resulted in the legalization of Solidarity and in Poland's first free elections after communism. In other countries, especially in Southeastern Europe (including Romania), the vertical control and the communist repression were stronger and the citizens more submissive.[77]

After 1990 the post-communist transition led to the abolition of the centralized structure of trade unions and of their compulsory membership. In addition, due to changes such as privatization and restructuring of large enterprises (which led to unemployment and the shift to employment in multinational companies, non-governmental organizations, new small-size enterprises and the service sector), labor unions could not retain their membership. Unionization levels in CEE fell dramatically from 100% to about 25-35% and the new trade union confederations led to excessive fragmentation of the movement everywhere within the region.[78]

All the new EU members and EU candidate countries have introduced changes concerning industrial relations and social dialogue (tripartite forums for discussion between and among social partners), new legislation regarding collective bargaining, and labor contracts and workplace representation of labour interests, consistent with the EU *acquis communautaire*.

Specialised government departments or official positions responsible for inter-sector co-operation have been established in many CEE countries. There are no common standards or rules yet regulating the level or the organizational set-up of such departments. There are examples of government institutions' coordination and interaction with NGOs (non-governmental organizations) in CEE. In Slovakia, the post of a special advisor on NGOs at the Department of Social and Intellectual Development within the Office of the Government was established in 1997. In addition, a number of positions were created at regional and local level for officials responsible for developing cooperation between NGOs and government administration. In Bulgaria, posts of special advisors on NGOs have been established under the auspices of the President of the Republic and Parliament. In Croatia, a special government department was set up to cooperate with NGOs. In Hungary, the Department for Social Relations in the Prime Minister's Office was created to implement the legislation that regulates civil society institutions and the development of inter-sector co-operation both at central and local levels. In Romania, a Department for Co-operation between the Government and NGOs was created in the mid-1990s. In 1999 this department was replaced by the Department for the Analysis of Social and Institutional Development, responsible for the advancement of co-operation between government and the NGO sector. Currently there is a position of State Secretary for Social Dialogue at the Ministry of Labor, Family and Equal Opportunities.[79] Besides, the Economic and Social Council - a tripartite autonomous public institution, established in 1997 - has the purpose of promoting social dialogue between employers, trade unions and the Government.[80]

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76 See Stefan A. (2005), "Securitization and Democratization: How They Condition Each Other. The Case of Romania", Rijksuniversiteit Groningen, The Netherlands, p. 38.
77 Centre for Administrative Innovation in the Euro-Mediteranean Region (2004), "Best Practices in the European Countries. Romania"
78 Avdagic, S. (2002), "Social Dialogue and the European Union Accession", Central European University, Center for Policy Studies, Open Society Institute, http://pdc.ceu.hu/archive/00001813/01/Avdagic.pdf
79 Source: United Nations Development Programme, www.undp.org
80 www.ces.ro

Nevertheless, the situation on the ground in the CEE is far from the European social dialogue model: while social partners at the European level have virtually become legislators, the CEE social partners have been largely marginalized by their respective governments. The representatives of trade unions in CEE complain about the discrepancy that exists between the letter of the law and its practical implementation.[81]

All over the region, 'non-governmental organizations' (NGOs) have proven to be competent channels of mobilizing citizens to address important issues at the local level. As an illustration, the profound 1996-1997 economic crisis in Bulgaria highlighted the NGO capacity to mobilize the population against extremely difficult social conditions. On the initiative of mayors or heads of local administrations, many non-government organizations became involved in the activities of municipal civil councils. At their meetings the councils discussed measures and solutions to alleviate the implications of the crisis at local level. The decisions and recommendations of the councils formed the basis of local action programmes.[82]

However, because in some countries, governments still tend to ignore any advice coming from non-governmental sources, some of the 'think tanks'' leaders have chosen to become politically involved (in many cases, joining political parties to promote their views). At the same time, to strengthen their voice in policy debate and to make a difference on important interdisciplinary and transnational issues faced by most countries in CEE (such as EU accession, NATO enlargement, environmental issues), a number of 'policy institutes' have chosen to engage in regional coalitions with other non-governmental partners to develop and promote common regional policy positions. Well-known institutes from Central Europe have been effective in supporting their new partners from Southeastern Europe[83] where think tanks have encountered more obstacles in making their opinions heard.

II. The Case of Romania

As discussed in the previous section, along with the possibility of a generalized approach for the whole of Central and Eastern Europe, we also find variations across the region in the way people communities, and societies react to the new opportunities brought by the transition and the 'core actors'' approaches to citizen engagement in the post-communist era. The case of Romania is worthy of note because, although it has many similarities with other post-communist countries, its transition began after a violent "revolution" and thus the development of its democratic institutions has been more difficult and slower than any other in the region.

The Communist Heritage

Pre-communist Romania was a parliamentary democracy and the communist regime was at first not easily accepted. During the early years of communist rule in Romania, in the late 1940s, the anti-communist resistance had an organized structure, and many people who opposed the regime formed armed partisan groups. Despite the government's frequent recourse to the deployment of military personnel and secret police, armed resistance continued until the early 1960s. It was then was almost completely repressed.

When Gheorghe Gheorghiu-Dej, the communist leader of Romania between 1948 and 1965 died, he was replaced by Nicolae Ceausescu. Ceausescu led communist Romania for 24 years (1965-1989),

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81 Ibid.
82 United Nations Development Programme (2002), "Policy Process Reform: Institutionalisation of Consultations between Government Institutions and Non-Government Organisations in the CIS Countries", Bratislava.
83 De Vera, J., Zyman, R. (2006), "Participatory Governance in Post-communist Transition", UNDESA Working Paper, New York.

during which he suppressed all opposition by using brutal force. Initially, he was very popular in the country, due to his independent foreign policy stance, and his courage in challenging the supremacy of the Soviet Union in Romania. However, his popularity later dramatically declined, while his regime became increasingly dictatorial. During four decades of communism in Romania, the State dominated all aspects of economic, social, and political life, thus hindering the development of autonomous civil society.

Although the events of the December 1989 "revolution" have remained controversial, they terminated the reign of the communist party, and set off the post-communist transition in Romania. (President Nicolae Ceausescu and his wife had been shot after a military tribunal found them guilty of genocide and undermining the national economy). Their execution was announced on national television and was transmitted all around the world. A shocked Romanian population soon accepted and even welcomed the change – even in the face unrest created and the last-ditch resistance put up by troops loyal to the dictator. What followed for more than a decade was a difficult transition to democracy and peace.

The Post-Communist Transition

The case of Romania is interesting because, although it has a lot of similarities with other post-communist countries, the development of its democratic institutions has been more difficult and has taken place at a much slower pace.[84] While some post-communist countries (such as Poland, due to the mobilizing role of the Solidarity movement) had a pre-transitional phase prior to establishing a democratic system, nothing similar happened in Romania. The brutality of the Romanian communist regime and the high degree of anomie in society both explain the difference between it and Poland. There was hardly any leader of note who was not co-opted by the communist regime, and the population was totally unprepared for democracy. Also significant is the fact that those who took over in 1990 after the 1989 revolution were individuals holding relatively junior command positions in the former communist regime.

External Factors and Players

In an increasingly globalized world, governments lack the capacity to design and implement effective public policies independently of outside forces. In a developing world context, standards of good governance at all levels have to be reinforced with external support as a precondition for sustainable development. These standards include those requiring local, national, and regional governance to be participatory, inclusive, transparent, and tailored to the prevailing social and economic conditions. 'Globalization' has had an impact on the social, economic, environmental and political aspects of Romanian life, and on the institutions. Globalization has also had an impact on the post-communist transformations, including the on-going evolution of a new socio-political culture.

Further, the decision of the *European Union* (EU) to extend to the Balkans has had a great impact on governance in Romania. For the last decade and a half, European integration has been the major political objective of the Romanian Government and of all political parties. The EU has played an essential role in helping the EU candidate countries (including Romania) to build and consolidate democracy.

During the post-communist transition, in the circumstances of globalization and EU enlargement, 'external actors' have played a significant part in encouraging good governance and popular participation in Romania. Western European governments, the United States, regional organizations - mostly the EU, the Organization for Security and Co-operation in Europe (OSCE) and the Council of Europe -, the World Bank, UNDP, other organizations of the United Nations (UN) system, the Organization for Economic Co-operation and Development (OECD), have implemented or supported

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84 See Stefan A. (2005), "Securitization and Democratization: How They Condition Each Other. The Case of Romania", Rijksuniversiteit Groningen, The Netherlands, p. 38-39.

various programmes to assist democracy and encourage public participation and good governance. In addition, foreign foundations have worked with Romanian NGOs to improve the quality of their activities. These external actors have also facilitated efforts at engaging civil society in meaningful dialogue and joint action with other key players, and to influence public policy at all levels. Many obstacles to development and good governance have also been reduced, due to external accountability mechanisms put in place, especially by the EU.

From the EU perspective, governance must be participatory. In preparation for EU accession, the Romanian Government has undertaken political and economic reforms including the consolidation of democracy, enthronement of the rule of law, respect for human rights, and guarantee of freedom of expression, and the development of a functioning free-market economy. After the successful conclusion of the EU accession negotiations in December 2004[85], the Romanian Government has been working on consolidating the institutions and regulations set out in the *Acquis Communautaire*. The implementation of European norms in internal legislation has entailed the strengthening of the capacity of the government institutions and a greater effort by the Romanian Government to promote transparent and participatory governance.

The UN Development Assistance Programme laid the foundation for cooperation between and among the UN agencies, the government, and other development partners. Most of the other assistance programmes were equally well-organized. However, better coordination between all the assistance programmes in Romania, including harmonization of their project management procedures would have increased their efficiency.

It is instructive that a variety of externally assisted projects on citizen engagement have failed. One possible explanation is the donors' decision to finance fruitless partnerships or promote *"intellectual fashion trends"*. An example is the emphasis placed by external donors on ethnic identity, which has strengthened, rather than weaken, ethnic tensions. In addition, most of the donors' programmes attempted to transfer knowledge and skills exclusively to an already empowered minority of educated and socially active citizens, supporting the formation of a group of professional activists, based on the assumption that they would further transmit a participatory civic culture to other segments of society. In fact, most of these programmes generally have not created opportunities for the socially marginalized citizens[86].

Internal actors: The Government

Post-communist transition requires fundamental transformations of the role of the state as an institution carrying out a broad range of activities to address social and economic issues. Although initial effort at reform (in the early 19990s) was characterized by confusion, by frequent overlap of roles among the erstwhile communist structures, by lack of clear reform strategies, and by relative weakness of the pressure for change, strengthening government institutions and promoting good governance have assumed increasing importance in recent years**.**

The Romanian Constitution contains adequate provisions on the 'rights' necessary for public participation, e.g., the right of expression, to information, of free assembly, of association, and to file petitions. Moreover, the Constitution stipulates that the government should cooperate with civil society in the rulemaking process.

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[85] The Accession Treaty was signed in April 2005; the accession of Romania to the EU took place in January 2007.

[86] De Vera, J., Zyman, R. (2006), "Participatory Governance in Post-communist Transition", UNDESA Working Paper, New York.

The government has made progress towards implementing the public administration and civil service management reform programme. This has sustained high hope of a promising future for Romania, has contributed to rebuilding the people's trust in government, and has fostered participation in policy-making process.

The National Agency of Civil Servants has run several EU Phare programmes and also benefited from the assistance of experts from the OECD, the World Bank and Western governments, which all contributed to a better management of the civil service and the effectiveness of implementing the reform of public administration. The underlying goal is to transform public service institutions into increasingly transparent, professional, efficient, ethical and customer-oriented bodies.

Restructuring and, in particular, modernizing, the public sector has been both the objective and the vehicle of reform. The public administration system has not been built from scratch, but rather it has been gradually modernized to reduce its malfunctions. Between 1990 and 2000, its service delivery capacity slowly improved. As part of the reform effort, the skills of civil servants were upgraded and the quality of their work improved. A new generation of civil servants was hired and trained while the previous ones were gradually retiring. For most of this period, obedience and length of service were still valued more than competence. Mechanisms to motivate civil servants and to hold them accountable did not exist.

Since the end of 1990s, various concerted efforts at establishing a professional, impartial, stable, and efficient civil service have enhanced the transparency and accountability of the government as well as the image of public administration. The relationship between public administration and the citizen is also receiving attention through the issuance of several normative acts.

The Ministry of Public Administration was set up in 2001 and its role has improved since then. Currently, it is located in the Ministry of Interior and Administration Reform, which also oversees the National Agency of Civil Servants. The mission of the Agency is to develop a professional, stable and politically unbiased civil service. The National Agency of Civil Servants was set up by Law No. 188/1999 on the Statute of Civil Servants.

Law No. 215/2001 regarding the local public administration incorporates the principle of "consulting the citizens in solving local problems of common interest". The Law consequently attaches high importance to the involvement of the citizens in resolving issues of interest to them as residents of the community. In accordance with the public administration law, all the meetings of the local councils are public.

Citizens also have the right to address their concerns to different government representatives and express their opinions on relevant public policies. Government representatives at all levels have increasingly conducted dialogue and benefited from the views of civil society on a wide variety of public policies. A special Governmental Department for Co-operation with Non-Governmental Organizations was, as earlier indicated, set up in the mid-1990s. In 1999 this department was replaced by the Department for the Analysis of Social and Institutional Development, which is responsible for advancing the co-operation between government and the NGO sector.

There is now a position of State Secretary for Social Dialogue at the Ministry of Labor, Family and Equal Opportunities and also a Government Department for Interethnic Relations. Besides, the Economic and Social Council - a tripartite autonomous public institution, established in 1997 - has the purpose of sustaining social dialogue among three parties, viz: employers, trade unions and the government. Its status is that of a consultative body. It advises the Parliament and the government in areas established by law, and serves as a mediator at industry and national levels in case of disputes between or among the social partners. Its membership is made up of three equal parts of individuals

appointed by the government, the national trade union confederations and the national employers' confederations. It liaises worldwide with social and occupational organizations.[87]

Civil service regulations and behavioural codes

The right to free access to information and the transparency of decision-making in public administration is guaranteed by the Romanian legislation. The Law on Free Access to Information of Public Interest was passed in 2001 (Law no. 544/2001) and the Law on Transparency of Decision-Making in Public Administration was passed in 2003 (Law no. 52/2003).

Law no. 161/2003 comprises measures for ensuring a high degree of transparency in carrying out civil service functions and exercising authority. It provides, for example, annual declaration of wealth by civil servants. The regulations on *conflict of interest* are stringent. Among other things, they forbid civil servants to have other remunerated or non-remunerated jobs/activities, the only exception being the jobs of professors within universities or in artistically inclined areas. In order to ensure the neutrality of the civil service, it is forbidden for civil servants to hold leading positions within political parties or to express their political views in public.

There are rules and codes of conduct to guide the behaviour of public servants, in accordance with the EU standards. An important legislative initiative of the National Agency of Civil Servants was the issuance of a code of ethics for civil servants by Law no. 7/2004. This regulation was complemented by Law no. 477/2004 regarding the code of conduct for contractual personnel.

The National Agency of Civil Servants has prepared a handbook of administrative procedures which set out mechanisms for applying the provisions of the draft code of conduct for civil servants. The Agency is also developing a network of public ethic officers in order to provide advice and support required by the Romanian civil servants in the day-to-day discharge of their responsibilities.[88]

Consultation with civil society on proposed policy directions

The Romanian Government initiated 'partnerships with civil society' on important national policy issues, such as those related to NATO and EU accession. The process empowered individuals to express opinions on European integration issues, and acknowledged the sustenance of dialogue on this vital subject as the responsibility not only of the government, but of the entire society.

For at least the last decade, the Presidents of Romania have had regular meetings with institutions of civil society, such as labor unions, employer organizations from various industries, professional associations, policy groups, the media, social organizations, and other interest groups. Among the interest groups are those with specific religious, nationality, or political orientations. The consultative meetings have occurred at various stages of the policy cycle on a large range of socio-economic issues, and many of them have helped refine and improve the content of policies. As guaranteed by the Romanian Constitution[89], the President of Romania now acts as a mediator between the State and the civil society. This is a significant change and may yet turn out to be a major landmark in Romania's transition to democracy.

Participation in development strategy formulation

The comprehensive debate for the formulation of a National Strategy for Sustainable Development (NSSD) that was launched and chaired by President Ion Iliescu between 2000 and 2004 was a

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[87] www.ces.ro

88 National Agency of Civil Servants, http://www.anfp-map.ro/strategies_reports_studies.php?sectiune=Studies&view=44

89 The Constitution of Romania, Article 80

demonstration of broad participation by civil society in enhancing public policies. Following a previous National Sustainable Development Strategy (July 1999)[90], the NSSD debate included a series of workshops on key areas of sustainable development with the NSSD main stakeholders: government representatives, academia, private sector and civil society. During the workshops, the stakeholders had the opportunity to debate in a non-partisan non-biased environment. In the course of deliberations, participants made vital inputs into the construction of Romania's development scenarios, identified relevant indicators of sustainable development, and helped chart the strategic directions to be pursued over the coming 15-25 years. The topics covered at these workshops included: energy policies and natural resources; forestry and mountain areas development; environmental protection; agricultural policies and rural development; the social dimension of sustainable development; prognosis on Romania' long-term economic development prospects; research, innovation and development strategies; and education.

Several workshops benefited from the presence of foreign experts, previously involved in the formulation of national strategies of sustainable development in their countries. These experts shared their experiences with the Romanian NSSD stakeholders.[91] Engaging civil society actors in this process has helped the government to formulate a broad strategic vision and sound development policies for Romania.

Political participation and prospects for democracy

The democratization of the Romanian society has seen an increasing range of decisions – especially those that affect the lives of the individual citizens and communities – being devolved to the local level. While devolution offers citizens greater opportunities for participation in governance, current legislation is constraining the public authorities' ability to organize public events for keeping the public informed about wide-ranging issues of interest, e.g., the progress attained and the difficulties encountered in solving society's problems. In order to encourage the participation of citizens at the meetings, public institutions must provide advance notification about the topics to be discussed, the date and venue, and the information needed for effective contribution. Until now, citizens have rarely participated. However, when they do, their recommendations have been incorporated in the final reports, and have had an impact on policy making.

Towards an open government: from face-to-face contact to e-petitions

The openness of public officials to the demands and needs of citizens has slowly developed. This has facilitated the inclusion of the views of concerned sections of the community in the policy process. The consultative mechanisms with the civil society have led to the institutionalization of government-CSO relations and have provided an opportunity not only for expressing diverse opinions, but also for achieving a consensus on various problems. The consultations have also made the decision-making process more transparent and facilitated cooperation between government and society.

The government has in addition instituted mechanisms for e-participation. The new system enables policy makers and public officials to interact with individual citizens. It further allows citizens to present their needs, participate in and influence policy-making, comment on the effectiveness and impact of policy implementation, provide feedback on government (on and off-line) services, and file complaints. New systems of information dissemination have been designed and operated to promote transparency and accountability.

Government institutions at all levels have internet pages which keep the citizens informed and invite them to share opinions by mail, e-mail, phone, or at public meetings. The initiative regarding the

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90 www.undp.ro
[91] For further details, see the UNDP Project "Strengthening the Institutional Capacity of the Presidential Administration of Romania", 2004, www.undp.ro

public administration phone line and the website www.administratie.ro enables citizens to transmit their complaints, requests, or suggestions.[92] The access to public information has brought a significant empowerment of people, enabling them to participate in policy and in decisions that affects their lives.

The Office of the President is a good illustration of transparent and participatory governance at the national level. The Presidential Administration developed in 2003, with the support of a UNDP-executed and Dutch-funded project, a modern e-petition application system, and a new portal managed in three languages. The project relies on an advanced information management system. The electronic management of petitions helps the Citizen Relations Department of the Presidential Administration to handle more than 30,000 petitions per year. A salient feature of the e-petition system is a full-cycle information model which captures the actions taken at various stages, from the receipt of the petition to the printing of the delivery-of-reply envelope. It also offers the petitioners detailed reports on each petition (its current status, and other relevant information depending on the geographic location and subject of petitions). Citizens can also address their concerns to the President via the website and express their opinions on any relevant topic[93].

The government has also encouraged horizontal relationships across the civil society sector, such as partnerships among NGOs to achieve enhanced participatory governance. One of the events organized towards this goal took place in 2003, when the Romanian Government took the initiative in organizing a regional conference and an NGO forum as part of the global effort to implement the "Plan of Action" of the Seoul Conference on "The Community of Democracies"[94]. The conference was attended by NGOs from 21 CEE countries, USA, and Western Europe. It afforded the participants an opportunity to share knowledge and experience about the consolidation of democracy in the region and on the role of NGOs in promoting good governance.

Expanding the space for participation by ethnic minorities

One lesson learnt after the escalation of inter-ethnic tensions between the Hungarian minority and the Romanian population in the early 1990s was that involving ethnic minorities in governance processes highly contribute to building credibility of the government and to enhancing the prospects for sustainable peace and development.

According to a comprehensive investigation of the legislative and institutional framework for national minorities in Romania[95], and supported by Reports of the European Commission, the various 'ethnic groups' enjoy the necessary rights and freedoms that allow them to preserve and develop their identity. Romania derives much of its ethnic diversity from its geographic position across major continental migration itineraries. Minorities currently constitute roughly 11 percent of Romania's 22 million people. This includes 6.6 percent who are Hungarians, 2.5 percent Roma, and almost twenty other smaller ethnic communities.

The Council for National Minorities, which was set up in 1993 as a consultative body of the Romanian Government, defends the rights of ethnic minorities. In the educational field, the legislation states that students can learn in their mother tongue. To ensure greater participation of minorities in

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92 National Agency of Civil Servants, Bucharest, http://www.anfp-map.ro/strategies_reports_studies.php?sectiune=Studies&view=44

93 UNDP Project "Strengthening the Institutional Capacity of the Presidential Administration of Romania", 2001-2004, wwww.undp.ro

94 The Community of Democracies, an international process aimed at protecting and consolidating democracy, was launched with the inaugural Ministerial and NGOs gathering in Warsaw in June 2000. A second global conference and NGO Forum took place in Seoul in 2002 and a third one took place in Santiago, Chile in 2005.

95 For further details, see Stefan A. (2005), "Securitization and Democratization: How They Condition Each Other. The Case of Romania", Rijksuniversiteit Groningen, The Netherlands, p. 107.

policy-making decisions, an approach (which is unique in Southeastern Europe[96]) has been adopted for the representation of all ethnic minorities in the Romanian Parliament. The approach capitalizes on the virtues and potentials of diversity while at the same time ensuring that nothing is done to fan ethnic tensions. Under the provisions of the electoral law, organizations representing national minorities which fail to obtain the number of votes for representation in the Parliament, have the right to one deputy's seat each. Citizens of a national minority are entitled to be *represented* by one organization only.[97] The *Democratic Union of Hungarians in Romania* has won seats in the Parliament without invoking this provision and is currently part of the Parliament's majority coalition.

At the most recent legislative elections (2004), the following parties and associations were granted a seat in the Chamber of Deputies: Association of Italians of Romania; Bulgarian Union of the Banat – Romania; Cultural Union of Rusyns of Romania; The Democratic Forum of Germans in Romania; The Democratic Union of Slovaks and Czechs in Romania; The Democratic Union of Turco-Islamic Tatars of Romania; The Federation of Jewish Communities of Romania; The Greek Union of Romania; The League of Albanians of Romania; The Lipovan Russian Community of Romania; The Social Democratic Roma Party of Romania; The Turkish Democratic Union of Romania; The Union of Armenians of Romania; The Union of Croatians of Romania; The Union of Poles of Romania Dom Polski; The Union of Serbs of Romania; The Union of Macedonians of Romania; The Union of Ukrainians of Romania.

Building trust in, and enhancing image of, government: work in progress

In Romania, probably more than in any other culture, the mindset and behaviour of the elite may constitute an obstacle to the consolidation of democracy. Due largely to the fact that the generality of the people have for long been conditioned to expect all aspects of life to be governed by centralized political decisions, many citizens are still waiting for signals from the political class regarding the shape and directions of transformation needed to live down the legacy of communism and consolidate democracy.

At the same time, and regardless of the fact that there are extremely few political and managerial leaders with capacity for public policy, politics and policy are most often mixed. It is yet to be fully acknowledged that the rough edges of reform could be smoothed out only by a professionally competent cadre of managers – those with the skills to analyze, implement, review, and reformulate public policy, design efficient and effective service delivery systems, engage the citizen in dialogue as partners, and present themselves to society as "servants of the people". Unless this cadre is developed and allowed to place its competencies at the service of Romania, the image of public administration is not likely to improve dramatically, and public trust in government may take some time to materialize.

Like other CEE countries, successive governments in Romania have worked on absorbing and implementing the Acquis Communautaire (which is mandatory for the new EU members and candidate countries). Although transformations occur rapidly, the practical implementation of the Acquis is "in transition" or a work in progress. As Romania approached the deadline for integration into the European Union, any wrongdoings on the part of corrupt public officials would take on added risks. Transparency and accountability are at the core of the public administration reform. Overall, as evaluated by the European Commission, the Romanian Government has made continuous progress in the fight against corruption, although it is believed that more efforts are necessary.[98]

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96 Alionescu, C., "Parliamentary Representation of Minorities in Romania", Southeast European Politics Vol. V, No. 1, June 2004, pp. 60-75,
//www.seep.ceu.hu/archives/issue51/alionescu.pdf#search='minorities%20in%20the%20parliament%20romania'
97 www.parlament.ro

98 European Commission, "Monitoring Report on the State of Preparedness for EU Membership of Bulgaria and Romania", September 2006

Top officials declare that "the most important challenge which Romania should face over the next years will be the absorption of European non-refundable funds and a good absorption of these funds depends on the local administration to an overwhelming extent".[99] As the Romanian Prime Minister has once stressed, the money allocated from the national budget and the European funds must be spent "in a responsible way". The local authorities should be accountable for the spending of public monies, regardless whether it has been allocated from the national budget or it originates in European funds. The media plays an important role as to the way the spending of this money is reflected.[100] Despite the proliferation of anti-corruption efforts, the impact of many anti-corruption projects has not lasted long. Efforts at combating corruption have also focused much more on the bribe-takers rather than the givers. It is gratifying to note that the anti-corruption campaigns have recently started to address this concern.

As illustrated by a study on decentralization and corruption in Romania, the decentralization process during the transition led to the emergence of a pattern of relations among certain categories of political actors and local government units intended to secure preferential treatment from the centre. These administrative wrongdoings are demonstrated by financial data and are closely associated with strong politicization of public administration. In view of the fact that the enforcement of regulations is loose and the costs of civic information and action by the public are high, decentralization alone cannot solve the problems of poor governance and corruption. In addition, safeguards should be integrated into the institutional design of decentralization. The design should provide for the monitoring and control of local corruption, and should be firmly anchored on transparency and clearly defined responsibilities.[101]

Despite the increased visibility given to integrity, ethics, and professional conduct in the public service, there is no substantial increase of the public confidence in government. The mechanisms for ensuring ethics, integrity and accountability need to be strengthened in both the public sector and in civil society. The government institutions still need to pay more attention to informing the public on the provisions of the laws, and give priority to the implementation of the legislation related to popular participation in policy making.

The mentality of government employees who view citizen engagement as an obstacle to decision-making warrants attention. Government officials responsible for drafting strategic public policy documents have sometimes expressed their frustration about the time spent in consultation with the civil society and the subjective or impolite response from the CSOs. At the other end of the government-society interaction, CSOs delegates have drawn attention to the difficulties encountered in establishing an open and continuous dialogue with the public authorities and have often expressed resentment when their proposals were rejected by government representatives. Training in public policy-making and negotiations should become mandatory for government employees, helping the understanding that the knowledge of the best policy alternative does not always belong to the government as much as it does not always belong to civil society representatives. On the other hand, greater transparency and accountability of government institutions at all levels of decision-making will allow a professional involvement of civil society in the policy processes in transition.

Although, according to the evaluation of the European Commission, the representativeness of the Economic and Social Council has improved through an increase in the number of its members, efforts need to continue with a view to improving social dialogue and solving outstanding issues of fragmentation and insufficient capacity of social partner organizations. Further efforts are also necessary to improve access to health care, especially among poorer socio-economic groups and

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99 Declaration of the Prime-Minister on October 19, 2006, www.gov.ro
100 Ibid.
101 See Ionita, S. (2004), "Money for Our People? Decentralization and Corruption in Romania: the Cases of the Equalization, Infrastructure and Pre-University Education Funds", Center for Economic Research and Graduate Education and the Economics Institute, Prague, https://www.cerge-ei.cz/pdf/gdn/RRCIV_71_paper_01.pdf

minorities. In the area of social inclusion, efforts need to continue to improve the situation of vulnerable groups, such as the Roma, and promote their full integration into society.[102]

Advancing opportunities for citizen engagement will have to continue rapidly in order to have a notable positive impact on policy formulation and implementation. There is room for improvement with regard to finding ways to "re-moralise citizens" as a possible solution to the democratic deficit by regeneration of a sense of community and collective responsibility.[103] Along with keeping their traditions, freedoms and options, citizens must feel empowered to participate in governance for the benefit of sustainable development. Public education should pay more attention to teaching the importance of citizen participation.

Role of Civil Society

The emergence of Romania as a democratic society has been relatively slow, due largely to the obstacles encountered in making the transition from the erstwhile centralized planning system to one based on public participation. Although the number of CSOs has gradually increased, their quality and effectiveness vary significantly. Some CSOs try to work as a liaison between the government and citizens, leaving many citizens skeptical as to whether the CSOs represent their interests and concerns or those of the government.

During four decades of communism in Romania, the state dominated all aspects of economic, social, and political life. No social stratum escaped the pervading influence of the dominant ideology and of the communist cadre. This was how people's mentalities were shaped, at least in the 1990s. Unless guidance came from the top, that is, from the political class, the people did not feel themselves empowered to effect any major transformations. At the beginning of the 1990s, during an initial phase of revolutionary effervescence, most people believed that problems could be solved by social pressure. There were constant turmoil and street protests, tied to various social, economic and political issues. Many of the protests (including the ones by aggressive miners) took a violent turn. In the absence of a tradition of peaceful dialogue between the state and civil society, and of institutions for processing grievances, the population was initially unable to to relate to the political class using democratic means.[104]

The privatization and restructuring of large enterprises caused brought unemployment thus further increasing the turmoil. In response, many intellectuals and other people who had been laid off decided to pursue new opportunities in multinational companies, NGOs, new small-size enterprises and the services sector. This was the beginning of the expansion of the governance space – a space now occupied by groups and individuals no longer answerable to senior hierarchies in government, or obliged to obey the erstwhile communist diktat. Thus, post-communist Romania has been exposed to progressively loud voices of the media, NGOs, labour unions, professional associations, academics, non-governmental policy research institutions, and community organizations. Other types of CSOs, such as religious organizations, consumer organizations, environmental groups, and charities are present, but are not quite active or numerous like the rest.

During the post-communist transition, the media, a number of NGOs, the academia, and policy institutions have become increasingly active in monitoring and assessing governance practices, and transmitting critical reports and recommendations to policy makers. Romanian NGOs have become particularly active in areas such as environmental policy, child protection, media monitoring, and anti-

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[102] European Commission, "Monitoring Report on the State of Preparedness for EU Membership of Bulgaria and Romania", September 2006
[103] EU funded research on "Engaging People in Active Citizenship in Central and Eastern Europe", http://www.pjb.co.uk/npl/bp64.htm
[104] For further details, see Stefan A. (2005), "Securitization and Democratization: How They Condition Each Other. The Case of Romania", Rijksuniversiteit Groningen, The Netherlands, p. 50.

corruption. Some of them work on programmes designed to sensitize the public and promote participatory attitudes among the Romanian people. To encourage citizens to participate in governance processes, the NGOs have used various channels to promote awareness on burning issues. Among these channels are press releases, media campaigns, dissemination of citizen guides, newsletters, information booklets and posters, collection of signatures from citizens and submission of petitions under the glare of publicity. They have also volunteered comments on draft laws regarding free access to information and the transparency of decision-making in public administration. An illustration is a 2002/2003 Transparency International-Romania project "Governmental Transparency in the Regulatory Process", aimed at enhancing transparency standards. Together with some NGOs and other partners[105], it succeeded in proposing amendments to the draft-law on Transparency of Decision-Making in Public Administration presented by the Government.

As the right to free access to information and the transparency of decision-making in public administration have become guaranteed by the Romanian Constitution and legislation, Transparency International Romania and other NGOs organized media campaigns and coverage in print outlets and public radio broadcasts to promote the Law on Free Access to Information of Public Interest (Law no. 544/2001) and the Law on Transparency of Decision-Making in Public Administration (Law no. 52/2003). In addition, Transparency International organized an awareness campaign among public servants in the local and central administration as well as media in regards to "The Role of the People's Advocate in Protecting Free Access to Information of Public Interest".[106]

Some highly experienced NGOs frequently organized training sessions for trainers. As an illustration, the practice of diversity management involving ethnicity and the fight against cultural biases have been important training themes for supporting popular participation efforts and democracy. There are also NGOs that monitor, or offer consulting services to, other civil society organizations.

Numerous self-styled politically independent policy institutes have been created in Romania in the last decade and a half. Besides undertaking policy research and analysis, they publish journals and books, organize round-tables and conferences, carry out education and training activities, undertake opinion polls, and engage in activities directed towards fostering public participation in policy debates. Due to the progress in communication technologies (especially the internet), it has become much easier for Romanian think tanks to collaborate across long distances with foreign think tanks. They cross the national borders in order to join regional networks and keep themselves updated with the CEE, European and global policy analysis and social activism trends. They also disseminate their positions on public policies and reach a large audience.

Some of them being part of global or regional networks, Romanian NGOs benefit from sharing knowledge on best practices for promoting participatory governance with international organizations, CSOs partners from Western countries or other CEE countries. There are also Romanian NGOs which already have a strong sense of self-confidence and try to initiate cross border networks. After its role in unveiling cases of corruption in Romania for a couple of years, the "Clean Parliament Coalition" (a coalition of Romanian NGOs) launched in October 2006 the "Eastern European Integrity Network", with the aim of "cleaning up the political class" in the region.

Overall, Romanian civil society has been continuously developing since 1990. It has proved that in spite of the obstacles on the path of the transition, it can also generate constructive solutions to contemporary social and governance problems.

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105 IRIS Center—Romania, Media Monitoring Agency—Academia Catavencu, the Romanian Public Radio, e-Romania Gateway Association, and the Civil Society Development Foundation, http://www.transparency.org.ro/
106 Transparency International Romania (2003), "Annual Report", http://www.transparency.org.ro/

III. Building Trust in Government Through Civic Participation: Challenges and Opportunities

Despite the efforts of foreign donors, the government, and the CSOs, the Romanian people have not demonstrated eagerness to make full use of their right of free access to information, particularly information of public interest. Whatever progress has been achieved in transparency and public accountability has been due not to a groundswell of demand for change but the activism of a tiny but increasingly vocal elite. The Institute for Public Policy once carried out a study on the number of instances in which Romanian citizens turned to the courts for assistance in protecting the rights guaranteed by the Romanian Constitution and legislation. The study revealed that citizens rarely availed themselves of the right to information. They are almost absent at scenes where decisions affecting their interests are being taken. The analysis showed that no complaint was filed in a court alleging, or seeking redress for, violation of the provisions of the law on transparency of decisions and citizens' participation in the decision making process in the local public administration.[107]

Social capital and legacy of restricted participation

During the communist era in Romania, vertical control and repression were stronger, and the citizens more submissive, than in most of the countries in the region. The post-communist transformation of the legal framework is clearly ahead of the change in mentalities. The cultural remnants of the communist dictatorship are still significant. Although an increasing proportion of the population has started to develop participant orientations, a majority of other Romanians have continued to be oriented towards an authoritarian government structure. Participatory governance largely remains a novelty for most Romanian citizens.

The lack of social capital is in part a negative response to the principles of "collectivism" endured in the communist period. However, a sense of commitment to specific cause (e.g., ethnic minority rights) is not unknown.[108] Otherwise, NGOs have faced challenges in promoting the idea of voluntary work for community interests among citizens. It has proved to be difficult to persuade people not to wait for the government to solve their problems but to have initiatives and solve them by working together for common goals. As illustrated by the conclusions of a project[109] carried out by the Community Development Centre, a Romanian non-governmental organization, funded by the US Department of State, Romanian farmers are reluctant to associate as an interest group and even less to participate in governance processes.

The transition from a totalitarian regime to democracy has also created many disruptions to daily routine, and constituted obstacles to engaged governance. Privatization of enterprises and other measures brought in their wake too many dislocations, e.g., unemployment, job insecurity, increasing social polarization, distrust between elected officials and citizens, confrontations between Western democratic values and local traditions and values of conformity. These dislocations rarely helped the cause of participatory governance. What interest the people are not access to information or transparency, but whether the government provides jobs, apartments, and social protection. Even then, and with all the preoccupation with pressing survival issues, the people have yet to accept that avenues and opportunities exist for local communities to achieve their objectives by getting involved in the policy process.

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107 Institute for Public Policy (2004), "Lack of civic readiness to defend the right to access public information and participate in decision making", Bucharest, http://www.ipp.ro/

108 EU funded research on "Engaging People in Active Citizenship in Central and Eastern Europe", http://www.pjb.co.uk/npl/bp64.htm

109 Community Development Center's project "Building Sustainable Rural Communities Together" (2003) tried to advocate the benefits of increasing the social capital and organized community development activities that involved farmers, public authorities, non-governmental organizations and teachers.

Many opinion polls reflect that the large majority of Romanian citizens do not exploit their rights as taxpayers and do not intend to participate in governance processes. This attitude will continue for decades to come. This is partly because the generality of the citizens are apathetic, and partly due to the fact that the young generations have not been educated to speak up and publicly defend their positions. CSOs could complement public education by using innovative ways of teaching the importance of citizen participation.

Broader public participation would in all probability reduce corruption, increase the efficient allocation of budget and external donor resources, and strengthen the democratic political culture. The fight against corruption led by the media and some NGOs has increased public awareness about anti-corruption work. Yet, coupled with the unsuccessful anti-corruption efforts, it stimulated people's disappointment with the ineffectiveness of the anti-bribery campaign, their lack of trust in government officials, cynicism, and lack of interest in public participation. Citizens have not stopped to give bribes. They scarcely realize that by conniving at bribery, they contribute in fact to maintaining their own and other fellow citizens' lack of trust in government officials. When analyzing the corruption, the media, NGOs and international organizations usually target only the demand side of the equation, that is, public officials who use their office for private gain[110]. Civil society organizations could do more to ensure that citizens are not forced by the "state of affairs" to pay bribes.

CSOs: the physician waiting to heal

As for civil society organizations themselves, they have a long way to go toward improving their own reputation, particularly in a country where many people are still skeptical about their (the CSOs') legitimacy. Mechanisms for ensuring high ethical, integrity, accountability, and citizen outreach standards need to be strengthened so they could become credible agents of change. If NGOs are badly run and unaccountable, they cannot be relied upon to promote democracy, and the funds they receive from donors would turn out to have been wasted. Some NGOs have also proved to be unreliable as they shut down after implementing a few projects, or fail to justify and properly account for the allocation of external donor resources.

The Romanian business sector rarely gives financial support to CSOs, since the former does not perceive the latter as effective means to promote business interests. The only non-profit organizations that enjoy the support of the corporate world are those articulating and defending business interests.[111]

External support and the take off to self-sustaining democracy

The useful contributions that think tanks make to the policy process in the developed countries have encouraged western donors and international organizations to fund think tanks in the CEE region. The aim is to strengthen the think tanks' capacity to promote dialogue on policy options, provide technical assistance in the construction of development models and scenarios, and generally make inputs into the formulation of strategies. With specific reference to Romania, the creation as well as survival of many think tanks has been facilitated by external funding. An important problem for the Romanian CSOs is how to secure independent and sustainable funding sources when foreign support ends.

The stoppage of external funding can sometimes lead to the reduction of CSOs operations, which means that the NGOs participating in dialogue with government are sometimes forced to withdraw in the middle of important negotiations. The dependence on foreign funding has, in any case, bound Romanian think tanks to certain global and regional research fads, to the neglect of issues that are

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[110] M. J. Balogun, "Causative and Enabling Factors in Public Integrity: a Focus on Leadership, Institutions and Character Formation", *Public Integrity*, Vol. 5, No. 2, 2003.

[111] De Vera, J., Zyman, R. (2006), "Participatory Governance in Post-communist Transition", UNDESA Working Paper, New York.

locally pressing and relevant. For example, in the first decade of post-communist transition, most think tanks focused on topics of interest to donors, that is, privatization of state enterprises and the development of free market institutions. The attention given to the externally dictated priorities contrasted sharply with issues taken very seriously within CEE, especially, job security, good governance, inclusiveness and public participation, public service ethics and accountability, and enhancement of public administration's civic engagement and service delivery capacities.

IV. Conclusion

The CEE political culture is experiencing a very dynamic process of transformation based on a mix of mentalities inherited from communism, gradual internalization of EU norms and the assimilation of values transmitted as part of the contemporary process of globalization. After decades of hyper-centralization and authoritarianism, the priorities in CEE are enthronement of the rule of law, enhancement of the capacity of public institutions to deliver vital services and become increasingly accountable to civil society, and, building as well as strengthening public trust in government. In some CEE countries – particularly, those which had enough time to foster the appropriate culture and develop the necessary institutions - these objectives were attained more rapidly than in others – the 'others' being those that rushed into change without the benefit of pre-transition experience. Although basic EU legislation on public participation has been adopted by various countries actual public participation differs across EU member states and candidate countries.

Romania is a country undergoing a difficult transition, due for the most part to its communist legacy, and the persistence of the past authoritarian political culture. Although the government has achieved tremendous progress in fostering popular participation in governance processes, the transition from 'democratic centralism' to genuine democracy and popular participation is still on-going.

The deficits in contemporary reforms call for effective political and managerial leadership - leadership with skills in policy formulation and strategic management, as well as capacities to design and operate quality service initiatives, work with civil society as partners, combat ethical violations, build trust in government, and by so doing, consolidate state legitimacy.

To have a notable impact on policy formulation and implementation, opportunities for citizen engagement will need to be greatly expanded and sustained. The accent should be on increasing policy effectiveness and promoting social justice. The mechanisms for ensuring high ethical, integrity, and accountability standards need to be strengthened in both the public and the non-governmental sectors. The government and NGOs need to pay increasing attention to keeping the public informed on the laws on participation and transparency, and to methodologies for educating citizens on the procedure to follow to avail themselves of their basic legal and constitutional rights.

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CHAPTER EIGHT

CONCLUSIONS AND RECOMMENDATIONS

(*M J Balogun*)*

I.   General Lessons

One major conclusion that could be drawn from the contributions to this volume is that a successful post-conflict recovery process is a multi-pronged initiative - one that, in a coherent, orderly, and mutually supporting fashion, pulls together the interventions of different actors. This is the broad thrust of the various chapters. Besides highlighting the key issues in post conflict reconstruction, the chapters underscore the necessity to apply participatory principles and processes. Above all, there is a broad measure of agreement that specific reconstruction goals (such as restoring security and re-establishing state authority, accelerating the economic recovery process, re-equipping and revitalizing governance institutions, and reengineering processes to provide essential social services) must go hand-in-hand with the overarching dimensions of re-building trust and restoring the legitimacy of the state. While the specific and measurable goals could be achieved by instituting changes of a technical kind - that is, changes in operational processes - rebuilding trust and restoring the legitimacy of the state is a long-drawn process that relies on mechanisms for social dialogue, participatory decision-making, dispute arbitration and conflict resolution, as well as clear commitment to rectitude and integrity in government, and to diversity and inclusiveness across the board.

While agreeing that making an impact takes time, the contributions underscore the fact that the patience of the stakeholders is limited. Accordingly, the chapter authors hold that whatever measures the leaders and the public service institute at the early post-conflict period must not only be targeted, but must also reckon with the expectations of the stakeholders. As one of the contributors noted, for instance, five years might be quite short for results of certain policy changes to be evident. Still, if actual results or impacts are long in coming, the *attitudinal changes* expected from those implementing the changes must at least be visible. In other words, the government and the public service must convince those waiting for better days that serious and determined efforts are being made to fulfill their expectations. There are ways of convincing the increasingly demanding but skeptical public that promises of relief from suffering would be kept. For instance, if improvements in service delivery do not come quickly with "Quick Wins", and the vast majority of state-run institutions are perceived as not operating efficiently, government must move quickly to restore the faith of the public by holding the faltering agencies' managers to account. Management teams that fail to deliver within specific time periods should be quickly reconstituted to make room for real achievers. These general lessons have major implications for government and public service leadership, a theme that has been exhaustively examined in the first part of this volume.

II. Leadership's Critical Role in Peace-building and Post-conflict Reconstruction

Stemming from the general lessons is the salience of leadership – political and managerial – in post-conflict reconstruction and development. Neither the broad goal of peace, nor the specific objectives of resettlement, rehabilitation, reconstruction and development are attainable unless countries

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emerging from conflict promote and actively support a leadership class with the right orientation. The leadership capable of meeting the various stakeholders' complex and wide-ranging expectations would - besides being committed to lasting peace - be *anxious and determined to move society from the traumatic arena of conflict a state that is conducive to the attainment of sustainable development.* Such a leadership class would, at the very least, adopt effective and efficient strategies to build trust, promote transparency and participatory processes in decision-making, rehabilitate war-ravaged governance and public service institutions, and enhance the credibility of the institutions through the provision of those services that were beyond the reach of the population while the conflict lasted. The importance of improved access to essential services (e.g., security and police protection, water, energy, healthcare and sanitation, shelter and education) cannot be under-estimated. Unless the institutions charged with the responsibility for providing the citizens' basic needs live up to expectations, the post-conflict reconstruction process will not proceed as expected. The upshot of all this is that while attending peace conferences and signing agreements, the leaders must give equally high priority to the restoration of normalcy in the operations of government, and in the delivery of public services.

The contributions further underscore the point that while visionary leadership is crucial, it is an essential and insufficient condition for the success of post-conflict transition efforts. Clearly, a self-less and visionary leader is a model to his/her lieutenants, and the choices that he/she makes can determine how things get done. All the same, unless the next layer of leadership – particularly, key political functionaries, and members of the Higher Civil Service – share the leaders' vision, all talk of "reform" or change would be just that – talk and no action, rhetoric and no substance, and motions with no result. For the leader's vision to "trickle down", the leader must hold his/her immediate lieutenants to account, and the latter must in turn ensure that the message from the top is heeded and acted upon down the line.

Even with all the best intentions, and despite heroic efforts, certain goals would still remain out of reach. For obvious reasons – e.g., breakdown and decay of conflict-afflicted institutions, inter-group suspicion and distrust, and material resource as well human capacity constraints – it would be difficult, if not impossible, to meet all parties' expectations. Accordingly, while making honest efforts to satisfy legitimate demands, government and public service leaders must not overlook the importance of an effective information and communication strategy. By this is not meant putting a spin on every government policy, or substituting false propaganda for factual and honest reports. By effective information and communication strategy is meant a strategy that connects the state, on the one hand, with civil society and other partners, on the other, while at the same time ensuring that the information that flows from the former to the latter is credible.

Effective post-conflict leadership in any case entails addressing awkward questions such as those of inequality, social exclusion, diversity, and the decay of institutions – particularly, institutions that, in normal times, could have been relied upon to promote social dialogue, consensus, peace, reconciliation and development. The peace that lasts is almost invariably preceded with genuine efforts to discuss and redress underlying grievances, while at the same time ensuring that no group feels excluded or unduly disadvantaged under the emerging order. This calls for leadership with rare attributes, especially, leadership with the ability to initiate or preside over difficult negotiations, arbitrate conflicting claims, persuade various parties to give some while trying to take all, and sell unappealing proposals to reluctant buyers.

If the path to peace is long and treacherous, so is the accompanying process of post-conflict reconstruction. To embark on this latter process with any hope of success, strategies need to be built around sectors or pillars that are accepted by all parties to be crucial – e.g., security, resettlement of refugees and internally displaced persons, rehabilitation of war-damaged infrastructure, demobilization, and re-integration of combatants into regular civilian life. It is, however, not enough to reach a consensus on programmes that should be accorded high priority in the post-conflict

environment. It is equally important to ensure that the programmes dovetail into one another, and that their implementation is properly sequenced and coordinated. The resettlement of refugees, for instance, warrant the application of sophisticated techniques like operations research, logistics and operations management, critical path analysis, procurement and inventory management, and transportation and warehousing (particularly, with regard to the storage of food and other items to be distributed at refugee centres).

Political leadership needs to be anchored on deep-rooted values of integrity, respect for diversity, service to the public, selflessness, and professionalism. Shortfalls in such values unduly complicate the already difficult task of forging links with local communities in many post-conflict countries, and erode the trust that people might have wished to have in their government. For example, lack of integrity leads to corruption and diversion of resources from development to wasteful ends, thus compromising the credibility of government and those associated with it. Lack of respect for diversity at the political leadership level can translate into disrespect for diversity and inclusiveness in the entire public service, including neglect of issues of concern to women, children, and the disabled.

III. Security Sector reform in post-conflict environments: a dominant theme in the reconstruction process

As a natural corollary of the transformations earlier mentioned, security sector reform in post-conflict societies needs to be viewed in a holistic manner, and integrated into the broader governance and development strategies. Among the issues to address under the reform are those of legitimacy, representation and inclusiveness, and civilian oversight. Equally relevant are the questions of resource allocation, and human security. Security sector reform, should as part of the post-conflict reconstruction process, confront the challenges emanating from previous legacies, e.g., corruption and heavy-handedness on the part of members of security services, as well as the challenges of post-conflict disarmament, demobilization and reintegration, and of disposal of anti-personnel landmines.

The objective of security sector reform should be to build the capacity to respond to the threats facing the nation and facilitate the emergence of an environment that is conducive to socio-economic development and poverty eradication. Tensions within the security forces and amongst representatives of different ethnic groups (probably, former war-time foes), are as much of a problem in the security forces as in any other areas of public administration in post-conflict countries. The first major challenge, therefore, lies in merging erstwhile ethnic militias and other independent armed groups into national forces, and ensuring that the troops imbibe the values of accommodation and tolerance. Training is an essential component of the re-orientation process, but it is no substitute for the consensus-building efforts and positive signals from the leaders of the various armed factions.

It is essential that the reform introduce transparent management mechanisms and ensure the accountability of the security sector to the government. This can preferably be ensured through a democratically accountable civilian oversight over the security agencies. Civilians need to be actively involved in oversight processes. Besides, public dialogue needs to be stimulated to create locally-owned democratic norms and human rights principles. This can be achieved by capacity-building and human rights training and by a sensitization of the population on the new role of the police. Security sector reform also requires giving attention to institutional capacity building. This is more important than effecting a drastic reduction in budgetary allocations or focusing narrowly on the "size and shape" of the armed forces.

Many governments are loath to undertake security sector reform and the necessary downsizing due to the fear of the discharged soldiers turning to crime or otherwise upsetting a previously negotiated peace plan. Governments thus often search for alternatives to drastic downsizing. They try to create new roles for the armed forces (e.g. providing logistics support during complex humanitarian emergences) or design bold reintegration programmes for ex-combatants.

In post-conflict situations, governments need to formulate short- and long-term plans to avoid a relapse into conflict. Short-term livelihood opportunities need to be created to keep ex-combatants gainfully employed, and to consolidate peace and stability.

The international community has made a big step forward in recognizing the crucial relevance of security sector reform in post-conflict recovery and its importance for development and democratization.

It is crucial to adopt a regional and sub-regional perspective in SSR. Security challenges often include cross-border aspects such as small arms or child soldiers. Confronting such (sub-) regional dilemma requires a collective response from national, regional and international partners.

IV. Post-conflict governance and public service systems: capacity building imperatives

Given the diversity of politico-administrative cultures, and the great variety of societal environments, each post-conflict country's leadership has to be open-minded in looking at all of the potential solutions to their own problems. The key element is to develop a sense of direction for the public service of a given country which in a realistic manner takes into account its history, its environment and its position in the global world. In this sense, the basic guideline on strategies, approaches, techniques and methodologies for leadership capacity development is that each situation, the needs the situation imposes, as well as the composition and nature of the targeted audience, should dictate the approaches, techniques, thematic content and training methods to be adopted.

In designing, planning, implementation, monitoring and the evaluation of leadership development programs – whether they be in the immediate, short-, medium- or long term – organizers should adopt a participative approach involving the program beneficiaries and target groups. Each of the target groups would require a strategy, an approach and methodologies that are congruent with their needs. Even the thematic content for the program would vary depending on the target group. The contents of a leadership development program can be specified only after careful and participant-oriented analysis of capacity needs. This is true not only in post-conflict situations but also in all cases of leadership capacity development efforts.

As forcefully argued by the various contributors to this volume, a comprehensive governance capacity building strategy is essential to the success of the post-conflict reconstruction efforts. Such a strategy should be designed with each specific context in mind, and should be geared towards the overriding objective of fostering state or nation building. Directly relevant to the post-conflict governance and peace-building efforts is the promotion of participatory processes, and forging of partnership with all key actors in civil society, the private sector and community-based associations. Deepening the democratization and peace building process indeed requires, at the minimum, genuine efforts at ensuring active participation of civil society in local government, and in affairs having a direct bearing on the life of citizens.

There is need to reflect on the combination of leadership capacities required to manage development processes and support the reconstruction of capacities for public service in post-conflict situations with their complexities, intricacies, paradoxes and contradictions.

The view in certain quarters is that top political leaders (e.g. Ministers, Parliamentarians, top executives etc) cannot be trained and therefore cannot benefit from leadership capacity building initiatives. At least two of the contributors to this volume have cited examples with which they were personally familiar – examples of high-level political office holders and top career officials participating in policy retreats, strategic planning seminars, and the like.

V. Re-equipping and retooling the post-conflict public service

The need for governance institutions in post-conflict environments to avail themselves of effective systems and tools (especially those geared towards enhancing transparency, effectiveness, dialogue, participation and accountability) cannot be over-emphasized. Of crucial importance is access to basic (and over time, modern) communication and information technologies, and to knowledge management networks.

As a key actor in the reconstruction process - and as the heartbeat of government - the public service is expected to be an agent of change. It therefore needs to brace itself for rapid self-transformation. It has to pay attention to the reconfiguration and re-engineering of its management systems, operational tools and processes. It should also take pro-active and systematic measures to change the mind-set of the entire work force, and to orient this work force towards the delivery of timely, cost-effective, and quality service to diverse clientele.

Suffice it say that the reform of the security and justice administration sector is critical not only to efforts at safeguarding the rule of law and reinforcing the legitimacy of the state, but also to the maintenance of enduring peace and stability. It is particularly necessary to reconcile the imperatives of justice with those of reconciliation. While dealing with past misdeeds, redressing grievances, and restoring the trust of people in the state, the post-conflict governance and public service system must craft a rule of law that assists all leave the traumas of the past behind them and move on. In this regard, the proper integration of customary governance practices and structures might be considered as part of the efforts at post-conflict peace building process.

The laws and administrative procedures regulating public sector institutions should be streamlined to accommodate the post-conflict imperatives of reconciliation, inclusiveness, peace, and sustainable development. It is accordingly essential to establish a proper congruence between, on the one hand, policies, strategies, programmes and projects, and, on the other, the norms and standards by which practices would henceforth be judged. The promotion of macroeconomic stability, for example, is a key objective in post-conflict reconstruction, but it needs to be closely aligned with the cardinal objective of peace building.

Institution building or rehabilitation should be integrated into public service capacity building efforts in the post-conflict period. Emphasis should be placed on building capacities at all levels. Thus, proceeding with the aim strengthening accountability, trust, and legitimacy, governance capacity building programmes should cover all the critical components, and should seek to eliminate the obstacles encountered by the various institutions in fulfilling their mandates. Besides, the programmes should be supported with adequate resources, and backed by the appropriate working tools, methods and technologies.

Capacity building efforts need to be implemented in a sustainable, effective, comprehensive and integrated way, and aligned with national long-term and evolving requirements. The commitment of national and local authorities in these efforts is essential. As part of these efforts, it is important to build skills and capabilities of civic and political leadership for constructive negotiation and consensus building as well as to enact mechanisms for in-depth conflict analysis, prevention and transformation.

Against the backdrop of the multiple and complex demands placed on post-conflict governance and public administration systems (relative to the scarcity of resources) the implementation of post-conflict capacity-building initiatives depends largely on continuous donor support. Without this support, it will be well-nigh impossible to address public sector service capacity building concerns, or in the early post-conflict period, deliver essential services. It is therefore of critical importance for

governments in post-conflict societies to acquire the capacity to manage external relations and forge alliances with a vast range of stakeholders.

However, while underscoring the role of external donor, the conclusion that emerges from the various chapters is that at the end of the day, the recipient governments have the responsibility for the success of post-conflict recovery efforts and therefore the final say on the programmes to accord high priority. Unless the ownership question is resolved from the outset, disappointments lie around the corner.

VI.   Building state legitimacy and promoting trust: a summation

Public participation and inclusive decision making are among the critical elements of good governance, and are especially critical to the recovery of countries emerging from conflict. Citizen engagement in policy making and the public service provides space for diverse interests to interact. It enables people to come together to debate, discuss, associate, and seek to influence broader society and the formal political processes. These public service efforts and values help facilitate dialogue throughout society and provide community leadership which are an important means to build peace and preclude future conflicts. To promote citizen engagement, public service values in post-conflict countries need to be developed in an inclusive, transparent, and comprehensive way.

Strengthening local capacities, both of governments and communities, is a concrete entry point for support agencies to engage with local stakeholders on conflict prevention and recovery. Strong and just institutions, active local organizations, increased awareness, networks and political will are all crucial in supporting economic, social and physical development of communities- and in securing sustainable peace and promoting long-term development.

Citizen engagement in the public service holds a unique potential to support peace and sustainable development efforts. Experiences from different national and international actors show how inclusive decision-making and multi-stakeholder consensus have not only strengthened governance but have also been essential in furthering reconciliation and promoting opportunities for lasting peace and development. However, the success of post-conflict consensus building efforts is a function of the prevailing social dynamics as well as the historical context of conflict.

Conclusions and recommendations

One immediate demand placed on the post-conflict public service is for the removal of threats to security, coupled with the re-establishment of state authority. The tiny window provided by the immediate post-conflict period must not be allowed to close before efforts to reconcile warring factions and disarm private militias succeed. Attention should therefore be given to the revitalization of the capacity of security and law enforcement agencies. Due attention should be given to the integration of hitherto antagonistic groups into unified national forces. Training is a crucial part of the integration process, but so are the incentives that the leaders of the various armed factions provide to facilitate the integration process. It is strongly recommended that the process required to reshape the police for its role in any new dispensation as part of an integrated strategic plan for combating crime must be clarified.

Equally important in the immediate post-conflict period is the provision of logistics support to efforts at resettling refugees and internally displaced persons. This calls for the application of fairly sophisticated management and operations research techniques.

Visionary leadership is critical to the success of post-conflict state construction efforts, but so is the commitment of senior government officials and their subordinates to the vision of a better society. The deficits in contemporary reforms particularly call for effective political and managerial leadership - leadership with skills in policy formulation and strategic management, as well as capacities to design

and operate quality service initiatives, work with civil society as partners, combat ethical violations, build trust in government, and by so doing, consolidate state legitimacy.

To have a notable impact on policy formulation and implementation, opportunities for citizen engagement will need to be greatly expanded and sustained. The accent should be on increasing policy effectiveness and promoting social justice. The mechanisms for ensuring high ethical, integrity, and accountability standards need to be strengthened in both the public and the non-governmental sectors. The government and NGOs need to pay increasing attention to keeping the public informed on the laws on participation and transparency, and to methodologies for educating citizens on the procedure to follow to avail themselves of their basic legal and constitutional rights.

The post conflict public service capacity building paradigm includes the critical structures, institutions that must be rebuilt to ensure the restoration of delivery of services to the people. This rebuilding must be properly timed and sequenced so that the changes are practical and feasible.

One of the immediate needs of the public service in the aftermath of conflict is for technical assistance to bridge gaps at senior management levels – especially, gaps in logistics and operations management, conflict management and team building, strategic planning, economic and financial management, as well as establishment of basic records and archiving services.

At the early stages it is unrealistic to attempt to introduce sophisticated public service management systems. However, the seed must be planted for such systems to take root when normalcy returns. As soon as security has been restored, the missions and strategies of the post-conflict public service should be re-examined, re-defined and re-focused. This will guide the creation of appropriate and well streamlined public service structures and functions.

The institutional renewal strategy should begin with the establishment of a small but well-paid and highly motivated public service. The issues of diversity and inclusiveness must be addressed right from the beginning, so that the composition of the public service reflects and represents the various population groups. It is also important to ensure that the public service is set up with the processes well-defined, bottlenecks eliminated, and appropriate information technologies applied.

The post-conflict public service needs the support of external donors in meeting urgent requirements in the area of human and institutional capacity building. However, in the interest of ownership and sustainability, aid recipients must have the final say on the technical assistance priorities. Indeed, considering the controversy that has surrounded the "conditionalities" that frequently come with external aid, governments must now decide what types of assistance they are able to absorb or willing to accept. After all, it is less wasteful to embark on a donor-assisted project only to abandon it half way, that is, before it reaches fruition.