

Local ownership in peacebuilding processes in failed states: approaches, experiences, and prerequisites for success ; workshop report

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Veröffentlichungsversion / Published Version

Konferenzbeitrag / conference paper

Zur Verfügung gestellt in Kooperation mit / provided in cooperation with:

SSG Sozialwissenschaften, USB Köln

Empfohlene Zitierung / Suggested Citation:

Pietz, T., & Carlowitz, L. v. (2007). *Local ownership in peacebuilding processes in failed states: approaches, experiences, and prerequisites for success ; workshop report*. Osnabrück: Deutsche Stiftung Friedensforschung; Zentrum für Internationale Friedenseinsätze (ZIF). <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-260602>

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Workshop Report

Local Ownership in Peacebuilding Processes in Failed States

Approaches, Experiences, and Prerequisites for Success

Expert Meeting, 20 – 21 April 2007

Center for International Peace Operations (ZIF), Berlin

Tobias Pietz and Leopold von Carlowitz

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1. Introduction¹

Sustainable peacebuilding requires broad local participation in decision-making processes, training and capacity-building for local stakeholders, as well as the gradual handover of international responsibilities to local authorities. All of these measures relate and contribute to *local ownership*. While many international organizations endorse the principle of local ownership, much unclarity remains with respect to its practical and sustainable implementation in the field.

The ZIF-research project on *Local Ownership in Peacebuilding Processes. Approaches, Experiences, and Prerequisites for Success. An empirical study of peace operations in Kosovo (UNMIK) and Liberia (UNMIL)* aims to fill that gap in existing research on local ownership by clarifying the meaning of the concept and by exploring the practice of its actual implementation in the field. The project intends to deliver:

- an improved empirically based understanding of local ownership and of the problems encountered in implementing the concept;
- a systematic contribution to the academic debate on peacebuilding and local ownership;
- a further development of the concept, in particular regarding its implementation;
- the development of tangible recommendations for political decision-makers and personnel in peacekeeping missions.

Despite the fact that the existing literature on local ownership often focuses on international administrations with governance powers, executive mandates still constitute an exceptional case in international peacekeeping. The project will hence compare how local ownership is applied in an executive mission (UNMIK in Kosovo) and in a non-executive operation with mere assistance functions (UNMIL in Liberia). Both cases will be analyzed in a comparative study to enable generalizable conclusions.

For reasons of practicability, the project will focus on the (re-) establishment of the rule of law and on the holding of elections as two key areas in both peace operations. These two areas are

¹ Christoph Lüttmann, Katharina Nötzold, Wibke Hansen, Wanda Welker and Hannah Strohmeier have substantially contributed to the success of the expert meeting as well as the completion of this report.

also understood to constitute key concerns of peace operations in failed states in general. Sub-issues in these areas will be chosen for closer analysis to understand how mandates and guidelines aiming at local ownership have been applied in practice.

The research project intends to draw conclusions on the scope and application of the concept by examining mandates, UN documents, project manuals, policy papers, as well as by conducting semi-structured interviews with local and international actors in the field and at UN Headquarters in New York.

From 20 to 21 April 2007, the Center for International Peace Operations (ZIF) hosted an expert workshop sponsored by the German Foundation for Peace Research (DSF) which assembled well-known researchers and practitioners on peacebuilding to discuss the concept of local ownership. The expert workshop was organized as an integral part of the research project, concluding its first phase in which the existing literature was reviewed, and the project's guiding questions and hypotheses were concretized.

The main goals of the workshop were twofold:

- to review the state-of-the-art of research on local ownership as well as related practical experience with a view on finding a common understanding of the concept, and
- to examine and to discuss the methodological approaches of the research project.

The workshop consisted of three panels: The first concentrated on the concept of local ownership in general, while the second discussed the implementation of local ownership in the area of the rule of law. A discussion paper was distributed in advance to prepare the debate in each panel. A third panel exchanged views on methodological issues to be considered for the project's field research in Kosovo and in Liberia planned for 2007 and 2008.

This report contains shortened versions of the discussion papers and summarizes the discussants' comments and the workshop discussions of the first two panels. It provides an overview of the current state of the ZIF-research on local ownership.

The workshop proved to be very fruitful in clarifying the conceptual value of the term local ownership and helped to find ways of operationalizing the concept for the upcoming field research. Participants also welcomed the workshop very much as a starting point to establish a network of researchers and practitioners engaged in local ownership. ZIF intends to facilitate this exchange in the future.

Dr Winrich Kühne
Director
Center for International Peace Operations (ZIF)

2. Local Ownership – Applicable Concept or Policy Ideal?

2.1 Discussion Paper

Tobias Pietz, Center for International Peace Operations (ZIF)

Violent state failure is a major threat to international security in the 21st century and has led to an increase in number and intensity of external interventions. The stabilization and reconstruction of failed states entail serious and often unprecedented challenges to successful international conflict management. So far, the record of peacebuilding has been mixed. The question of how peacebuilding processes should be conceptualized and effectively and sustainably implemented remains as yet largely unanswered. Researchers and practitioners argue that the lack of sustainability of peace operations results to a large extent from a lack of local ownership in international peacebuilding. But it is heavily contested what local ownership implies in practice. This paper will provide a short overview on the origins of the concept before discussing three key areas of local ownership: definitions, interactions and dilemmas.

Origins of a concept

The rationale behind the concept local ownership is not new. Local ownership and related terms such as local participation and local empowerment were widely used by the development community throughout the 1980s and 1990s. The term was formally recognized as a key concept for development aid in 1996, when the OECD's Development and Assistance Committee (DAC) called for a comprehensive approach that "respects local ownership of the development process".² The concept was endorsed in the area of peace operations in 2001, when UN Secretary General Kofi Annan noted that "[sustainable development] can only be achieved by the local population itself; the role of the United Nations is merely to facilitate the process that seeks to dismantle the structures of violence and create the conditions conducive to durable peace and sustainable development."³ A similar conclusion was drawn by another key document at that time, the *Joint*

² Organization for Economic Co-operation and Development, OECD Development Assistance Committee, "Shaping the 21st Century: The Contribution of Development Co-operation", 1996, p. 9.

³ Report of the Secretary General, "No exit without strategy: Security Council decision-making and the closure or transition of United Nations peacekeeping operations", UN Doc. S/2001/394, 20 April 2001, para 2.

Ustein Study of Peacebuilding which stressed: "It is important that partner countries be in the driver's seat as far as peace building efforts are concerned, especially in post-conflict situations."⁴ Nonetheless, considerable unclarity prevails what the concept implies in practice and how a local population can actually "own" a process that is driven from the outside.⁵

Defining local ownership: process and/or outcome?

The main assumption of the ZIF-research project is that local ownership constitutes both the process and the outcome of engaging local actors in international peacebuilding activities.⁶ It is undoubted that ownership as a central goal of peacebuilding. However, the process towards it is neither static nor linear: There are diverse forms and degrees of local participation which differ depending on and within different phases of peace operations.⁷

Authors concentrating on local ownership also take a comprehensive and process-oriented approach. For example Narten, defined local ownership as:

"(...) the process and final outcome of the gradual transfer to legitimate representatives of the local society, of assessment, planning and decision-making, the practical management and implementation, and the evaluation and control of all phases of state-building programs up to the point when no further external assistance is needed."⁸

In contrast, Chesterman argues that local ownership should be seen as the end and not as the means of post-conflict peacebuilding. Existing conditions prevailing on the ground as well as

⁴ Gesellschaft für Technische Zusammenarbeit (GTZ), "Joint Utstein Study of Peacebuilding - National Report from Germany", 2003, p. 73.

⁵ S. Chesterman, "Ownership in Theory and in Practice: Transfer of Authority in UN State Building Operations", *Journal of Intervention and Statebuilding*, Vol. 1 (2007), p. 7.

⁶ W. Hansen *et al.* "Ansätze, Erfahrungen und Erfolgsbedingungen von Local Ownership in Peacebuilding Prozessen in Failed States. Projektantrag", 2005, pp. 5-6.

⁷ *Ibid.*, p. 5.

⁸ J. Narten, "Dilemmas of Promoting Local Ownership: State-building in Postwar Kosovo", in: R. Paris/ T. Sisk (eds.), *Statebuilding after Civil War: The Long Road to Peace*, 2007 (forthcoming), pp. 46 et seq. Accessible at: http://state-building.org/resources/Narten_RPPS_October2006.pdf.

political or strategic objectives of the international community will prevent a significant input of local actors in relevant decision-making processes.⁹

However, despite the lip service regularly paid to the concept of local ownership, not many international peace operations set up in the 1990s have to date been able to deliver the final result of local ownership in the sense of a real transfer of responsibilities to local structures, politicians and stakeholders. Moreover, non-executive international peacebuilding resembles classical development cooperation built on consultation and support rather than control. Hence, local ownership should be seen less as an outcome of international activity but as a process that improves or supports existing local structures, counterparts, and capacities.

Intervention and interaction: asymmetric relationships?

As mentioned above, local ownership constitutes an integral element of post-conflict peacebuilding. In particular in long and highly intrusive peace operations, there is, however, a danger of misusing the rhetoric of local ownership for political purposes. On the one hand, the concept can be invoked to downplay the intrusiveness of the intervention and to maintain a continuing international presence. On the other hand, the concept can be taken as argument in support of a premature departure of international staff, once mission fatigue has set in and international engagement is needed in another post-conflict area.

External actors might also see local ownership as a tool that allows them to give the impression that they take into account the wishes of the local population, while they actually continue to execute their agendas without any local involvement. This reveals the core problem of the approach, i.e. how transformation processes that are internationally designed and implemented may ever be truly “owned” by local actors.

This is the focus of researchers like Reich who contend that the use of the term local ownership distracts from the fact that international interventions tend to be characterized by an asymmetric relationship between external and internal actors.¹⁰ In most cases, donors and international

⁹ S. Chesterman, *You, the People. The United Nations, Transitional Administration, and State-Building*, 2003, p. 4.

¹⁰ H. Reich, “Local Ownership in Conflict Transformation Projects. Partnership, Participation or Patronage?”, *Berghof Occasional Paper 27*, 2006, pp. 6-8.

organizations have already shaped the agenda, assessed the situation, and designed the programs before any local involvement takes place. Even if project objectives subsequently aim for local ownership, i.e. by providing project benchmarks and by prescribing participatory program implementation, the described asymmetric relationship is likely to prevent a true accomplishment of local authority and responsibility.¹¹

Instead of appealing to local ownership, Reich argues in favor of an in-depth discussion of the interaction between external and internal actors and advocates to search for project frameworks that can counter existing asymmetrical relationships. She claims that a different terminology should be applied that centers around the concepts of local participation, capacity-building and transfer of responsibilities, as these concepts are directly linked to operational activities and are thus more accurate and useful. A clearer picture could be obtained of what the international community is actually doing in the field and what the role of local actors is and could be in this context.

Moreover, if external actors employ the concept of local ownership in a pretentious way, local expectations of real inclusion are raised and are bound to be disappointed. Local ownership may also bolster a flawed sentiment of external experts of being able to steer and to control very complex processes on the local level. An asymmetry exist between internal and external actors with respect to the available knowledge on local systems and relations which local actors might exploited by refusing to contribute their knowledge and capacities to the international peacebuilding effort.

Generally, the patterns and fora of interaction between internal and external actors as well as their perceptions towards each other are fundamental, not only for local ownership but also for the overall peace process. Empirical research should therefore concentrate on these issues.

Dilemmas of local ownership

Other authors explored the problems that international peacebuilding encounters when trying to engage the local population with a view on transferring international responsibilities into

¹¹ *Ibid.*

local hands. Despite the fuzziness of the concept of local ownership, for example Narten¹² and Hansen/Wiharta¹³ developed first typologies of key dilemmas of implementing local ownership in peacebuilding processes. Based on these typologies, the following dilemmas can be formulated for the further operationalization of the concept:¹⁴

- a) *Intrusiveness dilemma*. Overly intrusive policy- and decision-making by external actors tends to alienate local stakeholders. Less intrusive measures may not suffice to stabilize a post-conflict situation.
- b) *Dependency dilemma*. Establishing sustainable local structures and capacities requires long-term external commitment. Yet, long-term international involvement and assistance tend to create local dependencies on external support.
- c) *Transition dilemma*. International peacebuilding activity should cooperate with local actors and should be based on existing structures and traditions from the very beginning. However, traditional power structures and mentalities often cause or contribute to the outbreak of a given conflict. External peacebuilders thus face a dilemma in selecting local partners. They should be cautious in relying on traditional elites and try to transform their attitudes and behavior.

Research on local ownership has so far focused mostly on the political and strategic level and explored mandates of peace operations and formal post-conflict institution-building processes. Analyzing peacebuilding activities at the operational level, e.g. by examining actual project

¹²J. Narten, "Post-conflict Peacebuilding & Local Ownership: A Case Study on External-local Dynamics in Kosovo under UN Interim Administration", paper presented at the International Studies Association Conference in Chicago, 3 March 2007, pp.16 et seq. Accessible at: <http://64.112.226.70/one/isa/isa07/>.

¹³ A. Hansen / S. Wiharta, "The Transition to a Just Order after Conflict", Policy Report, Draft 2006.

¹⁴ In his study of post-conflict Kosovo, Narten also refers to the so called *statehood dilemma*: External peacebuilders may be restricted in their choice of local counterparts and in establishing structures of self-government if the final status of a territory is unclear. Though local ownership is crucial for the legitimacy of international peacebuilding, it might complicate the overall political process. So far, Kosovo is the only case in which this dilemma played a role in the context of implementing of local ownership. See J. Narten, "Dilemmas of Promoting Local Ownership: State-building in Postwar Kosovo", in: R. Paris/ T. Sisk (eds.), *Statebuilding after Civil War: The Long Road to Peace*, 2007 (forthcoming).

implementation and management, is the objective of the ZIF-research project. The above-mentioned dilemmas are well-suited to support the analysis of the difficulties to put the concept of local ownership into practice. Together with the discussion on defining local ownership and on the patterns of interaction between external and internal actors, they sum up the current state of the debate on local ownership.

2.2 Panel

Following a presentation by Tobias Pietz (ZIF) based on the contents of the discussion paper, three discussants commented on the concept of local ownership and the approach of the ZIF-research project in general.

Annika Hansen, Norwegian Defense Research Establishment (FFI)

Ms. Hansen generally endorsed the approach chosen by the research project. She stressed the need to review how the concept of local ownership is put into practice as there is a huge gap between the international use of the term and the concept in the policy debate and its actual implementation in the field. Even where the term is not explicitly referred to, a range of measures implicitly aims at strengthening local participation and ownership, for instance through capacity building.

Regarding the question of whether to keep the contested term local ownership for the planned research, Ms. Hansen sympathized with the wish to abandon a term which is difficult to handle analytically because of its vagueness and its widely diverging interpretations. But she suggested that it would be counterproductive to do so given the fact that the OECD, the UN, the EU and others are all adopting the term as a core principle for their activities. The added value of research is to look at how it is implemented.

Ms. Hansen raised a crucial problem of local ownership: Does local ownership mean that local partners can define the outcome of international peacebuilding processes by themselves? Or will the outcome in practice be predetermined by internationals – not least to safeguard that it meets international standards of democracy, rule of law and human rights? If local actors decide on process and outcome, there may be the danger of involving local partners who are or were part of the conflict and – if in charge – whose actions might not contribute to a sustainable peace. Moreover, international peacebuilders may be confronted with outcomes that they do not believe will work in practice, but are preferred by local authorities. She illustrated this with an example: If local authorities decide they would like to have a bicycle with square wheels, should the internationals allow them to have such a bicycle even though they know it won't go anywhere? Or should they insist on imposing round wheels against the wishes of their local partners?

It is problematic when mechanisms of transition are dominated by internationals (i.e. in the form of an asymmetric relationship), but this does not invalidate the concept of local ownership itself. She suggested to concentrate on how the concept should be applied in practice and on the way local actors should be brought in. Based on her own field experience, she suggested that it was difficult to find internationals who accept local concepts and ideas. The type of person that is usually recruited for international work and is motivated to “make a difference” often finds it difficult to adopt a hands-off approach and to let locals carry out the job with the risk of failing. In her opinion, an “Übermensch” would be needed on both sides of the relationship to implement local ownership in a productive way – where both sides are patient, insightful, open-minded, good communicators, and are willing to learn and change.

Although Ms. Hansen agreed that the question of whether or not a peace mission operates under an executive mandate is important, she saw only limited value in emphasizing that difference because in practice activities differ with respect to degrees of authority and mandates in executive and non-executive missions.

In response to the transitional dilemma referred to in the discussion paper, she suggested not to use the term “traditional structures” in a way which associates it to the issue of formal versus informal mechanisms. In most post-conflict situations, the traditional and informal structures continue to work while only the formal structures have broken down.

Summarizing her comments, Ms. Hansen stressed that ultimately there is no way around using the principle of local ownership. If the international mission is to withdraw at some point, there is a need to transfer authority to local actors.

Hannah Reich, Berghof Research Center for Constructive Conflict Management

Ms. Reich wondered whether local ownership as currently discussed is merely a policy ideal or a useful concept that lends itself to practical implementation. In her view, local ownership means far more than a consultative or participatory role for local actors. Instead of distinguishing between internationals and locals, she advocated the terminology of internal or inside actors ver-

sus outside actors, as transnational diaspora networks and the long-term presence of international staff members can make it difficult to assess who is local and who is international.

If ownership in this context was to be understood in a literal sense, then insiders should possess final power over decision-making processes and project outcomes. Insiders should also have the means to decide on the agenda, the strategy, on budget management procedures and even on the selection and deployment of experts. However, existing practice does not meet these standards at all.

Moreover, Ms. Reich mentioned two additional problems inherent in the asymmetrical relationship between internals and externals. The first concerns the fact that giving up project control rarely lies in the interest of a donor (external) partner. Secondly, it is almost impossible to develop democratic structures as long as the relationships are asymmetrical. How can insiders learn a system of power sharing and participation if outsiders aim to transform the society in a hierarchical way? A project could not be locally owned if the main decisions are taken from the outside. In addition, the contradiction between the official message of power sharing and democratization and the de facto patron-client relationship between out- and insiders causes further difficulties.

Ms. Reich wondered how peacebuilding operations could work towards a more equal partnership even if the main structures are unequal and time was missing. According to her, outsiders should dedicate more time and energy to use their power to alter the asymmetric relationships and to facilitate and to learn real power sharing.

Ulrich Schneckener, Stiftung Wissenschaft und Politik (German Institute for International and Security Affairs, SWP)

Mr. Schneckener confirmed that the concept of local ownership had its origins in the development community but that peacebuilding practitioners and agencies are now also using it as a core principle. Local ownership was originally seen as a kind of “self-enlightenment” for donors to refrain from patronizing attitudes towards local partners.

While the result of this policy was mixed, local ownership continues to be a relevant notion in the context of international cooperation and peacebuilding. However, according to Mr.

Schneckener, the concept is misleading with respect to its practical application as it was too often used as an international excuse for avoiding a transfer of power into local hands. He suggested that if the term local ownership was to be kept in the ZIF-research project, a wider normative discussion should be avoided. Instead, the term should be applied only in a technical and process-oriented sense that focuses on concrete project implementation and the transfer of responsibilities from international to local actors. True local ownership and control as an outcome would be difficult to reach in an interdependent world with various forms of outside interventions in domestic systems. Local ownership can thus only be achieved to a certain degree. Looking at the operationalization of the concept, Mr. Schneckener recommended distinguishing between different policy areas with varying degrees of local ownership.

With respect to the discussion on asymmetric relationships, Mr. Schneckener noted that there was not only a donor-driven asymmetry of resources, but also an asymmetry of local knowledge and of time that played in favor of local actors who would instrumentalize this factor. He then presented four “illusions” linked to the concept of local ownership. The first concerned the assumption that external actors are in control of something that they could return or transfer to local structures. In post-conflict situations there was regularly no local power vacuum, as some local actors would always be in charge irrespective of international preferences. The second illusion related to the assumption that local actors in general demand ownership. Mr. Schneckener emphasized that in reality local politicians would sometimes favor not being held responsible for certain policies. A further illusion concerned the static understanding that internationals could transfer some kind of authority to local legitimate actors. But in many cases local actors who had been granted internationally legitimized positions would lose their power once the international presence departed. The final misconception was, according to Mr. Schneckener, that there might be an ideal point in time in any given mission cycle when a transfer should typically start and end, while in practice this would heavily depend on the concrete circumstances prevailing in a given post-conflict situation. However, Mr. Schneckener suggested that research would be valuable on the de facto relationships between international and local actors and on corresponding international exit strategies.

2.3 Discussion

A difficult concept

The general critical attitude towards the concept of local ownership prevailed in the discussion. Criticism was particularly directed to its possible misuse to disguise ongoing patronizing attitudes towards local actors and to legitimize continued intervention. It was also argued that in many peacekeeping operations it was not intended to hand over control of decision-making for a substantial period of time, as this would potentially reinstall the power structures that caused international intervention and thereby jeopardize the peacebuilding process.

Participants stressed that it would be illusionary to develop a comprehensive definition of local ownership covering all relevant aspects of peacebuilding processes as the concept remained too unclear and too politically charged. However, agreement prevailed nevertheless that its underlying notion that the policies relevant for a country should in principle be determined by local actors continued to be an important ideal for peacebuilding efforts. In the same vein, most participants emphasized the need to include local partners in relevant decision-making processes already at the early stages of the mission, even if this process also entails risks for the peace process.

Analyzing the practical value and implementation of local ownership without entering into a normative debate on the issue was seen by most participants as a valuable contribution to research in this area. In contrast, one participant found that the ZIF-research project focused too much on the technical aspects of local ownership. A widened understanding of the concept should be applied, describing local ownership both as the sum of instrumental and operational aspects such as capacity-building and as the socio-political goal of building sustainable peace.

Choosing local partners

A long discussion centered on the choice of local partners in the field. The question was raised whether only the national elite or also the general public should be considered as a local partner. Participants observed that international attempts to work towards local ownership mostly concentrate on the national elite only. This approach was supported by a tendency to regard the local population as a uniform group whereas in reality most countries consist of very heterogeneous fractions of society.

Moreover, international mission staff tends to stay in central urban settings but a broad and decentralized implementation of a local ownership agenda would also need to take into account demands of non-elite actors and to consider community-based knowledge found in remote and rural areas. Given these difficulties, it would be worth conducting research on how early and broad participation could be achieved that includes this knowledge.

A further issue that was raised concerned the legitimacy and accountability of the local counterparts. External actors might select local actors who are not accountable to anybody in the domestic structure. This argument was countered by pointing to the fact that in most post-conflict situations requiring international intervention formal local structures have ceased to function. Thus, no local system of accountability could be expected.

Participants also stated that legitimacy of local actors was a difficult category anyway as it was not clear who was the appropriate party to determine legitimacy. Among external actors there was a tendency to look for like-minded partners who might lack legitimacy in their own constituency. Instead of focusing extensively on legitimacy and accountability, it was suggested that peace operations should rather concentrate on selecting local counterparts who could serve as *effective* partners in given peacebuilding processes.

Pragmatic guide or normative principle?

Several participants underlined that post-conflict societies governed by internationals pose a normative problem. In case of a threat to or breach of international peace and security, the UN Security Council may decide to authorize enforcement measures to intervene in matters which are essentially within the domestic jurisdiction of any state. This may involve the establishment of international interim administrations with full legislative and executive powers. Such administrations may at times pursue an international agenda in a neo-colonialist way without sufficiently taking into consideration local input and interests. Yet, international law requires that these peace operations only intervene into domestic affairs as much as this is required for international peace and security. International governance must also respect the local population's right to (internal) self-determination i.a. by establishing democratic institutions of self-government and by working towards local ownership in peacebuilding efforts.

This led to a discussion of whether peace operations should initially seek to gain as much executive control as possible or should rather try to identify local structures and partners that are still functioning, at least rudimentarily. It was pointed out that international interventions usually take place because (formal) local structures failed or were overthrown. Therefore, most participants agreed that, while it is desirable to develop peacebuilding strategies with as much local input as possible, peace operations might have to act quite intrusively in the beginning. Nevertheless, they also should start to build up local capacities as quickly as possible. At some point, governance functions should be jointly carried out in equal partnership by international and local actors and responsibilities should then be gradually transferred into local hands. The establishment of some form of normative international oversight mechanism should accompany the latter process before final withdrawal of the international presence could be considered.

It was pointed out that given the extreme personal and professional challenges that external peacebuilders face in most post-conflict environments, they might lack the ability to reflect on their attitudes and impact as well as on the status of the mission. For self-serving reasons some international actors might also prefer not to give up any control although circumstances would require so. One specific problem of international peace operations was that mission agendas are one-sidedly driven by Western actors and ideas because the international engagement would have to be funded by (and justified to) the electorates of the donor states. This situation would often lead to a maximized agenda based on Western standards (e.g. establishing a liberal democracy, enforcing the rule of law by means of multiethnic law enforcement agencies, etc) which might meet local resistance and complicate or delay the transfer of responsibilities. One participant warned that local populations particularly in Africa could easily associate non-locally sensitive peacebuilding activities with past colonial experiences and refuse cooperation with the international community on the grounds of resisting neo-colonialism.

3. Local Ownership and the Rule of Law

3.1 Discussion Paper

Leopold von Carlowitz, Center for International Peace Operations (ZIF)

In his recent report on the “Rule of Law and Transitional Justice”, the Secretary-General emphasized the importance of restoring and respecting the rule of law in post-conflict peacebuilding.¹⁵ Corresponding international assistance was covered by the mandates of the United Nations Interim Administration Mission in Kosovo (UNMIK) and the United Nations Mission in Liberia (UNMIL) and formed a significant part of their peacebuilding activities. In this discussion paper, the concept and the different elements of international rule of law programs will first be sketched in general terms and specifically for the purposes of the ZIF-research project. Then, brief reference will be made to the necessity of achieving local ownership in this context and to the ways how and on what levels UNMIK and UNMIL tried to implement local ownership in their rule of law activities. In the last section, some consideration will be given to potential thematic areas on which the research project could focus in particular.

Elements of rule of law programs

In the Secretary-General’s report, the rule of law is defined as “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.”¹⁶

It is the judicial system composed of the judiciary and the judicial administration that lies at the heart of the rule of law. The judiciary consists of judges, prosecutors, public defenders and attorneys. The administration of justice is undertaken by court registrars, clerks and translators. Besides the law enforcement agencies, the correctional services play a central role in maintain-

¹⁵ Report of the Secretary-General, “The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies”, UN Doc. S/2004/616, 23 August 2004, para. 64 (a).

¹⁶ *Ibid.*, para. 6.

ing the rule of law. Post-conflict rule of law programs have been grouped in the following categories representing different social goods: (1) human security and law and order; (2) human rights and transitional justice; (3) property and commercial disputes resolution and economic regulation; (4) predictable and effective government bound by law; and (5) access to justice and equality before the law.¹⁷

Notwithstanding this categorization, it is argued in this project that after violent conflict and state collapse, law and order issues are of primary importance for international peacebuilding efforts, in particular in situations where the international community takes over executive functions. The (re-) establishment¹⁸ of judicial and correctional institutions is the central response to a breakdown of the formal justice system and a complete deterioration of public security. Besides maintaining order by deploying international judges, prosecutors and police forces, international civilian assistance is provided mainly by appointing and training local judges, prosecutors, police and correctional staff, by reforming and/or introducing corresponding legislation, and by refurbishing court houses, police stations and prisons (“justice and security sector reform”).

As the research project intends to concentrate mostly on legal and judicial aspects (as opposed to the executive side) of rule of law programs, the main focus will be placed on the justice sector and on judicial reform. Complementing activities primarily associated with the security sector such as international policing and police reform will not be addressed here although these activities constitute an essential component of international rule of law engagement.

A functioning and legitimate judicial system requires access to justice and equality before the law - requirements that might include special protection for groups especially affected by the conflict such as refugees and displaced persons or raped women. Ensuring that these basic criteria are met by means of monitoring and legal aid is a complementary activity to legal and institutional reform.

¹⁷ K. Samuels, “Rule of Law Reform in Post-Conflict Countries. Operational Initiatives and Lessons Learnt”, Social Development Papers, Conflict Prevention and Reconstruction, Paper Nr. 37, October 2006, p. 7. The original order of the second and third category was changed.

¹⁸ The term „(re-) establishment“ is used to indicate that international activity relates both to the reconstruction of judicial structures that were destroyed in the course of the conflict as well as to the (new) establishment of a judicial system as part of a peacebuilding strategy.

Much post-conflict rule of law programming also relates to the concept of transitional justice. According to the Secretary-General, transitional justice “comprises the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, service justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.”¹⁹

By addressing prior human rights violations, transitional justice serves as a prerequisite for a (regular) judicial and security system to function and to be perceived as legitimate. Activities aiming at transitional justice are interrelated and overlap with the concept of the rule of law if they concern the judicial system, for example in the context of a vetting process or with respect to the prosecution of war crimes. Vetting is not only a question of getting rid of criminals, but also a measure to safeguard future rule of law practice. In as far as this is the case, transitional justice is considered in the research project.

While justice (and security) sector reform involves elements of acute crisis management and is often directly related to the conflict, the area of economic regulation and commercial dispute settlement is a classic field of international development cooperation. Reforming a country’s civil and commercial legislation towards a liberal market economy and engaging in corresponding institution-building requires some degree of post-conflict stability that needs to have been established earlier. As the research project focuses on post-conflict rule of law in the narrow sense, economic reform will not be studied. Likewise, little mention will be made of international interventions aiming at a predictable and effective government or, more generally, at the principle of good governance, except if they involve constitutional and administrative reforms that concern the structure, responsibilities and accountability of the judicial system.

Local ownership

Achieving local ownership is crucial for the success of rule of law programs. As the Secretary-General emphasized, “[u]ltimately, no rule of law reform, justice reconstruction, or transitional

¹⁹ UN Doc. S/2004/616, para. 8.

justice initiative imposed from the outside can hope to be successful or sustainable.”²⁰ New institutions and legal systems are only perceived as legitimate if they have been established in consideration of local structures and traditions. They can only function effectively and sustainably if local actors regard them as useful and take over responsibility for managing them. Local ownership is especially important in the rule of law sector, as police and judicial institutions in fulfilling their functions are dependent on active cooperation by and communication with the general public. Thus, winning local stakeholders and gaining public acceptance has been one of the most important objectives of international rule of law assistance.

Rule of law programs introduced without sufficient local participation and capacity-building and carried out in disregard of local structures and traditions will not only be fruitless and waste scarce international resources. Such programs might also do harm by creating legal and institutional pluralism and thereby worsen local anarchy. Moreover, they might be criticized for legal imperialism and contribute to alienating a target population from the international community.

Local ownership in UNMIK and UNMIL rule of law assistance

While the mandates of UNMIK and UNMIL do not explicitly refer to local ownership, indirectly the concept nevertheless plays an important role in various contexts of rule of law activity and related interaction between locals and internationals.

According to Security Council Resolution 1244, UNMIK is authorized to “provide transitional administration [including the administration of justice] while establishing and overseeing the development of provisional democratic self-governing institutions”.²¹ The Special Representative of the Secretary-General is empowered to issue legislative acts and “may change, repeal or suspend existing laws to the extent necessary for the carrying out of his functions, or where existing laws are incompatible with the mandate, aims and purposes of the interim civil administration.”²² These provisions give UNMIK a far-reaching executive and legislative mandate that stands in some contradiction to the notion of local ownership. This principle comes into play as UNMIK is obliged to respect local (Yugoslav and Serb) legislation “insofar as it does not conflict

²⁰ *Ibid.*, para. 17.

²¹ UN Doc. S/Res/1244, 10 June 1999, para. 10.

²² Report of the Secretary-General on the United Nations Interim Administration in Kosovo, UN Doc. S/1999/779, 12 July 1999, para. 39.

with internationally recognized human rights standards or with previous UNMIK regulations.”²³ Further local ownership is implied in UNMIK’s mandate to establish self-governing institutions and to carry out corresponding capacity-building.²⁴

In contrast, UNMIL only has a mandate to assist the Liberian Government in re-establishing national authority including a functioning administrative structure, and “in developing a strategy to consolidate governmental institutions, including a national legal framework and judicial and correctional institutions”.²⁵ With respect to human rights, UNMIL unlike UNMIK is not responsible for the protection of human rights, but merely required “to contribute towards international efforts to protect and promote human rights ... within UNMIL’s capabilities and under acceptable security conditions...”.²⁶ Executive and legislative responsibility rests with the Liberian authorities, so that local ownership could be presumed in principle. However, local ownership might be questionable in the light of a potential asymmetric relationship between international and local actors characterized by a domination of international expertise or of a possible conditionality of international aid.

Understanding local ownership as both process and outcome, there are three main types of interaction that aim at achieving local ownership: The first is participation and/or joint decision-making and program implementation (legislative, judicial and executive); the second concerns capacity-building programs; and the third involves the formal transfer of international responsibilities to local institutions.

Participatory decision-making

In various degrees, both UNMIK and UNMIL have worked towards local ownership by including local partners in relevant decision-making processes. In the rule of law sector, this concerns for example selection and appointment processes, mainly of judges and prosecutors but also of correctional and ministerial staff. In Kosovo, international and local judges and prosecutors cooperate in criminal proceedings and pronounce decisions that (ideally) are supported by the local judiciary. Moreover, in the course of the Joint Interim Administrative Structure in Kosovo (JIAS), UNMIK tried to achieve local ownership in its “ministerial” work by appointing local co-

²³ *Ibid.*, para. 36.

²⁴ *Ibid.*, paras. 79-81.

²⁵ UN Doc. S/Res/1509, 19 September 2003, para. 3 (p) and (q).

²⁶ *Ibid.*, para. 3 (l).

heads for all administrative departments (including the Department of Judicial Affairs) and by employing local staff paid by a local budget. The same applied to the management of subordinate JIAS institutions such as the Kosovo Law Centre and the Kosovo Judicial Institute.

In addition, both peace operations tried to include local politicians, experts and stakeholders in legislative processes. In this context, it is relevant that UNMIK possessed full legislative powers at least until the establishment of the Provisional Institutions of Self-Government (PISG), whereas UNMIL only assisted the Liberian Government in its national lawmaking activities. Therefore, the inclusion of locals in international regulatory work had more prominence for UNMIK than for UNMIL. As regards local participation in UNMIK lawmaking, it should be differentiated according to the phase of the international involvement and with respect to the concrete justification and objective of the UNMIK regulations.²⁷

In the rule of law sector in Kosovo, the drafting of a new criminal code and code of criminal procedure as well as various UNMIK regulations on the establishment of the judiciary, on special prosecution measures and on property rights need to be mentioned. Legislative reform in Liberia mainly related to certain aspects of criminal law (e. g. on rape), to the judiciary and to the establishment of a truth and reconciliation commission. Besides, UNMIL has been engaged in initial steps to develop a comprehensive legal framework of the justice system.

The wide-spread use of uncodified customary law has constituted a special challenge to UNMIL's regulatory assistance. The complexities of the prevailing informal legal relations have severely limited UNMIL's capacity to provide sound legislative advice. At the same time they underline the primary role of the Liberian legislators in law reform projects. In contrast thereto, (Albanian) Kosovo's customary law, the Canon of Lek Dukagjin, did not play a role in UNMIK lawmaking as it is superseded by the applicable Yugoslav and Serb legislation. There was, however, severe uncertainty about the applicability of the latter legislation, as the Kosovo Albanian judiciary and other relevant professional groups perceived it to be discriminatory and illegitimate and refused to apply it, at least officially. Irrespective of this dispute, UNMIK had serious difficulties

²⁷ L. von Carlowitz, "UNMIK Lawmaking and Property Rights in Kosovo", *Global Governance*, Vol. 10 (2004), pp. 331-332.

in respecting and considering domestic laws given their different language, culture and legal traditions.²⁸

Capacity-building and transfer of responsibilities

Fostering local ownership through capacity-building was a major part of UNMIK's and UNMIL's rule of law engagement. Both missions conducted extensive training courses and workshops for local judges and prosecutors and other relevant local staff. UNMIK (OSCE pillar) even established a specialized training institute, the Kosovo Judicial Institute, as well as a legal resource center, the Kosovo Law Center. As with participatory decision-making, international familiarity with domestic laws and legal traditions is a critical issue for successful capacity-building that utilizes the knowledge and experiences of the beneficiaries.

Further, local ownership plays a role for UNMIK as an institutional outcome in the course of the formal transfer of originally international executive responsibilities to Kosovar institutions and staff. On the one hand, reference should be made to those subordinate JIAS institutions that were placed into local hands and budget following the establishment of the PISG. The Kosovo Judicial Institute and the Kosovo Law Center belong to this category. On the other hand, the newly-created Ministry of Justice needs to be mentioned as a local institution that has taken (or is about to take) over functions that the Constitutional Framework of Self-Government assigned to UNMIK as "reserved" powers.

Selecting fields for empirical research

Given the number and variety of rule of law programs conducted by UNMIK and UNMIL (see list of activities annexed), it is necessary to limit the areas to which empirical research on local ownership should be directed. In principle, the ZIF-research project should concentrate on core areas of rule of law activity in both peace operations. The selection should also be guided by the comparability of the UNMIK and UNMIL programs. In addition to the different competencies, a constraining factor in this context is that UNMIL has been much less active in the rule of law sector than UNMIK. Furthermore, consideration should be given to issues of research economy and measurability. For example, when researching local ownership, it is practical to study the conduct and attitudes of a limited group of stakeholders such as judges and prosecutors instead

²⁸ Compare: Report of the Panel on United Nations Peace Operations, UN Doc. A/55/305-S/2000/809, 21 August 2000, paras. 79-80.

of the general public. Moreover, research is more beneficial if assessing processes and outcomes instead of only trying to measure the latter.

The (re-) establishment of the criminal justice system, including the appointment of judges and prosecutors and the reform of the judiciary, formed the central piece of both missions' rule of law engagement. Given the significance and the extent of international activity in this field, criminal justice assistance should lie at the heart of the ZIF-research project. In contrast, the civil justice system does not serve as a suitable field for in-depth research, as UNMIK concerned itself with this field only comparatively late and in a limited way and as UNMIL did not deal with it at all.

Besides, rule of law assistance in the area of transitional justice could be considered for further exploration. Yet, the most prominent international involvement in this context, the International Criminal Tribunal for the former Yugoslavia, is not part of Kosovo's peacekeeping operation in the narrow sense. For the purpose of the research project, it would be more appropriate to examine UNMIK activities in prosecuting or regulating conflict-related and war crimes. Moreover, given the emphasis on the rule of law and the judicial sector, the research project should abstain from studying non-judicial institutions such as the Housing and Property Directorate (HPD) in Kosovo and the Truth and Reconciliation Commission (TRC) in Liberia that were established to heal and to remedy conflict-related crimes. Especially the TRC, but to some extent also the HPD, aim at (general) post-conflict reconciliation, rather than at strictly law-based justice.

The case of these institutions is also more complicated with respect to the category of persons selected for interview. In comparison to judicial reform where the interviewees could primarily be chosen from among the judiciary or lawmakers – both groups are clearly defined and concern relevant persons who are directly involved and qualify as stakeholders and opinion leaders – the most relevant groups to be analyzed in the context of the HPD and the TRC are the victims and claimants respectively as well as the general public. Such coverage would, however, exceed the capacity of the project.

Therefore, this discussion paper suggests limiting the research focus on the (re-) establishment of the criminal justice system. Focusing more on legal reform, institution-building and judicial work rather than on enforcement issues, the following activities in this area may be considered for in-depth examination with a view to local ownership:

- Cooperation of local and international judges and prosecutors (Kosovo)
- Legislative reform concerning the judicial system and criminal law
- Appointment of judges and prosecutors
- Training of judges and prosecutors
- Integration of informal justice mechanisms (Liberia)

In selecting concrete research topics, it should be noted that the cooperation of local and international jurists in law reform and institution-building lends itself to study due to its processuality, whereas the outcome of capacity-building programs in the form of local ownership is only difficult to measure. Thus, the research project could include a focus on pertinent legislative activities such as the drafting of the Criminal Code in Kosovo and the Rape Law in Liberia. In this context, the knowledge and influence of existing national and customary legal provisions on the regulatory process could also be assessed and analyzed. Moreover, the system of selecting judges and prosecutors should be assessed empirically.

Despite their importance in working towards local ownership, the development and implementation of training modules should on the other hand not be made subject of the interview process. The interaction between trainers and trainees is not easily assessed and rule of law-related training courses may be characterized as supplementary programs to specific reform activities that form the core of the respective international assistance.

Given their prominence in UNMIK's rule of law strategy, the cooperation of local and international judges might also be included in the research. There is, however, no comparable UNMIL project (although the deployment of international judges and prosecutors was proposed to the Liberian Government) and detailed information relating to judicial deliberations might be difficult to obtain.

Overview of rule of law-related activities of UNMIK and UNMIL²⁹

Criminal Justice System

UNMIK

- Establishment of Emergency Judicial System
- Appointment of judges and prosecutors
- Establishment of (mainly local) Advisory Judicial Commission to recommend judges
- Establishment of Supreme Court and General Prosecutors Office
- Deployment of international judges and prosecutors (for sensitive cases)
- Recruitment of correctional staff
- Refurbishment of and other support to courts and correctional facilities
- Establishment of Kosovo Organized Crime Bureau
- Monitoring (focus *i.a.* on ethnic discrimination and crimes and on ethnic composition of judiciary and prosecutors)

UNMIL

- Vetting and appointment of judges and magistrates
- International judges and prosecutors proposed (but rejected by Liberian Government)
- Establishment of Public Defender's Office
- Refurbishment and other support to courts and correctional facilities
- Monitoring (focus *i.a.* on juvenile justice)

Civil Justice System

UNMIK

- Appointment of judges and prosecutors
- Refurbishment of and other support to civil courts
- Civil cases exclusively handled by local courts
- International monitoring only very late (Pillar III)
- Establishment of Housing and Property Directorate and cadaster reform

²⁹ The survey does neither include police-related activities nor issues relating to economic reform.

UNMIL

- Appointment of judges and prosecutors
- Refurbishment of and other assistance to courts
- No property-related program

Transitional Justice

UNMIK

- [ICTY]
- Preparatory work for War and Ethnic Crimes Court (not realized)
- Deployment of international judges and prosecutors (for war crimes)
- Establishment of Housing and Property Directorate
- Abolishment of discriminatory legislation

UNMIL

- Establishment of Truth and Reconciliation Commission

Legislation

UNMIK

- Revision of Criminal Code and Code of Criminal Procedure
- Adoption of UNMIK Regulations relating to (1) judicial system, (2) property law, (3) terrorism and organized crime
- Adoption of PSIG Law on Kosovo Judicial Institute
- Establishment of Legal Policy Unit (Pillar I) and of Policy and Legal Support Unit (Pillar II)

UNMIL

- Adoption of Rape Law and legislation establishing Truth and Reconciliation Commission and National Human Rights Commission
- Preparatory work on Jury Law and Law on Financial Autonomy of the Judiciary
- Establishment of Technical Committee on the Rule of Law

Legal Education and Capacity-building

UNMIK

- Establishment and early transfer of Kosovo Judicial Institute and Kosovo Law Center
- University reform including reform of law faculty
- Establishment of Criminal Defense Resource Center (Pillar I)
- Training of judges, prosecutors and correctional staff

UNMIL

- Training of judges and magistrates, prosecutors and correctional staff
- Reopening and reform of National Law School

Human Rights

UNMIK

- Establishment of Ombudsperson's Office
- Human rights advocacy, monitoring, training and provision of legal aid (Pillar III)

UNMIL

- Establishment of National Human Rights Commission
- Human rights advocacy, monitoring and training
- Establishment of human rights clubs in schools

3.2 Panel

Following a presentation by Leopold von Carlowitz (ZIF) that summarized the contents of Discussion Paper two, four discussants commented on the presentation and on the research program in general.

Agnès Hurwitz, International Criminal Tribunal for the Former Yugoslavia (ICTY)

Ms. Hurwitz stated that she appreciated the envisaged limitation to research on the criminal justice system on the basis that such an approach could lead to a focused and valuable study. In the light of considerations relating to research economy, she also did not object to excluding the police and correctional institutions from empirical examination. She suggested that the outcome of the international assistance should be specified and analyzed using the criteria of a fair and efficient criminal justice system.

Ms. Hurwitz wondered why UNMIK and UNMIL had been chosen as case studies and remarked that the context of the international interventions should be explained, as these narratives would strongly influence the objectives and outcome of the rule of law-related engagement of the international community. In the case of Kosovo, special mention was made of the status issue and of strategic interests of European states that would shape international agendas not necessarily reflecting interests and priorities of Kosovo's judiciary.

With respect to the circle of interviewees, Ms. Hurwitz suggested to include not only judges and prosecutors but also staff from human rights organizations and other relevant institutions and to enquire how they view the process of re-establishing the judiciary and other pertinent rule of law projects.

Peter Schumann, United Nations Mission in Sudan (UNMIS)

Mr. Schumann commented on the different perspectives and funding mechanisms of the peace-keeping and the development sector. He found the selection of the case studies interesting, as it showed how missions in Africa and Europe are differently conceptualized and implemented. While in Kosovo, the European Union engages in serious institution-building based on the EU

accession strategy, UNMIL had different priorities informed by traditional development cooperation and based on fewer resources available.

He suggested that the research project should also examine the outcome and effect of international assistance. Did specific rule of law projects deliver the results originally envisaged? What is the local perception of the international involvement, e.g. in case of the international judiciary? In how far is domestic applicable law, including customary law, applied and respected by internationals?

Kirsti Samuels, International Institute for Democracy and Electoral Assistance (IDEA)

Ms. Samuels emphasized the importance of sustainability in rule of law assistance. Instead of picking UNMIK, which in her opinion was over-researched, she argued that the light-footprint approach applied in Afghanistan was a more suitable research topic in connection with studying local ownership. She also advised to examine the work of development-oriented NGOs and paralegals rather than to focus solely on situations dominated by big international institutions.

Thomas Jaye, Kofi Annan International Peacekeeping Training Center (KAIPTC)

Mr. Jaye found the research objectives very important and stressed the necessity to consider the historical context. With respect to Liberia, he pointed at the long period of poor and centralized governance and the complete break-down of the judicial system. Efforts to (re-) establish the justice system were influenced by current power politics, a weak judicial infrastructure and an insufficient number of skilled lawyers, in particular in the countryside. He deplored the low quality of legal education in Liberia and stated that there was much legal pluralism and contradicting competencies that were in need of reform. He also mentioned the prevailing clan system and traditional power structures as well as customary practices relating to truth finding and punishment influenced by superstition. Training courses should be organized for local chiefs to teach them practices in compliance with international standards and norms. To reach sustainability in rule of law reform, he also highlighted the present attempts by UNMIL and the Liberian Government to strengthen the law schools.

3.3 Discussion

In the following discussion, participants mainly focused on (1) methodological issues in connection with the selection of the case studies and of specific rule of law programs for the interview process; on (2) access to information; and (3) on how to deal with customary legal traditions.

Methodology and selection

In response to various questions on the selection of the case studies, ZIF staff explained that UNMIK and UNMIL had been chosen for reasons of practicability and comparability. It was argued that the two missions lend themselves to comparison in the light of their failed state environment and because of their similar structure and mandate including a strong emphasis on elections and the rule of law. The results of the comparison could be generalized because of the missions' different geographical contexts, timelines and mandates. Moreover, it was clarified that UNMIK had also been selected for practical reasons, since the ZIF personnel pool contained a high number of current or previous UNMIK staff.

Different opinions were articulated regarding the circle of interviewees. While some argued in support of a narrow approach concentrating on judges and prosecutors and other stakeholders concerned with the formal justice system, other participants stated that the research should also include actors situated at the grassroots level such as human rights NGOs and paralegals, or even the general public, to be able to give a full account of local ownership in rule of law projects. It was also mentioned that the cited definition of the rule of law by the Secretary-General includes many references to terms associated with civil society, such as "accountability", "reconciliation" and "public acceptance". Therefore, it was advisable to either widen the circle of interviewees or to re-work the rule of law definition applied.

One participant remarked that an analysis of criminal justice reform could not afford to study only vetting and appointment processes and pertinent legislative reform. These aspects could not be separated from government structures and the political system in general, which would have to be examined, too. Such examination should also look at legislative prioritizing as this would have a serious impact on the actual institution-building. Another participant argued that in the context of Liberian law reform the distinction between civil and criminal justice would

not be useful as it reflected a Western legal categorization that was not shared by many Africans.

Moreover, it was held that a study on local ownership should also include a focus on training programs and other aspects of capacity-building and that actual judicial performance should be monitored. In this connection, it could be beneficial to concentrate on local oversight mechanisms, because a system, according to one participant, is only locally owned if local structures exist that are able to correct undesirable developments on the local level.

With a view to selecting concrete rule of law projects for further research, the issue of comparability between specific UNMIK and UNMIL projects was raised. While there was the general research requirement to produce generalized conclusions based on a comparative approach, ZIF would have to clarify in how far this approach could be modified with respect to certain international core activities such as the deployment of international judges and prosecutors in Kosovo for which there was no counterpart in Liberia.

Access to information

In relation to the anthropological problem of access to information by the relevant interviewees, the relationship between judges and prosecutors and the traditional village structures was discussed. It was pointed out that the representatives of the formal justice system have a much lower position in the Liberian clan system than in the state system and thus might not be taken seriously by clan chiefs. On the other hand, experience from Timor-Leste has shown that key actors of the formal justice system might treat representatives from the traditional and/or informal sector in an arrogant manner and without respect. At any rate, judges and prosecutors would know about existing power structures and informal procedures and traditions. In the African context, magistrates and paralegals would be a particularly helpful source of information. Regardless, a clear definition of the research objective would have to be developed first before the circle of interviewees and the set of questions could be established.

It was emphasized that, in general, researchers need to have a lot of time to receive sound information from African stakeholders. A relationship of trust would have to be established first that could be fostered by a good introduction, the belonging to or acceptance by a particular network. With a view to the judiciary in Kosovo, it was advised to be particularly careful with the

information received, as there was a tendency to say what the interviewers wanted to hear. Framing the questions right was regarded as crucial to a successful research project. In particular with respect to judicial reform in Liberia, it was stressed to try to avoid Western legal categories and to be sensitive to local traditions and approaches. In this context, mention was made of the disparity between the Western emphasis on prosecution and the general preference for conflict mediation in many African traditions. It was suggested that a good way to approach the issue would be to ask for access to justice proceedings in general.

Customary law

While some participants cautioned that the project would become much more complicated if customary law was included as research topic, most participants agreed that customary law was an area that was too central and too important to rule of law reform to be left out. With a view to the experience of the World Bank in African countries, the observation was made that the distinction between formal and informal laws is not useful in socio-legal research and that an integrated approach needs to be applied. It would be very difficult, though, to learn the complexities of the customary traditions and to understand the real functioning of dispute resolution in pluralist legal system. However, many studies currently conducted on how to deal with customary law and paralegals would be able to provide a good overview and guidance for Western researchers.

With respect to the areas of criminal law reform envisaged for further empirical research (*i. e.* Criminal Code Kosovo and Liberian Rape Law), it was clarified that customary legal traditions could be analyzed within an examination of these legislative reform processes and do not have to be treated as an independent research topic.

4. Conclusions

Local ownership is a vague concept that evokes many diverging interpretations and is difficult to handle both analytically and operationally. However, the following set of political, practical and normative reasons necessitates the further use of the term and supports additional research on local ownership:

- *Sustainability through inclusive peacebuilding*

Practice has shown that international peacebuilding efforts often fail because project planning and implementation is carried out with insufficient local input and without respect for local structures and traditions. If new institutions are based on foreign concepts and are established without local participation, they will neither be accepted, nor maintained by the local population. In the end the local population and their leaders will have to take over.

- *Policy debate and normative concept*

Irrespective of the ambiguities the term might entail, local ownership remains an essential policy ideal and normative concept that supports the central objectives of international interventions in post-conflict environments, i.e. local participation in international project activities and the final handover of all authority to the local population. Accordingly, the term local ownership is part of mandates, policy guidelines and project management activities in contemporary peacebuilding (UN, AU, EU, World Bank, etc.) and therefore has to be accepted as a basis for peace research as well.

- *Self-determination and sovereignty*

Local ownership is a reflection of the right to self-determination and the principle of national sovereignty as stipulated in the UN Charter and in other international legal documents. Even if the UN Security Council may authorize the intervention into domestic affairs for the maintenance of international peace and security, self-determination and sovereignty continue to serve as normative guidelines for international action in failing states like Liberia or in conflict-ridden territories like Kosovo.

A number of key issues relating to local ownership were elaborated in the discussion papers and the workshop contributions that will direct the operationalization of the concept for the planned field research. A research matrix will be developed to form the basis of guidelines for the semi-structured interviews in Kosovo and Liberia. Three main themes are central in this context:

- *Process and outcome:*
Local ownership is not only a process but also, an outcome-oriented ideal and normative principle of transferring international responsibilities into local hands. Strategies and program activities that will be analyzed have to be broken down into phases and/or reached benchmarks and outcomes.

- *Asymmetric interactions:*
The mutual perception and interaction between *internal* and *externals* is decisive for successful peacebuilding. However, the relationship between both groups is characterized by several asymmetries. These asymmetries and corresponding patterns of interaction should be analyzed and integrated into the interview guidelines.

- *Typology of dilemmas:*
The workshop generated a guiding typology of dilemmas concerning local ownership in peacebuilding processes: the intrusiveness, dependency, and transition dilemma. Such categorization will enable a more structured understanding of the profound difficulties to implement local ownership and will enhance the analysis of individual attitudes and perceptions of the interviewees.

The participants in the workshop generally welcomed the practice-oriented shape and focus of the ZIF-research project on local ownership in peacebuilding processes. As most existing research on local ownership primarily analyzes the strategic and macro level, the project's concentration on two operational areas, i.e. the (re-) establishment of the rule of law and the holding of elections, bears high potential to make a significant contribution to present knowledge on the issue.

The majority of participants also found the selection of UNMIK and UNMIL as case studies convincing since the rule of law and elections form core concerns for both missions. This compari-

son allows that potential differences are revealed in the way how European and African missions as well as peace operations with an executive and a non-executive mandate are conceptualized and implemented in relation to local ownership.

Besides providing an updated overview of current research projects on local ownership and related issues, the workshop facilitated a closer cooperation of complimentary DSF-funded research projects.³⁰ All workshop participants expressed their wish to establish a network of researchers and practitioners with an interest in local ownership. ZIF offered to moderate this process and to facilitate a continuing exchange of relevant experiences, contacts and information.

³⁰ In addition to the ZIF-project, this concerns the following DSF-funded projects: (1) Global Public Policy Institute, "Learning to Build Peace: The United Nations, Peacebuilding and Organizational Learning", (2) University of Konstanz, "Administrative Science meets Peacekeeping", (3) Institute for Peace Research and Security Policy, "Post-conflict Peacebuilding and Local Ownership. International Peace Efforts in Divided Societies under UN Interim Administration between Success and Failure - A Case Study on Kosovo" (dissertation project).

5. Annex

5.1 Agenda

Friday, April 20

Morning Arrival and Check-In of Participants

14:00. Coffee

14:30 Welcome

Winrich Kuehne, Director, ZIF

Introduction of Participants

15:30 **Panel I: Local Ownership – Applicable Concept or Policy Ideal?**

- What definitions and concepts of local ownership do exist?
- Should local ownership be treated as an applicable concept for peacebuilding operations or merely as a policy ideal?

Chair: *Winrich Kühne, ZIF*

Speaker (15-20 min.): *Tobias Pietz, ZIF*

Discussants (10 min.):

Annika Hansen, Norwegian Defence Research Establishment

Hanna Reich, Berghof Research Center

Ulrich Schneckener, German Institute for International & Security Affairs

16:30 Coffee Break

18:00 Conclusion

19:00 Dinner

Saturday, April 21

09:30 **Panel II: Methodological Aspects**

- Presentation and discussion of the research projects' working concept, hypotheses, and envisaged research methods.

Chair: *Tobias Pietz*, ZIF

Speaker (10 min.): Katharina Nötzold, ZIF

Discussants (10 min.):

Sharon Wiharta, Stockholm International Peace Research Institute

Tanja Hohe, World Bank

Jens Narten, Institute for Peace Research and Security Policy

10:30 Coffee Break

11:00 Additional Inputs and Discussion

12:00 Lunch

13:30 **Panel III: Building-Up Local Capacities in the Context of Rule of Law**

- Which elements and activities are covered by international rule of law programs?
- Which approaches are used to build local capacities in this context?
- Which specific rule of law activities in Kosovo and Liberia should be selected for further empirical research and why?

Chair: *Wibke Hansen*, ZIF

Speaker (15-20): *Leopold von Carlowitz*, ZIF

Discussants (10 min.):

Agnes Hurwitz, International Criminal Tribunal for the former Yugoslavia

Peter Schumann, UN Mission in Sudan

Kirsti Samuels, International Institute for Democracy and Electoral Assistance

Thomas Jaye, Kofi Annan International Peacekeeping Training Center

15:30 Coffee Break

16:00 Additional Inputs and Discussion

17:00 **Final Panel: Summary & Wrap-up**

Group Discussion

Chair: *Winrich Kühne*

Input: *Tobias Pietz*

18:00 End of workshop

5.2 List of Participants

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Carlowitz, Leopold von
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Rapporteurs:

Welker, Wanda

Lüttmann, Christoph

Strohmeier, Hannah

5.3 Acronyms

DAC	Development and Assistance Committee
DSF	German Foundation for Peace Research
FFI	Norwegian Defense Research Establishment
HPD	Housing and Property Directorate
ICTY	International Criminal Tribunal for the former Yugoslavia
IDEA	International Institute for Democracy and Electoral Assistance
KA IPTC	Kofi Annan International Peacekeeping Training Center
OECD	Organization for Economic Cooperation and Development
PISG	Provisional Institutions of Self-Government
SWP	German Institute for International and Security Affairs
TCR	Truth and Reconciliation Commission
UNMIL	United Nations Mission in Liberia
UNMIK	United Nations Interim Administration Mission in Kosovo
UNMIS	United Nations Mission in Sudan