

# Between Rhetoric & Practice: Local Ownership & the Rule of Law Mission in Kosovo

GPPAC POLICY NOTE

September 2017



---

Filip Ejdus  
School of Sociology,  
Politics and International Studies  
University of Bristol



A Network of People  
Building Peace

# Colophon

The Global partnership for the Prevention of Armed Conflict (GPPAC) is a world-wide member-led network of civil society organisations active in the field of conflict prevention and peacebuilding. As part of its mission to seek a shift from reaction to prevention of violent conflict, the network supports multi-actor collaboration and advocates for local ownership of conflict prevention strategies.

GPPAC informs policy through the production of policy briefs that analyse conflicts from a human security perspective. This policy brief is a collaboration between Filip Edjus and GPPAC.



A Network of People  
Building Peace

---

Filip Edjus  
School of Sociology,  
Politics and International Studies  
University of Bristol

Published by GPPAC © 2017



This research is part of a project that received funding from the European Union's Horizon 2020 research and innovation programme under the Marie Skłodowska-Curie grant agreement No 656971.

## Executive summary

In June 2016, the EU extended the mandate of the Rule of Law Mission in Kosovo (EULEX) until June 2018. While the fate of the mission after that date is still uncertain, the coming end of the current mandate provides an excellent opportunity to take stock of a decade long and over a billion € worth of EU investment in Kosovo's rule of law. Despite limited achievements, the mission has struggled to make a substantial improvement to the Kosovo's rule of law, and has not met the expectation to bring to justice key perpetrators of war crimes and corruption. This policy brief shows that an important but often overlooked impediment to the impact of EULEX has been the gap between EU's rhetoric and practice of local ownership. In the policy discourse, the EU construes ownership as a broad and inclusive negotiation and compromise building. In practice, lacking trust in local institutions and overly concerned for short term stability, EULEX has either disregarded the local ownership principle altogether, or at best practiced it as an outside-in and elite-centred transfer of responsibility for externally devised objectives. The rhetoric/practice gap on local ownership severely undermined the local legitimacy of EULEX and debilitated its long-term impact.

## Policy recommendations

- The EU should entirely and without delay transfer responsibilities to the Kosovo's rule of law institutions and then use accession-related conditionality to ensure compliance.
- Beyond Kosovo, the EU should provide its support to the rule of law reforms in third countries through demand-driven and long-term engagements while avoiding crisis-management missions with executive mandate.
- In its current and future Common Security and Defense Policy (CSDP) missions, the EU should take local ownership seriously as a difficult, unpredictable and long-term process of consensus building that ultimately needs to be driven by the locals. The EU should not sacrifice long term legitimacy and sustainability for the sake of achieving short-term stability.
- The EU should ensure meaningful participation of wider governance structures and civil-society in the design and implementation of its rule of law missions, otherwise their results will not hold once the international mission is gone.

# 1. EULEX, the story so far

## Background

In 2008, the EU launched EULEX, its biggest and most ambitious Common Security and Defence mission with the aim of supporting the establishment of effective rule of law institutions in Kosovo. The mission cost over 1 €billion and at its peak comprised of 3200 personnel including policemen, judges and prosecutors from various European countries. In addition to its advisory role, EULEX was also given an executive mandate to investigate and prosecute, on its own or together with its Kosovar counterparts, serious cases of organized crime, corruption and war crimes.

Almost ten years since it was launched, the effectiveness of EULEX Kosovo has been highly questionable. Despite some limited achievements in the monitoring, mentoring and advising (MMA) of the Kosovar police, judiciary and customs, as well in supporting the EU-facilitated dialogue between Belgrade and Pristina, the most important objectives of the EULEX's mandate have not been achieved. The mission has struggled to make a substantial improvement to the Kosovo's rule of law, and it missed the opportunity to bring to justice the main perpetrators of war crimes and big corruption (Capussela 2014, ECA 2012, Radin 2014, Jacque 2015, Eckhard 2016ab).

Most existing analyses attribute the limited achievements of EULEX to the over-ambitious mandate, the lack of consensus among EU member states prioritisation of stability over democracy, micro-management of the mission from Brussels, tedious planning process and reluctance of member states to deploy sufficient number of qualified staff and their high turnover. While there is no doubt that these wider political and technical obstacles have hindered the effectiveness of EULEX, this policy brief shines light on an often overlooked and deeply problematic way in which the EU has operationalised the principle of local ownership in EULEX.

## 2. EULEX, ownership and rhetoric/practice gap

*Rhetoric/practice gap.* In the policy discourse, the EU treats "local ownership" as one of the guiding principles of its crisis management policy. The EU defines ownership in CSDP missions as "the appropriation by the local authorities of the commonly agreed objectives and principles" (EU 2005, p. 11). The latest Global Strategy of the EU also endorses such an approach that promises to "blend top-down and bottom-up efforts fostering the building blocks of sustainable statehood rooted in local agency" (EU 2016a, p. 31). Additionally, the EU policy discourse advocates for an inclusive approach to ownership that: "goes beyond a government's acceptance of international actors' interventions" and includes wider "national security and justice actors" and "society as a whole" (EU 2016b, 7). The implementation record, however, clearly shows that the EU does not practice what it preaches across CSDP missions. As previous research has shown, the EU implements ownership as an effort to secure a buy-in of local elites for externally devised objectives (Ejdus 2017).

*Ownership and executive mandate.* EULEX Kosovo is a case in point despite its rhetorical attachment to “total ownership of the reform process by the relevant Kosovo institutions” (EULEX 2009, 9). To begin with, ownership is inherently incompatible with the executive mandate of the mission. In the words of one EU official from the Civilian Planning and Conduct Capability (CPCC): “The biggest lesson learned from EULEX is that substitution was a mistake because it never works. The EU should not do executive missions because they hamper local ownership and without it there are no results”.<sup>1</sup> Contrary to the logic of ownership, the executive character of EULEX has created a culture of dependency, and an expectation, as one expert put it, “that the internationals will do the job and that the internationals are those to be asked for the most sensitive issues”.<sup>2</sup>

*Ticking box exercise.* In theory, the EU has created mechanisms that could ensure a substantial dialogue and compromise-building with the locals. The EU and the Government of Kosovo, for example, have signed in 2012 “the Compact on Joint Rule of Law Objectives” (renewed in 2015) and used “the Joint Rule of Law Coordination Board” to monitor implementation. While the meetings of the Coordination Board were frequent and substantial at the outset, they lost the momentum and relevance over time (Eckhard 2016a, 105). Engaging the locals became a “ticking box exercise”.<sup>3</sup>

*Lack of trust.* One reason behind the tokenistic approach has been the lack of trust between EULEX and local institutions. On the one hand, EULEX has never fully trusted local institutions and political leaders who are often perceived as corrupt and unreliable. Among EULEX, as one of its officials pointed out, “there is a firm sense that if things are handed over to the locals they will not be pursued”.<sup>4</sup> On the other hand, both the local authorities and the wider public have had a decreasing level of trust in EULEX due to the status neutrality of the mission, corruption scandals and real or perceived lack of contextual understanding and arrogance.

*Exclusion.* EULEX has failed to meaningfully engage with the wider governance structures and civil society organisations. It has persistently refused to become accountable to Kosovo’s Parliament, Ombudsman or Anti-Corruption Agency. Wider civil society has not only been excluded from the design and implementation of the EULEX mandate<sup>5</sup> the mission has also, in the words of a director of a reputable NGO from Kosovo: “failed to communicate its activities to the civil society.”<sup>6</sup> The reconfiguration of the mandate in 2012 allowed for slightly better engagement with civil society, but this problem persists until this day. As a result, only one fifth of Kosovo’s citizens trust the EU mission (Qehaja and Prezeli 2017).

---

<sup>1</sup> Interview, CPCC official, 8 June 2016.

<sup>2</sup> Interview, NGO activist, 5 February 2016.

<sup>3</sup> Interview, NGO activist. 5 February 2016.

<sup>4</sup> Interview, EULEX official, 2 February 2016.

<sup>5</sup> Interview, EULEX official, 2 February 2016.

<sup>6</sup> Interview, NGO activist, 4 February 2016.

*Stability-first.* The efforts of EULEX to secure ownership have mostly focused on the local power holders. As a result, the EU sacrificed long term legitimacy and sustainability for the sake of achieving short term stability. Thus, for example, EULEX focused on building cooperative relationships with the potential spoilers such as the former Kosovo Liberation Army (KLA) elites among the Albanians or hard-line nationalists among the Serbs in the North. Although this might have preserved stability, this tactic has also hampered the ability of EULEX to fulfill its promise and go after 'the big fish'. Because of this risk-averse politicking of the EU, a clear majority of cases made by EULEX prosecutors and judges concerned secondary figures while only a few involved major lawbreakers. Even when the EU did initiate legal procedures against 'the big shots', they were carefully selected and too often ended up in acquittals (Kursani 2013, Calusella 2015). Finally, contrary to its rhetoric on ownership, EULEX has been reluctant to transfer responsibility for major cases to panels composed of majority local judges thus replicating mistakes made under UNMIK (Welski 2014).

*Simulated ownership.* The record on prosecuting war crimes has been so bad that the EU and the US pushed the Kosovo authorities to establish a new Special Court for war crimes. Established in 2016 as part of the Kosovo constitution but composed of international judges and prosecutors who are appointed and financed by the EU, this Specialist Court seated in The Hague will adjudicate war crimes committed between 1 January 1998 and 31 December 2000 (Korenica et. al 2016). Instead of transferring the responsibility to the Kosovo judicial institutions, and then using conditionality and other tools to make the society face the past and bring perpetrators to justice, the EU is moving in the opposite direction. After a decade of investment in the Kosovo judicial system, the EU is placing the responsibility into the hands of another international court. The court, rubber-stamped under enormous external pressure by the Assembly of Kosovo in a staged act of simulated ownership, is expected to succeed where UNMIK, ICTY and EULEX had previously failed.

## Conclusion

Almost ten years after the EU has launched EULEX, its results are characterized as mixed at best and a debacle at worst. After almost two decades of international assistance, Kosovo police is in a better shape, but the judicial system is in a mess, and it's clear that the effective rule of law requires both. One of the key reasons behind these underwhelming results has been the inability of the EU to take local ownership seriously. Instead of ensuring a genuine partnership with the widest circle of local shareholders, the EU has been too focused on short term stability-oriented cooperation with the government on technical issues.

In the year ahead, the EU will decide whether to extend the mandate of EULEX once again. As it seems, the mission might be prolonged for additional two years, probably under a different name and under the umbrella of the EU Office in Kosovo. In the past, each extension of EULEX mandates faced ever stronger resistance by the local authorities. If the EU decides to take this path again, however, there is little doubt that the formal invitation will be issued despite the overwhelming consensus among both decision makers

and wider population that the mission should end. Whatever the fate of the mission is after June 2018, CSDP is in for new disappointments failures in the future unless the EU does not draw some painful lessons from EULEX Kosovo.

## References

- Capussela, A. L. (2015). *State-building in Kosovo: Democracy, corruption and the EU in The Balkans*. IB Tauris.
- Eckhard, S. (2016a). *International Assistance to Police Reform: managing peacebuilding*, London: Palgrave.
- Eckhard, S. (2016b). Political guidance or autonomy in peacebuilding? EU police reform in Afghanistan and Kosovo. *International Peacekeeping*, 23(3), 363–388.
- Ejdus, F. (2017). "Here is your mission, now own it!" The rhetoric and practice of local ownership in EU interventions. *European Security*, 1–24.
- EULEX (2009). EULEX programme report 2009, Pristina: European Union Rule of Law Mission (EULEX) in Kosovo.
- EU. (2005). *EU concept for ESDP support to security sector reform (SSR)*, 12566/4/05, Brussels, 13 October.
- EU (2016a). *Joint Communication to the European Parliament and the European Council: Elements for an EU-wide strategic framework for supporting security sector reform (SSR)*. Brussels: European Union, JOIN (2016)31, Brussels, 5 July.
- EU. (2016b). *Joint staff working document: Lessons drawn from past interventions and stakeholders' views*. Strasbourg: European Union, SWD (2016) 221, Brussels, 5 July.
- EU. (2016c). *Shared Vision, Common Action: A Stronger Europe, A Global Strategy for the European Union's Foreign and Security Policy*, Brussels, June.
- Jacque, J.P. (2015). Review of the EULEX Kosovo Mission's implementation of its mandate with a particular focus on the handing of the recent allegations. Brussels: Council of the European Union.
- Korenica, F., Zhubi, A., & Doli, D. (2016). The EU-engineered hybrid and international specialist court in Kosovo: How 'special' is it? *European Constitutional Law Review*, 12(3), 474–498.
- Qehaja, F., & Prezelj, I. (2017). Issues of local ownership in Kosovo's security sector. *Southeast European and Black Sea Studies*, 1–17.
- Welski, D. (2014). Hybrid Court System in Kosovo: Has EULEX proven to be the device to strengthen the independence and effectiveness of the judiciary?, Policy Report No.11, Group for Legal and Political Studies.