



# **Assessment of Administrative Capacity in Kosovo**

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## **Table of Contents**

### **I INTRODUCTION**

- I.1 Purpose and Conduct of this Assessment
- I.2 Presuppositions

### **II OUR APPROACH TO ASSESSING ADMINISTRATIVE CAPACITY**

- II.1 A Working Definition
- II.2 Benchmarks

### **III OVERVIEW OF CONCLUSIONS AND RECOMMENDATIONS**

- III.1 Overall Conclusions
- III.2 Overall Recommendations

### **IV FINANCIAL MANAGEMENT**

- IV.1 Current Situation in the Financial Management Area
- IV.2 Legal framework
- IV.3 The Budget and the budget preparation process
- IV.4 Budget execution
- IV.5 Internal control and internal audit
- IV.7 Public Procurement
- IV.8 Revenue collection
- IV.9 Human resources

### **V DECISION-MAKING AND POLICY COORDINATION**

- V.1 Assessment Framework
- V.2 The present situation in Kosovo
- V.3 Institutions
- V.4 Legal base for the policy and legislative system
- V.5 Personnel
- V.6 Conclusions and recommendations

### **VI ADMINISTRATIVE LEGAL FRAMEWORK AND CIVIL SERVICE MANAGEMENT**

- VI.1 Legal Framework
- VI.2 Institutional set up
- VI.3 Costs: control of staff numbers and the pay system
- VI.3 Rights, Obligations and Working Conditions

### **VII POLICE AND JUSTICE**

#### **a) The Kosovo Police Service**

- VII.1 Background
- VII.2 Mandate and Current Situation
- VII.3 Recommendations

#### **b) The Justice System**

- VII.4 Background
- VII.5 Functions and Current Situation
- VII.6 Recommendations

## **VIII LOCAL GOVERNMENT**

VIII.1 Methodology

VIII.2 Factual description of the general situation at local level:  
very unbalanced development

VIII.3 The institutional set-up of Kosovo municipalities

VIII.4 Capacity assessment of key municipal functions

VIII.5 Capacity-assessment of internal management functions of local authorities

VIII.6 Evolving Central-Local Relationships

VIII.7 General conclusions and recommendations

The views expressed in this report are those of the authors and do not necessarily represent the views of the United Nations Development Programme (UNDP).

# **I INTRODUCTION**

## **I.1 Purpose and Conduct of this Assessment**

The purpose of this assessment is:

- To document existing capacity of the Kosovo administration;
- To assess this capacity in term of the ability of the administration to manage all the functions of an autonomous entity (without foreign presence);
- To specify the gaps between present capacity and needed capacity;
- To identify existing and planned donors' projects to support the PISG in building additional capacity; and
- To point to areas where additional donors' projects would be needed and useful.

This report builds on the Interim Report that was circulated for comments to the PISG, the SRSG, UNMIK, and the donor community during February 2005. The comments and suggestions made by the readers were reviewed by the initial drafting team, and were used as a basis for revision of the text. The team received many comments, not all of them pointing in the same direction. We have made an effort to reflect as many of the comments as possible, but the final decision on revisions reflects our own judgement.

We ask the readers' attention to the following limitations of this report:

- This is a report about **administrative capacity**. The focus is on the capacity of the PISG, specifically the administrative institutions and personnel, to perform the functions required of State institutions. It is not a report about the results they are achieving in terms of outcomes such as social justice, equality, human rights, or economic growth. This is a crucial difference, and it is worth mentioning here because many of the comments made to us on our earlier draft failed to take account of this distinction.
- This report does not contain an action plan. It was agreed at the outset that an action plan would be developed after the distribution of the final report. At this time, the intention is to hold a meeting of donors to discuss how to follow-up this report with a coordinated effort to assist the PISG to continue the development of administrative capacity of Kosovo governmental institutions.
- This assessment was carried out over a highly compressed time period of less than two months, from mid-November to mid-January. Moreover, this period included the formation of a new Government in Kosovo following the elections of October 23, 2004. During February and March, we received many comments, but were not able to go back to the field for additional research and verification. Therefore, in some cases, developments after January 2005 are not reflected in this report.
- Due to the short time and restricted number of experts, we did not assess the capacity of individual Ministries. We agree with many commentators that this is unfortunate, because such an assessment is necessary at this time. We recommend below that detailed assessment of all the Ministries should be

carried out as soon as possible, and should be the top priority of any action plan resulting from this report.

- Although this point is made in more detail below, the comments we received indicate to us that one clarification is needed above all. It is related to the term “capacity building”. It appears that many of our readers equate the terms “capacity building” and “capacity development” primarily with “training”, that is, with the development of the capacity of individuals working within the administration. The team preparing this report, on the other hand, took a different approach, and interpreted the term “capacity” as an institutional concept, that is, the capacity of institutions to perform their roles and responsibilities. In this context, the level of knowledge, motivation, and ability of individuals is only one of many aspects of capacity. Capacity must also relate to institutional structure, legal competences, leadership, equipment, etc. Therefore, where we speak of “capacity building” we do not refer only to training, but to the broad concept of “institution building”, of which training is only one element. This is a crucial difference, and the reader is invited to keep it in mind while reading this report.

## I.2 Presuppositions

For the sake of transparency, we indicate that the following presuppositions are built into our thinking.

**Concreteness:** It is important to stress at the outset that we have taken a certain approach to our task that may be disputed by some experts. Specifically, we endeavoured to be very concrete in our approach, and to stay away from some of the more theoretical concepts that are often used in discussions of public administration reform. Because we observed that references to administrative capacity in Kosovo often lack concrete details, we aimed our report at filling this gap. We hope that it will serve the purpose of leading to a concrete and coordinated plan for capacity development and technical assistance to Kosovo over the coming few years.

**Step-by-step:** In a similar vein, we call attention to the fact that we do not recommend that Kosovo engage at this time in the preparation of a comprehensive Public Administration Reform (PAR) Strategy. The usefulness of such strategies is debateable everywhere, the record is mixed, and there are certainly proponents pro and con. In the case of Kosovo, before the determination of final status and with it the clarification of nature of the State and the administration, the preparation of a PAR Strategy is likely to be a time-consuming and divisive process, with inevitably limited concrete impact. Significant progress can and should continue to be made by agreeing on short and mid-term priorities, and implementing concrete development projects across the spectrum of institutions. Information-sharing and better donor coordination would also contribute. Such an approach, while intellectually less satisfying, is in our view more likely to lead to results in the foreseeable future than investment of effort in a PAR Strategy.

**Parallel action instead of pre-conditions:** Capacity building – or better, capacity development – is a long-term process that rarely proceeds in a linear fashion. This view is inescapable when one looks at the development of public administration in the emerging democracies of central and Eastern Europe and at other developing countries; it is also

sustained by observing the developed members of the OECD where activities to reform and adjust the administrative system are on-going. No doubt, the decision to transfer specific competences from UNMIK to the PISG, and/or to Kosovarize those not transferred, cannot be completely divorced from the existence of Kosovan capacity to perform these responsibilities. But the opposite is equally valid: some capacities are not likely to develop unless the competencies and responsibilities are transferred first.

The view of responsibility and capacity as two distinct concepts can lead both sides, both the international community and the PISG, into a form of deadlock fuelled by criticisms, distrust, and blame. Our own observation is that this dichotomy should be consciously and openly replaced with a dynamic view in which neither capacity nor competences are seen as a pre-condition for the other. Rather, they should be viewed as complementary concepts that must proceed in parallel, albeit in a less-than-certain environment. Not only will this approach facilitate dialogue and progress; it will also do justice to the process that has in fact taken place in Kosovo over the last few years. Our report certainly confirms the remarkable progress that has occurred in the development of the administration in Kosovo through the combined effort of the PISG, UNMIK, and the donor community. That more remains to be done is a challenge that would be easier to meet when the politics of pre-conditions is replaced with the politics of parallel action and the practice of “learning by doing”.

**European compatibility:** Finally, we assume that there is an advantage to developing the administration in Kosovo in line with, and towards, European practices and compatibility with the *acquis*. By this we do not imply that Kosovo should meet “European standards” as a pre-condition for progress on status issues, or that it will become a candidate for European Accession in the near future. Preparing to meet European standards is crucial for Kosovo in order to progress in the Stabilisation and Association process designed to bring the whole region closer to European integration. In fact, Kosovo is already engaged in the European process, and there is a specific chapter with priorities for Kosovo in the S&M European Partnership, as well as an implementation plan for the European Partnership priorities. On a practical level, all the experience of the last 15 years indicates that it is more efficient to move in the European direction from the beginning, than to have to revise laws and restructure institutions later.

## II: OUR APPROACH TO ASSESSING ADMINISTRATIVE CAPACITY

### II.1 A Working Definition

There is no universally agreed definition of administrative capacity. In this report, administrative capacity is defined relative to the tasks that need to be performed by the administration, and consists of the following elements:

**Institutional structures** (the Ministries, agencies, department, etc., that exist to carry out the required functions)

**Legal instruments** (the legislation to allow the structures to perform the needed tasks, including legal competencies)

**Procedures** (the procedures necessary to perform the tasks, represented both in legal instruments and in practice)

**Personnel** (the staff available to perform the tasks, including their numbers, levels, training, and the system of managing them)

**Budgets and equipment** (these are aspects of capacity, but they are not systematically

covered in this assessment)

From this definition, it follows that “capacity building” or “capacity development” imply improving one or more of the above elements, be it institutions, laws and regulations, personnel, and material resources. For greater certainty, in our approach the training of staff is an important, but by no means the only approach to building administrative capacity/

This assessment distinguishes between horizontal, specialized, and vertical capacities.

### II.1.1 Horizontal capacities

Horizontal capacities are used to perform those activities of the administration that cut across all Ministries and Agencies. These include:

- Civil service and human resource management;
- Decision-making and coordination;
- Financial management (budgeting, treasury, audit, public procurement)

For each of these areas, a chapter of this report documents and assesses current capacities (institutions, laws, procedures, personnel), capacity gaps, and donor projects. It then proposes how the missing capacities might be added, and what additional donor project would be useful for assisting in filling the gaps.

### II.1.2 Specialized capacities

In the case of Kosovo, these refer to special priorities related to post-conflict situation. These are generally seen as fundamental to resolving ethnic tensions, an absolute pre-requisite to progress toward final status discussions. These are:

- Police service
- The administration of Justice; and
- Local self-government

### II.1.3 Vertical capacities

Vertical capacities refer to the capacity of Ministries and Agencies to perform the required tasks in their own sphere of competence, such as education, transport, or agriculture. Initially, our objective was to document for the PISG, Ministry by Ministry, the laws, procedures and personnel that exist in order to carry out the tasks required, and to follow this documentation with an assessment of what is missing so that the entire responsibility of any given Ministry could be performed satisfactorily without foreign participation (except Technical Assistance). It soon became obvious that the time and resources allotted to this assessment would not allow us to produce a full analysis of the Ministries. The last chapter of this report presents some preliminary information on the Ministries, and recommends follow-up actions.

## **II.2 Benchmarks**

Clearly, in order to perform any kind of gaps analysis (between what capacities exist and what capacities are needed) one must have an explicit or implicit standard. The public administration literature often uses terms that imply that explicit standards exist, variously

referred to as “European standards” or “best practices”. We contend that with few exceptions (related directly to the EU *acquis*), there are no solid and explicit benchmarks. There is, for example, no agreed best civil service law, and no agreed ideal structure of a Ministry of Agriculture or of Education.

What does exist is a certain number of principles that are generally believed by practitioners and experts in public administration to be useful and desirable. For example, it is generally agreed that the policy output of the government should be coherent and coordinated, that there should be a certain amount of forward planning, that civil service recruitment and promotion should be based on merit, that stakeholders should be consulted in matters affecting them, and that Ministries of Agriculture in countries aspiring to join the EU should be developed so that they are able to operate within the European Agricultural policy. Examples of generally agreed principles exist in all areas of the administrative system, and professional assessors should be able to use these principles judiciously and apply them to unique situations and cultural traditions in an intelligent way. While this approach may fall short of “scientific” measurement against “benchmarks”, we believe that it is the best that can be done within the current state of knowledge about administrative systems.

In terms of assessing administrative capacity in Kosovo, our approach is to apply accepted principles, on the understanding that the relevant question at this time is not the gap between the current situation and an **ideal world**, but rather the gap between the current situation and some reasonable state of affairs that would allow Kosovo to **operate adequately as a “self administering entity”**. Needless to say, as happened in all the other countries in the region (and in central and Eastern Europe more generally), the capacity to operate adequately is far from the end of the story, and much reform of the administration proceeded (and still proceeds) after self-management began in 1989. We think it is only fair that the same approach would be applied to Kosovo. One would not want to argue that the PISG is unable to manage a certain area of administration just because it cannot yet manage it in the best possible way, or up to European standards. Such a requirement has never been applied to any other state, and should not be applied here either.

Instead, the task of this assessment, first and foremost, is to identify gaps that are crucial for adequate self-management. Where possible, we also point out additional improvement in capacity that would be needed in the medium term.

### **III OVERVIEW OF CONCLUSIONS AND RECOMMENDATIONS**

#### **III.1 General Conclusions**

Our overall conclusion is that the foundations for a sound system of public administration in Kosovo the foundations for a sound system of public administration are being established gradually. Progress has been made in a short period of time, under the support of all participants, international and local. Participants in this process – the PISG, UNMIK, and all donors -- should be proud of their accomplishments. In most areas, the level of development of the administrative system is no less advanced than it was in comparable countries at the time of independence, and it even exceeds this level on a significant number of measures. Without prejudice to political and other considerations regarding final status negotiations, we conclude that none of the weaknesses in capacity should be seen as serious impediments to continuing, accelerated, and complete transfer of competencies and responsibilities to the Kosovan authorities.

As the rest of this report shows, there remain many weaknesses in the administrative system, and it will require time and a lot of hard work to reach “European Standards” across the board. Experience in comparable countries (e.g., Macedonia) shows that building an effective and efficient administration continues to require effort by the government and the administration, and ongoing assistance from donors, over many years. However, once the foundations of the legal framework and the main institutions are established, the focus has to shift to improving the performance of managers, teams, and individuals. Public administration is primarily hard daily work, and performance improves primarily through practice and through taking responsibility for, and learning from, errors and setbacks.

In general, the requirements for managing the main horizontal system are either in place or in the process of being implemented. The legal basis and the required institutions for managing the civil service and for financial management are in place, and the central structure for supporting the decision-making system is being built in the OPM. The specialized capacities (policing, justice, and local government) are also well on their way, but they still require transfer of competences for the capacity to be fully built.

The record of Ministry development is much more mixed, and this is where most of the weaknesses are to be found. This is not surprising, given that:

- There is variable history in the continuity of Ministries from previous times;
- Some of the ministries have been established only very recently;
- Donor and UNMIK efforts have rightly focussed on the central systems and on the specialized capacities, but much less on the individual Ministries;
- Ministries are required to perform a large number of different functions and require diverse skills and complex organizations.

Another general conclusion that cuts across all areas is that the overall legal system, built in parallel from a variety of sources lacks coherence and consistency. There is a growing risk that the legal system will become increasingly fragmented, contradictory, and unwieldy, unless there is a major effort to unify it. To ensure that a coherent and consistent legal system is developed, foreign experts should move out of drafting legislation and into purely advisory roles, drafting capacity in Ministries should be built, and the capacity of the Office of Legal Support Services in the OPM should be increased. This risk of inconsistent legislation should not be underestimated. Inconsistencies in the legal system tend to grow over time, and can threaten the rule of law and the administration of justice. The longer the process fragmented legislative drafting is allowed to continue, the more difficult it will become to untangle as time passes.

Finally, we must raise here the issue of the level of salaries in the public administration. The issue of salaries in the Civil Service is currently in transition. A major study and proposal for a new pay and grading system for the Kosovo Civil Service has been prepared by HELM Corporation and Public Administration International (16 February 2004), but this is not yet implemented. It is unclear that public administrations at this stage have the capacity to implement the reform, and PISG, at the request of the IMF, has delayed to a large extent the reform due to lack of preparation.

It is not surprising that the majority of our Kosovan interlocutors raised this issue, but it was also raised by many internationals. There is a widespread view that the potential capacity of

the Kosovo population is not reflected in public administration because salaries are not competitive. Those of us who worked over the years in central and Eastern European (CEEC) countries and other Balkan countries are well familiar with this complaint, but there are some who argue that the problem is particularly acute in Kosovo, due to the competitive pressure caused by the large international presence. This presence is believed to have raised the cost of living faster than elsewhere; it no doubt creates alternative, and better paid opportunities, to would be public administration employees.

The extent to which salaries are a serious impediment to recruitment and maintenance of good quality staff is not possible for us to determine, and may not be known until international presence is much further reduced. Experience elsewhere shows that this problem tends to be less serious than public servants claim, because additional considerations and advantages, such as security of employment, interest in the work, future opportunities, training, and commitment to building one's country, can reduce this problem to manageable propositions. We make a general recommendation on this issue in the following section.

### **III.2 General Recommendations**

The chapters below cover various aspects of administrative capacity, and include many recommendations both on substance and with respect to donor assistance. But a small number of issues cut across the chapters, and we think it is useful to highlight and underline them up-front.

1. We recommend that starting immediately, donors should increase their focus and support to the Ministries individually, through a comprehensive development plan. The comprehensive development plan should be developed with the following steps:

- Conduct of Functional Reviews of all the Ministries and other Administrative Bodies, each review resulting in an agreed structure, personnel levels and numbers, skills, and job descriptions. Each of these reviews should be conducted jointly by experts from the Ministries and international experts, including subject-matter specialists.
- A related Public Expenditure Review, assessing the capacity of budget entities to spend efficiently public resources and provide in turn adequate service, and helping prioritize recurrent and investment expenditures in areas where it is most needed. This review would also take a look at the appropriate size of the public service in view of priorities, cost to the rest of the economy, existence of adequate government revenues in the medium-term, and trends in decentralization.
- Long-term development and mentoring relations between specific donors and Ministries. (We don't use the word "twinning" so as not to confuse this proposal with the EU Program with that name.)
- Assessment and development of the staff functions across all the Ministries (human resource management, legal drafting with focus on European harmonization, budgeting and financial management, policy-development, and procurement) To the extent possible, the assessment should result in consistent mandates and job descriptions for each of these functions across the Ministries.

- Advance planning for the “missing Ministries” (Justice, Interior, etc.)

2. We recommend that a project will be undertaken with donor assistance, but based on local experts, to create a comprehensive database of Kosovo legislation, to unify it in terms of content and style, and to create a basis for future development of the legal corpus of Kosovo. The inevitable multiple sources of law in Kosovo will not stop overnight. But all concerned should make a concerted effort to reduce this problem as much as possible, and before the mountain of conflicting legislation gets out of hand.

3. We recommend that foreign donors address collectively the issue of salaries so as to avoid piecemeal solutions, distortions, and donor competition. We neither recommend nor object to salary supplementation and other forms of donor-assisted capacity within the administration. Instead, we recommend that donors create a joint Working Group with a mandate to develop a forward-looking plan to deal with this issue, taking into account projections for reduced local employment by international agencies, and including a concrete exit strategy for whatever plan is recommended. Once the Group brings forward its recommendations, effort should be made to have all donors accept and follow a unified strategy in this regard.

#### **IV FINANCIAL MANAGEMENT**

##### **IV.1 Current Situation in the Financial Management Area**

The distribution of powers and responsibilities between the PISG and the SRSG for government financial management area is defined in the chapter 5 of the Constitutional Framework of May 2001, as follows:

- The Provisional Institutions of Self-Government shall have responsibilities in the following fields: (a) Economic and financial policy; (b) Fiscal and budgetary issues; (c) Administrative and operational customs activities;
- The Provisional Institutions of Self-Government shall also assist the municipalities in the development of their own budgets.
- The reserved powers, which will remain exclusively in the hands of the SRSG, shall include: (a) Final authority to set the financial and policy parameters for, and to approve, the Kosovo Consolidated Budget, acting on the advice of the Economic and Fiscal Council; (b) Monetary policy; (c) Establishing arrangements for the independent external audit of the Kosovo Consolidated Budget; (d) Exercising control and authority over the UNMIK Customs Service; Authority to administer public, state and socially-owned property in accordance with the relevant UNMIK legislation in force, in cooperation with the Provisional Institutions of Self-Government; and Regulation of public and socially-owned enterprises after having consulted the Economic and Fiscal Council and the Provisional Institutions of Self-Government.

Until 2003, the Central Fiscal Authority (CFA) was responsible for Public Financial Management, under the EU Pillar IV. The transfer of the economic competencies from the UNMIK to the PISG, according to the provisions of the Chapter 5 of the Constitutional

Framework had been completed in 2003, the responsibilities of the CFA being transferred to the Ministry of Finance and Economy (MFE).

In conjunction with the transfer of responsibilities to the PISG, there has been significant progress in building local institutions. In particular, a number of new organisations and departments have been created to ensure key functions such as the Treasury function, the Banking and Payment Authority, and tax and customs administrations.

Therefore, currently, the MFE undertakes most of the activities commonly undertaken by a finance ministry in EU countries, with the exception of the supervision of Customs services. It executes the Budget; administer taxes; coordinates with donors on financing and grant contributions; administer government cash transactions, monitors line ministries' compliance with applicable rules and procedures for public expenditure; and ensures the adoption and implementation of standards of accounting. The MFE has a total staff of about 1000 employees.

To fulfil its functions, the MFE comprises the following departments<sup>1</sup>:

- The budget department (staff: 38 persons in 2004). This department includes the following divisions and units: (i) division of the central budget, which is divided in four sectoral units (public services, security and justice, economy and infrastructure, social affairs); (ii) division of municipal budget; (iii) Execution, Reporting and Analysis division.
- The macroeconomic policy department (19 persons), which includes four divisions: (i) fiscal assumptions; (ii) financial sector; (iii) balance of payments and foreign trade; (iv) real economy.
- The tax policy department (13 persons<sup>2</sup>).
- The Treasury department (70 persons), which comprises the following divisions: (i) FreeBalance (Treasury IT system); (ii) Revenue and Bank; (iii) Capacity Building; (iv) assets and charges; (v) accounting and reporting unit; (vi) expenditure division, which consist of the Treasury Central Office and five regional offices.
- The property tax department (20 persons)
- The international economic cooperation department (20 persons), which is divided in four divisions: (i) identification and assessment of development programmes; (ii) public loans from abroad; (iii) donor coordination; (iv) regional and European integration.
- The internal audit department (25 persons), which includes four sections: (i) MEF and other ministries; (ii) Tax administration; (iii) Customs service; (iv) Municipalities.

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<sup>1</sup> Staff numbers indicated in this section correspond to the staff positions indicated in the 2004 Budget.

<sup>2</sup> Data from the 2004 budget. The occupied positions would be 26 persons in the macroeconomic policies department and 6 in the tax policy department.

- The tax administration (690 persons). The tax administration includes divisions responsible for tax collection and control, regional offices, an IT division and an internal control division;
- The public procurement regulatory commission.
- The independent tax appeal review board.
- The board on financial reporting standards.
- Various support department and an information technology department.

The reserved powers organizations involved in financial management include:

- The customs services (about 500 persons)
- The auditor general office (about 50 persons)
- The Kosovo Trust Agency, which is responsible for administering all social owned enterprises, and their privatization, and supervising the management of public owned enterprises.

The Economic and Fiscal Council (EFC), which is chaired by the SRSG, includes high rank officials from the UNMIK, the Prime Minister, the President of the Assembly, and members of the government. It has advisory functions only. The UNMIK Pillar IV EU Pillar Fiscal Affairs Office provides advice to the SRSG and other relevant authorities on fiscal and economic policy issues and financial management..

The organizations for financial management are in place and staffed. However as discussed below whereas staff numbers seem generally adequate, capacity in many areas remains limited and some procedures should be streamlined to better ensure the basic tasks of budgeting.

The Kosovo Standards Implementation Plan (KSIP), which was made public in 2003, sets out in detail the actions and policies that should be undertaken in order to reach the Standards for Kosovo, which will determine the gradual transfer of authority from the UNIMK to the various PISG institutions. Progress in implementing the actions of the KSIP related to financial management is reviewed briefly below.

## **IV.2 Legal framework**

### **IV.2.1 The LPFMA**

The Law on Public Financial Management and Accountability (LPFMA) provides the legal

framework for public financial management. It provides for definitions and assignments of roles and responsibilities of key financial actors (departments of the MFE and authorizing and accounting officers within line ministries). It can even be deemed excessively detailed (For example, it enumerates and specifies the main departments of the Ministry of Finance, instead of dealing with the function).

The LFPMA lays down appropriately the procedure for budget preparation, execution, accounting and auditing. Concerning the management of the budget, it meets generally the standard requirement of a budget organic law<sup>3</sup>. Nevertheless, taking into account the current special circumstances, some basic rules differ from the organic laws of EU countries. In particular, the LFPMA institutionalizes a dual budgeting process, because of different procedures for the reserved powers budget. As noted the constitutional framework, empowers the SRSG to exert a veto right over the budget and it empowers. The LFPMA specifies the procedure according to which the SRGS can change the final version of the budget.

The existing internal audit unit (IAU) of the MFE is established in accordance with the provisions of Section 8 of the LFPMA, but there are no legal requirements to establish internal audit government-wide in the PRSG administration.

The LFPMA serves currently the requirements for financial management, but it will need to be amended in function of the future institutional developments.

#### IV.2.2 Other legal texts

The other basic legal texts are as noted:

- The new procurement law (UNMIK regulation no 2004/3)
- The UNMIK regulation No 2002/18 for external audit.
- The customs code (UNMIK regulation 2004/1)
- The law on Tax Administration and Procedures (law No 2004/48), which, however, has not yet been promulgated.

These texts give an appropriate framework. However, it will be necessary to prepare and/or implement the secondary legislation and administrative guidance, particularly in the area of accounting and financial control.

### **IV.3 The Budget and the budget preparation process**

#### IV.3.1 Are the basic tasks of budgeting carried out?

It is generally agreed<sup>4</sup> that public expenditure management should be aimed at ensuring: (i) *aggregate fiscal discipline*, to achieve macroeconomic stability; (ii) *allocative efficiency*, which involves prioritizing programs in accordance with government policies and selecting

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<sup>3</sup> Detailed, for example, in Bill Allan, "Public Expenditure Management and Budget Law: Toward a Framework for a Budget Law for Economies in Transition." IMF. 1994.

<sup>4</sup> See for example: "Public Expenditure Management Handbook", World Bank, 1998; and "Managing Public Expenditure- A reference book for transition countries", Allen-Tommasi, OECD-SIGMA, 2001.

the most cost-effective programs and projects; and (iii) *operational performance*, that is efficiency and effectiveness in public service delivery.

To ensure aggregate fiscal discipline and efficient resource allocation some key basic principles of budgeting should be enforced. These include the traditional budgetary rules<sup>5</sup> of *annuality, unity, universality* (budgetary revenue may not be allocated to particular items of expenditure and all revenue and expenditure must be entered in gross terms without any adjustment against each other), and the *specification* of expenditure (each appropriation is allocated to a particular kind of expenditure).

#### *IV.3.1.1 Aggregate fiscal discipline*

Until recently, the Kosovo budget system was successful in achieving *aggregate fiscal discipline*. From 1999 to 2003, the budgets were implemented with surplus (e.g. the budget surplus accounted for 5.6% of GDP in 2002, and 2.5% in 2003<sup>6</sup>). Actual revenue collection is generally at the level of revenue forecasts, or above this level, which could show a cautious approach in preparing the budget. However, in 2004 surplus in previous year have been turned into a deficit of about 7% of GDP, because notably of a significant increase in investment expenditures, which doubled from 2003 to 2004, and the 2005 Budget has been enacted with a deficit.

The favourable results achieved until 2003 came partly from weaknesses in budgeting. Expenditures were systematically overestimated in the budget. For example, in 2003 only 66% of budget appropriations have been used, budget deviation by function varying from 7% (social protection) to 50% (general services). As noted in chapter 3 of the 2004 Kosovo Budget, such a budget deviation came from the combination of several factors including inefficiencies in budget implementation, weaknesses in costs estimates and, above all, the fact that appropriations for multi-year projects were defined on a commitment basis, not on a cash basis. Under the procurement regulations in force until 2004, all the money for a capital project should be appropriated even when the project could not be completed in one year. As a result a significant part of the appropriation was unspent at the end of the year and had to be carried over to the following budget.

Because of commitment-based appropriations and an extensive use of the carry-over procedure, the budget system did not comply with the annuality principle. This was a major weakness of the Kosovo budget system, because the budget did not give a realistic picture of what could be spend in the fiscal year. This weakness has been addressed. The new procurement law (UNMIK regulation 2004/3) no longer mandates that the full cost of multiyear projects be committed up-front. The appropriations in the 2005 budget correspond to the cash payment forecasts.

Beyond these issues, recent fiscal developments show that, arrangements to ensure fiscal discipline should be strengthened. In addition, until now, the high volume of external aid eased the fiscal situation. External aid has a favourable impact on the budget both directly and indirectly, through stimulating economic growth and tax revenues. One key public

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<sup>5</sup> These principles are enumerated in the regulations that regulate the EC budget system (Commission Regulation Nos. 2342/2002 and 2343/20002 of 23 December 2002).

<sup>6</sup> Source: "Kosovo--Gearing Policies Toward Growth and Development". IMF, November 2004.

expenditure management problem facing the PISG will be to maintain fiscal balance in the face of declining donor receipts.

This will require, among other elements, defining a proper fiscal strategy within a medium-term fiscal framework that will set aggregate fiscal targets, improving economic monitoring, and preparing more robust economic and fiscal forecasts. For this purpose, capacities in macro-economic analysis and forecasting should be reinforced.

#### *IV.3.1.2 Achieving allocative efficiency*

The *principles of unity and universality* are formally enforced, but in practice there are fragmented arrangements in budgeting. There is still some competition between reserved-power and transferred-power agencies. The fact that the investment projects financed by donors' grants are presented in the budget under a separate chapter and are programmed in a separate process contributes to increased fragmentation.

To enforce the *principle of specificity*, the law on public financial management and accountability (LPFMA-regulation 2003/17 of May 2003) includes provisions that define limits for transfers between budget items. However, in practice, this principle is barely enforced because authorizations for transfers between appropriations are allowed too frequently. These are about 200-300 in-year transfers between appropriations. In addition, the fact that the appropriations are overestimated softens the rule that limit transfers to 20% of the negatively affected appropriation.

The share of government investment expenditure to GDP has been increased significantly in 2004 and in the 2005 Budget. Taking into account weaknesses in project preparation and selection, this raises concerns about potential wastefulness and future funding requirements for adequate maintenance of infrastructure. The government should assess the future fiscal impact of its budgeted expenditure programs, within a medium-term fiscal framework.

In 2004, the macroeconomic policy department of the MFE has prepared medium-term macroeconomic and fiscal projection, which are published in the paper "Medium Term Macroeconomic Background to the Budget for 2005". The 2003 and 2004 budgets include expenditure projections by ministry and department for the two years following the budget year. Placing the budget within a multi-year perspective is important for reinforcing the budget-policy link, planning policies implementation and assessing the forward fiscal impact of the current policies. However, these forward estimates are not yet an instrument for budget policy planning, notably because they have not been prepared under hard budget constraints. Nevertheless, such a weakness should be relativized. Preparing a Medium Term Expenditure Framework (MTEF) under hard budget constraint is desirable and is generally considered as a best practice. However, while every EU countries present aggregate medium-term fiscal projections in their stabilization program, not all EU countries prepare an MTEF detailing these forward estimates by ministry or by programme.

#### *IV.3.1.3 Achieving operational performance*

To encourage efficiency and effectiveness in public service delivery, the LPFMA requires the production of performance statements. The budget includes brief narrative statements that summarize the activities of the ministries, or the departments, but it does not include measurable indicators for activities and performance to ensure that funds are spent in an efficient and effective manner. Actually, developing a performance oriented approach in

budgeting needs time, even in the most developed countries.

Wages and salaries absorb an increased share of total operating costs (wages and salaries plus goods and services) of the government. (42% of the in 2003, 47% in 2004). An excessive wage bill risks to absorb inefficiently the scarce government resources to the detriment of goods and services and investment maintenance expenditures. Containing personnel costs will be necessary to improve operational performance.

#### IV.3.1.4 *The budget preparation procedure*

The budget preparation procedure is defined in the LPFMA. The budgeting procedure and the content of the budgetary documents defined in the LPFMA are aimed at encouraging program prioritization and correspond to good practices. According to this law, budget preparation will be framed by aggregate fiscal targets, which should be prepared by April 1, and by sectoral expenditure ceilings, which should be notified to budget organization in the budget circular by May 15. The budget submission and the budget should include, among other information, mission statements and program performance plan, forward expenditure estimates for a three-year period.

In practice, program prioritization is still weak during budget preparation. On the hand, in 2004 the budget circular has been notified belatedly, which leaves less time to line ministries to prioritise their programs. On the other hand, line ministries do not comply with the expenditure limits notified in the budget circular.

#### IV.3.2 Responsibilities

The budget department is responsible for budget preparation, while the macro-economic framework is prepared by the macro-economic policy department. Both departments are supported the USAID (2 permanent technical assistants in the macroeconomic policy department and 2 in the budget department).

Within the MEF, capacity of the budget department to analyze and challenge budget users' proposals in depth is still weak, but national capacities are in the process of being built. While substantial support is being provided by international advisers to the MFE, the quality of budget submissions prepared by line agencies is poor. Further progress in budget preparation required increased capacities at the line ministry level.

The macroeconomic policy department lacks of skilled national experts and had to rely on the USAID Technical assistance, as well as on the expertise of the IMF. As noted later attracting skilled staff in the area of policy analysis and formulation will be an important challenge.

#### IV.3.3 The KSIP

To achieve the standard 5.3 (*"Economy- The budget process is functioning and meeting all legal requirements*) the KSIP include a number of actions, related to both institutional and policy development. Concerning the institutional aspects, progress along these actions is as follows:

- Action 5.3.1 *"The adoption of the KCB 2005 and annual budgets thereafter in full compliance with fiscal and budget regulations and the LPFMA, satisfying all conditions for SRSG promulgation including sufficient attention to*

*reserved areas, taking recommendations on IMF and other development partners into due account". This action has been accomplished.*

- Action 5.3.2 *"Development of an MTEF, including integration of the public investment plan, which is non-discriminatory and takes into account the priorities of the Government and reserved areas.* For the moment a full-fledged MTEF has not been developed. However, some initial steps have been made. For example, aggregate fiscal projections are being prepared. It should be taken into account that not all Western Europe countries prepare a full-fledged MTEF.
- Action 5.3.3 *"Improvement of sector spending plans and dialogue between MFE and other budget agencies, with due consideration given to priorities of women."* Although the dialogue between the budget organisations (excluding reserved powers organisations) and the MFE is currently not very comprehensive, it seems to meet the needs expressed by the agencies. The dialogue between reserved powers organizations and the MFE appears to be underdeveloped.
- Action 5.3.4. *"Improvement of the implementation of the budget timetable to ensure timely presentation of the Mid-Year Review".* This has not been achieved. First, the IMF recommended in March that no mid-year review be undertaken during 2004, in order to focus the efforts on the implementation of a budget effectively cash-based. Second there has been a delay in the issuing of the budget circular.
- Action 5.3.6. *"Compliance with the LPFMA and the Budget 2004 and 2005 regulations, is monitored, with reporting following the timelines set out in this regulation".* The internal audit unit of the MFE (IAU) controls whether the agencies comply with the LPFMA, but there is no special mechanism to evaluate the implementation of the LPFMA.
- Action 5.3.7. *"Strengthening of public expenditure management in maintaining fiscal discipline and efficient allocation of resources".* As noted there is a good fiscal discipline. Fragmented budgeting arrangements, which are related to the current special circumstances, and weak capacity in policy formulation are not conducive to efficient resource allocation.

#### IV.3.4 Direction for further improvements and TA needs

Institutions (organisations and procedures) for budgeting are in place, but the capacity of the budget system to undertake the basic tasks of public expenditure management should be reinforced.

First, budgeting procedures should be streamlined. A significant weakness, which was the lack of credible cash based budget, because of commitment-based appropriations, is being addressed. Some other weaknesses, such as those related to the fragmented processes, are related to the current special circumstances and cannot be addressed for the moment. Recent fiscal developments show that fiscal policy formulation should be strengthened. However, concerning the budgeting processes, overambitious approaches consisting, for example, of replicating best practice models should be avoided for the moment.

Second, capacities in expenditure planning, programme prioritisation, project preparation and selection are weak. Both technical assistance, focused on on-the-job training, and training are required. In addition, as noted in section D, incentives should be provided to attract skilled Kosovan technicians.

The technical assistance (TA) to the MFE that will be provided by the existing and under preparation TA projects should fulfil the TA needs of the MFE, provided that a good coordination between these different assistances is established. In the budgeting area, the following TA programmes are planned:

- The USAID TA programme, which will be pursued until 2008, in principle.
- The EAR project to assist in strengthening public investment programming (€2 million), which will start in 2005.
- The World Bank is preparing a USD 5.5 million Public Expenditure Management Technical Assistance Project (PEMTAG). It is expected that this project will be approved by the board of the World Bank in May 2005. The budget formulation component of this project will focus on: (i) consultancy and training program to build capacity in budget preparation in four major line ministries and (ii) building capacity among budget analysts in the Ministry of Finance. The project would also monitor the transfer of knowledge to local staff to ensure capacity building.
- The IMF provides TA regarding budget and macroeconomic advice, and training through participation of civil servants to courses in the Joint Vienna Institute.

Taking into account these planned TA's, it could be counter-productive to overload the MFE with additional technical assistance. However, additional assistance to support line agencies in preparing projects and programmes is desirable.

#### **IV.4 Budget execution**

##### **IV.4.1 Treasury**

The Treasury department is responsible for supervising budget execution and accounting. It is established under the provisions of Section 3 of the LPFMA. In accordance with these provisions, the Treasury is headed by a Director appointed by the SRSG on the advice of the Minister of Finance and a Deputy Director, who is appointed by the Minister of Finance with the consent of the Government. It is expected that the treasury will be managed soon by a Kosovan director. (This seems feasible, but it will require revising the LPFMA).

The Treasury department comprises a central office located in the MFE in Pristina, and five regional offices in Gjilan, Mitrovica, Peja, Prizren and Pristina. The central office employs some 50 staff and each of the regional offices between three and four staff, bringing the total number of staff to some 70 persons.

The Treasury department operates a Treasury information system (derived from the Canadian

"FreeBalance" off-the-shell software), which has been implemented with the support of the Canadian International Development Agency (CIDA) and the Swedish International Development Cooperation Agency (SIDA)<sup>7</sup>. FreeBalance is implemented at both the central level and the regional level. This information system has been implemented in 21 months from mid-2001 to early 2003. It is being used to record appropriations, commitment and payment transactions. There is an effective control of general government spending through the Treasury system. Thus, the all transactions on the municipal budgets are channelled through this system.

All 30 municipalities are electronically linked to the Treasury information system, but the line ministries are not. Line ministries have to submit to the central office of the Treasury paper copies of commitments and payment orders. This delays budget execution and deprives budget managers of real time data on spending. They therefore depend on their own parallel accounting and reporting systems, which are often based on simple spreadsheets. It is expected that the FreeBalance system will be rolled out to line ministries in 2005

The implementation of an operational Treasury system within a relatively short time limit is an important achievement. Of course, a number of teething problems are still met in operating the Treasury system and improvements are needed (e.g. for interfacing between the Banking and Payments authority of Kosovo – BPK- accounting system and the Treasury System, and for improving the format of certain reports).

#### IV.4.2 Reporting

Despite this achievement, capacities in accounting and preparing financial statements are weak. The LPFMA stipulates that a final budget reconciliation report for the previous fiscal year should be submitted to the Assembly and the SRSG no later than March 31, and that no later than June 30 a set of financial statements in compliance with “the relevant international accounting standards that have been audited” should be submitted to these institutions. Actually, the financial statements and the subsequent audits of the KCB for FY 1999-2002 were submitted with significant delays. It is, however, expected that as of FY 2004, annual financial reporting will be in accordance with the provisions of the LPFMA.

Budget implementation reports with aggregate data are available on a current basis from the Treasury System, but the format of these reports should be improved. Budget organisations submit quarterly reports on actual revenues and expenditures to the MFE, but on paper or disquette because they do not have modern accounting systems. It does not seem that all modules of Freebalance eFinancials have been implemented operationally (For example, the Treasury System does not have a vendor register and a procurement module).

#### IV.4.3 The KSIP actions

Related to reporting the KSIP include the following action: "*Timely Annual Reports and Financial Statements*". For the moment this objective has not been achieved. It is expected it will be achieved in 2005.

#### IV.4.4 Direction for further improvements and TA needs

The implementation of both the Treasury offices and the Treasury system within a short time

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<sup>7</sup> CIDA contributed a total of \$2.3 million to the project, SIDA to an additional \$1.2 million.

limit is a remarkable achievement. The Treasury system is operated by local staff without any major difficulty. Nevertheless, further assistance will be required to support the extension of the Treasury system, a more extensive use of its potentialities, and improve accounting and reporting standards.

The extension of the information system to line ministries in 2005 will require extensive training of agency personnel in accounting and financial management, and the preparation of appropriate guidelines, reporting formats and management procedures. The World Bank is considering supporting some of these activities through the PEMTAG project, which is currently under preparation<sup>8</sup>

In principle, the existing USAID assistance to the Treasury, if it is extended as expected, and the budget execution component of the future World Bank "Economic policy and public expenditure management project", mentioned earlier, should ensure the required support to implement these improvements.

## **IV.5 Internal control and internal audit**

### **IV.5.1 Current situation**

Currently, the internal control system consists of the Internal Audit Unit (IAU) of the MFE, which has been established in accordance with the provisions of Section 8 of the LPFMA. The IAU of the MFE consists of 25 staff. Since 2001, the IAU of the MFE has completed about 25 audits annually. The IAU operates with a good degree of independence and has in place a formalized audit planning process.

According to an evaluation of the USAID technical assistance program<sup>9</sup>: "The accomplishments in internal auditing are sustainable... The internal audit can execute financial and compliance audits without continuing expatriate involvement". Nevertheless, the IAU functions more as inspectorate than a modern audit office. The IAU focuses on compliance with rules and procedures, and put less attention to the effectiveness of the management systems. However, this approach corresponds to an initial step that suits the current administrative context.

The MOF has issued an internal audit charter for Kosovo in August 2003. This Charter specifies, among others, the following mandatory requirements for government agencies<sup>10</sup>: (i) the MFE must establish an Internal Audit Coordination Unit (IACU) to coordinate and set the standards for the Internal Audit in Kosovo; (ii) Each major institution must have an Audit Committee (AC), which produces an annual report for the senior management; (iii) The AC of each institution, advised where appropriate by its Internal Audit Department (IAD), must ensure that satisfactory arrangements are in place to promote economy, efficiency and effectiveness; (iv) Each major institution must have arrangements for an effective IAD, which reports at least annually through the AC to the IACU, the Permanent Secretary or CEO and if required to the Minister or President of Municipal Assembly. However, for the moment these arrangements are not in place, efforts have been focused on the IAU of the MFE.

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<sup>8</sup> Cf. Project Information Document.

<sup>9</sup> "Evaluation of the USAID/Kosovo Economic Reconstruction Project". Checci and Company Consulting/Louis Berger. Washington, November 2003.

<sup>10</sup> Source: Public Administration Profile: Serbia-Montenegro/Kosovo. SIGMA. 2004

Several required procedures for internal control are lacking or weak (e.g. written procedures and basic control activities such as bank- reconciliations). The LPFMA defines sanctions that can be imposed in case of violations of rules and procedures, but cases of mismanagement are not systematically sanctioned. A recent report shows that corruption in Kosovo does exist, although according to this report the degree of corruption measured by a set of corruption indices would be lower than in neighbored countries<sup>11</sup>.

Taking into account these problems, the government intends to develop a government-wide decentralized internal control and internal audit system, with the support of the EAR.

#### IV.5.2 KSIP Actions

To achieve the Standard 1 ("functioning democratic institutions") the KSIP includes two actions related to internal audit. Progress along these actions is as follows:

- KSIP Standard 1 Action 12.3 "Internal Audit Units established for main expenditure units of KCB, and internal audits conducted" and Action 23.5 "...PISG bodies introduce adequate internal financial controls and system of internal audits". For the moment the only operating internal audit unit is the IAU of the MFE. Progress is therefore very limited. However, experience of transition countries shows that setting up an operational internal auditing system can take time.
- KSIP Standard 1, Action 12.4: *"Results on implementation of audit recommendations notified by each PISG expenditure"*. There have been some actions to implement some of the AIU recommendations.

#### IV.5.3 Required further improvements and technical assistance

Both the internal control and internal audit systems within line ministries have to be built. Development of internal control and audit is currently supported by EAR through a € 1.9 million project ("Support to the Central level administration – development and reinforcement of Internal Audit and Internal Financial Control Systems" project). This project includes two component: (i) development of public internal financial control, including assistance in the preparation of administrative guidance, processes development and training; (ii) development of internal audit including methodological advice, guidance on the role of each actor, training and on-the-job assistance in carrying out audits.

As shown by the experience of other countries developing internal control and audit needs time. Therefore, it will be important to pursue the assistance to the development of the public internal financial control and internal audit after completion of the current EAR project.

Preparing secondary legislation and guidelines for internal audit and financial control is required.

### **IV.6 External audit**

#### IV.6.1 Current situation

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<sup>11</sup> "Corruption in Kosovo: Observations and Implications for USAID," Management Systems International, Washington DC, July 10, 2003.

The Office of the Auditor General of Kosovo (OAG) was established in 2002 by the UNMIK Regulation 2002/18 and is the Supreme Audit Institution (SAI) in Kosovo. The Auditor General was appointed in November 2003. The UNMIK Regulation No. 2002/18 provide for a broad mandate for the external audit and its functional independence.

The OAG has not yet undertaken its first audit of the execution of the Kosovo Budget, which so far has been contracted out to the Dutch Court of Audit (the *Algemene Rekenkamer*). Reports on the audit of the 1999/2000 and 2001 accounts were released in May and December 2004. The audits for 2002 and 2003 are not yet completed.

The OAG currently employs about 50 Kosovan staff. There are about 40 trainee auditors attending various stages of professional training. The OAG will recruit an additional team of trainee auditors during 2005. When the Office is fully staffed it will employ approximately 85 Kosovan staff. Continuous training will be required, notably because of the move of many auditors to the private sector.

The local staff and the operating costs of the OAG are funded from the Kosovo Budget. A grant from the EAR of € 2.2 million finances a technical assistance and capacity building project, the Auditor General of Kosovo being the director of this project. The emphasis at this stage of the development of the OAG is to train future auditors of Kosovo according to EU standards. The OAG will have to rely on either external support or contracting out for the external auditing of the two next fiscal years, but it is expected that after this initial capacity building phase, the audit of budget execution will be undertaken by the OAG auditors.

#### IV.6.2 KSIP Actions

The KSIP includes:

- KSIP Standard 1, Action 12.1: "*audit plans drawn up by Auditor General's Office every year in advance, and notified*". It has been planned that the audits will be contracted out.
- KSIP Standard 1, Action 12.2: "*Auditor-Generals reports submitted to SRSG and the Assembly*". The external audit report on the execution of the KCB 2001 has been disseminated belatedly in December 2004.
- KSIP Standard 2, Action 23.4: "*Auditors within Auditor-General's office trained and performing regular audits of financial activity of Government bodies*". The training of auditors is being undertaken.
- KSIP Standard 2, Action 23.5: "*PISG bodies comply fully with audits from Auditor-General's office...*" For the moment the published external audits concern the period before the transfer of powers from the UNMIK to the PISG.

#### IV.6.3 Required further improvements and technical assistance

The OAG has not yet adequate capacities to carry out audits and has to rely on other SAIs. The on-going EAR project "Support to the creation and establishment of the Supreme Audit

Institution” is aimed at creating these capacities. It runs until October 2006. The training of professional audit staff must continue until 2009 to ensure that the OAG is able to perform audits in compliance with EU Standards. Taking into account the time needed to build an effective OAG further assistance will be required after completion of the ongoing EAR project.

## **IV.7 Public Procurement**

### **IV.7.1 Current situation**

The public procurement system, is governed by the law on public procurement (UNMIK regulation No 2004/3). This law has replaced a previous UNMIK Finance Administration Instruction of 1999, which included some provisions incompatible with the EC procurement directives. It provides procedures modelled on the European procedures as they stood before May 2004 and introduces measures required by the relevant EC directives. It establishes the following central bodies to manage the system: the Public Procurement Agency (PPA), the Public Procurement Regulatory Commission (PPRC), and the Public Procurement Rules Committee.

The Public Procurement Agency (PPA) is staffed with 19 persons and is situated within the Ministry of Public Services, conducts centralized bidding over a certain level. The Public Procurement Regulatory Commission (PPRC), which is situated in the Ministry of Finance. It is responsible for developing procedural guidelines, train personnel, monitor the tendering function, and review complaints – essentially, to serve as a regulatory mechanism.

Secondary regulations and standard bidding documents which are required to underpin the new procurement law are not yet fully implemented. Thus, some provisions of the law have not been implemented, notably those concerning the procedures for complaints. Actually, the procurement law is lengthy and complex. Some of its provisions are difficult to implement. Kosovo has gone from a position of having no or little procurement law to a position of having a full and comprehensive procurement law extending to over 90 pages. Given the existing procurement capacity in Kosovo and the novelty of this law, users have difficulty in applying it.

The EAR is financing the drafting of improved regulations and bidding documents (project Support to the establishment of a Public Procurement System € 970 000).

Ministries and municipalities are authorized to conduct procurements for their own needs, subject to a preliminary review of the PPA of their procurement plan. Procuring entities (some 500 in total) have not yet received adequate support in the application of the PPL and the skills deficit remains very high. A few training seminars have been arranged, but further training is required. A system for the training of trainers should be developed, in order to ensure continuity in the provision of training support.

### **IV.7.2 KSIP Actions**

The KSIP include the following actions:

- Standard 5. Action 11.4. *Transparent and efficient procurement processes demonstrated through independent external audits performed on a regular*

*basis.* The audit of the 2001 Kosovo Consolidated Budget includes several recommendations to improve the procurement process. However, it will be premature to assess whether this standard is met.

- Standard 5. Action 11.6. Advertisement of Government procurement processes in all official languages.

#### IV.7.3 Required further improvements and technical assistance

While EAR has been providing support in the preparation of legal texts and training, the World Bank is considering providing TA in the form of consultancy to budget institutions in implementing the procurement law.

In addition continuing efforts to improve efficiency of the public procurement system at the operational level are needed. Technical assistance will be required to enable spending ministries to implement procurement efficiently and cost-effectively.

### **IV.8 Revenue collection**

#### IV.8.1 Current situation

The Tax Administration commenced operation in January 2000 as part of the then UNMIK controlled Central Fiscal Authority. In February 2003 the Tax Administration was transferred to the PISG and became part of the MFE.

The Tax Administration currently has about 560 staff and is currently recruiting a further 100 as part of its plans to reach an optimal staff of between 700 and 750. Tax administration comprises nine regional offices and the headquarters.

The Tax Administration is assisted by 10 international advisers (4 from USAID/BearingPoint and 6 from EU Customs and Fiscal Assistance Office CAFAO, which is funded by the EU). The Tax Administration itself has also recently contracted an international I.T. expert to assist for 12 months.

The customs service is still a reserved power, supervised by the UNMIK EU-pillar IV. The Director General of UNMIK Customs is a EU pillar officer. An international Director General, two international Directors and four Kosovo Albanian Deputy Directors currently manage the Customs Service. The customs services are staffed with about 490 Kosovan officers. The number of external advisers is expected to decrease to 6 in 2005 from 25 previously. The fact that the customs services are "reserved power" is seen to present the advantage of insulating them from patronage and political influence.

According to an IMF report of November 2004: "The performance of the new tax system is perhaps the single most positive feature in all economic developments since the end of the conflict. Higher tax rates, larger tax bases, and better enforcement contributed about equally to this over-performance.... Close to 80 percent of taxes are collected at the border, and this is often mistakenly attributed to an inefficient domestic tax administration ... Only 17 percent of border taxes are genuine taxes on imported goods, but this is in line with the experience in

other economies at a similar stage of development"<sup>12</sup>

Nevertheless, additional progress in domestic tax collection is required. As the IMF put it<sup>13</sup>: "Domestic collection captures only part of the potential tax base... Accordingly, the mission recommends targeted high-profile on-site audits of suspected tax avoiders, as well as the determined pursuit of the planned public education campaign". Also tax collection appears weak at the municipal level. In the case of property taxes, only 13 percent of the bills issued in 2002 and 2003 had been paid at the end of 2003<sup>14</sup>. USAID is supporting improvements in this area.

#### IV.8.2 KSIP Standards<sup>15</sup>

According to the Tax Administration, the KSIP standards are being implemented. A number of KSIP standards concerning the tax administration deal more with policy issues than administrative capacity. Nevertheless, their degree of achievement shows to which extent the tax administration is able to respond to policy requirements. Progress in implementing the KSIP standard is as follows:

- Standard 3, Action 1.3. "Completion of the fiscal legislative framework in cooperation with other development partners, including: (i) Profit Tax to be extended to cover the presumptive taxpayers; (ii) the adoption of a new 'tax administration and procedures' law consolidating all previous tax administration laws; (iii) The adoption of a comprehensive personal income tax- introducing tax on income beyond wages". Updated Personal Income Tax and Profit tax laws have been approved by the Assembly and the UNMIK (in December 2004). The new law on Tax Administration and Procedures law have been adopted by the Assembly in September 2004 (law No 2004/48).
- Standard 5, Action 10.1 "Development of a system of measuring compliance indicators with Kosovo's taxes and customs duties complemented by detailed compliance estimates produced on a semi-annual basis". The Tax Administration calculated and published internally a 2003 Annual Report which contained indicators on operational efficiency. Further work to develop compliance indicators would be under way.
- Standard 5, Action 10.2 "Implementation of property tax and profits tax, in compliance with the European Convention on Human Rights (ECHR)". This Standard has been achieved.
- Standard 5, Action 10.4 "*Internal VAT system is operating and following the EU Directive on VAT*". The VAT system is generally operating satisfactorily. There are however several areas where improvement can be made. Thus, many taxpayers do not yet fully understand how VAT works. The Tax administration intends to update the VAT law during 2005, but it is unlikely

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<sup>12</sup> Kosovo: Gearing Policies Toward Growth and Development. IMF. November, 2004.

<sup>13</sup> Aide memoire of the IMF Staff Mission to Kosovo, December 8 - 18, 2004

<sup>14</sup> Source: "Kosovo: Economic memorandum". World Bank. May 2004.

<sup>15</sup> This review is based on data provided by the Tax Administration. It does not cover customs services.

the new VAT law will be fully EU-compliant, notably because this would need to increase the VAT rate on agricultural product.

- Standard 5, Action 10.5 "*The operation of VAT rebate system is reviewed and improved*". The expected completion date of July 2004 for this Standard has not been met, but the process is under way.
- Standard 5, Action 11.2 "Multi-ethnic and professional Tax Administration in place, free from political interference, demonstrated through: Opening of Tax Administration offices in all ethnic areas; Employment of all ethnic communities in Tax Administration offices". Tax Administration considers that this Standard is being achieved. Recent recruiting has increased the number of ethnic minority staff in the Tax Administration from 17 to 26 with a small number of other additional ethnic minority positions yet to be decided and appointed.
- Standard 5, Action 11.2 11.3 "*Fair and equitable implementation of the tax system across business sectors, regions of Kosovo and ethnic communities*". Tax administration believes it already met the Standard (for example all tax forms and guides are produced in three languages).

#### IV.8.3 Required further improvements and technical assistance

The tax administration has prepared a training plan, which would be supported by the USAID and the CAFAO. It will benefit from the TA of USAID and CAFAO advisers. Both tax administration and customs services developed plans to increase national capacities and are implementing them

In addition to training plans, both the tax administrations and the customs services need to recruit a number of effective relatively mature local managers to take over the top jobs. The technical aspects of these jobs are relatively straightforward, but the management issues are not.

The USAID supports the property tax department of the MFE. Pursued actions in this area will be required (see also chapter on local government).

Attention will need to be given to designing protective mechanisms before the Customs services are transferred to the PISG. Perhaps, establishing agencies could be considered to insulate the tax administration and customs services from any risk of patronage.

Proper incentives must be given to staff. The cuts in the remuneration of some key staff in customs that would be considered would have obvious adverse impacts for morale and revenue collections.

### IV.9 **Human resources**

#### IV.9.1 The need to create incentives

Currently, local administrative capacity in key financial management functions is generally

insufficient when it comes to both training and experience. Therefore further training, including on the job training is still needed. However, experience shows that focusing on training only will be insufficient.

As noted in a USAID study<sup>16</sup>, success in implementing the Treasury, the IAD, or the Tax administration shows that when the jobs are procedural and managerial in nature, it may be possible to build internal capacity and train employed local staff satisfactorily. On the other hand, for jobs that are deeply analytical in nature, building capacity through training of existing employees may not be possible. According to this study: "*After four years there are no local employees that are satisfactorily trained for the senior analytical positions in the Macroeconomic, Budget, Tax Policy, or Intergovernmental Fiscal Relations Units, and there are no local employees who are professionally prepared to lead these operations*".

The higher wages in the donor sector explain in a large part this problem. Also, probably the support system, initially based by necessity on external advisors could not favour the emergence of local managers, despite the fact that the foreign advisors in the MFE are moving from substitution TA to on the job training.

#### IV.9.2 Training

There are training needs for all areas of fiscal and budget management. In addition, basic training would be required to increase staff's computer literacy. As noted, it will be important to train officers from line ministries in various areas such as budget formulation, project preparation, administration of the Treasury system and procurement. There is a need to ensure a coordination of the future training activities in budget management area and to ensure that they are consistent with the actions currently undertaken to build a sound budget system<sup>17</sup>

The training areas include:

- *Policy formulation, preparation of medium-term budget policy paper, preparation of medium-term fiscal projections*: on-the-job training is currently provided by the USAID TA, but it will be important to attract skilled young national technicians and to give them complementary training (e.g. the training provided by the IMF on financial programming and policy, or on public finance).
- Budget preparation at the ministry level, project preparation and selection, sectoral expertise, and review of the budget submissions by the budget department: training and on-the-job training will be provided by the EAR and World Bank projects. However further training will be desirable.
- *Treasury system implementation at the line ministries level, accounting within line ministries*. Training of line ministries officers will be necessary. The projects identified above will provide some training in these areas, but it should be assessed

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<sup>16</sup> "Evaluation of the USAID/Kosovo Economic Reconstruction Project". Checchi and Company Consulting-Louis Berger. 2003.

<sup>17</sup> According to the budget department some training activities undertaken in 2004 did not meet this requirement.

whether additional training is required.

- *Procurement*: Training of line ministries officers will be necessary.
- *Internal audit and financial control*. Training will be necessary, but it should be closely coordinated with the ongoing project.
- *External audit*. Actions are being undertaken. They should be pursued after the completion of the ongoing project
- *Tax and customs administration*. These organisations have prepared a training programme.

## V DECISION-MAKING AND POLICY COORDINATION

### V.1 Assessment Framework

This chapter examines the capacity of the PISG collectively to produce coherent policy output in the form of Government decisions and draft legislation. The most commonly used tool for assessing such capacity is the SIGMA Baseline for Assessment of Policy-Making and Coordination. Between 1999 and 2003, this Baseline was used annually to assess capacity in the 10 central and Eastern European Candidates for EU accession, and to report progress to the European Commission. Last year SIGMA began applying it also to countries of the former Yugoslavia. In recent years, the World Bank and the Asian Development Bank have also used various versions of this Baseline in their country assessments.

The central premises underlying the baseline are that countries need policy-making and coordination arrangements that:

- Create policies that are not deficient in law or substance, are economically efficient, and which do not contradict one another;
- Create policies that are sustainable in budgetary terms;
- Ensure that decisions are implemented;
- Lay the foundations for operating effectively within the EU.

The work of OECD, and of SIGMA in particular, to assess the policy coordination mechanisms at the Centre of Government (CoG) in a large number of countries resulted in two recent papers that seek to document and analyze the findings and to draw general conclusions<sup>18</sup>.

For the purpose of assessing the capacity of the OPM to perform the required tasks, four of the conclusions from these papers are of crucial importance.

The first is that there is no ‘correct’ way of **organizing** the Centre of Government [OPM

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<sup>18</sup>Michal Ben-Gera, “Co-Ordination at the Centre of Government: The Functions and Organisation of the Government Office”, SIGMA Paper No. 35, March 2004. Simon James and Michal Ben-Gera, "A Comparative Analysis of Government Offices in OECD Countries", *OECD Papers*, Vol. 4, No. 6.

equivalent]. The apparatus supporting each country's Government has developed incrementally, and often haphazardly. Arrangements have only rarely been based consciously on foreign models. Usually the Centre of Government is homegrown, influenced mainly by domestic traditions of law, politics and administration. Often it has been caused to develop in unexpected directions by political circumstance, personality and chance. The degree of organizational variation is enormous.

The second conclusion, on the other hand, is that the **functions** performed by the Centre of Government are remarkably similar in different countries. It is possible, therefore, to list eight functions that are carried out by most or all Centres of Government in EU and OECD countries. All of these functions are different aspects of coordination; the first seven are often referred to as "core functions", the last lists possible "attached" functions:

1. Co-ordination of organisational arrangements in preparation for the sessions of the Government and Ministerial Committees;
2. Co-ordination of the policy content of proposals for Government decision;
3. Co-ordination of legal conformity of proposals;
4. Co-ordination of the preparation of Government programme and priorities, and their link to the budget;
5. Co-ordination of communications messages;
6. Co-ordination of the monitoring of Government performance;
7. Co-ordination of the Government's relations with the Parliament; and
8. Co-ordination of specific cross-Ministry strategic priorities (these vary between countries, for example, European Integration in Candidates, federal-provincial relations in federations, privatisation, public administration reform, etc.).

The third important conclusion is that an effective policy system requires interrelated capacities between Ministries and the Centre of Government [OPM]. The centre of Government must have the capacity to develop and enforce procedures for sound policy development. Specifically, the procedures need to address inter-ministerial and stakeholders consultations, and to require sound analysis, including assessment of costs and consequences of policy and legislative proposals. In the Ministries, there must be capacity (and commitment) to follow the required procedures and base their policy and legislative proposals on valid analysis including *ex ante* assessment of the impacts of proposals, and periodic *ex post* assessment of results. If either the CoG [OPM] or the Ministries lack the necessary capacity, the policy system will not operate effectively.

Finally, it should be pointed out that the various assessments of policy-making and coordination in former Communist states indicate that the difficulties reside as much with cultural habits as with objective capacity. To simplify greatly, policy development requires open, two-way exchange between politicians and civil servants, initiative and judgement on behalf of civil servants, inter-ministerial consultations and information-sharing, extensive interactions with an informed civil society, and consensus building. This is often in sharp contrast with the top down approach of former times, and the habits of secrecy and of

following orders. These issues, which cannot be fully developed here, nevertheless suggest to experts that the development of a healthy and open “policy culture” in newly democratic systems is likely to be a slow and long process.

As comparative note, it is important to emphasize that the SIGMA annual assessments of the Policy-Making and Coordination systems of all the central and Eastern European Candidates found that none of them had the capacity to perform all the necessary functions. In particular, there was widespread inadequacy in the capacity of the CoG to provide policy-coordination and planning support to the Government, and significant weaknesses in the ability of the Ministries to prepare policy proposals based on adequate analysis and consultations. Nevertheless, eight of these countries joined the EU in 2004, and Romania and Bulgaria are still on track to join in 2007.

## **V.2 The present situation in Kosovo**

UNMIK Regulation 2001/19, Section 2 establishes the Office of the Prime Minister, and specifies that it will include following:

“2.1 The Office of the Prime Minister shall have a section which includes political advisers and, in addition, shall encompass the following offices having responsibilities and functions as set out in Annex I to the present regulation:

- (a) Office of Legal Support Services;
- (b) Office of Public Information;
- (c) Advisory Office on Good Governance, Human Rights, Equal Opportunity and Gender;
- (d) Advisory Office on Communities; and
- (e) Senior Public Appointments Committee.”

This Regulation does not provide a sufficient legal basis for the OPM. In terms of the required core functions (the 7 functions listed above), the Regulation very partially addresses policy advice and coordination, but it vest it only with the political advisers (in the political Cabinet of the Prime Minister). It also covers 2 other functions: legal and communications activities. (Note that the last three units listed in the Regulation perform “attached”, not “core” functions) In practice, the OPM already encompasses additional units, especially a unit to prepare the sessions of the Government and also the Office of European Integration. However, recent work to develop a Government Secretariat apparently necessitates an approval by UNMIK and an amendment of Regulation 2001/19. This seems to be an unnecessary rigidity. In the Future, legislation to establish the OPM is advisable, and it should establish the overall functions and responsibilities of the Office and leave it to the Government to establish the specific departments and units in a flexible manner.

Within the context of the Constitutional Framework (which leaves final decision-making with the SRSG) the OPM can, in practice, provide all the necessary support to the Government with respect to those functions transferred to the PISG. In other words, there are presently no formal limitations on the OPM in performing the functions of a normal CoG, i.e., nothing is reserved as such.

There is still a PIO in the OPM. As the OPM develops along the lines described in this chapter, consideration should be given to the continuing necessity for this post.

## V.3 Institutions

### V.3.1 Core Functions in the OPM

Coordination of the policy-making system is the responsibility of the OPM. In the past two years, a number of reviews of the OPM (DFID, SIGMA) noted that the organization is at an early stage of development and that it is necessary to build the capacity of the OPM to manage and coordinate the policy-making system. In particular, they noted the need to develop capacity in the OPM to organise and service the meetings of the Government, to provide strategic and policy coordination support to the Prime Minister and the Government, to plan the work of the Government, and to monitor implementation by the Ministries. Its internal management system and the capacity of existing staff also need to be strengthened.

Since early 2004, a large (about € 4 million), long-term DFID project is in place to assist the OPM in establishing the core functions (with the exception of the legal coordination function). The project is expected to last at least until March 2007 (with a possible further one year extension).

The focus of the DFID project to build the capacity of the OPM has been on the development of a Government Coordination Secretariat (GCS) that would perform the core tasks of policy coordination, strategic and work planning, monitoring, and liaison with the Assembly. Preparation for establishment of this Secretariat progressed well during the second half of 2004, with full agreement and support of the Permanent Secretary and the Prime Minister. In December 2004, the Prime Minister signed a Decision of the Government that established this Secretariat within the OPM, with an extensive mandate to carry out the essential tasks of providing leadership and coordination to the policy system. The Decision specifies the functions of the new Secretariat (essentially core functions 1,2,4, and 7) that the Secretariat will have staff of 13, a number that would appear adequate at this stage. The establishment of the GCS is an important step forward for policy coordination within the PISG.

The new Secretariat now exists, the Director has already been hired, and the process of hiring the other staff is in progress. It will obviously need to be staffed, trained and mentored, and its successful operation will also require a change in the interaction between the OPM and the Ministries. The DFID project will continue to support the OPM, the Permanent Secretary, and the Director and staff of the new Secretariat in the next two years. While it is far too early to judge the success of this development, it is, at the moment, very promising. There appears to be no need for additional technical assistance in this regard.

The DFID project is also assisting the OPM to develop its communications function (core function number 5), including the OPM Office of Communications and the Prime Minister's Spokesperson. The project produced a detailed assessment and recommendations for organizing and strengthening this function, and they are generally supported by the Permanent Secretary. In the coming months, it is expected that the OPM and the Cabinet of the Prime Minister will undertake steps to strengthen the communications function in cooperation with the DFID project. At this point it appears that additional support to this function is not necessary.

Work is also underway to strengthen the monitoring capacity of the OPM (core function number 6). At present, this function is quite rudimentary (with the exception of Standards

monitoring which somewhat more developed). But some of the technical planning work for a new system is already completed, and there is agreement from the Permanent Secretary on the main element of a new system for regular monitoring. Implementation of the plan is expected to begin in 2005.

In terms of the seven core functions of the OPM, the only one that is not presently addressed in a comprehensive manner is the coordination of legal conformity (core function number 3). The OPM includes an Office of Legal Services (OLSS), but at present, its role within the policy system is not fully clarified. There are, in fact, two contending models for the development of the OLSS. The first, which is essentially the continental European model, will see the Office as essentially a coordinating body that checks the conformity and legal standards of draft legislation that is prepared by Ministries. The second, used in Commonwealth countries, sees the Office as a drafting office. In this model, Ministries develop policy proposals for approval by the Government, and then the actual drafting is carried out by a central body (variously placed in the CoG, the Ministry of Justice, or in the Parliament). The establishment of a Ministry of Justice, already requested by the PISG, should facilitate a better clarification of the role of the OLSS.

While the OLSS presently receives some Technical Assistance, this is focussed on drafting of specific legislation, not on primarily on capacity development. We believe that it is important to build the capacity of the OLSS, as a prerequisite for the PISG taking over full responsibility for its evolving body of law. Technical support for this is urgently needed.

The important elements of assistance to the OLSS are:

- The assistance should be based on a clear set of institutional objectives for the OLSS. The writers of this report believe that the continental model is the more suitable for Kosovo, and that the OLSS should be developed as a coordinating and quality assurance body within the OPM, not as a drafting service. This model fits better within the administrative tradition in the region, whereby governments deal with legislative proposals (not only policy proposals) that as a rule are prepared by the Ministries. Any attempt to make the OLSS into a drafting service would create duplication with the work of the Ministries, and would also deprive the legal system of the function of legal quality assurance. The decision, however, should be taken by the PISG prior to implementation of any capacity building assistance for the OLSS.
- The assistance should be practical, on-the-job, and should focus on structuring the office to perform its main functions within the Kosovo legal system. Assistance from countries with a similar legal tradition would be advisable.
- The assistance should be provided in close cooperation with the DFID project assisting the OPM, and with the EAR project assisting the European Integration office (see below). In any system of policy-making and coordination, there must be a link between policy content and the development of legal instruments that give force to the policy. In countries aiming to join the EU, the conformity of policies and laws with the European *acquis* is an important and difficult task. Therefore, the development of the OLSS the Government Secretariat, and the Office of European Integration must be closely linked and complementary.

### V.3.2 Other bodies within the OPM

The Office of European Integration was recently established within the OPM as an expansion of the SAp Tracking Mechanism (STM). The organisation chart of the Office envisions a fully developed operation structured along the lines of similar bodies within CEEC and Balkan countries. The Office is not yet fully staffed, but it is operational. As of November, it is assisted by an EAR project (€ 3 million over 2 years). Until the start of this project, some assistance was provided by DFID, and the Director of the Office is also receiving advice from her Croatian and Macedonian counterparts. While capacity will need to increase, the basics are there, and present assistance to the Office appears sufficient.

This Office also plays a coordinating role within the OPM with respect to the KSIP, with assistance from the DFID project, working with the PISG Standards Coordinator and in coordination with UNMIK. The focus of activity is on operationalizing the KSIP within the Ministries, and preparing to report on progress on behalf of the PISG as a whole.

There are two Advisory Offices within the OPM (established by 2001/190: Advisory Office on Communities; and Advisory Office on Good Governance, Human Rights, Equal Opportunity and Gender. The first of these is (appropriately) due to become part of the new Ministry on Communities and Returnees. The location of the second within the OPM remains problematic, and efforts should continue to find a home for these issues within an existing or future Ministry. There does not seem to be any strong rationale for placing the Office on Good Governance, Human Rights, Equal Opportunity and Gender within the OPM except as a temporary measure pending the establishment of a full set of Ministries. We are aware that this issue is contentious, and that there are those who believe that it should stay within the OPM.

There are three additional offices within the OPM: Office of Energy (which goes now to the new Ministry of Energy), Public Safety Office, and Coordination Office for International Cooperation and Regional Dialogue. The last two are also temporary, pending the establishment of Ministries of Interior and of Foreign Affairs. In any event, the five offices described in this paragraph are not elements of the policy-coordination system and are mentioned here only to provide a full picture of the OPM.

### V.3.3 Administrative support for the Assembly

To support the assembly, there is presently an Assembly Secretariat, which includes a Legal department and a small unit to provide clerical assistance to Members. Individual Assembly Members do not have staff. The support to the Assembly is generally considered insufficient to ensure good quality output.

In support to the Assembly, ten organizations, foundations and parliaments are intensively cooperating. These include European, American and UN-affiliated institutions. In a coordinated approach these ten capacity building actors have streamlined their activities along 6 programmatic lines: advice on basic components of parliamentary life; advice on parliamentary procedural questions; technical support to Assembly Committees in the legislative process; assistance to international working visits of Assembly delegations; the role and participation of non-majority communities in the Assembly; and advice and training to various departments in the Assembly Secretariat including the Legal Department, the Press

and Public Information Department and the IT-section. In relation to the support to Assembly administration, key actors within ASI, such as EAR, USAID, UNDP and OSCE, have ongoing programs directed to specific departments and their staff.

The ASI prepared a detailed matrix of its ongoing and completed projects (dated 20 May 2004). But it is not clear from the matrix which of the projects will continue into 2005 and beyond. We need to get ASI plans for the next 2 years in order to assess whether additional support would be necessary for the Assembly Secretariat.

#### V.3.4 Policy and legal drafting capacity in the Ministries

While the OPM coordinates, the OLSS reviews, and the Government decides, the preparation and analysis of policy and legislative proposals is quintessentially the task of the Ministries.

The policy-development tasks of the Ministries generally include:

- Identification of policy issues requiring development (from the Government Programme, Government strategic priorities, public pressure, international agreements and commitments, fiscal constraints, etc.)
- Initiation of policy-development work (setting up a Working Group, contracting research, etc.)
- Preparation and analysis of options
- Costing of options
- Consultations (intra-ministerial, interministerial, NGO's, public at large)
- Finalizing options and recommendations and agreeing them with the Minister
- Preparation of material for decision in the Government meeting (draft legislation, concepts, supporting argumentation and data)
- Building support for proposed policy option after decision by the Government (communications function)
- Supporting the Minister (In Government and Parliament)

A related problem is the issue of implementation of legislation. While progress has been noticed in various ministries, the overall implementation of legislation remains affected with problems related to the lack of subsidiary legislation, the lack of hierarchy between normative acts, the functioning of legal offices in the ministries and publication of normative acts.

There is doubtless some variation among the Ministries in Kosovo in terms of their capacity to carry out policy development and implementation activities. Nevertheless, it is universally acknowledged by both local and international observers that capacity is low (at times barely existing) throughout the administration.

There are a number of reasons for this situation:

- The Ministries are all relatively new, and many of their functions are underdeveloped
- Policy development activities are particularly foreign to the traditional responsibilities of Ministries throughout the region. (Note that SIGMA assessments of policy-making in CEEC's have documented Ministries' policy-

development weaknesses in all the countries.)

- There are no agreed rules for Ministries to follow, and no capacity yet in the OPM to demand high-quality products from the Ministries
- The Government itself (at the political level) is not yet fully responsible for its own policy output
- Some of the skills required in this area, such as highly trained analysts and experienced lawyers are particularly hard to attract to the administration due to uncompetitive pay levels for these skills
- International donors often focus on doing the policy and legal drafting work, rather than engaging in the slow process of developing indigenous capacity

In our view, these issues can and should now be addressed as a matter of priority by the PISG and the international community. While other aspects of the policy-making system (the OPM, the Assembly) are now substantially assisted by donors in building their capacity to acceptable standards, the focus of future assistance should be on the Ministries. There are essentially two ways to proceed, and these should be discussed and ideally agreed by donors in a coordinated manner.

The first is for one of the donors to take responsibility for a large-scale project to build policy capacity in all the Ministries (and some of the main agencies). This might involve, as a first step, a “horizontal functional review” of the policy and legislative capacity of all the Ministries, to be followed by recommendations about how these functions are to be organized throughout the PISG, the personnel required, and a training program.

The second is for a number of donors to become involved in building policy and legislative capacity in one or more Ministries, and work closely with the Ministry in a mentoring mode until the capacity is established.

The first of these options has the appeal of consistency throughout the administration, but it may be just too much for any one donor. The second option’s main advantage is that it is likely to encourage donors to involve subject-matter specialists in their chosen Ministries, and thus lead to a better-tailored approach to the specific needs of different Ministries.

There maybe a third option, some combination of both approaches. We leave this for the follow-up discussions on a capacity-building plan for Kosovo. A firmer recommendation may be possible in our final report.

#### **V.4 Legal base for the policy and legislative system**

The procedures for the work of the government and the preparation of policy and legislative drafts by Ministries are insufficient, complex, and incomplete. In the past couple of years, there has been some work on the government Rules of Procedures (RoP), and a draft was prepared by the EAR (GTZ) consultants in the OPM. The draft was modelled substantially on the RoP in Slovenia. It should be pointed out that in all the countries of ex-Yugoslavia there are fairly similar RoP’s, and some version of this is likely to suit Kosovo as well. The RoP is normally secondary legislation approved by the Government, and it tends to evolve over-time

as capacity of CoG and the Ministries increase. Recently, a much-improved version of the RoP was completed and approved by the Government (February 1, 2005), but more work is presently carried out in this area with assistance from the DFID project..

In May 2004, the then Prime Minister signed an Administrative Instruction entitled “Procedures for Drafting and Submitting Draft Laws to the Government and Assembly”. Officially, it has entered into force since 14 of June 2004. This is a cumbersome document that was obviously prepared by foreign consultants without proper consultation and is not in line with the current practices or capacities in Kosovo, nor with the need to harmonize legislation with the EU *acquis*. We are aware that the legal departments in the Ministries find it unrealistic and impractical, and we fully support this view. We understand that thought is being given at the present time to consolidating this Administrative Instruction with the RoP of the Government and other related documents. This is a positive development, and should be supported.

The legal basis in this area suffers from a problem that is common throughout the administrative system in Kosovo, arising from the preparation of laws by foreign consultants who are not always sufficiently familiar with local conditions, and who are in a hurry to produce normative acts to suit their own projects’ ToR. Granted, this has speeded up the process of building the legal underpinning of the system, but at a great cost. Not only are the laws not realistic, but confusion between different types of legal systems, and other forms of contradictions between laws are in the process of being created and augmented. This issue has been raised before, but so far little is being done to correct it.

We recommend that a Working Group made of Kosovo lawyers and OPM staff be formed to prepare the legal basis for the work of the government (Rules of Procedure) and for the preparation of laws (Law on Normative Acts). These two should be prepared together, and be consistent with each other. Technical assistance for this Working Group could be provided by the DFID project, but foreign consultants should act as advisers, not as drafters. Before such laws are approved by the Government, an extensive consultations process should take place within the PISG, including all the Ministries and main agencies. Exchange of information with the Assembly would also be useful, but the rule should be maintained that the Government and the Assembly are each entitled to establish their own Rules of Procedure.

## **V.5 Personnel**

At present, there are insufficient personnel in the OPM, and not enough lawyers in the legal departments in the Ministries. It is not known if additional staff is required in the Ministries to develop and analyze policy, or if this is rather a matter of assignment of existing staff and of more training. This matter should be addressed in the horizontal review of the policy and legislative function, as mentioned above.

Staff for the OPM Government secretariat is now in the process of being hired, and they will be trained by the DFID project. Additional staff for the office of European Integration is also being recruited, and they will be trained by the EAR project.

## **V.6 Conclusions and recommendations**

### **V.6.1 Strengths of the policy system**

The main strengths of the central policy coordination system in Kosovo derive from the fact that good foundations are already in place to develop a sound Centre of Government that would be able to undertake the core functions of such organizations in developed countries.

In particular:

A central organization (the OPM) exists and has a reasonable structure that contains all the necessary Units and functions, at least in an embryonic stage.

The Prime Minister and the Permanent Secretary recognize the need to act to develop and strengthen the OPM. This is proved concretely by the Decision of the PM from December 2004 to establish a Government Coordination Secretariat with a full set of responsibilities for policy planning, policy coordination, and monitoring. The hiring of the Director of this body, and the process to recruit staff should ensure that the GCS becomes operational in the near future.

An organization within the OPM to manage issues related to European Integration has been designed following proven models, and there is a process in place to staff and train this Office.

The OPM is developing its capacity to coordinate, monitor and report with respect to the KSIP.

#### V.6.2 Weaknesses of the policy system

The main weaknesses that need to be addressed are:

None of the departments in the OPM are fully staffed and functioning at this point, and all of them require additional personnel, and training for existing personnel.

The rules for the work of the Government and for the preparation of policies and legislation by Ministries (Rules of Procedure, law on normative acts) need to be further developed and agreed, and then enforced by the OPM.

The capacity of the Ministries to develop policies and draft legislation is extremely weak. This is fully recognized by the Ministries and the OPM.

The role of the OLSS is not sufficiently clear, nor is its integration into the regular work of the OPM and its relations with the new Government Secretariat.

#### V.6.3 Present donor projects

There are two large, long-term projects to support broad organizational development in the OPM. The first is a DFID project to assist the development of the OPM along European standards, and to assist in the process of planning and monitoring the KSIP across the PISG. The second is an EAR project to assist the Office of European Integration. It will become clear soon if the latter project will also assist the OLSS in developing its capacity, and if will also provide assistance to Ministries in developing their respective capacity to engage in European Integration activities.

Assistance is provided to the OLSS by USAID, focussed primarily on drafting specific legislation. UNDP jointly with KFOS provide advisory assistance in fulfilling Standards for Kosovo to the Office of Good Governance, Office of Communities, and Office of International Cooperation through the CBF project. UNDP is also tasked with capacity building of the Office for Public Safety.

#### V.6.4 Projects needed in the next 12-24 months

Additional assistance to the OLSS is likely to be needed. The purpose would be to define the role of the OLSS within the system policy and legislative system, integrate its activities with the rest of the system, prepare working methods and job descriptions, and provide training.

The work of the PISG (OPM) to further develop the necessary legal basis for the work of the government and the policy system should be supported with Technical Assistance. Ideally, the existing DFID project would be able to provide such assistance.

A comprehensive program to build capacity for policy development and legislative capacity is needed for the Ministries. It is doubtful that a single project would achieve the purpose, because the work will need to be tailored carefully to the needs of each Ministry, including use of subject-matter experts. Ideally, a separate project would be established in each Ministry, possibly by different donors, but it would be useful if the approach were coordinated across the PISG. Given the importance of conformity with EU legislation, it may be most appropriate if the leadership for such a large program of support could be assumed by the EAR.

## **VI ADMINISTRATIVE LEGAL FRAMEWORK AND CIVIL SERVICE MANAGEMENT**

### **V.1 Legal Framework**

The law in force in Kosovo has three different sources: pre-war Yugoslav law, laws prepared by UNMIK and adopted/imposed by the SRSG, and laws prepared by the new Kosovo administration (mostly with the assistance of international experts), adopted by the Kosovo Assembly and promulgated by the SRSG. To clarify this difficult legal situation, UNMIK adopted Regulation 1999/24 which defines the law applicable in Kosovo as: (a) the regulations promulgated by the Special Representative of the Secretary-General and subsidiary instruments issued thereunder; and (b) the law in force in Kosovo on 22 March 1989. This Regulation determines also that in case of conflict, the Regulations and Subsidiary Instruments issued by the SRSG shall take precedence. As an exception, Yugoslav legislation adopted after March 1989 may be applied if it is not discriminatory and if it is the only legislation covering the given subject matter. Finally the Regulation specifies that the SRSG is the highest authority to clarify and interpret legislation.

The incoherence of the existing administrative legal framework is also due, in part, to the limited attention paid in the beginning by the international community to the existing legal and institutional framework and to the prevailing legal culture. The legal system of Kosovo, as derived from the overall Yugoslav legal system, was continental and rooted in the Austrian legal system. This is to say that there was a specific drafting tradition, and a fairly clear distinction between public and private law. However, probably due to the common law background of many of the consultants, legislation enacted by UNMIK was often drafted

according to Common Law practices and based on Common Law principles.

All this, coupled with initial coordination difficulties between the pillars, resulted in a fragmented and sometimes inconsistent and contradictory legal framework which hampers adequate implementation, and now puts an additional burden on the PISG when reviewing the existing legal framework to make it coherent and to align it with EU and general European standards.

#### VI.1.1 Administrative legislation in place and under consideration

The law in force (UNMIK/REG2001/19 Annex IX) assigns the central management function for public employment in Kosovo to the Ministry of Public Services. Within the ministry this function is performed by the Department of Civil Service Administration (DCSA). The DCSA has the task to develop and oversee the implementation of policies to achieve a multi-ethnic, non-partisan, professional, and accountable Civil Service, as well as to develop and coordinate the implementation of policies for training and capacity development of the civil service.

Based on the Constitutional (Chapter 2), a Civil Service Law, prepared by international experts, was promulgated by the SRSG on 22 December 2001 (UNMIK Regulation 2001/36). The Civil Service Law sets out a contract-based employment system based on a contract length of three years (which may be extended). The law is applicable to all employees paid by the Kosovo Consolidated Budget (KCB), i.e. it includes the staff of municipalities. It contains mainly definitions and governing principles for the civil service. It establishes two institutions, an Independent Oversight Board (IOB) and a Senior Public Appointments Committee (SPAC), and defines in some detail their remit and procedures. The law includes a short Code of Conduct.

Although the law provides for a multi-ethnic civil service, it does not give operational criteria to help interpret this objective. Unlike the continental tradition and also the previous law on public employment, the law does not provide any regulation regarding the basic requirements for becoming a civil servant, of categories or positions in the civil service, or the basic structures and components of the salary system.

Chapter 2, section 2 of UNMIK/REG/2001/36 stipulates non-discrimination right to individuals. At the same time UNMIK/REG/2001/19, section 4, point 4.1 calls for a proportionate representation of the non-majority community. Both these principles are important and necessary for Kosovo. However, adequate implementation of these – partly conflicting – principles needs further guidance to avoid unintended politicisation or damage to the merit principle.

The civil service legislation provides for decentralised human resources management, i.e. every institution recruits its own staff and provides job descriptions and classifications for the posts within the institution. These are to be coordinated by the DCSA, followed by adoption of the staffing plan/classification by the government.

Only the recruitment of senior positions is carried out centrally. The Senior Public Appointments Committee (SPAC) is regulated in UNMIKREG 2001/19 Annex I E (Regulation on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo), and in the Civil Service Law (UNMIKR 2001/36) with regard to its composition

and procedures. It is charged with the selection and appointment of top management, i.e. Permanent Secretaries of Ministries and Chief Executive Officers of the executive agencies (UNMIK/REG 2001/19 Art. 5.1 and UNMIK/REG 2001/36 sect 1 j).

On its own, the Civil Service Law was not implementable (experts voiced reservations about the structure, quality and implementability of the draft from the start); implementation, except for SPAC activities, could only start more than a year later when it had been complemented with the Administrative Direction 2003/2 in early 2003.

Administrative Direction No.2003/2 of 25 January 2003, supplementing the Civil Service Law, offers details on recruitment, career development, personnel records and conditions of employment, as well as on disciplinary measures. In line with the Law, the Direction applies to all staff employed by a public authority – including municipalities – and paid out of the Kosovo Consolidated Budget (KCB). It excludes members of the Independent Oversight Board, exempted appointees and members of the Kosovo Protection Corps. Exempted appointees are directly appointed advisors to politicians, and international and other personnel appointed and assigned to a Ministry by the SRSG to enhance the effectiveness of the Executive Branch. Personnel working in public, state, and socially owned enterprises are not covered by the law (UNMIK/REG 2001/36; section 1).

The Direction does not offer detail regarding the conditions of the employment contract, in particular it does not provide conditions and/or procedures for extension beyond 3 years.

Reviewing and amending the Regulation and the Direction governing the civil service is on the Governments' legislative agenda. During this review, it is intended to reconsider certain problematic regulations, e.g., the limited contractual relationship which can be renewed on the proposal of the direct superior, the responsibility distribution between the IOB and the DCSA, as well as disciplinary procedures, difficulties in implementing IOB decisions, individual employment authority hindering redeployment and transfers, and other issues.

The salary system was reviewed in 2004 by HELM Corporation and Public Administration International, and a new, transparent salary system was adopted by the previous Government near the end of its mandate. It is reported that the new system was adopted by the government without approval of the Minister of Finance. According to DCSA, it was envisaged to start the implementation of the salary new system in February 2005. Given that according to UNMIK/REG 2001/19 the Ministry of Public services administers the civil service payroll and salary system, there was a certain probability that the system would be implemented; however, until now (March 2005) implementation has not started.

A new law on Administrative Procedures has been drafted and forwarded to the Government, but it has not yet been adopted. At present, administrative procedures are still regulated by the pre-1989 Yugoslav law, which in principle could provide a workable base for administrative activity though it is not fully in line with general European standards. Also, as institutional structures and responsibilities have changed considerably since the days of the autonomous province, the legal provisions are often no longer applicable to the changed environment. In addition, new laws adopted within the current constitutional framework tend to incorporate their own, specific procedures. This contributes to the proliferation of different administrative procedures, which in turn make the administration less transparent and responsive for the citizen. To improve legal certainty and transparency for citizens and businesses it is necessary to unify administrative procedures and provide adequate judicial

review possibilities.

There are several laws to strengthen the integrity systems and the accountability in order to fight corruption; some are implemented, e.g., the law on the Ombudsman (adopted in 2000); others are in the drafting process.

#### VI.1.2 Assessment

Despite the flaws noted above in the administrative legal framework of Kosovo, it can be stated that the basic administrative legal framework is in place. The existing legislation is geared to ensure an administration observing the principles of rule of law, transparency, accountability and legal certainty. The Kosovo administrative legal framework is at least on an equal level with its neighbours. It is acknowledged and envisaged by the Kosovan authorities to continue the efforts to review and complement the administrative legal framework to make it consistent and comprehensive, and this should considerably ease and speed up the implementation.

The Sigma baseline calls for an appropriate legal basis for defining the status of public servants responsible for advising on and implementing government policy, carrying out administrative actions, and ensuring service delivery. As indicated above, the Regulation and the Direction do not fully achieve this objective. However, they have already now resulted in improved professionalism; when reviewed and amended as intended by the Government, the legal framework should be sufficient.

The law also provides for legality, responsibility and accountability as well as impartiality and integrity of the civil service; it calls for the rule of law, provides conflict of interest rules, rules to fight corruption and provisions for disciplinary procedures. As delegation within administrative bodies has barely started, the implementation of accountability regulations in practice is difficult to assess. In any events, as long as there is little effective delegation of responsibilities from the minister down to the directors, heads of section, etc, sophisticated accountability legislation may be of lesser importance than assumed by international consultants.

Additional legislation, enforcing the integrity system, e.g. conflict of interest, disclosure of assets, etc. is being drafted. It is advisable to proceed cautiously on this type of legislation. It should be taken into account that legislation on disclosure of assets cannot really be effectively implemented before property rights and registries are fully operational. It should be carefully assessed whether new legislation that cannot be enforced should actually be adopted. It may do more harm than good by affecting negatively the habits of compliance. Moreover, it has been observed that such legislation often neglects already existing regulations, e.g., in the civil service law, and this can seriously hamper its implementation.

#### VI.1.3 Recommendations

The existing administrative legal framework needs to be reviewed and partly amended to improve its comprehensiveness and to align it further with basic EU standards. Some Technical Assistance will be needed. DfiD has ensured this assistance in the past. DfiD or EAR could ensure the necessary assistance in the future. To carry out the work, additional expert staff will be needed in the administration (see under institutions). In addition, it could be considered to provide some training in substantive areas to parliamentarians.

It would be advisable to engage consultants of continental European background and with experience in the region for the Technical Assistance on legal reviews and drafting. It should further be taken into account that additional legislation calls for additional implementation capacity, and training to ensure adequate implementation. Attention should also be paid to transition periods, as in Kosovo legislation tends to be too short or even non-existent.

## **VI.2 Institutional set up**

In terms of the institutional structures for the management of the public service, the SIGMA baseline calls for “efficiency in the management of public servants and in the control of staffing, cross-government structure, and for systems for personnel management.” In Kosovo, there is a comprehensive system to manage these aspects, including civil service policy development, central monitoring of recruitment and other procedures, personnel management units in the Ministries, an appeal board, and a training institution. Each is presented briefly below, showing that, while they all need further development, the overall system is operational and performing at a reasonable level.

### **VI.2.1 The Department of Civil Service Administration**

The Department of Civil Service Administration, (DCSA) in the Ministry of Public Services, provides the central management function for public employment in Kosovo. It is in charge of policy making for the civil service, i.e. drafting legislation, directions, etc. The Department has the right to check if ministries and other public bodies implement the civil service law in a correct manner. It focuses mainly on checking whether recruitment procedures are properly applied. The Department has 30 staff; the budget allows for additional 7 staff. There are 3 divisions (Human Resource Management, Civil Service Policy, Salary System). The Department has the main responsibility for the salary system and the supervision of staff numbers.

#### **Assessment and Recommendations**

The DCSA has been assigned all necessary responsibilities to assume the central management capacity for the civil service. It has not yet fully taken on this role, as on the one hand there is not sufficient staff, and on the other hand, certain functions cannot yet be performed. For example, career planning cannot be seriously done due to the legally fixed interim character of the civil service (three year contracts).

The DCSA will need to improve its capacity, recruit additional staff, and take on the following tasks to ensure the development of a unified professional civil service:

- Take up an advisory function, including for the local authorities, to ensure adequate implementation of the law
- Hold regular meeting/workshops for the personnel officers in the Ministries to update them and to foster unified development
- Develop HRM procedures, including performance appraisal, transfers, and in the medium term career path and job rotation
- Review job classification to ensure common standards.

Specific training modules need to be developed (closely linked to the applicable laws and by-

laws) for the DCSA and the personnel officers in ministries, in particular for new staff. The training should be carried out by the KIPA.

There is a need for continuing Technical Assistance to the DCSA.

#### VI.2.2 Human Resource Management (HRM) in the Ministries

Personnel sections have been created in all ministries, municipalities and other civil service employment authorities. These sections are in charge of organising, guiding and monitoring the recruitment procedures. The personnel officers have received training in HRM methods and techniques.

##### Assessment and Recommendations

The existing personnel units seem to be generally in a position to ensure a merit-based recruitment. Most, if not all units have carried out a training needs assessment for their ministry. They are, however, not sufficiently staffed to ensure overall HRM, e.g., career development, human resource planning. As soon as the short contract period will be changed into an undetermined one, additional staffing and training will be necessary.

There is a need to continue to build the capacity of the HRM units in the Ministries, along with the general focus on developing the Ministries proposed in this report. A horizontal review of the HRM units across the administration is recommended as a step toward ensuring unified management of personnel across the administration.

The HRM units should assume additional tasks covering all aspects of HRM, including training, performance appraisals, HR planning, etc. It is likely that the personnel units should be strengthened with additional staff in most ministries to assume all tasks of HRM. They may also need more moral support and backing from the DCSA to be able to resist possible political interference when executing their tasks.

A network of personnel managers should be created quickly under the guidance of the DCSA and the KIPA to promote and ensure a harmonised development of HRM practices across the whole administration

Regular workshops for personnel officers should be considered to enhance their capacity and to strengthen the network.

#### VI.2.3 Senior Public Appointments Committee (SPAC)

The SPAC has been set up to ensure equal qualification of top-level managers and recruitment in a non-political manner. The SPAC includes 3 international members. The quorum for meetings of the SPAC is seven members. The term of appointment is two years.

The SPAC started its work in 2002 with rather close international monitoring. Nevertheless, given the principle of proportionate representation and the different political interests, a fully merit-based selection proved impossible to achieve. In reality, politics continues to interfere when recruiting senior executives and Permanent Secretaries. However, the general impression is that most top positions are staffed with qualified individuals. To ensure further reform and progress of the Kosovan administration, it will be necessary that the SPAC

continues to insist that only fully qualified staff is hired for the top management positions, even if the final decision among the selected qualified candidates (possibly 2 or 3) were done through direct appointment by the respective minister. Such a solution would admit the existing bias in selection, but at the same time ensure that the candidate appointed to the position fulfils the necessary criteria. Such a solution is common in the continental European tradition and elsewhere in the world where top positions are usually staffed through direct appointment, while quality standards are generally respected through some form of non-political procedure.

### Assessment and Recommendations

The Sigma baseline calls for legal frameworks and management practices which provide for open and competitive selection of civil servants. The SPAC ensures in general professional standards in when recruiting top management staff. Some problems have occurred in the past; in order to enhance confidence in the SPAC, some changes as proposed above should be considered.

The SPAC should be fully “Kosovarised” and its term of office should be extended.

The appointment and dismissal of members of the SPAC should be done jointly by either the Prime Minister and the SRSG, or the President, the Prime Minister and the SRSG, not only by the SRSG. In the medium term it could be fully transferred to the Kosovo authorities.

Internationals could take part as observers, or, in the medium term, only if they are asked to participate.

The work of the SPAC should be evaluated to assess, *inter alia*, if the participation of “eminent” inhabitants of Kosovo has proven useful, and whether the tie vote should stay with the chairperson or with the relevant Minister.

UNMIK should move to refrain from direct participation in the administration and take on a role of ex-post checks to ensure that basic principles are observed.

#### VI.2.4 Independent Oversight Board (IOB)

The Independent Oversight Board (IOB) is located within the Ministry of Public Services. The Board is organised as an autonomous unit within the Ministry, and reports directly to the Minister of Public Services. A copy of all reports has to be sent to the Prime Minister, and the SRSG. (UNMIK/REG/2001/36 Chapter III, section 7, 7.1, 7.2). The Board members have finally been recruited in September and October 2004, and the Board was established on 2 November 2004. It consists of 6 members, including a member each from the Serb and the Turkish minorities. One international consultant serves as the seventh Board member. The staff of the secretariat supporting the Board was already appointed in October 2003, including one international staff member. The IOB is empowered to hear and decide appeals against decisions of employing authorities (UNMIK/REG 2001/36, Section 10.) Civil servants appointed by the SPAC are outside the jurisdiction of the IOB.

Given the fact that the Board should have been appointed in 2003, there is a backlog of complaints (85). Moreover, the distribution of responsibilities between the IOB and the DCSA is still unclear for both the institutions; at the time, both institutions claim the more or

less exclusive right to carry out inspections regarding the implementation of the civil service law. Neither institution has sufficient staff to actually carry out such inspections.

As part of the Ministry, the IOB lacks organisational independence; in addition the secretariat is not directly subordinated to the IOB but is part of the hierarchical structure of the ministry. This organisational structure as part of the ministry should not necessarily hamper the independence of the decision-making of the IOB. Some problems may arise from the fact that the IOB does not have any instruments to ensure that its decisions are implemented. However such enforcement instruments are usually not necessary within the public service as compliance is automatically expected from administrative authorities. In practice, the reputation and power of the IOB will depend on the quality of its decision-making and the support it receives from the government, personnel units, etc.

An appeal to the court against decisions of the IOB is possible.

#### Assessment and Recommendations

The respective roles of the IOB and the DCSA with regard to monitoring and control of the law implementation and civil service development are not clearly defined, at least not to the understanding of the two institutions. The extreme difficulties in staffing the Board are similar to the difficulties encountered in other countries/entities when attempting to set up so-called independent bodies in the region. Independent appeals bodies for civil servants are not a common feature in continental Europe and have often proven to be rather politicised in the region and the tensions between the administration and the Board have hampered the development of the civil service.

The plan to review the IOB, with a view to transforming it into an autonomous body reporting directly to the Parliament should take into account the experience with such boards in the region. The basic question, whether or not the institutional structure as a Board is feasible in the region should also be assessed. Placing the IOB under the Parliament may seriously politicise the IOB. Moreover, under the separation of powers, civil service management is the responsibility of the government; therefore, it would fit better in the prevailing tradition if the IOB reports to the government, which in turns reports to Parliament.

The division of responsibilities and tasks between the IOB and DCSA should be more clearly defined. Additional staff may be needed in the Secretariat if the IOB is to seriously assume inspection tasks rather than remain a body treating individual complaints.

The IOB is supported by one international member for one year. In addition, it receives Technical Assistance from DfiD. This assistance should suffice. When the IOB has gathered some practice, it may benefit from some study visits, e.g., to Tirana, where such a Board has existed for quite some time.

#### VI.2.4 Kosovo Institute for Public Administration (KIPA)

The Kosovo Institute for Public Administration was created in 2003 by UNMIK/DIR 2003/25, to provide systematic civil service training. It is established as an executive agency

within the Ministry of Public Services. The mandate of the KIPA covers the whole civil service, i.e. municipality, agency and ministerial staff. Since October 2003, the KIPA has its own premises and equipment. The KIPA has (end 2004) 19 staff, of which 7 are Course Developers. Training courses/modules are developed on all horizontal issues: legal drafting, including impact assessment, budget and finance, IT, general administration, general management, HRM and specific municipal issues. The KIPA has delivered a considerable amount of training in its first year of existence, including training for municipalities, and has elaborated its objectives and a work plan for 2005. The KIPA has been supported by the OSCE in the past and still receives support from the OSCE regarding some logistics; furthermore the OSCE continues the delivery of general management courses. The EAR is about to start a Technical Assistance project with the KIPA, to support organisational structures, training needs assessment, focal points in ministries, and the development of training curricula and materials. In the past, DFID had a Technical Assistance project that included a very large training component targeted to personnel managers at central and local level.

### Assessment and Recommendations

The Sigma baseline calls for opportunities to develop skills and qualifications. The KIPA seems to be well equipped and the work already carried out indicates that it should be able to have a considerable impact on the professionalisation of the civil service in Kosovo. The KIPA will need TA support to further improve its staff capacity, develop training materials, improve training management tools and enhance its pool of local trainers.

The KIPA should take on the responsibility to be the focal point for all training delivered in Kosovo. It should create capacity to target and channel training measures so that in future training will be delivered in a more comprehensive way, and training methods and contents are harmonised although delivered by different donors.

The KIPA should focus on in-service training targeted to foster the implementation of the administrative reform and the enhancing of the professional knowledge of the staff. It should create and support professional networks of senior/top management staff to encourage unified development despite decentralised management.

At least in the medium term, the KIPA should not attempt to deliver graduate or post-graduate course, or to become a think tank for the government; both of these would deviate resources and attention from the urgently needed training in the local languages for staff at all levels.

### **VI.3 Costs: control of staff numbers, and the pay system**

According to UNMIK/REG 2001/19 Annex IX, the Ministry of Public Services administers the civil service payroll and payment system for the entirety of the civil service. The Ministry of Finance has no clear responsibility regarding public service pay (UNMIK/REG 2001/19 Annex II).

The total staff under the civil service law was 63,690 on the payroll in November 2003, excluding police, but including health and education; about 12,000 staff, included in this number, work in the reserved powers (chapter 5 of the Constitutional Framework-Regulation 2001-9). It was stated that the latter receive a supplement to their KCB salaries from UNMIK. Kosovo Serbs, employed in the PISG often also receive a second salary from

Belgrade. It was also said that some salaries are topped up by donors.

For 2004, the MoFE gave the number of 77,000 staff in the KCB; however, a considerable number of positions is not filled; in fact, over the last couple of years the personnel budget was never fully spent due to persisting vacancies.

The civil service registry which will serve HRM and remuneration purposes is not yet fully operational, but already includes the data for about 55,000 staff. Staff numbers are closely controlled by the DCSA, and the KCB budget allocated to personnel is transparent. If the required recruitment procedures are not followed, the DCSA may ask the MoFE to refuse to pay the person's salary.

Currently, salary levels are rather opaque and differ among ministries, so that salaries for the same position may differ considerably. The DCSA had neither the capacity nor the real power to stop this development. The salary system still in place (December 2004) is based on a basic salary multiplier to which coefficients ranging from 3 (since July 2003) to 10 are applied according to the position. Coefficient 3 represents routine jobs, such as cleaners or security guards and coefficient 10 represents a Head of Department position in a Ministry. Currently there are 69 different salary levels in Kosovo due to the fact that ministries have introduced a number of additional multipliers between the ranges of 3 to 10. In December 2004, the base (multiplier) for the calculation of the salary was 31€. The salary of a Permanent Secretary was fixed at around 600€. For the judiciary special additional multipliers of 12 to 18 applied. For some positions, salaries are set on an individual basis, e.g., senior jobs in the judiciary.

The existing salary system for the administration does not allow for salary progression at a given job level, and neither performance nor experience is taken into account. The average ratio between lowest and highest salary, excluding permanent secretaries is 1: 3, which is rather compressed (average ratio in EU is 1:6; in poorer countries the ratio tends to be larger). The system includes some allowances, e.g., for overtime and shift work, hazard pay, special allowance for staff working in jobs where corruption is a risk, performance pay for Customs officers.

A new salary system and a unified classification has been developed and agreed by the previous government; its implementation which was planned for January 2005, has been postponed. The new salary system has abolished the multiplier system instead it shows in a table the salary for each grade and individual step. The minimum salary under the new system (grade 1 step 1 is fixed at 131€ (it was stated that the poverty line is at 150€), the starting salary of a director of department is fixed at 495€, the top salary at 695€ (grade 12, step 10). The judiciary remuneration is higher, it ranges from 470€ to 950€.

The new system covers all staff from routine support staff to head of department (director general). It does not include permanent secretaries. It consists of 12 grades covering 3 categories, namely the general service grades, the professional and senior technical grades and senior grades. Each category ranges over 4 grades. Each grade encompasses 10 seniority/performance/experience steps. The classification of positions has been unified across ministries, so that in future salaries for the same position should be equal. Some problems can nevertheless be expected as staff in some ministries were paid considerably more than in other ministries for the same tasks, so that with the new unified classification system some staff will end up earning less than before. Transitional measures to ease this

problem were seemingly not considered or thoroughly discussed.

### Assessment and Recommendations

There is a system in place to control staff numbers and overall personnel costs, as called for by the Sigma baseline.

Transparent and comparable salary levels across ministries do not exist under the current system. The introduction of the new system represents a notable improvement, and should have a positive impact on the civil service. The new salary system provides for a systematic and transparent salary scheme across the administration. It provides some incentives so that good staff should be recruited and retained more easily than before. The new salary system is in line with good European practice; it is simple and transparent. The new salary system should be introduced as soon as possible.

A few problems remain regarding the implementation of the new system, in particular:

- The unclear role of the MoFE in salary questions and the fact that the MoFE did not approve the new salary system in the Government meeting, a fact that could considerably interrupt its implementation.
- In addition, the way in which the DCSA envisages to implement the new salary system, namely without any screening of existing staff, nor taking into account staff experience when setting the initial salary levels, and not establishing transitional provisions, may cause problems for the implementation. Additional work to correct these difficulties will be required and some TA would be desirable.
- The different salary levels for Kosovans working in reserved powers and for those working in transferred powers (if proven true) need to be addressed urgently, so that the capacity in the transferred powers can be improved and qualified staff can be retained when tasks are transferred.

Further efforts will have to be made to integrate and retain high quality staff into the public service. The distortion in the labour market and the relatively high cost of living due to the large international presence may make it necessary to envisage – for a transitional period - labour market or responsibility supplements for top positions in the civil service. Otherwise, highly qualified individuals may continue to work for international employers, to the detriment of a sustainable development of the public administration. Such supplements should, if at all, be paid to all staff in all ministries in a given position. Differentiation of Ministries and individual top ups should be avoided, as they lead to distortions and unsustainable capacity building.

## **VI.3 Rights, Obligations and Working Conditions**

### **VI.3.1 The status of civil servants**

In terms of rights and obligations, the civil service law does not differentiate between civil servants executing public authority powers, and support staff. The law on the executive branch of the PISG (UNMIK/REG 2001/19) states that Permanent Secretaries of ministries and chief executive officers of agencies are also civil servants (sections 5.2, 5.3) and defines their tasks. The fact that all employment contracts are limited to three years, and that extension of the contract depends only on the superior allows for potential politicisation and nepotism at all levels of the civil service. Given the three-year contracts, there is little possibility for transfers and career development; the turnover of staff is about 10 to 15 per cent, which is about the same as in other parts of the region. Still it seems high, given the high unemployment in Kosovo.

Political direct appointments (i.e. “exempt appointees” not covered by the law on civil service) are foreseen only for the recruitment of advisors to ministers and members of the staff Assembly, and the President of Kosovo. The SRSG may also appoint directly for a transitional period.

### Assessment and recommendations

The general working conditions, rights and obligations, are in line with good practices in EU countries.

The creation of a professional civil service would require changes in the contract situation, and certainly in the procedure regarding the extension of contracts. There appear to be no real obstacle to issuing unlimited contracts, even though the final status of Kosovo is not yet determined. The possibility should be considered of changing the work relationship of civil servants into a unilateral public law relationship, as is common in continental EU member states.

Only when civil servants have a permanent status, investment in human resources management, including career development and integrated training, would become productive and sustainable.

The introduction of unlimited contracts would require, at the same time, the introduction of an adequate probation period for the newly recruited staff, and the strengthening the performance appraisal system.

#### VI.3.1 Social rights and fundamental freedoms

The Constitutional Framework, the Law on Civil Service, and the Administrative Direction to implement the Law on Civil Service guarantee fundamental rights, in particular access to employment in the public service. The Direction (UNMIK/DIR/2003/2) provides further detail for implementing the requirement of fair representation of minorities in the civil service. The Kosovo authorities make serious efforts to live up to the constitutional requirements. Despite an outreach programme, (“Community Proportional Representation”, initiated by the Office of the Prime Minister), and the subsequent dramatic increase in the number of applications, no significant increase in the number of minority staff has been observed. This is mainly because most applicants withdrew their applications and, of those selected, very few accepted the post. Feedback from applicants indicated that the main reason for their withdrawal/non-acceptance was the higher remuneration and long-term job security offered by parallel structures now operating in ethnic Serb dominated areas of Kosovo.

In order to strengthen efforts for the achievement of the gender equality goals, an Inter-Ministerial Working Group on Gender Equality was established under the coordination of the Office of the Prime Minister, and a Gender Equality Commission has been operating in the Assembly. A draft law on gender equality has also been introduced in the Assembly. However, despite such provisions, Kosovo still has a mixed record of hiring women at senior levels and managerial positions in the public sector. The reason could be the prevailing culture and the access of women to higher education.

The Law on Civil Service guarantees the right of civil servants to belong to political parties and other political organisations; it forbids “active involvement” in political activity (UNMIK/REG 2001/36, section 4), explained in UNMIK/DIR 2003/2 and in line with common practice in EU Member States.

Section 5 the law on Civil Service guarantees the right to be a member of a trade union. It restricts the right to strike or to any other industrial action if this may disrupt essential services. The same section also gives an unrestricted right to the Government to declare a service as being essential. This unlimited discretion of the government to declare a service as essential is not in line with ILO Conventions.

#### Assessment

Minority rights and social rights are protected and appear to be implemented by the PISG. However, for the above reasons minority communities remain underrepresented in the PISG. The difficulty in recruiting minority staff may be reduced when the new pay scale is in place

#### VI.3.3 Recruitment policy and career development

Recruitment principles are stated in the Civil Service Law (section 2) and further elaborated in the Administrative Direction No 2003/02. The DCSA has issued detailed regulations for the ministries regarding recruitment procedures. The personnel sections in ministries, municipalities and other civil service employment authorities are organising, guiding and monitoring the recruitment procedures and it seems that in general a merit-based recruitment is ensured. There are, in practice, implementation difficulties. Since recruitment is decentralised and information exchange across Ministries limited, different recruitment standards could emerge overtime, especially since the DCSA has neither sufficient capacity nor the clear mandate to take part (if only as an observer) in recruitment activities of ministries and local authorities.

Annual performance appraisal is being introduced. Career development plans and job rotation are not yet in place. Clearly, the current contract situation makes real career development unfeasible in practical terms, despite the fact that the UNMIK Direction includes a section on career development (Chapter II). It includes transfer for service reasons, performance assessment, training and promotion. It also states that promotion should be based on merit and that promotion should be decided upon by multi-ethnic and gender-balanced panels. An open competition is the rule; however, in exceptional cases, with approval of the Permanent Secretary, direct appointment is possible.

#### Assessment

The legal framework for adequate HRM is in place. The staff in the personnel sections

received training in HRM methods and techniques. The full and successful introduction of full HRM will depend to a considerable degree on the contract situation. As was noted, performance appraisal and career development will only make sense if good performance can have a real impact on career development over time.

## **VII POLICE AND JUSTICE**

### **a) The Kosovo Police Service**

#### **VII.1 Background**

During the period from 1974 to 1989, the Autonomous Province of Kosovo of the Socialist Federal Republic of Yugoslavia had a regional police force in place<sup>19</sup>. However, no traditions of democratic or community policing ever existed and this remains an important cultural legacy<sup>20</sup>. With the abolition of the autonomy of Kosovo by Milosevic's regime in 1989, most of the Albanian personnel was expelled or resigned, the police force of the province was abolished and law enforcement authority was transferred to the Serbian Ministry of the Interior (MUP<sup>21</sup>) in Belgrade.

The 1990s were characterized by important political repression against ethnic Albanians. The Serbian police, as well as other security forces, conducted regular arrest, detention and searches operations and committed massive human rights violations. The situation further escalated in the spring of 1998, when the Kosovo Liberation Army (KLA) actions against the Serbian police led to large-scale reprisals and killings of civilians, particularly in the Drenica region<sup>22</sup>.

During the political negotiations in 1998-1999, it was envisaged that a local police force would take over policing functions in Kosovo. However, this was envisaged as the aftermath of a negotiated political settlement, not a war<sup>23</sup>.

The Serbian police played an active role in the massive human rights violations, including abductions, rapes, extra-judicial executions, theft and destruction of property during the NATO bombings from March to June 1999. During this period, members of this institution committed what accounts in many instances to war crimes and crimes against humanity.

When the international community assumed its authority in June 1999, this was done in a security vacuum and no local police force was in place. Under Resolution 1244, the main responsibilities of the international civil presence (i.e. the United Nations Interim Administration Mission in Kosovo, UNMIK) includes *inter alia* "Maintaining civil law and

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<sup>19</sup> The Secretariat for Internal Affairs (SPB or Sekretariati i Puneve te Brendshme (Albanian), SUP or Sekretariat Unutrasnjih Poslova (Serbo-Croat)).

<sup>20</sup> As some authors noted, "It should be remembered that Kosovo was not a particularly well ordered society before the war either. The police were an instrument of oppression and, on the other side, strong traditional structures of *kanun* [i.e. customary] laws and self-styled "policing" prevailed". See: Eide, Espen Barth and Holm, Tor Tanke, 2000. "Postscript: Towards Executive Authority Policing? The lessons of Kosovo", in Espen Barth Eide and Tor Tanke Holm (eds), *Peacebuilding and Police Reform*. London: Frank Cass Publishers.

<sup>21</sup> Ministarstvo Unutrasnjih Poslova.

<sup>22</sup> For a detailed account of this period see: Judah, Tim, 2000. *Kosovo: War and Revenge*. New Haven: Yale University Press, pp. 137 and al.

<sup>23</sup> See: Peake, Gordon, 2004. P. 17. *Policing the Peace: Police Reform Experiences in Kosovo, Southern Serbia and Macedonia*. London: Saferworld, p. 17.

order, including establishing local police forces and meanwhile through the deployment of international police personnel to serve in Kosovo”<sup>24</sup> (sic). The development of a local policing capacity quickly became a high priority whilst the main responsibility for the maintenance of law and order was given to United Nations international civilian police officers (3,545 deployed as of 17 December 2004<sup>25</sup>).

The mandate of training officers for the newly established Kosovo Police Service (KPS) was given to the third pillar of UNMIK: the Organization for Security in Cooperation in Europe (OSCE). The rehabilitation of the former police academy in Vushtri began in July 1999 and the training of the first class of KPS officers started in September 1999. This followed a thorough recruitment process whereas the inclusion of minorities was given a high priority despite important challenges in achieving this objective<sup>26</sup> (the goal for minority participation was initially 15% of the total force).

The first class of 176 officers, including 37 women, graduated on 16 October 1999 after a six-week course. This was followed by nineteen weeks of field training. The original course was further extended to 8 weeks, then 12 weeks and is currently of a 20 weeks duration. By December 2004, UNMIK had vetted, recruited, trained and deployed more than 6,000 KPS officers.

## VII.2 Mandate and Current Situation

### VII.2.1 Mandate

Under article 8.1 of the *Constitutional Framework for Provisional Self-Government in Kosovo*<sup>27</sup> the Special Representative of the Secretary-General of the United Nations (SRSG) has exclusive authority over all law enforcement institutions including their local staff. In effect, international civilian police officers have law enforcement primacy in Kosovo, whether directly by undertaking law enforcement activities or based on the chain of command and control for the KPS.

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<sup>24</sup> Paragraph 11i) of United Nations Security Council Resolution 1244 (1999), dated 10 June 1999, S/RES/1244 (1999). More generally, the international civil presence was given the mandate to organize and oversee the “development of provisional institutions for democratic and autonomous self-government pending a political settlement” (par. 11c)) and transfer “as these institutions are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo’s local provisional institutions and other peacebuilding activities” (paragraph 11d)). It should also be noted that under paragraph 6 of annex 2 of Resolution 1244 it is stated that an agreed number of Yugoslav and Serbian personnel will be permitted to return to maintain a presence at Serb patrimonial sites and key border crossings.

<sup>25</sup> With a total authorized strength of 4,718 since October 1999.

<sup>26</sup> As one author noted, “From the very first class, the KPS has sought minorities. Recruiters visit minority enclaves and urge eligible candidates to apply...Some minority candidates, especially Serbs, face pressure from extremists not to join the KPS. The Serb hard-liners assert that Serbs should not “collaborate” with the UN or with Albanians, who only want to separate Kosovo from Serbia. Some minorities genuinely were afraid to travel and then live in Vucitrn (*Vushtri*), a town now almost completely Albanian. In several of the first few classes, only about one-half of the minorities who were accepted in the KPS actually showed for training”. See: O’Neill, William B., 2002. *Kosovo: An Unfinished Peace*. Boulder: Lynne Rienner Publisher Inc., pp.111-112.

<sup>27</sup> UNMIK Regulation 2001/9, dated 15 May 2001, UNMIK/REG/2001/9.

In this context, Chapter 6 of the Constitutional Framework for Provisional Self-Government in Kosovo states that:

Maintenance of law and order is of fundamental importance for all the people of Kosovo. The Kosovo Police Service, which functions under the authority of the SRSG and under the supervision of UNMIK Police, contributes significantly to achieving this objective through its supporting role in crime prevention and public protection and safety. With the support of the international community, the capacity of the Kosovo Police Service in crime prevention, criminal information gathering, criminal investigation and fighting against criminality is being enhanced. This will make it possible for the Kosovo Police Service to gradually assume additional responsibilities for the maintenance of law and order.<sup>28</sup>

One of the most important objectives of the “Standards for Kosovo”<sup>29</sup> is the establishment of effective Rule of Law in Kosovo. In this respect, the fundamental objectives are that:

There exists a sound legal framework and effective law enforcement, compliant with European standards. Police, judicial and penal systems act impartially and fully respect human rights. There is equal access to justice and no one is above the law: there is no impunity for violators. There are strong measures in place to fight ethnically motivated crime, as well as economic and financial crime.<sup>30</sup>

These objectives are further divided in terms of law enforcement standards pertaining to equal access to justice, reigning upon impunity as well as in the area of economic and financial crimes. Specific actions have been envisaged and in many instances implemented as part of the “Kosovo Standard Implementation Plan”<sup>31</sup>. However it is important to note that these standards should be envisaged in a longer-term perspective, which goes beyond the final status issue as well as the envisaged transfer of reserved powers. Realistic and achievable priorities should be promoted in the immediate future and such a focus should be “...placed clearly on return and reconstruction, decentralization/local government, security and standards directly supporting such priorities”<sup>32</sup>.

## VII.2.2 Current situation

### VII.2.2.1 *Legal basis and institutional structure*

One of the most important gaps for law enforcement in Kosovo is the absence of a police law. Although there is theoretically police legislation from the pre-1989 period that should be applied, owing to the radical political changes since then and the establishment of the KPS, there is a *de facto* legal vacuum.

Efforts have been made in this regard and a draft police law was completed at the end of 2004. The preparation of this document was however criticized by the Office of the Prime

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<sup>28</sup> *Idem*.

<sup>29</sup> Published in Pristina on 10 December 2003 and endorsed by a Presidential Statement of the Security Council on 12 December 2003 (S/PRST/2003/26). See: UNMIK, 2004. *Kosovo Standards Implementation Plan*. Pristina: UNMIK. Other standards include functioning democratic institutions, freedom of movement, returns and reintegration, economy, property rights, dialogue with Belgrade and the Kosovo Protection Corps.

<sup>30</sup> *Id.*, p. 27.

<sup>31</sup> *Id.*, pp. 27 to 44.

<sup>32</sup> See paragraph 31 of the report of Ambassador Eide to the Secretary-General conveyed to the Security Council on 6 August 2004 (S/2004/932).

Minister as representatives from the Provisional Institution of Self-Government (PISG) had yet to be formally consulted in this process as of December 2004<sup>33</sup>. No representatives from civil society appeared to have been involved in the working group that drafted the law. Additional work on this fundamental legislation is ongoing.

The KPS is structurally under the Police and Justice Pillar of UNMIK (i.e. Pillar I). This Pillar was established on 24 May 2001 by transferring local and international policing functions from Pillar II (Civil Administration). The creation of the Police and Justice Pillar was seen as a way to facilitate the processes and links between the police, the judiciary and the correctional services and to allow a greater focus on security issues such as war, inter-ethnic and organized crime.

Currently the KPS is under the authority of the Civilian Police Commissioner of UNMIK (who also heads the –international- Civilian Police Component of UNMIK). The Commissioner in turn reports to the Deputy Special Representative of the Secretary-General for Police and Justice (Head of Pillar I).

The KPS is divided in two major units: the Police Service and the Security Services Division. The Police Service performs general law enforcement public safety and security functions in close coordination with international civilian police officers deployed under the Civilian Police Component of UNMIK. Its officers carry weapons and are vested with full powers of arrest, detention and searches. The Security Services Division is tasked with the internal security of government buildings. Its members are unarmed but are supported by armed KPS officers.

One of the key aspects of KPS development is the introduction of a new organizational structure based on the police law (to be promulgated). In the interim, a new organizational chart was prepared and adopted by the Civilian Police Commissioner in January 2005.

#### *VII.2.2.2 Personnel*

Under the 2004 Kosovo Consolidated Budget, there are 8,830 budgeted posts for the KPS. As of 28 December 2004, there was a total of 7,021 personnel in the KPS with approximately 15% of minority personnel, including 8% of Serbs officers, and 15% of females. This personnel is deployed as follow: 1,224 in Pristina, 1,007 in Gjilane, 859 in Prizren, 813 in Peja, 780 in Mitrovica, 541 at the main headquarters, 639 at the main headquarters, 83 in the Kosovo Police Service School, 120 Police Field Training Officers and 955 in the Border Police<sup>34</sup>. The personnel target for the institution, based on Kosovo's population, is the deployment of 6,300 KPS officers (including 550 for the border police), 800 security services officers and 1,608 civilian staff.

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<sup>33</sup> At the time of a meeting with the author in December 2004, the Director of the Office for Public Safety in the Office of the Prime Minister had yet to receive a copy of the draft law and was not formally informed of the nature nor the scope of the work that had been undertaken by the working group (which comprised Slovenian specialists). Moreover, he emphasized the need for greater coordination and cooperation between his Office and Pillar One in the future including through regular meetings with key staff and the immediate deployment of PISG liaison officers to the Civilian Police Component of UNMIK and the KPS (and vice-versa). He further noted the risk for UNMIK international personnel to develop police legislation and structures without close consultation with the PISG as these may not be acceptable to Kosovans when reserved functions are transferred and that, consequently, such legislation and structures may not be sustainable.

<sup>34</sup> Based on the 29 December 2004 daily situation report of the Civilian Police Component of UNMIK.

Prospective applicants for the KPS must: a) have a secondary education qualification at the time of the application; b) be aged between 21 and 56; c) pass a physical ability test; d) go through a written and verbal examination. In addition they are subjected to a background investigation as well as medical and psychological examinations<sup>35</sup>.

One of the greatest successes of UNMIK since its establishment is arguably the training and deployment of an important number of KPS officers in all municipalities of Kosovo. However, the development of the institution *per se* remains an important challenge. Training of a sufficient number of cadres for all levels has yet to be completed. Few commissioned officers have been trained to perform their functions (i.e. personnel at the Lieutenant, Captain, Major, Lt-Colonel and Colonel' levels).

In addition, a sufficient number of KPS personnel will need to be trained for specialized functions such as close protection, intelligence, special investigation and enforcement, forensics and crime scene investigations<sup>36</sup>. Although the KPS lacks the basic mechanisms of an established organization, such as a basic police law and comprehensive standards operating procedures, this should not be as an absolute impediment to adequate initiatives and the immediate training of personnel for basic (if not universal) specialized policing functions must take place. KPS personnel have already been deployed in the Trafficking and Prostitution Investigation Unit, the Kosovo Organized Crime Bureau, the Kosovo Drug Enforcement Unit and the Central Criminal Investigation Unit. However, these units are under-staffed and KPS personnel under-trained.

Another essential element pertains to internal investigations for allegations of misconduct, including corruption, within the force. Professional Standards Units have been established at both central and regional levels to investigate such cases. However, again these units are under-staffed and personnel deployed under-trained. They also suffer from a lack of office space, as well as vehicles and communication devices that are essential for them to fulfill their mandate. It is essential for the integrity of the institution that adequate arrangements are in place for the prompt investigation of and disciplinary measures for acts of misconduct by KPS officers. Moreover, the audits and inspections capacity of the KPS must be reinforced in order to prevent such acts (as well as to serve as a management tool in other areas of interest such as asset management and compliance with administrative directives).

As of December 2004, KPS officers received on average 254 € per month. Whilst such emoluments are paid regularly and are comparable to the rest of the public and private sector, this may not be sufficient to cover the basic cost of living in Kosovo (i.e. food, lodging, utilities and other basic needs). This is probably one of the causes of the perceived, albeit proportionally limited, corruption within the force.

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<sup>35</sup> See: UNMIK, June 2004. *Pillar I (Police and Justice): Presentation Paper*. Pristina: United Nations. p.11.

<sup>36</sup> In a correspondence to UNDP dated 28 February 2005, the OSCE noted that: "An EU Regional CARDS Programme, "Strengthening Police Capacities against Serious Crime in South Eastern Europe", was launched in 2004 and has two components: Module 1 (coordinated by CoE) provides recipient countries (including Kosovo) with the necessary tools against economic and organised crime; Module 2 (coordinated by IOM) delivers comprehensive training against trafficking in human beings, smuggling in human beings and illegal migration. DPED/KPSS is involved in both modules and UNMIK Pillar I is involved in Module 1. A number of bilateral (US donor) funded programmes on organised crime were delivered at the KPSS for KPS officers in the Department of Organised Crime in 2004. The latter included Basic Organised Crime Courses (2003, 2004, 2005), Economic Crimes Courses (2004, 2005), and Basic and Advanced Financial Investigations Courses (2004, 2005)".

### *VII.2.2.3 Budget*

The KPS had a budget of 52,960,000 € under the Kosovo Consolidated Budget for the year 2004<sup>37</sup>. Out of this sum, 60% was earmarked for salaries, 30% for operating costs and 10% for sustained capital (including limited fleet replacement and refurbishment of facilities). In order for the KPS to be fully operational a total of 38 million € will be required during the period 2005-2006 for hard capital expenditures including for vehicles, communication equipment and the refurbishment of buildings.

UNMIK international personnel still largely control the preparation and execution of the budget. An important number of specialized KPS budget, finance and procurement officers will need to be trained and deployed in order for the force to assume such responsibilities on its own.

### *VII.2.2.4 Equipment*

Important efforts have been made by UNMIK to equip the KPS since 1999. Keeping in mind the vacuum that existed a little more than 5 years ago, an impressive number of vehicles and other law enforcement equipment was procured and deployed and the KPS is probably better equipped than other police forces of the region. However there is still an important shortfall of vehicles, communication equipment as well as adequate infrastructure in order for the KPS to fulfil adequately its mandate. Computers and other equipment are also largely lacking. This is reflected in the 38 million € requirements in capital expenditure that is necessary in the immediate future to equip and facilitate the work of the force.

### *VII.2.2.5 Operational capacity*

The KPS has likely reached an operational capacity that could compare advantageously to other police forces in the region. However, as noted earlier, policing remains a reserved function of the Special Representative of the Secretary-General and international civilian police personnel are at the head of the chain of command and control.

As a positive step, primacy for policing was transferred in 17 out of 34 police stations as of early December 2004<sup>38</sup>. Gjilane should be the first of five regional headquarters to be transferred in early 2005. The final objective should be the transfer, with the continued advice of international civilian police officers, of all functions performed by regional headquarters as well as centralized activities such as serious crimes investigation, forensic and other related matters.

Following the March 2004 riot, one of the key priority was the full training and deployment of at least 600 personnel as part of the 6 Regional Operation Support Unit (ROSU)<sup>39</sup>. These units are essential for crowd management and riot control. Officers are now being trained based largely on the Danish model<sup>40</sup>. Such functions are usually essential for law enforcement in any post-conflict situation but particularly so in Kosovo. The lack of an

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<sup>37</sup> See: p. 5 of Schedule 3 of the Kosovo General Budget for 2004.

<sup>38</sup> Interview with Deputy Commissioner Richard Warren, 7 December 2004.

<sup>39</sup> In an interview with the author on 7 December 2004, the civilian police regional commander for Pristina region confirmed that personnel from these units performed very well in Pristina and Gjilane during the March 2004 riots.

<sup>40</sup> Whereas body armour is used instead of shields so as to facilitate contacts with crowds.

adequate number of trained KPS personnel for crowd management and riot control remains to this day an important risk for law enforcement in the region.

Moreover the capacity of the institution to investigate war as well as ethnically related and organized crimes and other sensitive cases remain very limited<sup>41</sup>. Even with adequate training, the capacity of KPS personnel to perform their functions impartially and adequately in such cases may be questionable in the future (as is probably the case in other regions of the former Yugoslavia). Criminal intelligence is also very limited. Notwithstanding such challenges, more must be done by UNMIK and donors to prepare the institution for such tasks.

In terms of public perception, a study published in August 2004 noted that Kosovo Albanians were “satisfied” or “very satisfied” with the performance of the KPS<sup>42</sup>. However, only 1.8% of Serb respondents viewed the performance as positive<sup>43</sup>. The public trust in the KPS is an important issue, particularly for the operations conducted by the institution, and any negative perception should be addressed through an adequate public information programme.

### **VII.3 Recommendations**

The following are recommendations for immediate implementation over the next 12 months formulated in the perspective in which the KPS would assume full responsibility for law enforcement in Kosovo prior to “...the transfer of authority from Kosovo’s provisional institutions to institutions established under a political settlement”<sup>44</sup>. Efforts must be made to implement the actions foreseen in the “Kosovo Standards Implementation Plan”<sup>45</sup> and many of the recommendations made herein have already been formulated in this document.

The most important priority in terms of donors’ assistance is the provision of funding for urgent capital expenditures required during the period 2005-2006.

#### **VII.3.1 Legal and institutional issues**

Efforts must be made to provide the KPS with a sound and effective legal and institutional framework. The competent authorities must:

i) Draft and promulgate the legislation establishing the KPS. A UNMIK working group, comprising representatives of the PISG (including the Office of the Prime Minister) and representatives of the Civil Society, should be established. Responsible authorities: Office of the SRSG, Pillar I, the Office for Public Safety in the Office of the Prime Minister (OPM)

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<sup>41</sup> It should also be emphasized that in some instances minority communities do not welcome Albanian KPS officers in the enclaves. This is the case for example in Gracanica where Albanian officers are not deployed. The situation is better in some other localities such as Lipjan and Obilic where patrols, comprising both Albanian and Serb officers, are regularly conducted.

<sup>42</sup> UNDP, USAID and al, August 2004. *Early Warning Report Kosovo: Report #7 (May-August 2004)*. Pristina: UNDP, USAIS and al. p.24.

<sup>43</sup> *Idem*.

<sup>44</sup> Paragraph 11 f) of Resolution 1244, *supra*.

<sup>45</sup> *Supra*. One of the priority actions identified in this document was (by mid-2004) “strengthening the capacities of police to investigate crimes against members of smaller ethnic groups by the establishment of a central monitoring team and the designation of police officers in all regions and stations with special responsibility for investigating such crimes” (p.28).

and key representatives from civil society.

- Assistance was provided by a team of Slovenian specialists, and continued technical assistance may be required from donors for the preparation of this legislation.

ii) Draft and promulgate a legislation establishing a Ministry of the Interior, with a responsibility for the KPS, under the PISG. Functions currently fulfilled by Pillar I should be progressively transferred to this Ministry as part of the eventual transfer of reserved functions. Responsible authorities: Office of the SRSG and Pillar I in close consultation with the OPM.

- Technical assistance may be required from donors for the preparation of this legislation.

ii) Draft and adopt the organizational chart of the KPS based on the police law once promulgated. An interim organizational chart should be prepared as soon as possible in close consultation with the PISG. Responsible authorities: Pillar I in close cooperation with the OPM.

- No technical assistance is required from donors at this stage.

iii) Increase public confidence in the KPS by implementing a public information strategy to lead to greater transparency and public understanding. A specific emphasis should be put on increasing the confidence of Serb communities in the institution. Responsible authority: Pillar I with support from the OPM.

- Technical assistance and funding may be required from donors.

### VII.3.2 Operational and personnel related matters

The KPS must have an increased operational capacity and the staff should be increasingly professionalized. Moreover, actions must be taken to accelerate the transfer the primacy for law enforcement from the Civilian Police Component of UNMIK to the KPS. The competent authorities must consequently:

i) Train, equip and deploy at least 600 KPS officers as part of the 6 Regional Operations Support Unit for crowd management and riot control. Funding and procurement of the necessary equipments for these units must be an absolute priority for UNMIK. Responsible authorities: Office of the SRSG, Pillar I, Pillar III, Pillar IV (European Union) in close consultation with the OPM.

- Donor assistance may be required for the provision of equipment.

ii) Train, equip and deploy at least<sup>46</sup> 1,000 KPS officers for specialized functions such as close protection, intelligence, special investigation and enforcement (including for narcotics, prostitution, human trafficking, economic and financial crimes and other forms of organized

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<sup>46</sup> The exact numbers of personnel are currently being determined by the Office of the Civilian Police Commissioner.

crime) forensics and crime scene investigations. The highest priority must be given to the prevention and investigation of organized crime and terrorism cases. Responsible authorities: Pillar I and Pillar III in close consultation with the OPM.

- Donor assistance may be required for the provision of equipment.

iii) Train and deploy senior personnel (commissioned officers) based on the interim KPS organizational chart. Responsible authorities: Pillar I and Pillar III.

- Donors should be encouraged to provide internships abroad.

iv) Transfer the responsibility for the remaining 17 police stations (out of 34) to the KPS. All law enforcement functions currently performed at the central and regional level by the Civilian Police Component of UNMIK must be transferred as soon as the KPS has the human and material resources necessary to fulfil its mandate. Responsible authorities: Pillar I in close consultation with the OPM.

- No donor assistance required at this stage.

v) Investigate promptly allegations of misconduct against KPS personnel. In this context, the professional standard units must be rendered fully operational by the training and deployment of an adequate number of KPS officers. The Policy and Procedures Manual and the Code of Conduct of the KPS must be regularly evaluated and updated and appropriate training provided to all personnel. The audit and inspection capacity of the KPS must also be reinforced. Responsible authority: Pillar I.

- No donor assistance required at this stage.

vi) Draft and promulgate the legislation establishing the Kosovo Police Service School (or an institution performing such functions) and draft a plan to transfer all responsibilities to the PISG. Responsible authorities: Office of the SRSG, Pillar I, Pillar III and the OPM.

- The OSCE prepared in 2004 a draft law for the establishment of a Public Safety Training Institute as a training centre for the KPS and other customer groups (customs, corrections, Fire and Rescue, etc). Additional consultations are required on this matter, not least with the PISG authorities. Technical assistance may be required from other donors for the preparation of this legislation.

vii) Review salaries and other emoluments of KPS personnel in order to ensure that, insofar as possible, this is sufficient to cover the basic cost of living in Kosovo. Responsible authorities: Pillar I, Pillar IV and the OPM.

- Comprehensive review undertaken recently (i.e. Helms report) of the salaries of Kosovan public servants. However the revised salary scale still does not cover the basic cost of living in Kosovo for most KPS officers. Technical assistance may be required from donors for a specific and comprehensive review of salaries and other emoluments of all judicial personnel with a clear strategy to solve this problem.
- Technical assistance may be required from donors.

viii) Develop cooperation at international and regional level by strengthening law enforcement liaison with neighbouring countries. Responsible authorities: Office of the SRSG, Pillar I in consultation with the OPM.

- No donor assistance required.

x) Continue to encourage the recruitment of suitable female and minority candidates for the KPS. Responsible authorities: Pillar I in close cooperation with the OPM.

- No donor assistance required.

### VII.3.3 Administrative, budgetary and support matters

It is essential that the KPS has the necessary administrative, budget and logistical means in order to assume full responsibility for law enforcement in Kosovo. In this regard the competent authorities must:

i) Allocate 38 million € for the capital expenditures required for the KPS to be fully operational during the period 2005-2006. Responsible authorities: PISG, Pillar IV with support from international donors.

- Assistance from donors is urgently required.

ii) Based on the availability of funding, the procurement of essential law enforcement equipment, as well as the refurbishment of facilities, must be undertaken: Responsible authorities: Pillar I.

- Direct donations of equipments should be envisaged by donors, as well as assistance to the refurbishment of facilities.

iii) Complete, review, evaluate and automate human resources, finance, budgetary, procurement, asset management and archiving systems, policies, guidelines and outputs. Responsible authorities: Pillar I.

- Assistance was provided in this regard through a US \$ 1 million Dutch-funded UNDP project. However, further technical assistance from donors is required.

### **b) The Justice System**<sup>47</sup>

#### **VII.4 Background**

From 1974 to 1989, the Autonomous Province of Kosovo had a local judiciary in place. According to many Kosovan judges, prosecutors and lawyers, political influence was important and judicial independence was, at best, limited. However members of all Kosovo's

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<sup>47</sup> This section does not cover the issue of the availability of advocates (defence attorneys). While they are not part of the government, their capacity is an important element of the proper functioning of the justice system. Much also remains to be done in this area. This section does not make reference to the current capacity and further development of the Kosovo Correctional Services which is undertaken by the Penal Management Division of the Department of Justice.

communities were represented. With the abolition of the Province's autonomy in 1989, most of the ethnic Albanian judges, prosecutors and judicial support staff resigned or were expelled and replaced, mainly by Serb personnel.

In the 1990s, the justice system essentially became one of the instruments in the organized political repression that was taking place in Kosovo. With the arrival of international authorities in June 1999, there was no judicial institution in place and a Justice system had to be effectively established from nothing. As one author noted:

Virtually no judges, prosecutors, defence lawyers, or jailers were left once NATO troops arrived. Those fleeing also took whatever they could carry and destroyed what remained. The Serbs took official vehicles, computers, printers, phones, copiers, law books, court files, even office furniture with them. Court buildings looked as if a plague of heavily armed locusts had swept through, scouring the grounds for anything valuable and leaving broken windows and ripped-out electrical sockets in their wake.<sup>48</sup>

However, most of the judges, prosecutors and judicial staff that were employed prior to 1989 were still in Kosovo. An Emergency Judicial System (EJS) was rapidly established with the nomination in July 1999 of 55 judge and prosecutors and the relevant support staff to serve in four District Courts and Prosecutorial Offices<sup>49</sup>. An ad hoc Court of Final Appeal was also created in September 1999. The EJS focused its activities on criminal cases as part of UNMIK and KFOR intensive efforts to establish law and order.

The Department of Justice of UNMIK was established in August 1999. It was originally divided between a Prosecution Services and Court Administration Section and a Penal Management Section (responsible for the management of Kosovo's correctional facilities).

Despite very limited human and financial resources, the Department of Justice response to the lack of basic material for the functioning of the judiciary was one of UNMIK's greatest successes. In a few months, assistance, including from bilateral donors, was effectively mobilized and the judiciary received substantive material assistance<sup>50</sup>. By the end of 1999, close to 300 judges and prosecutors had been vetted, selected and recruited by UNMIK to serve in more than 60 judicial institutions throughout Kosovo<sup>51</sup>.

However, much remained to be done in order to establish a multi-ethnic judicial system and to guarantee the judicial independence, due process and establish the Rule of Law. More generally, the promotion of non-discrimination and observance of human rights throughout the judicial system remained an important challenge, particularly during the period 1999-2000<sup>52</sup>. It can be noted that the applicable laws are the regulations promulgated by the Special

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<sup>48</sup> William G. O'Neill, *supra*, p. 75.

<sup>49</sup> Pristina, Prizren, Mitrovica and Pec. The District Court of Gjilane was re-established at the end of 1999.

<sup>50</sup> By early 2000, the Department of Justice had distributed "32 vehicles, 502 desks, 984 chairs, 374 bookcases, 58 computers, 15 photocopiers, 200 typewriters, 150 filing cabinets and 5 generators, as well as court stamps, ID cards and legal forms". See: UNMIK (Administrative Department of Justice), September 2000. *The Justice System of Kosovo: Basic Information*. Pristina: United Nations. See also: William O'Neill, *supra*, p. 81; OSCE, *Report 1: Material Needs of the Emergency Judicial System*. Pristina: OSCE.

<sup>51</sup> Minor Offences Courts, Municipal Courts, District Courts, Commercial Court, Supreme Court and Offices of the Public Prosecutor (at Municipal, District and Supreme Court levels) in all 5 judicial districts (Pristina, Gjilane, Mitrovica, Pec and Prizren).

<sup>52</sup> For a critical account see: OSCE, 2000. *The Criminal Justice System in Kosovo (February – July 2000)*. Pristina: OSCE.

Representative of the Secretary-General, the laws in force in Kosovo on 22 March 1989<sup>53</sup> and, in some instances, the laws adopted between 22 March 1989 and 10 June 1999 if they are not discriminatory<sup>54</sup>. In addition, all persons undertaking public duties or holding public office in Kosovo must observe internationally recognized human rights standards<sup>55</sup>.

UNMIK had also been forced to recognize that judges and prosecutors of the Kosovo judiciary had faced a certain amount of pressure in specific circumstances, particularly in cases involving members of Kosovo's minorities, terrorism and organized crime, and that this impacted strongly on their ability to remain independent and impartial. As stated in a document from Pillar I of UNMIK, "the problem of ethnic bias, both actual and perceived, is deeply rooted in Kosovo"<sup>56</sup>. In addition, the lack of adequate security for judges, prosecutors, victims and witnesses has an important, and negative, impact on the administration of justice in Kosovo.

In this regard, the appointment of international judges and international prosecutors throughout Kosovo following the violent events in Mitrovica in February 2000 was seen as an important element in the establishment of the Rule of Law. It was also seen as a way to relieve undue pressure on local national judges and prosecutors that had to handle sensitive cases (eg. crimes against humanity, war crimes, terrorism, organize crimes and serious crimes involving members of Kosovo's minorities). A separate branch of the Department of Justice was established at that time to support this international presence: the International Judicial Support Section. As of 6 December 2004, 15 international judges and 12 international prosecutors, supported by more than 100 international staff, were assigned to Kosovo's judiciary<sup>57</sup>.

## **VII.5 Functions and Current Situation**

### **VIII.5.1 Functions**

The establishment of a fair, independent and impartial judiciary in Kosovo remains a high priority for the international community. Under the *Constitutional Framework for Provisional Self-Government in Kosovo*, the courts are "responsible for the administration of justice in Kosovo in accordance with the applicable law"<sup>58</sup>. Under the *Standards for Kosovo*, Rule of Law is seen as a fundamental objective for UNMIK and, in this respect, "UNMIK's justice system, both civil and criminal, must be both effective and equally accessible to both men and women and to all communities in Kosovo"<sup>59</sup>.

### **VII.5.2 Current situation**

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<sup>53</sup> This followed an important political debate on this matter as the applicable law. Initially, UNMIK first regulation was to the effect that the laws applicable on 24 March 1999 (including the legislation that was adopted and enforced by Serbian authorities after the abolition of Kosovo's autonomy in 1989). The Kosovan magistrates refused to apply such laws and SRSG Kouchner reverted his previous decision and decided that the laws in place at the time of Kosovo's autonomy should be applied insofar as they do not conflict with international human rights standards.

<sup>54</sup> See: section 1 of UNMIK regulation no.1999/24, dated 12 December 1999

<sup>55</sup> *Idem*.

<sup>56</sup> *Supra*, p.15.

<sup>57</sup> Interview with the Head of the International Judicial Support Section, 6 December 2004.

<sup>58</sup> Article 9.4.1, *Supra*.

<sup>59</sup> See: *Kosovo Standards Implementation Plan, supra*, p. 27.

### VII.5.2.1 *Legal basis and institutional structure*

#### *The Courts and Offices of the Public Prosecutor*

Based on the *Constitutional Framework for Provisional Self-Government in Kosovo*, adopted on 15 May 2001, there should be a Supreme Court of Kosovo, district courts, municipal courts and minor offences courts<sup>60</sup>. There should also be an Office of the Public Prosecutor as well as offices of district and municipal prosecutors<sup>61</sup>. It should be noted that the SRSG exercises final authority over the appointment, removal from office and disciplining of judges and prosecutors<sup>62</sup>.

Structure and jurisdiction under the Law on Regular Courts<sup>63</sup>,

There are a total of 25 municipal minor offences courts operating in most municipalities of Kosovo. They have a material jurisdiction for minor violations of public order that can result in a maximum imprisonment of up to 60 days. Appeals are made to a High Court for Minor Offences, located in Pristina.

The 24 municipal courts have *inter alia* a material jurisdiction for offences carrying a sentence of imprisonment of up to 5 years. They also have a wide civil jurisdiction for both contentious and non-contentious cases. These courts operate in 26 municipalities (including 2 department of municipal courts located in smaller municipalities).

The 5 district courts have jurisdiction *inter alia* in respect of criminal offences for which a punishment of more than 5 years is prescribed. They also have a civil jurisdiction for matters such as marriage and divorce and appeals from decisions of the municipal courts lies with the district courts (respectively in Pristina, Gjilane, Pec, Prizren and Mitrovica).

A Commercial Court was established in Pristina although the existence of this institution was not specifically foreseen in the *Constitutional Framework for Provisional Self-Government in Kosovo*. This court has a competence *inter alia* for commercial offences as well as for a number of dispute and commercial claims. Under the law on regular courts, a second commercial court should be established in Gjakova.

The Supreme Court of Kosovo has a general appellate jurisdiction for all court decisions (first instance appeals from decisions of district courts and second instance appeals for decisions of municipal courts) as well as a first instance jurisdiction in a number of cases.

#### *Ministerial and centralized functions*

The adoption of the *Constitutional Framework for Provisional Self-Government in Kosovo* resulted in the transfer of responsibilities from the Department of Justice to a newly established Department of Judicial Administration in the Ministry of Public Services. The Department of Justice has a primary responsibility for reserved functions whilst transferred responsibilities pertaining to administrative support for the courts and offices of the public

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<sup>60</sup> Article 9.4.4, *supra*.

<sup>61</sup> Article 9.4.9, *supra*.

<sup>62</sup> Article 8.1.

<sup>63</sup> Official Gazette of the Socialist Autonomous Province of Kosovo no 21 of 28 April 1978, as amended.

prosecutor were given to the Department of Judicial Administration<sup>64</sup>.

The Department of Justice currently comprises five sections: the Judicial Development Division, the International Judicial Support Division, the Criminal Division, the Penal Management Division and the Office for Missing Persons and Forensics. Most substantive legal and policy decisions pertaining to the administration of Justice are taken by the Department of Justice and are implemented, in principle, by the Department of Judicial Administration in respect of its own mandate.

This division had a lasting negative effect as centralized judicial functions were artificially divided between two departments with limited coordination. In this respect, several judges and prosecutors have been particularly critical of the fact that it is unclear to whom they should inquire on judicial support matters, that there were some overlaps between the two departments and that decisions on critical issues, such as for the budget or personnel policies, are taken without adequate consultations with them<sup>65</sup>. In addition, whilst the Department of Justice reports to Pillar I, the Department of Judicial Administration reports to the executive branch of the PISG (with support from the Civil Administration of UNMIK).

At the difference of other PISG institutions, and owing in part to the fact that key functions such as the nomination and removal from office of judges and prosecutors remains a responsibility of the SRSG, very little progress was made in the full establishment of a centralized national judicial support and policy structure in Kosovo. Plans for the establishment of a Ministry of Justice appear to lack behind and there seems to be little preparation for the PISG to assume full and complete responsibilities in the judicial field. As was noted in a detailed report on this matter:

Where the judiciary is concerned, however, there has been less substantive delegation of authority and responsibility, notwithstanding Framework provisions that promote the separation of powers. From the perspective of institutional independence, Kosovo's judiciary has made relatively little progress. The judicial power of government remains under the

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<sup>64</sup> See paragraph 5.3 b) to m) of the *Constitutional Framework for Provisional Self-Government in Kosovo, supra*, in conjunction with annex IX par. 11 of UNMIK Regulation 2001/9, dated 13 September 2001 (UNMIK/REG/2001/19). The Department of Judicial Administration of the Ministry of Public Services is responsible for: 1) Exercising responsibilities regarding the organization and proper functioning of the courts, within existing court structures; 2) The provision, development and maintenance of court and prosecutorial services; 3) The provision of technical and financial requirements, support personnel and material resources to ensure the effective functioning of the judicial and prosecutorial systems; 4) The training, including professional and vocational training, of judicial personnel in cooperation with the Organisation for Security and Cooperation in Europe (OSCE); 5) The organization of examinations for qualification of judges, prosecutors, lawyers and other legal professionals through an independent professional body; 6) The appointment, training, disciplining and dismissing of members of judicial support staff; 7) Ensuring coordination on matters pertaining to the judicial system and the correctional service; 8) Co-operating with appropriate organizations in respect of independent monitoring of the judicial system and the correctional service; 9) Providing information and statistics on the judicial system and the correctional service, as appropriate; 10) Protecting personal data relating to the judicial system and correctional service; 11) Ensuring cooperation in judicial and correctional matters with appropriate entities inside Kosovo; and 12) Assisting in the recruitment, training and evaluation of personnel for the correctional service.

<sup>65</sup> These problems were noted on several occasions by Kosovan judges and prosecutors during interviews with the author in December 2004. The highly centralized system for administrative support to the courts and offices of the Prosecutor was also criticized and proposals made for a more decentralized and flexible system.

administrative oversight of UNMIK's Department of Justice and Ministry of Public Services whose functions include the recruitment and hiring of all judicial and prosecutorial support staff. Control over the budget for the justice system falls to Pillar I.<sup>66</sup>

More generally, judicial independence has yet to take a firm hold in Kosovo.

#### VII.5.2.2 Personnel

Under the 2004 Kosovo Consolidated Budget, there are a total of 2,358 approved posts for judges, prosecutors and judicial support staff. According to the Department of Judicial Affairs, as of 7 December 2004 a total of 1,799 staff including 397 judges and prosecutors were in place. Out of this total there was an overall minority representation of approximately 11% (including 4% of Serbs). A total of 142 staff was also in place by the end of 2004 for the following areas: Victims Assistance and Advocacy unit, Office of Missing persons and Forensics, Legal Policy Unit, Kosovo Judicial and Prosecutorial Council, Judicial Inspection Unit, Judicial Integration Section, Special Chamber and Administration.

The SRSG exercises final authority over the appointment, removal from office and discipline of judges and prosecutors<sup>67</sup>. The Kosovo Judicial and Prosecutorial Council (KJPC<sup>68</sup>) has an advisory role to the SRSG on matters related to the appointment of judges, prosecutors and lay-judges, as required, and hearing complaints, if any, against any judge, prosecutor or lay-judge<sup>69</sup>. The KJPC can also decide upon disciplinary sanctions other than removal from Office of judges and prosecutors and from the function of lay-judges and recommend such removals to the SRSG<sup>70</sup>. It is assisted in its disciplinary activities by the Judicial Inspection Unit of the Department of Justice. It should be noted, however, that despite numerous allegations of corruption, no judges or prosecutors have been imprisoned and a culture of impunity has, apparently been allowed to develop<sup>71</sup>.

Judicial support staff is nominated by the Department of Judicial Administration under the applicable procedures as set-forth by the Ministry of Public Services. This process is highly centralized and no authority is delegated at the courts or prosecutorial office level for the nominations (although representatives from these institutions are present in the interview panels).

Under the applicable law judges and prosecutors must: "a) have a university degree in law; b) have passed the examination for candidates for the judiciary, or, in the case of applicants for the position of a judge in the Minor Offences Court, have passed the professional examination; c) be of high moral integrity; d) not have actively been engaged in discriminatory practices; and e) not have a criminal record<sup>72</sup>". In addition, "except in the case of positions in the Minor Offences Court, applicants shall have relevant work experience in the field of law, i.e. three (3) years for the position of a Municipal Court judge (or a prosecutor) or of a judge of a Minor Offences Appeals body, seven (7) years for the position

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<sup>66</sup> Council of Europe and United States Department of Justice. *Kosovo Judicial System: Assessment and Proposed Options (2003-2004)*. Pristina: Council of Europe and United States Department of Justice, p. 7.

<sup>67</sup> See: article 8.1, *Constitutional Framework for Provisional Self-Government in Kosovo, supra*.

<sup>68</sup> .

<sup>69</sup> See article 1.2, UNMIK, Regulation no. 2001/8 *On the Establishment of the Kosovo Judicial and Prosecutorial Council*, 6 April 2001,

<sup>70</sup> Article 1.2, *Idem*.

<sup>71</sup> Interview with an international judge in December 2004.

<sup>72</sup> Article 6.1, *Idem* .

of a District Court judge (or prosecutor) and four (4) years for the position of a Commercial Court judge<sup>73</sup>.

Many of the judges and prosecutors of Kosovo used to work under the former Yugoslav system prior to the abolition of the province's autonomy in 1989. However most of them were not able to exercise their functions in the 10 years that followed and this created an important gap in their professional capacity. Important efforts have been consequently made by donors, and in particular by the OSCE (i.e. the Kosovo Judicial Institute) as well as the Council of Europe, for training Kosovo's magistrates particularly on basic international human rights standards. The Kosovo Judicial Institute has been particularly active as 55 training sessions were provided for example to judges and prosecutors during the year 2004, including on the newly adopted criminal code and criminal procedure code. Study trips for magistrates were also organized to Germany and France and training of trainers sessions held in Bulgaria. Some observers stated, however, that most problems, particularly in cases involving members of Kosovo's minorities, are not linked to a lack of knowledge but rather to attitudes or a lack of basic security<sup>74</sup>.

Based on a very detailed case-load study conducted by the Council of Europe and the United States Department of Justice, it appears that the number of judges and prosecutors in Kosovo may be considered overall to be relatively adequate although some reallocation of existing human resources should be considered. As a matter of fact, this study concluded that "a system with fewer judges that are more productive and better trained should be able to resolve many more cases and handle them more efficiently and more quickly"<sup>75</sup>.

As for the KPS, judges, prosecutors and support staff receive emoluments that may not be sufficient to cover the basic cost of living in Kosovo (i.e. food, lodging, utilities and other basic needs). This may render magistrates more susceptible to corruption. This is a crucial element that may need further evaluation particularly in the perspective of reigning upon corruption.

### *VII.5.2.3 Budget and equipment*

Under the 2004 Kosovo Consolidated Budget the justice institutions of Kosovo have an overall budget of 14,228,250 €<sup>76</sup>. This includes funds necessary for the courts, offices of the Public Prosecutor, centralized functions as well as the newly established Kosovo Judicial Institute.

Although the basic material conditions are in place for the justice system to operate, there are still some material requirements that would need to be fulfilled in order for the system to be fully operational. Some facilities will need to be refurbished and constructed. In this regard, a large number of public trials, particularly in civil matters, but also in criminal matters, are

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<sup>73</sup> Article 6.2, *Idem*.

<sup>74</sup> Interview with the Director of the Rule and Human Rights Section, OSCE, 13 December 2004. An international judge also stated the same to the author in December 2004.

<sup>75</sup> Council of Europe and United States Department of Justice, *supra*, p. 276.

<sup>76</sup> See: p.7 of Schedule 3 of the Kosovo General Budget for 2004. This covers activities of the Department of Judicial Administration (Administration and Support Office, court administration, Operations Unit, Judicial Integration Unit), the Department of Justice (Victim Advocacy and Assistance Unit, Sensitive Information and Operation unit, Professional Development Section, Office on Missing Persons and Forensics, Legal Policy Unit, Kosovo Judicial and Prosecutorial Council, Judicial Inspection Unit, Special Chamber) and the Kosova Judicial Institute.

held in the judges' offices because of lack of courtrooms. In addition, magistrates often refer to the lack of vehicles as well as IT equipments (including access to the Internet). A substantive capital investment will be required to fulfil these needs. Additional systems should also be developed to facilitate court administration particularly in the field of budget, finance, case-tracking, asset management and security. In any case, Kosovo's financial resources allocated for the judiciary as well as available equipments compare advantageously to most countries of the region and this is not a fundamental obstacle to an immediate and full transfer of responsibilities.

#### *VII.5.2.4 Operational capacity*

According to representatives from Pillar I, Kosovo's national judges and prosecutors handle more than 97% of criminal cases and all civil cases. It is widely considered that the Justice system is in many ways comparable to other systems in the sub-region and could assume full responsibility with similar standards (and deficiencies). The treatment of minorities as well as other sensitive cases, such as organized crime, is arguably as problematic in Serbia and Macedonia as it is in Kosovo.

The key issue at this stage is to prepare plans for the eventual transfer of responsibilities in order for Kosovan magistrates to be responsible for all criminal cases. Three fundamental elements must be addressed at this time: a) the establishment of a centralized judicial support structure for the progressive transfer to the PISG of functions undertaken by Pillar I; b) the security of judges, prosecutors, victims and witnesses; c) reigning upon corruption and guaranteeing the independence, fairness and impartiality of the justice system by: i) the payment of adequate salaries to magistrates that are sufficient to cover their cost of living; and ii) a more robust approach to internal discipline by the Kosovo Judicial and Prosecutorial Council and the DOJ's inspection unit. The extensive restructuring of the functions of the judiciary, as proposed in a detailed report of the Council of Europe and the Department of Justice<sup>77</sup>, should not be seen as an absolute priority nor as a pre-requirement to a transfer of responsibilities from Pillar I to the PISG.

The presence of international judges and prosecutors should be thoroughly re-evaluated owing to the future transfer of judicial functions, including for sensitive cases, to the PISG. In the autumn of 1999, UNMIK's Department of Judicial Affairs had planned to establish a new court, the Kosovo War and Ethnic Crimes Court, for cases of war crimes, crimes against humanity as well as serious crimes involving members of Kosovo's minorities. This court was to be staffed by both international and Kosovan judges and would have had jurisdiction at both first instance and appeal level for such cases. For a variety of reasons, including the potential costs associated with this operation, the court was never established. Owing to Pillar I's failure to provide adequate security arrangements to Kosovan judges, prosecutors, victims and witnesses, the time may have come to reconsider the possibility of establishing such an institution and a separate Office of the Prosecutor for cases of war crimes, crimes against humanity, organize crime and terrorism as well as for other serious crimes involving members of Kosovo's minorities. This would particularly allow for better security measures for persons involved in such cases and thus improve judicial independence and impartiality.

One important aspect is the attitudes of Kosovo's population towards the justice system. A study conducted last year concluded that "Seventy-four percent of Kosovo Albanians

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<sup>77</sup> *Supra*.

strongly agree or agree somewhat that the judicial system in Kosovo treats all people equally, whereas 25% of Kosovo Serbs and 51% of other minorities agreed at least somewhat with this statement”<sup>78</sup>. This study also showed a direct correlation between familiarity with various aspects of the judicial system in Kosovo and trust in judicial institutions<sup>79</sup>. The relative negative attitude of Kosovo Serbs is an issue of concern<sup>80</sup> and this should be addressed through an adequate public information programme.

## VII.6 Recommendations

The following are recommendations for immediate implementation over the next 12 months formulated in the perspective in which the Courts and Prosecutorial Offices, staffed solely by national personnel, would assume full responsibility for judicial functions in Kosovo. We would reiterate our earlier statement to the effect that efforts must be made to implement the actions foreseen in the “Kosovo Standards Implementation Plan”<sup>81</sup> and that many of the recommendations made herein have already been made in this document.

From the donors’ perspective, the most important requirements at this stage are the provision of technical assistance for the preparation of draft legislation as well as the provision of funding for capital expenditures, particularly in relation to security.

### VII.6.1 Legal and institutional issues

Efforts must be made to provide the courts and offices of the Public Prosecutor with an effective national judicial support structure. The competent authorities must:

i) Draft and promulgate the legislation establishing a Ministry of Justice. Moreover, and in order to reinforce the separation of powers and the independence of the judiciary, due consideration should be given to the establishment of an administrative office of the courts under the authority of the Supreme Court (to provide budgetary, financial, logistical and related support to the courts). Most if not all functions currently undertaken by Pillar I (including the Department of Justice) and the Department of Judicial Administration should in due time be progressively transferred to these bodies and a detailed assessment, with a time-line in conformity with the evolving political situation, should be prepared. Responsible authorities: Office of the SRSB, Pillar I and PISG.

- Technical assistance is presently being provided by consultants funded by both USAID and the UK Department of Foreign Investment and Development (DFID). EAR has also agreed to provide funds for the development of the

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<sup>78</sup> National Center for State Courts and IFES, July 2004. *Measuring and Improving Citizen’s Understanding of the Justice System: Public Opinion Survey in Kosovo 2004*. Pristina: NCSC/IFES. p. 7.

<sup>79</sup> Idem,

<sup>80</sup> The OSCE noted in this regard that it was “concerned with the perception that the minority communities might have of the Kosovo Albanian dominated criminal justice system, rather than actual bias. A lack of trust may discourage witnesses from minority communities from coming forward to report what they know to the police and/or from testifying at trial. This, in turn may result in denial of justice for the victims of crimes”. OSCE, 2004. *Human Rights Challenges Following the March Riots*. Pristina: OSCE. p.12

<sup>81</sup> *Supra*. In particular, “Kosovans must assume progressively greater functional responsibilities throughout the justice sector (...) and demonstrate their capacity to exercise those responsibilities effectively and impartially towards all ethnic communities” (p.27).

justice system. However, additional technical assistance may be required from donors for the preparation of this legislation.

ii) Draft and adopt the organizational chart of the Ministry of Justice and, if so required, an administrative office of the courts as mentioned above. Responsible authorities: Pillar I and the PISG.

- See point i) above.

iii) Increase public confidence in the justice system by implementing a public information strategy to lead to greater transparency and public understanding. A particular emphasis should be put on increasing the confidence of Serb communities in the Justice system. Responsible authority: Pillar I in close coordination with the PISG.

- USAID continues to provide support for such functions through its project with the National Center for State Courts. Additional technical assistance and funding may be required from donors.

#### VII.6.2 Operational and personnel related matters

The Courts and Offices of the Public Prosecutor must have the capacity to eventually handle in a fair, independent and impartial manner all civil and criminal cases in Kosovo. Efforts should be made to increase the professional level of all judges, prosecutors and judicial support staff. The competent authorities must consequently:

i) Take immediate measures to ensure that adequate security arrangements are in place for the protection of national judges and prosecutors. In this context, the KPS should be given adequate human and material resources for the protection of court buildings and related facilities as well as the close protection of judicial personnel. In addition, due consideration should be given to the creation of a specialized and highly protected Court and Office of the Public Prosecutor, with a balance representation of all Kosovo ethnic communities, for cases involving minorities as well as organized crime and terrorism Responsible authorities: Office of the SRSB, Pillar I and the PISG.

- Financial and material resources may be required from donors for the provision of adequate security measures.

ii) Investigate promptly allegations of misconduct against all judicial personnel, particularly judges and prosecutors for review by the KJPC. In this context, the Judicial Inspection Unit of the Department of Justice should increase its operational capacity and improve the exchange of information with the relevant units of the KPS for cases of criminal allegations. The operational capacity should be improved with the perspective to build the capacity of Kosovan staff in the Judicial Inspection Unit to analyse and evaluate the functioning of courts and prosecutors' offices and to implement conclusions of these analyses and evaluations. In parallel the capacity of Kosovan staff in the KJPC to conduct disciplinary hearings and drafting of decisions should be increased. Pillar I should also consider the possibility of reallocating some of its international posts in order to recruit more international judicial inspection advisers to build the capacity of the unit. Responsible authority: Pillar I in close consultation with the PISG.

USAID is funding the creation of a judicial audit capacity, and the Government of Canada has seconded an international judicial inspector.

- Training assistance, including internships abroad, may need to be provided by donors.

iii) Draft and promulgate the legislation establishing the Kosovo Judicial Institute in order to facilitate the training and increased professionalization of judges and prosecutors. Responsible authorities: Office of the SRSJ, OSCE, and PISG in close consultation with Pillar I.

- Technical assistance may be required from donors for the preparation of this legislation.

iv) Review salaries and other emoluments of all judicial personnel, with a particular attention to judges and prosecutors, in order to ensure that, insofar as possible, this is sufficient to cover the basic cost of living in Kosovo. Responsible authorities: Pillar I, Pillar IV and the PISG.

- Comprehensive review undertaken recently (i.e. Helms report) of the salaries of Kosovan public servants. However the revised salary scale still does not cover the basic cost of living in Kosovo for most judicial staff. Technical assistance may be required from donors for a specific and comprehensive review of salaries and other emoluments with a clear strategy to solve this problem.

v) Develop judicial cooperation at the international and regional level by establishing relevant liaison mechanisms and procedures. Responsible authorities: Office of the SRSJ, Pillar I and the PISG.

- No donor assistance required.

vi) Develop adequate measures for the protection of victims and witnesses, including by reaching agreements for relocation to third countries. Responsible authorities: Office of the SRSJ and Pillar I in consultation with the PISG.

- Donor countries should facilitate this process by allowing the relocation of victims and witnesses from Kosovo on their territory.

vii) Encourage and facilitate the recruitment of minorities and women as judges, prosecutors and judicial support staff. Responsible authorities: Pillar I and the PISG.

- No donor assistance required.

### VII.6.3 Administrative, budgetary and support matters

It is essential that the courts and offices of the Public Prosecutor have the necessary administrative, budget and logistical means in order to assume full responsibility for judicial functions in Kosovo. In this regard the competent authorities must:

i) Allocate the necessary sums for urgent capital expenditures during the period 2005-2006. Responsible authorities: PISG, Pillar IV with support from international donors.

- Donor assistance required.

ii) Complete, review, evaluate and automate human resources, finance, budgetary, procurement, asset management, security and archiving systems. Responsible authorities: Pillar I, PISG with support from international donors.

- Technical assistance from donors required.

## VIII LOCAL GOVERNMENT

### VIII.1 Methodology

The assessment of Kosovo municipalities builds on other existing assessments such as the extensive work of USAID (2003) and other important surveys on Kosovo local government such as the *Kosovo Mosaic* (UNDP, 2003). Since these available reports already provide extensive information for a capacity gap analysis it has not been necessary to invest a lot of resources and time into data-collection that would repeat what they have already done. However, given that the situation at local level is evolving quickly, and that central-local relations are changing permanently, the assessor interviewed important actors at central and local levels and from all donors with programmes and major projects focusing on local authorities.

The interviews also include field visits to four local authorities. The local authorities were selected in such a way that they mirror a wide variety of Kosovo local government contexts. Table 1 provides a brief description of the interview sample.

Table 1: Profile of the sample of municipalities chosen for field visits

Municipality	Characteristics
Mitrovicë/ Mitrovica	Large city divided in two parts: Mitrovica South populated mainly by Albanians and Mitrovica North populated mainly by Serbians. Other minorities are present in both parts of the city. Mitrovica represents a unique example of parallel structures in Kosovo. The northern part of the city is administrated exclusively by UNMIK
Obiliq/Obilic	Small-sized industrial municipality with large ethnic minorities. The municipality is identified with the largest industry of Kosovo, the electrical company of Kosovo (KEK).
Lipjan /Lipljan	Medium-sized rural municipalities with a

	large variety of ethnic minorities. Subsistence agriculture characterises this municipality.
Shtime/Štimlje	Small-sized local authority with small ethnic minority, UNMIK staff will leave as of January 2005

The evaluation is based on a template drawn up by the assessor and shared with all interviewees, which covers the issues outlined in the Terms of Reference for the study (see appendix). The benchmarks used in this evaluation are drawn from the European Charter of Local Self-Government which is a recognised framework to guide local government reforms in Kosovo.

Consideration of the reform of Local Self-Government started in 2004. A working group on Local Government was established with the aim of preparing a framework on reforms for local self-government. It is co-headed by PISG and UNMIK, and is further comprised of the Office of the Prime Minister, the Ministry of Economy and Finance, the Association of Kosovo Municipalities, the Ministry of Public Services, community representatives, and international experts from USAID, Council of Europe, and OSCE. The working group was established by a Presidential Declaration of the Security Council on 30 April 2004 with the brief to explore "efficient local governance through devolution of non-reserved central responsibilities to local governments" and with an invitation to interested parties in Kosovo to develop concrete reform proposals. The working group finalised the *Framework for the Reform of Local Self-Government in Kosovo* on 19 July 2004. The Framework document stipulates the adoption of a new law on Local Self-Government and a new law on Local Finance. It also recommends an extensive legal review of regulations affecting municipalities, which is currently being carried out. Therefore this assessment does not go into these issues.

## **VIII.2 Factual description of the general situation at local level: very unbalanced development**

The situation of local government in Kosovo is very diverse. While this is true of any local government system, Kosovo local government is characterised by some unique features:

- Each of the thirty municipalities of Kosovo is made up of at least one urban settlement and several villages (USAID, 2003). This means that service delivery is particularly difficult outside the urban settlements. Furthermore, the political representation of the villages in Municipal Assemblies is often unequal.
- The diversity of the 'geopolitical' profile of each municipality is compounded by different ethnic composition. For example, whereas the percentage of ethnic minorities in Shtime/Štimlje is only 5 per cent, Novo Berdë/Novo Brdo has a Serbian population of 37 percent.
- The administrative and political culture in the municipalities is very different as well.
- Last but not least, different municipalities have been supported by different international aid organisations each of which has implemented different projects using different templates for development. Clearly, the biggest presence has been that of UNMIK. It has been suggested by some interviewees that it is primarily the lack of a coherent and consistent line through UNMIK, as delivered by MA/MRs and their

teams that has led to such a diversity of practice. In addition, many donors have engaged essentially in specialist services like health /education at local level, and have ignored issues of corporate management of municipalities. By focusing on setting up 'pilot' municipalities, donors have also increased the variation in levels of know-how between municipalities.

This diversity is augmented by the fact that municipalities apply the requirements they bear under Regulation 2000/45 differently. All local government officials and politicians interviewed thought that the Regulation 2000/45 is quite unclear and gives rise to overlap of responsibilities of central and local government. One example is the fact that according to the Civil Service Law the Director of School is a local employee and has to be financed out of the local budget. However, according to the Education Law, the appointment has to be made by the Ministry of Education. Such inconsistencies give rise to different applications of the legal framework at local level and make it difficult for local managers to manage staff and services properly. However, the example of Shtime/Štimlje also shows that it is possible to overcome legal obstacles by negotiating solutions with UNMIK, PISG, and donor organizations and find agreements that fit all parties.

However, other municipalities in Kosovo lack the strong consultation culture that is present in Shtime/Štimlje, and seek little dialogue with central government and UNMIK. There is a dominant perception that the centre is quite reluctant to transfer responsibilities to local level and intervenes too often in local affairs. There is a common view that there is very little understanding of local problems and municipal management at central level. But most local officials hope that this will change with the appointment of Mr. Lutfi Haziri as the new Minister for Local Administration.

Overall, the capacity and performance standards of Kosovo municipalities are very different. This means that there cannot be a 'one size fits all' training programme for all municipalities in Kosovo. Furthermore, training should focus on the least developed municipalities in the future as the gap between the high performers and the 'laggards' is widening. This does not mean that there cannot be a 'core training agenda' for local government in Kosovo, but each municipality should be able to pick the most relevant sections of this agenda for its own capacity building.

However, despite all the problems, the increased financial resources that have recently become available to local government mean that municipalities are more able to deal with local problems. All interviewees confirmed that there are visible improvements to the quality of life of local people and there was a shared view that the greater responsibilities and resources available at local level constituted a large part of the explanation.

### **VIII.3 The institutional set-up of Kosovo municipalities**

The size of Kosovo municipalities is relatively big by the standards of most European countries - in general, they have more than 65,000 inhabitants. At present, village councils are not formally recognised units of local government (USAID 2003, p. 10) even though there is evidence that in some areas sub-municipal structures are alive and well with village representative being on the municipal payroll. Given that there are many villages that have no representative in their Municipal Assembly, while other villages are overrepresented, there is currently a debate on a new division of administrative units. There is also a proposal by the Council of Europe to increase the number of local authorities in Kosovo to 120 and to

implement a two-tier structure at local level.

Another issue that has been stressed in the interviews, in surveys, and in other research on local governance in Kosovo is the unproductive relationship of municipalities with the Kosovo Trust Agency (KTA). As the USAID report (2003, p. 9) points out, UNMIK Regulation 2000/45 gave the municipalities the responsibility for ensuring adequate services in the utilities sector. With the creation of the KTA as an independent body and as custodian of all properties owned by government through Socially-Owned Enterprises (SOEs) and Publicly-Owned Enterprises (POEs), the KTA became responsible for utility management within the scope of UNMIK Reg. No. 2000/49. Municipalities are represented on utility regulatory boards, but they only have a consultative voice. It was suggested that under the current arrangements municipalities have very little incentive to control the KTA and to make sure that KTA boards respond to local needs.

### Recommendations

It is clearly not the objective of this report to make political recommendations regarding the decentralisation process. From a capacity point of view, it can be said that the pool of knowledge and qualified staff at local level is still very thin and any increase in the number of local authorities will inevitably stretch the level of capacities at local level. There can be no doubt that a two-tier structure would increase 'red-tape' and bureaucracy at local level and increase the budget needs of municipalities for wages and salaries. Furthermore, there would be financial sustainability challenges for any newly created municipality since, at present, most municipalities seem to be able to collect property tax fees only from the town centres. One alternative way to improve the representation of villages in Municipal Assemblies would be a change in the local election system. The current proportional voting system could be changed into a majority system whereby each district elected one member. Clearly, this would have repercussions on the representation of ethnic minorities but it would be worthwhile exploring this scenario.

There are strong views at local level that the voice of municipalities should be strengthened in KTA boards so that they have an incentive to take a more active role in utility management. At present, the KTA still has a local basis and municipalities have data that may help to improve the management of utility services. However, there is agreement both at local level and in the donor community that the ultimate solution is the privatisation of SOEs and POEs, and this would also boost local economic development.

## **VIII.4 Capacity assessment of key municipal functions**

### VIII.4.1 Strategic planning/Local economic development

Given that high unemployment is perceived to be one of the biggest problems in Kosovo today it is not surprising that many international aid organisations provide advice to enhance municipal capacities for SME development. So inevitably, this section will focus on donor initiatives rather than on municipal initiatives. Indeed, the current perception in the donor community is that there would not be much local activity in the area of economic and strategic planning without the encouragement of donors. (For unemployment data disaggregated by municipalities - see UNDP Kosovo Human Development Report (2004), Table A3, p.112.) The main shortcoming of all programs that are currently being implemented at local level is that they only involve a limited number of local authorities.

The assistance provided in this area has to deal with four major problems:

- Most Kosovo citizens and municipal staff are inclined to short-term thinking. As one local official put it “anything going beyond three months is in the distant future for most people”.
- There is a lack of reliable statistical information and data in Kosovo.
- In many municipalities there is not much potential for business development.
- Municipalities cannot make much use of socially- or state-owned enterprises and properties, such as renting or leasing buildings to business.

The first capacity building project in strategic planning at local level was implemented by UNOPS. In late 2001, the Head of UNDP in Kosovo requested UNOPS to assume responsibilities for executing the UNDP Local Governance (LOGO) Project. By early 2002, UNOPS, with UNDP funding, supported five pilot municipalities in Prizren/Prizren to draft municipal development agenda (MDA) documents containing a description of the developmental gaps in each major sector and priorities. A project document was drawn up for an expanded Local Governance Project that would, among other capacity building activities, create a technical unit in each municipality and build its capacity 1) to update MDAs periodically; 2) to design project proposal and tender documents; 3) to ensure that MDAs were channelled upstream to be used by UNMIK, Central Planning Authorities, and donors for aid coordination.

In late 2003, UNOPS received funding from UNMIK/PISG Ministry of Finance and Economy (MoFE), to draw up in 2004 MDAs for 12 municipalities from two regions, using KCB funding. This enlarged project received strong support from the President of the Association of Kosovo Municipalities (UNOPS, 2003). In contrast to the first phase of the project, the second-generation of MDAs were significantly ‘leaner’ but still encompassed about 100 pages of description of the ‘state of the art’ of different sectors in the municipalities (see, for example, the MDA of the Municipality of Malisheve/Mališevo, 2004). There is no SWOT analysis in the MDAs and the ‘strategic orientations’ outlined at the end of the MDAs are rather vague. The project matrix is also quite superficial, and does not specify who is responsible for what. Recently, in late 2004, UNMIK and the Government of Italy agreed to provide funding to UNOPS to elaborate MDAs in Mitrovica/e regions.

DELTA (Developing Enterprises Locally through Alliance and Action) is a joint initiative of the World Bank Group and the Open Society Institute. It is implemented locally by Reinvest (<http://www.deltakosova.org/>). The first phase of the project started in 2002 and involved seven local authorities (Istog/Istok, Kaçanik/Kaçanic, Klinë/Klina, Prizren/Prizren, Podujevë/Podujevo, Viti/Vitina and Vushtrri/Vučitrn). In the second phase (DELTA II), which started in the beginning of 2004, the project was extended to another five municipalities (Gjilan/Gnjilane, Pejë/Peč, Ferizaj/Urosevac, Drenas/Gillogoc, and Lipjan/Lipljan).

The strategic planning exercise put a lot of emphasis on the development of relations with external stakeholders such as the business community and NGOs (see, for example, the strategic plan of the Municipality of Podujevë/Podujevo, 2003). Even though many trained staff had left to join the private sector, Reinvest suggested that many public-private partnerships which had been built during the drafting of the strategic plan still exist and meet on a regular basis to review and update the strategic plan and to oversee the status of planned

and on-going projects. Altogether DELTA I gave rise to a total of 160 projects in the pilot local authorities. Although DELTA I provides no resources for the implementation of these projects, Riinvest supports the local authorities to find financing resources, in particular for one-stop shops, which are seen as a priority for local economic development.

In 2004 UNDP also became active in supporting the municipality of Gjakovë/Đakovica in the preparation of a Local Sustainable Development Strategy, clearly inspired by the Agenda 21 process (UNDP, 2004). The lead in the planning process was assigned to a group of 15 experts from the municipality and other public agencies, the local business community and NGOs. Once this group of experts had finished drafting the plan, it was submitted to the municipal assembly for approval. As in Skenderaj/Srbica and Shtime/Stimlje, a leading body for the implementation and review of the Sustainable Development Strategy - the Local Development Agency - will be established in Gjakovë/Đakovica.

Despite the ‘sustainable development’ heading, the approach of the UNDP pilot is actually very economic development-oriented. In this respect it is similar to the strategic plans drafted within the DELTA project. Nonetheless the two approaches do have differences: the UNDP model pays more attention to a detailed socio-economic situation assessment and relevant data gathering and analysis, while the DELTA approach is more focused on description and development of projects. Moreover the UNDP model seeks the creation of a local framework that enables the permanent monitoring of strategy implementation, review and follow-up. (This is the case of the MBC in Skenderaj/Srbica and Shtime/Štimlje and the Local Development Agency in Gjakovë/Đakovica). It is valuable that since January 2004 there have been bimonthly meetings, the ‘LED Roundtable’, involving Riinvest and UNDP amongst others, to exchange experiences and to bring together "working level" people (project managers and programme officers) from different local and international agencies which are dealing with LED in Kosovo. These meetings discuss the challenges and opportunities facing LED in Kosovo with relevant stakeholders (local/central government institutions and donors) and share information about ongoing activities on LED.

Both the DELTA Project and the UNDP Project have understood that strategic planning is not just the responsibility of technicians. There is a strong focus on involving representatives from the private and non-profit sectors, and the development of public-private partnerships. Yet, in the case of the DELTA Project, the consultation of interest groups comes at a late stage, after the final draft strategy had already been developed by local authority staff and a wider working group. As far as the UNDP pilot project is regarded, there is no public consultation at all which is completely against the spirit of Agenda 21.

### Assessment and Recommendations

Strategic management cannot be reduced simply to the drawing up of strategic plans. Nevertheless, strategic plans have to meet certain quality standards. They must go beyond an apolitical description of the current situation and set priorities and operationalise the implementation of the selected priorities. The UNOPS MDAs clearly fall short of this.

The strategic plans should provide municipal managers with guidance in the allocation of resources – it should therefore be expected that municipalities with a strategic plan would manage to spend the totality of intergovernmental grants. Furthermore, such plans help to make sure that donor funded projects within municipalities are demand-driven.

Given that the strategic plans for economic development are comprehensive local development plans, they should be taken as an opportunity to go beyond the ‘usual suspects’ and to reach out to citizens who were never asked about their views before. This is even truer of sustainable development strategies. If the public has not been consulted before the strategy had been approved by the municipal assembly, there is unlikely to be much interest and ownership of the sustainable development plan no matter how much effort is made to promote it. It is very encouraging though, that some key priorities of the UNDP municipal strategic plan for Gjakovë/Đakovica and Shtime/Štimlje have already been implemented, which clearly gives credibility to the planning document. The same positive assessment can be made in the municipality of Viti/Vitina, which participated in the DELTA I project where a large number of projects were implemented within one and a half years.

The key question now is how various stakeholders can be motivated to work together to implement the strategic plan. This requires not only resources but also individual and organisational learning to bring about:

- Competence in project management
- The ability to act in partnership with other stakeholders
- Negotiating skills
- The ability to learn and criticize

In other words, local authorities are not necessarily strategic in their orientation simply because they have a strategic plan. Whereas various donors have offered technical assistance in project management, there is currently a lack of support for leadership development and partnership working. This has serious implications for the implementation of the strategic plans.

The case of Suharekë/Suva Reka where a strong chief executive had the authority to establish consensus within the assembly to accept the MDA, and where a large number of priority projects received funding, shows the importance of local leadership. In municipalities where such leadership is missing such as in Prizren/Prizren, the assembly is still discussing the MDA. Possible training modules could consist of workshops where multiple stakeholders practice role changes and role reversals, in order to come to understand each other’s perspectives more clearly. Ideally, the training should involve not only administrative staff but also elected members, NGOs and representatives of the business sector and media.

Yet, the effects of all capacity-building in local strategic management can be assumed to be limited in terms of improving local economic development as it has so far avoided dealing with the two most pressing problems at local level:

- Uncontrolled construction, coupled with lack of enforcement of spatial planning and zoning
- Different practices of municipalities in licensing businesses.

Although international donors such as the World Bank and the AMK have already made many efforts to work with local authorities and business towards the harmonisation of licensing practices, success has been sporadic at best. While the creation of one-stop shops has helped to improve transparency for business, they do not help to reduce red tape and divergent practices. Therefore, there may be good cause for a central *diktat*, perhaps in consort with municipalities, through which the technical requirements needed for different

business licenses are standardised throughout Kosovo. Furthermore, action urgently needs to be taken with regard to illegal construction. If neither local inspectors nor the police are able to stop or reverse illegal construction, this may need to be tackled by giving more incentives to local communities to take action – e.g. by vesting the ownership of all illegally-constructed properties in the local authority. The OSCE Human Rights Experts who are currently implementing a strategy aiming at ensuring respect of property rights by the Kosovo municipalities should consider this idea when giving advice to municipal officials responsible for the protection of these rights.

Incentives for strategic management may also stem from inter-municipal benchmarking. Comparing the local development and performance of municipal services between municipalities can highlight shortcomings that the local authority needs to address and opportunities that it should consider pursuing. The awareness that “we are performing worse than the neighbouring village” can be a very powerful driver to set priorities and to take actions for improvement. If local authorities take more ownership through a ‘localised’ *Kosovo Mosaic*, this survey could well become one important building bloc of such performance comparisons.

#### VIII.4.2 Service Delivery

It would be beyond the scope of this report to assess the capacity of municipalities to deliver specific services. However, it is important to make some observations about the capacities of local authorities to deliver public services in general.

First of all, it is striking that service directors lack very basic information which is necessary for service planning and evaluation. To start with, municipalities have no reliable statistics about service users or the size of the local population. The last census took place 15 years ago. There are also complaints about the lack of computers and the lack of technical skills on the part of municipal staff in relation to collecting basic data and using them to inform investment decisions and the allocation of resources. This means that most service departments are technically unable to process complaints or to run basic surveys on user satisfaction in relation to the availability and quality of public services. The few citizen surveys that have been carried out by local authorities are very revealing, though: a service satisfaction survey conducted by the municipality of Prishtinë/Priština in February 2002 shows that 53 per cent of all citizens interviewed believe that the municipal administration functions poorly or very poorly (KIDS/LOGO, 2003:19).

Apart from the lack of quality of public services, access to public services due to the lack of freedom of movement and unequal volume of use are still major problems as well.

It should be mentioned in this context that the AMK has issued a large number of ‘Policy Statements’ which give municipalities and other relevant organisations and institutions guidelines in respect of many areas of local activity such as tourism, licensing and local economic development. The ‘Policy Statements’ which are supported by the EAR are developed by specific task forces of the AMK, including municipal representatives and experts from other organisations.

#### Assessment and recommendations

It is important to recognise that there have been visible improvements in the municipal

capacity to deliver public services. However, these improvements are not always mirrored in citizens/user surveys, since the expectations of Kosovo citizens – as elsewhere in the world – have been raising. As one commentator pointed out, expectations of many Kosovo citizens are also very unrealistic: “Their view is that first services should be delivered and then, afterwards, they will consider their payment obligations”. In order to improve local public services further it is important to build up a self-assessment capacity of municipal service departments. So far, NGOs have carried out quite a few extensive surveys (usually on behalf of donors) on perceptions of different stakeholder groups in relation to municipal services – a new survey involving six pilot local authorities has just been commissioned by USAID. AMK has also engaged in municipal surveys, in particular with relation to the ‘Standards’.

Although these surveys have the advantage of providing non-partisan information, because they were undertaken by outsiders they have experienced little ownership on the part of municipal management. Municipalities can only become more accountable if they are able to gather their own performance information on a continuous basis. Therefore, more training is needed to enable service departments to self-assess their performance. This involves training in developing basic performance indicator systems and in analysing performance data. However, great care will have to be taken not to develop overambitious measurement systems that only become meaningless bureaucracies. Certainly, the idea which is floating around in some donor organizations, namely to establish the UK ‘Best Value’ system in Kosovo would be ‘over-the-top’ and completely inappropriate in the Kosovo context. At present, there is a legal mechanism for complaints but it is not properly implemented. Clearly, a functioning complaints system in municipalities would be a first step to reinforcing their accountability. At the same time, a complaints system with effective feedback to citizens would allow public officials to remind service users that service quality not only depends on the efforts of the producer but is strongly influenced by the behaviour of the service recipient as well, who in a very real sense has to co-produce the services together with the providers.

By the same token, it is more valuable to invest resources to continue and build on existing surveys rather than commissioning new surveys. In particular, it would be very useful to continue the *Kosovo Mosaic* as this survey has included the biggest sample of municipalities ever used for a local government survey in Kosovo, and provides a lot of comparative information. However, in order to increase the ownership of Kosovo municipalities, the municipalities should be in charge of running the surveys, as they need to develop capacity in performance measurement. The AMK or Ministry for Public Administration could then aggregate the individual *Mosaics* of Kosovo municipalities into an overall *Kosovo Mosaic*.

#### VIII.4.3 Fostering relations with civil society

##### VIII.4.3.1 *Communication with the public*

There is general agreement in the donor community that this is an area that still needs to be developed at local level. So far, the efforts of international donors have focused on strengthening the role of NGOs as a watchdog at local level. For example, the National Democratic Institute (NDI) has been training a multi-ethnic network of approximately 70 NGOs from 12 municipalities to enable them to monitor the work of municipal assemblies and to observe elections ([www.ndi.org/worldwide/cee/kosovo/kosovo/asp](http://www.ndi.org/worldwide/cee/kosovo/kosovo/asp)). Furthermore, the AMK has been involved in a publicity campaign to encourage citizens to attend municipal consultation meetings.

While the capacity building of some citizen activists has been important in helping to open up municipalities, few efforts have yet been made to include the non-organised citizens who are less articulate and less willing to become engaged on a permanent basis. Certainly, it is clear that the particularly difficult economic and social situation in Kosovo makes it very difficult to motivate citizens to become engaged in public affairs. Current research on citizen participation in well-developed Western European countries confirms that typically it is mainly the well-informed and well-off middle classes who take part in consultation exercises and that often only a minority of local public officials and politicians take the views of citizens seriously.

Moreover, members of local government assemblies often perceive citizen participation as a threat to their power. Clearly this is even more significant in Kosovo, where directly elected assemblies are still a recent phenomenon. Nevertheless, research in other conflict situations (e.g. Northern Ireland) suggests that it is both important and feasible to get 'ordinary' citizens to take part in some discussions over issues that directly affect their quality of life. Without such wider participation, the opportunity to affect the behaviour and attitudes of the majority of citizens will be very limited, with potentially serious consequences for the scope of future social and political changes in Kosovo.

It is generally recognised that transparency is a precondition for the effective functioning of democratic institutions and a vibrant democracy. There is a general perception that Kosovo municipalities are rather intransparent in their internal and external communication. The availability of local government websites does not necessarily mean that municipalities have 'opened up', since the contents are determined by the municipality. Nevertheless, it is encouraging that at present 19 out of 30 municipalities seem to have their own website. There also exist some encouraging good e-governance practices in Gjakovë/Dakovica and Gjilan/Gnjilane, where the agenda and decisions of assembly meetings are put online in a timely way. Even if such information is unlikely to be of high interest to most citizens, it provides useful information to opposition parties and helps to ensure fair play in assembly meetings.

There are also discussions as to whether local budget plans should be made public in local newspapers. The experience from the UK and local authorities in other EU countries that voluntarily provide such information shows that this information is generally not sufficiently interesting or relevant to citizens to promote the trust of those citizens in their local authorities or their interest in local issues.

### Recommendations

Public officials at local level need to receive communication training to make them aware that different target groups have different needs for information and also need different communication channels. Training programmes of elected members and mayors should also include modules on citizen participation. Typically, consultations at local level are between public officials and service users, with elected members being left out of the equation. Unless politicians at local level recognise that they benefit from increased citizen participation by learning more about citizens' needs and being able at an early stage to address issues which are giving rise to dissatisfaction, they will be suspicious about consultation and dismiss the outcomes of consultation exercises which will therefore disillusion citizens even further.

The development of municipal websites should involve citizens and NGOs, in order to ensure

that they provide useful and clear information to different groups and citizens – and there is the added benefit that citizens who take part in such exercises can see the results of their inputs almost immediately. It is also important that local ICT staff responsible for updating municipal websites should receive regular professional advice from communication specialists. Typically, marketing companies or journalists are better suited to build these capacities than ICT companies, which are more knowledgeable about the technical aspects of ICT, rather than what content and presentation style is most effective on websites. There is also scope for closer cooperation between Municipal Information Officers with OSCE Human Rights Experts to make sure that understandable and adequate information is provided to all minority groups.

#### *VIII.4.3.2 Ethnic relations*

Naturally, this is still a very touchy issue in Kosovo municipalities, as there are still high ethnic tensions in most local areas. The situation is compounded by ‘parallel structures’ in some municipalities, which receive extra support from by Belgrade. However, it is unclear to what degree the financial support from Belgrade has improved the quality of life of Kosovo Serbs and how this should be taken into account in assessing the needs of these municipalities. As mentioned elsewhere, ethnic divisions also put limits upon efficient and effective local government management: they mean that municipalities cannot collect all revenues due to them in areas with strong ethnic minorities. They are also sometimes exacerbated because there are still wide variances in the quality and availability of many public services and the adequacy of public infrastructure in Kosovo (USAid, 2003, p. 14). There are also situations where municipalities have reconstructed minority housing damaged by the March 2004 riots (with funding from international donors) and minority communities have not returned for various reasons (e.g. lack of judicial recourse and security as well as insufficient assistance for resettlements). Nevertheless, a number of public officials who were interviewed suggested that the situation has improved with the institutionalisation of community officers and there are hopes that the establishment of ‘returns officers’ (as of January 2005) will bring further improvements. There was less optimism in Mitrovica, though, where community relations are still thought to be bad due to the high rate of unemployment, estimated at about 90 percent.

#### Recommendation

OSCE and other organisations such as the AMK have been providing a lot of training to municipal staff and councillors on human right issues. In particular, there has been a lot of training with a specific focus on the integration of the minority communities into the municipal structures (Municipal Assembly Support Training – MAST I &II). However, OSCE is rather sceptical about the effectiveness of the training programmes delivered. For example, it was suggested that so far there are only 2-3 successful examples of community committees. The rather meagre outcomes of past training are explained by OSCE as follows:

- (1) The training sessions conducted to date were only one day long. However, it takes much longer to help local public officials understand the full meaning of human rights concepts and basic principles.
- (2) The current specification of the responsibilities of Community Committees is too unclear to allow their members to comprehend what to do and why human rights have any bearing on their work
- (3) Since the general awareness among public officials about human rights issues

is very limited and there is almost no understanding of the role of Community Committees, the Committees are being ignored.

Before the launch of new training programmes on human rights issues there is a clear requirement to do a needs analysis in relation to both local elected members and officials.

Clearly the increasing lack of a common language in Kosovo (as younger Albanians no longer understand Serbian) needs to be addressed in the medium-term. An evaluation should be undertaken into whether resources should be provided to kindergartens, schools and universities to work towards a bilingual society. It was also suggested that teaching Macedonian could be a solution as this language is not so unpopular as Serbian.

There is also a lack of a common curriculum in schools and higher education. UNICEF and a number of other aid organisations are currently making efforts to develop curricula which are accepted by all communities but as always it is debatable to what degree such curricula can be and should be integrated in a multi-ethnic society.

## **VIII.5 Capacity-assessment of internal management functions of local authorities**

### **VIII.5.1 Budgeting and political decision-making**

Given the fact that by now all 30 Kosovo municipalities have been certified “to have adequate budgetary and financial management systems in place” (UNMIK Regulation 2000/45, section 46.2) and it has also been certified that “the municipal civil service has the capacity and capability to implement effective financial procedures and controls” (UNMIK Regulation 2000/45, section 46.2) it is fair to assume that the skills of technical staff at local level are adequate. However, the auditing of the municipalities in the following year showed that this certification was a bit premature. As different levels of budget surpluses indicate, some municipalities are able to manage the budget better than others. This view was also shared at MoFE, which believed that there has been sufficient capacity-building of technical staff in relation to fiscal issues at local level. It was even suggested that Kosovo local government is doing far better in budgeting and financial management than other countries in the Balkans.

However, a lot of technical, political and leadership capacity building still has to be done with elected officials at local level. In 2004, OSCE conducted a comprehensive training programme on participatory municipal budget management for the Policy and Finance Committees of the seven municipalities included in the UNMIK Prishtina/Pristina Region. In 2005, OECD intends to roll out this training to the remaining 23 municipalities. The National Democratic Institute (NDI) recently established a training programme for the mayor, vice-mayor and assembly members. The programme started in February 2004 in three local authorities, which are Shtime/Štimlje, Gjilan/Gnjilane and Istog/Istok. All these pilots represent rather advanced local authorities, with different political and ethnic contexts. There has also been a high commitment from the political leaders, including the opposition party, to participate in this programme.

The first experiences gathered so far show that the maturity of the political input to the budgeting process varies considerably among the pilots. Whereas there has been a good political debate in the Istog/Istok assembly, helped by the fact that there has been a good description of what the budget means for each department, the budget debate in the

Shtime/Štimlje assembly was reduced to a ‘yes or no’ vote on the municipal budget proposals. The municipality of Gjilan/Gnjilane has been without an approved budget for several months as there was political gridlock caused by a proposal of the chief executive. Interview partners also suggested that the expression of political disagreement by the boycott of a meeting or decision-making process by the opposition party is still quite frequent.

Constructive political debates around the municipal budget are also hampered by the unwillingness of the municipal CEOs and Service Directors to share information with the local assembly. Yet the municipal management needs to recognise that it is the task of the assembly to set budget priorities.

### Recommendation

Given that local assemblies have no institutional memory, a lot of capacity-building still needs to be done with assembly members. In particular, their role in the budgeting process has to be strengthened. Given that OSCE is about to roll out its training programme to all Kosovo municipalities, the question arises as to what kind of added value the NDI programme will offer. Clearly, the training activities of both organisations need to be coordinated.

### VIII.5.2 Information and Communications Technology

Kosovo municipalities benefit from the fact that Internet coverage is good in Kosovo and that emails are in relatively wide use by the population. For many families it is the main way to stay in touch with ex-patriots. In order to respond to this demand, Internet cafes have opened in almost every village. The fact that even remote areas are well connected to the Internet opens up new possibilities of communication and public service delivery in ethnically divided areas that need to be explored further.

As in all OECD countries, the municipalities in Kosovo have been lagging behind these new technological developments. An assessment of ICT infrastructure and skills commissioned by the Kosovo Foundation for Open Society (KFOS) in 2001 showed that municipal departments were managing projects and services on stand-alone computers so that internal and external communication and business process management was poor. In 2002 KFOS joined up with UNDP to embark on a major ICT capacity-building project at local level (UNDP/SOROS, 2004). The Italian government provided resources to start work in 10 municipalities that had been selected by the Ministry of Public Services. The project provided training to both ICT staff in local authorities but also built up the basic ICT skills of other public officials – the percentage of non-ICT staff participating in the training programme varied. At the same time, the project supported the development of ICT infrastructure at local level: a front desk and a website in Albanian and Serbian languages were established in each pilot municipality and the back-offices were linked through an intranet.

However, the establishment of a local ICT network within the pilot municipalities did not involve a business process review that would have made internal communication and service delivery even more effective. Consequently, it appears that ICT improvements were implemented in order to speed up existing administrative and support processes, rather than to reconfigure processes in a way that would make them simpler and more effective. It is also unclear to what degree the establishment of local ICT networks has increased transparency and helped to promote fair and honest behaviour in tendering and recruitment processes. It

seems that little attention has been paid to exploiting this potential of ICT.

Since February 2003 the project has been extended to another 9 municipalities. This means that at present 19 out of 30 municipalities are (or are becoming) ICT-literate but in the other municipalities substantial capacity building is still needed in this area.

### Recommendations

In order to avoid a widening of the digital divide at local level, basic ICT training has to be provided to all municipalities and NGOs in Kosovo. Since there has been no evaluation of the UNDP/KFOS project yet, it is unclear whether the ICT skills in the municipalities that have been involved in the project are currently adequate.

It is also important to ensure that all schools have on-line access – at present, only 20 percent do. Given the fast technological developments in this area, training can only be effective if it takes place on a continuous basis. There are already a number of local NGOs and companies with ICT specialists and training expertise. But there is also a need for continued external funding of ICT training programmes, even though the municipalities should provide some match-funding themselves in order to demonstrate and increase their commitment.

Clearly, the next steps in ICT development at local level have to focus on fostering inter-municipal cooperation, increasing transparency (especially of tendering processes) and improving communication with citizens.

### VIII.5.3 Human resource management

Staff recruitment and promotions at local level are currently still strongly influenced by political considerations. This applies in particular to the top management level. The present system determines that the chief executive is selected by a recruitment panel on the basis of his/her qualification, and that the selection is politically approved by the assembly. This should ensure that the CEO has the appropriate qualification but also fits in politically. The problem is that in many cases the majority party of the assembly overthrows the ranking of candidates by the panel and makes arbitrary appointments. This unsatisfactory situation has sparked off a debate as to how the CEO should be recruited. Whereas the Ministry of Public Services is in favour of a model whereby the CEO is a civil servant and selected through an open recruitment process, elected politicians at local level would prefer the mayor to appoint the CEO. At present, it is still unclear which model will be adopted in the future.

Current recruitment practices at local level also fail to encourage positive action to ensure a more diverse public service through the recruitment of people with disabilities, women and minorities.

Another problem of municipalities is the leakage of talent to central government and business. There is also a significant loss of qualified staff after local elections. While this is the case in many countries of the world, the trouble in Kosovo is that there are insufficient experienced personnel to deal with such upheavals. The workforce at local government also suffers from an age problem. Most civil servants are middle-aged and there are few young people working in local government.

### Recommendations

Capacity building should focus on the middle management and “street-level” civil servants who are less liable to recruitment on political criteria than top-managers. There is also a need to set up fast-track schemes for young people who may have less political baggage than middle-aged staff.

Local officials will only be motivated to take part in training courses if they receive a personal benefit from it. Therefore, the participation in training courses should be taken into consideration in decisions about staff promotion. Periodical evaluation of civil servants’ performance is supposed to be undertaken by high-level civil servants (i.e. the Chief Executive Officer) but the majority of them are lacking specific training/knowledge to carry out such evaluation. There also needs to be more commitment of municipalities to investment in staff training. At present, most municipalities do not provide funds from their own budget for staff training.

There can be no doubt that all the capacity-building efforts of local government staff will not be effective and sustainable unless there are more reasonable salaries and more job security. Higher salaries are especially important for the retentions of ICT staff in municipalities.

## **VIII.6 Evolving Central-Local Relationships**

### **VIII.6.1 UNMIK**

The role that UNMIK plays at local level varies from municipality to municipality. As of 1 January 2005, the municipal UNMIK representative and most other UNMIK staff will leave Malishevë/Mališevo, Kaçanic/Kaçanic, and Shtime/Štimlje as these three local authorities have become part of a pilot scheme to test the objectives of the local government reform process. At the time when the evaluation report was drafted it was still unclear how the experiences of the pilot municipalities would be evaluated.

However, UNMIK is also downsizing staff in other municipalities where the political objectives are less clear. The downsizing process is believed by some interviewees as lacking in planning and causing a lot of stress, in particular where new UNMIK representatives will have not have an adequate support structure in the form of an experienced deputy with a lot of implicit knowledge of the local situation. The UNMIK staff shortage in some local authorities is aggravated by the fact that there are many requests from the centre that have to be answered within a short-time and interrupt the local tasks of UNMIK representatives.

### **Recommendations**

In order to avoid over- and understaffing of UNMIK representatives at local level, the downsizing process needs to be based on a proper assessment of performance levels of municipalities. Areas with weak management structures and high ethnic tensions such as North Mitrovica clearly need more UNMIK staff than municipalities with a less difficult context. The downsizing of UNMIK staff should therefore await the evaluation of the pilot municipalities and should be based on an updated *Kosovo Mosaic* and other performance information. At the same time, the moving of UNMIK staff between local authorities should be kept to a minimum. The development of political relations requires trust and time. A high staff turnover of UNMIK staff is definitely not productive to the peace-building process at local level.

We recommend strongly that at least one UNMIK representative with substantial working experience in the pilot municipalities should be part of the evaluation team with an advisory role.

#### VIII.6.2 Department for Local Administration within the Ministry of Civil Service

The Department for Local Administration within the Ministry of Civil Service is currently responsible for the supervision of public services at local level and the coordination of local issues between ministries. However, there is a general perception at local level that the department lacks the capacities to fulfil its tasks properly. It also has not been seen as an active player in the decentralisation process. In particular, its relationships with the Association of Kosovo Municipalities (AMK) have not been very productive because of political partisanship. It has also not managed to coordinate effectively between donors that are involved in municipal development.

All local public officials and politicians interviewed expressed optimism and hope that central-local relations would improve with the establishment of the new Ministry for Local Administration. Also the prospective Minister of Local Government, Mr. Lufti Haziri, enjoys a lot of confidence at local level because of his former experience as head of the AMK and mayor of Gjilan/Gnjilane.

#### Recommendations

The definition of the portfolio of the Ministry for Local Administration will strongly affect the current responsibilities and activities of the Ministry for Public Services and also of AMK, which has been partly taking over some ministerial functions such as the harmonisation of municipal regulations.

Looking at the portfolio of other Ministries for Local Administration in the Region, and having in mind the identified capacity gaps, the portfolio of the Kosovo Ministry for Local Administration should include the following tasks:

- 1) Creating and modifying the proper legal framework for municipal activities, in particular leading the legal review foreseen in the Framework Document of the Working Group on Local Government.
- 2) Preparing local authorities for EU Integration and coordinating international cooperation.
- 3) Supervising the legality of municipal activities within the current legal framework.
- 4) Informing and consulting municipalities on all legislation affecting them.
- 5) Co-ordinating with MoFE on financial issues affecting municipalities.
- 6) Formulating appropriate policies for local government within the legal framework, including municipal development.
- 7) Promoting 'good practices' and rewarding high performers.
- 8) Coordinating all donor projects that are targeted at municipalities.

Although the incorporation of the Department for Local Administration into the Ministry for Local Administration would involve the transfer of some staff with appropriate knowledge, the new Ministry will have more staff that will need to be trained.

The inconsistent application of regulations at local level shows that there is also a need to strengthen the oversight capacity of the centre.

In order for the new Ministry for Local Administration to become effective, substantial Technical Assistance will be needed.

### VIII.6.3 Ministry of Economy and Finance (MoFE)

Funding for municipalities comes mainly from budgetary transfers from the Ministry of Economy and Finance (MoFE). The staffing in the municipal budget department at MoFE is 9 plus one international consultant. At the same time, the Ministry supports municipalities in their administration of revenues from property tax. There are 11 staff members in the MoFE Property Tax Department, with one part-time international consultant. MoFE has also played an active role in providing training programmes to prepare municipalities to take on more responsibility for financial management. Training for municipal staff in fiscal matters has come from many sources: USAID, Swedish SIDA, OSCE, and UNMIK are a few examples. In addition, MoFE directly nurtures the development of municipal fiscal capacity through its own staff.

In January 2002, the intergovernmental transfer system was set up but the municipalities remained under the direct financial management of the municipal UNMIK representative. According to UNMIK Regulation 2000/45, section 46.2, responsibility for financial administration cannot be transferred to a municipality “until the independent auditor has certified that adequate budgetary and financial management systems are in place and that the municipal civil service has the capacity and capability to implement effective financial procedures and controls”. In summer 2002 training programmes in financial management started at local level. In December 2002 the certification of 24 municipalities occurred. Another 5 were certified in March of 2003 and the last remaining municipality was certified in December of 2004. Deloitte and Touche carried out the audit under contract from the MoFE.

During 2003, all municipalities were connected on-line to the central government transfer system, which the MoFE claims is a very modern system. With the increasing transfer of responsibilities to local government, the amount of central government transfers increased.

Nevertheless, municipalities do not have the degree of financial autonomy as described in the European Charter of Local Self-Government. Smaller municipalities still have to travel to a regional treasury office in order to make any payment. Many aspects of the municipal budget are determined by central government regulations (see AMK, 2004, p. 9). This applies in particular to the health and education grants.

While the increased financial resources now available to local government has meant that municipalities were more able to deal with local problems, there are still major needs, in particular as far as public infrastructure is concerned. For example, most municipalities still have 3-4 shifts in their schools. It is surprising that, in view of these obvious needs, 20 per cent of the total municipal budget was left unspent in 2004. The following explanations were given for this unsatisfactory situation:

- The frozen privatisation programme means that municipalities cannot utilise

municipal land and other property. This clearly hampers municipal investment.

- There is some criticism at both central and local levels that some central government procedures for capital investments at local level are very cumbersome and make it difficult for municipalities to spend their resources on time. For example, the Ministry of Education requires a certification before it gives municipalities permission to build a new school.
- There are complaints in municipalities that the intergovernmental grants give them too little flexibility in allocating resources. Donations from donors give them more room for manoeuvre in implementing priority projects.
- In spite of these difficulties, a few municipalities such as Shtime/Štimlje manage to spend all the central government grants allocated. This shows that a big part of the underspending problem is also due to the fact that there is a lack of municipal capacity in budget planning and expenditure management.

Along with the strong dependence on central government transfers, some local authorities do have some resources of their own. According to UNMIK regulation 2000/45, “own resources” are limited to income from licenses and fees, and from municipal assets and fines (section 39). After the implementation of a pilot programme for the imposition of taxes on immovable property (UNMIK 2001/23), a property tax has also been introduced. Municipal assemblies have to vote the rate (between 0.01 and 1 % of the market value) and the rate may vary according to the categories of property laid down in the law (UNMIK 2003/29). In spite of this addition, the level of own-source revenues remains rather low.

The reasons for this unsatisfactory situation as thought to be the following:

- A lot of land is still locked up in socially owned enterprises (SOEs), which are exempt from property taxes. So part of the problem is that the overall tax base is rather small.
- The capacity of municipalities to collect taxes is still developing. It is unclear to the assessor whether the low rate of tax collection is due to a lack of expertise or whether there is reluctance by tax collectors to collect unpaid bills and to execute fines. The MoFE commissioned an external audit of the tax performance of municipalities, but the results are not yet available at the time this report is drafted.

### Recommendation

The fact that Kosovo has a budget surplus for municipal expenditure despite major spending needs indicates that there are some fundamental shortcomings with the current system. We recommend that budget reviews should be carried out at central government level every six months. This new function will require additional staff. Furthermore, the parameters for the allocation of grants need to be reviewed. In particular, the level of development at local level should be considered more strongly to decide which amounts are to be allocated to the municipalities. There also needs to be a review of procurement regulations, which municipal staff perceive to be very complex.

#### VIII.6.4 Association of Kosovo Municipalities (AMK)

The AMK is a recent institution, established on 30 June 2001. It was very important to establish a local government association in Kosovo, as the development of municipalities has been very divergent and there has been no proper representation of local interests at central

level. Furthermore, horizontal coordination has been very weak because with the creation of districts in 1992 the former regions have been suppressed which were the channel of cooperation between municipalities. Therefore, there is no reason to question the very existence of the AMK. The AMK has observer status in the Congress of Local and Regional Authorities in Europe and is a member of the Network of Associations of Local Authorities in South-East Europe.

The interviews suggested that the AMK increased its visibility under the leadership of Mr. Lufti Haziri and is believed to be likely to gain even more profile now that Mr. Haziri is the Minister for Local Administration. At the same time, the AMK is viewed by some key decision-makers at central level as a political partisan association which somewhat weakens its status.

The role of the AMK is still unclear. As it is an assistance body to the municipalities, there is a risk that it may be overburdened with different requests by its members, a problem which all voluntary associations have to cope with. An analysis of the current statutes of the AMK shows that there are at least five different roles that the AMK is expected to play:

1. Political representation of its members (paras 2.2.5 and 2.2.8)
2. Providing an appropriate national legal framework (para 2.2.2)
3. Representing the professional interests of public servants and professionals (para 2.2.4)
4. Providing technical advice and consultancy based on best practice in Kosovo and elsewhere (paras 2.2.1 and 2.2.3 and 2.2.6 and 2.2.9)
5. Networking and marketing activities for local government (2.2.1 and 2.2.7)

It is doubtful whether one organisation can fulfil all these roles properly. Of course, the fact that executive bodies and other organisations also carry out these tasks does not mean that the AMK cannot take its own action. But it is particularly important for a young organisation to be focused on the highest priorities and gain a high profile by getting them right. It is also striking that these different roles are not reflected in the organisation chart of the AMK. In most member countries of the Council of Europe, these roles are fulfilled by different organisations. For example, in the UK the LGA focuses on the political representation of its members, while IDeA specialises on promoting best practice in UK local government.

While the AMK seeks to represent both civil servants and elected officials of local authorities (see para 2.2.6), its present board members include only mayors. Given the major need for exchange of information and coordination between assembly members and civil servants, this could be a weakness. The AMK does have a structure in which civil servants play important roles but the EAR has commented that “there is a need for greater communication between assembly members and civil servants”. The AMK should now consider whether this might better be achieved through reconfiguration of its committee system or by allowing representation of civil servants on its board. It is valuable that the AMK, in its present form, gives Kosovo mayors and vice-mayors a sounding board and a voice to represent their interests at central level – but civil servants would benefit from having a similar voice and, indeed, strengthen the message that the AMK sends to the centre.

It remains problematic for the AMK that it does not represent all Kosovo municipalities. Even though all 30 Kosovo municipalities are formally members of the AMK, the municipalities of Leposaviq/Leposavič, Zubin Potok, Shtërpce/Štrpce and Zvečan/Zvečan

(with Serbian majority) do not participate in any meetings or decision-making processes. Therefore, *de facto* only 26 municipalities are actively involved in the Association. In addition, the municipality of Novo Berdë/Novo Brdo (37% Serbian population) is participating but not voting. No representatives of the Serbian municipalities are members of the Board. AMK has stated that it would like further engagement with the Serbian municipalities but that its efforts to build relationships are being overshadowed by politics at national level in Kosovo.

### Recommendations

The current objectives of the AMK are many-fold and lack a strategic focus. The wide range of activities of the AMK may be explained by the lack of capacity of municipalities to interpret and to implement central government regulations. However, the establishment of the new Ministry for Local Administration brings a new player, which should allow the AMK to reduce its current range of activities and to focus on its core tasks. We therefore recommend the reassessment of its current portfolio of activities. IFES Ltd., one of the lead consortium partners in a project funded by the European Agency for Reconstruction to build the capacity of the Association of AMK, is well positioned to help with such a review. Some roles such as the harmonisation of regulations and other legal acts concerning local governance (para 2.2.2) should be taken on by the new Ministry for Local Administration; other technical and advisory roles may be taken on by new training institutions for local government.

The staffing level and training of AMK staff needs to be determined after this review.

The AMK needs to make efforts to extend its membership if it wants to continue to represent all aspects of local government. This also implies changes in its governance structure as suggested above.

Clearly, a redefinition of the objectives of AMK will also have repercussions on the capacity-building efforts of the consortium partners. For example, the development of a communications strategy, which is part of the LGIB portfolio, should be strongly shaped by the key tasks and membership of AMK. The present website (which is still under construction) is more based on an organisation-centred view and does not state which services AMK provides for its different groups of members.

### VIII.6.5 Kosovo Auditor General

The Office of the Kosovo Auditor General still has no capacity to conduct external audits of the financial performance of municipalities. As one interviewee said “the question will soon be asked publicly why the Kosovo Auditor General carries out no audits”. Since 2002, Deloitte and Touche carried out external financial audits of municipalities every year.

### Recommendation

Priority needs to be given to the development of an audit profession within Kosovo. University graduates in economics/financial management should be given practical experience by participating in the audits carried out by foreign consultants as trainees.

### **VIII.7 General conclusions and recommendations**

#### VIII.7.1 The key challenge: developing a culture of dialogue and consultation between the centre and the municipalities

At present, there is still a lot of confusion over responsibilities and lack of clarity on what devolution means, both at central and local government levels (see also USAID, 2003, p. 9). There is not much willingness at local level to cooperate with the centre – most municipalities want to do their ‘business’ alone and distrust the centre. At the same time, most Ministries and agencies at central level do not want to cooperate with the municipalities. While the new Ministry for Local Administration will hopefully be able to improve the coordination of local issues within central government, it cannot expect to change quickly the perceptions and organisational culture in each Ministry.

What is needed is more consultation at central level with municipalities. One good practice can be identified in the Ministry of Trade, which is currently preparing a wide consultation process with all Kosovo municipalities for the drafting of the national strategy for SME development. As the AMK Policy Statement on Finance points out (2004, p. 5), there is the perception (at local level) “that the central authorities have, so far, always prepared and adopted legislation in this field, (which also directly regulates and determines municipal budgets), without consultation and consent from the municipalities”.

In order to encourage more dialogue and exchange between central and local level, more technical assistance should be provided to central government Ministries and agencies to carry out consultations with the AMK or directly with the municipalities. There is also a need for donors and the AMK to encourage public officials and elected members to voice their concerns to central government representatives. This may or may not be through the AMK but it is important to establish visible examples where local decision-makers have been listened to and solutions have been found to deal with their concerns.

#### VIII.7.2 Training and mutual learning

Training at local level has so far focused a lot on the development of NGOs, as municipalities have been rather distrusted. However, in order to prepare for a fuller decentralisation process, a great deal more training will have to be directed at the municipalities themselves. In particular, it is important to devote efforts and resources in those municipalities that are currently lagging behind. Therefore, new training programmes should be piloted in municipalities that demonstrate a range of performance standards, and not just in high-performing municipalities where chances of success are high. Other training programmes, such as the UNDP/KFOS ICT capacity-building project, need to be extended to ALL municipalities.

There is also a need to rethink the form in which training has been delivered at local level. There is a general awareness in the donor community and in the municipalities that conventional classroom teaching with foreign consultants being flown in to teach for a few days is largely ineffective. It is important that the foreign experts and locals are able to develop relationships and that consultants/trainers understand the legal framework and context within which municipalities operate. The model of the Local Governance Initiative of USAID/Kosovo to install resident advisers for a period of two years in different host municipalities, and the KFOS/UNDP Capacity Building Facility (CBF) offering regular coaching services and advisory services to municipalities, are models that overcome these

problems. At the same time, these approaches are more resource-intensive and do not extend to all municipalities.

It has been suggested by several donors that it would now be timely to develop a sister-city twinning programme for Kosovo municipalities, which would provide regular assistance and advice to all municipalities. This approach has been very successful in EU candidate countries, which also suffered from an overkill of consultants. It is worth considering for Kosovo. Such twinning programme should be based on a contract with a work plan that clearly sets out the results to be achieved, in order to ensure clarity and commitment on both sides. The target group should not just be mayors and chief executives – who already have plenty of opportunities to participate in training and other events abroad – but should also include middle managers and assembly members. The latter would benefit greatly from shadowing their peers in sister-municipalities (even though language could be a problem).

What is most important is to support exchange and cooperation among municipalities. Each has followed different development templates and focused on different issues. At present, there is very little knowledge as to what works and what doesn't. Many authorities, even amongst those that are generally 'low performers', have interesting examples to offer in some services of what can be done better.

Action should be taken to develop a 'can-do'-mentality in local government and to give public recognition to high performers. Possible initiatives could include:

- The launch of a *quality award programme* which identifies and rewards municipalities – this would both show what CAN be done in Kosovo and would also draw attention to the gap between high performers and other authorities.
- The establishment of a *'beacon' scheme* to showcase municipalities that are doing particularly well in specific areas such as public transport, health and education. These 'beacon' services would not only receive recognition for their achievements but would be funded to undertake open days, presentations, staff exchanges, etc., which would help other local authorities to learn the lessons from the good performers and transfer these lessons to their own context.

The new Ministry of Local Government is likely to be well placed to establish such schemes. (Responsibility for promoting and administering these 'good practice' initiatives should not be with AMK, since it is currently perceived as a lobbying institution of mayor and vice-mayors and is not recognised by all municipalities in Kosovo. As recommended above, it would be more effective to separate the 'political' and 'technical' functions of the AMK.)

The issue of setting up 2-3 regional training institutes for municipalities had been raised and discussed before. On the one hand, this would reduce travel time for municipal staff, get over the reluctance of many local government staff to travel to Prishtinë/Priština to take part in training courses, and provide the opportunity of providing decentralised training using local staff from specific areas who understand the local cultures. On the other hand, this is an expensive solution for a small place like Kosovo, it will undermine the work of the KIPA, and may contribute to, rather than reduce the performance differences between municipalities. One alternative may be the development of teams of consultants and trainers that could offer short-term training programmes to municipal staff and deliver the training at

the facilities of the municipality. For example, the team could exist of a legal expert, an economic development expert, an administrative law expert and a management expert. After the training has been delivered the team members could provide further consultancy on an as-needed basis. This approach would be cheaper than the establishment of decentralised training institutes and still allow the development of ‘tailored’ training programmes. The design of the core-training agenda and selection of team members could be done by KIPA, the Ministry of Local Administration and the AMK working in partnership.

We are not able, at this point, to offer a definitive recommendation in this regard. It requires additional discussion, which perhaps should be based on a feasibility study to be funded by an international donor for the Ministry of Local Government. The study should develop recommendations to the PISG and the municipalities regarding the best institutional arrangements for providing training to municipalities.

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