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REFORM PROPOSALS TO ENERGISE NON-JUDICIAL HUMAN RIGHTS INSTITUTIONS IN KOSOVO

on the basis of the expertise of Mr Jeremy McBride built on the research undertaken by consultants Ms Gülcan Yeröz, Mr Arben Hajrullahu, Ms Natyra Avdiu and Mr BardhyHasanpapaj

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* *This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.*

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LIST OF ABBREVIATIONS

AGE	Agency for Gender Equality
AoK	Assembly of Kosovo
OGG	Office for Good Governance, Human Rights, Equal Opportunities and Non-Discrimination
CC	Constitutional Court
CCC	Communities Consultative Council
CoE	Council of Europe
CSO	Civil society Organisation(s)
DCMAC	Deputy Chairperson of the Municipal Assembly for Communities
DM	Deputy Mayor for Communities
EPAP	European Partnership Action Plan
EUO/EUSR	European Union Office in Kosovo/European Union Special Representative in Kosovo
HRU	Human Rights Unit(s)
IOBCSK	Independent Oversight Board for Civil Service of Kosovo
KAS	Kosovo Agency for Statistics
KPGE	Kosovo Programme on Gender Equality
LO	Legal Office within the Office of the Prime Minister of Kosovo
LPSC	Local Public Safety Committee
MCR	Ministry of Communities and Return
MCSC	Municipal Community Safety Council
MEI	Ministry of European Integration
MEST	Ministry of Education, Science and Technology
MFA	Ministry of Foreign Affairs
MIA	Ministry of Internal Affairs
MLSW	Ministry of Labour and Social Welfare
MLGA	Ministry of Local Government Administration
MOCR	Municipal Offices for Communities and Returns
MoH	Ministry of Health
MoJ	Ministry of Justice
MPA	Ministry of Public Administration
MKSF	Ministry for the Kosovo Security Force
MWGR	Municipal Working Group on Returns
OCA	Office for Community Affairs
OGE	Officer for Gender Equality
OGG	Office for Good Governance, Human Rights, Equal Opportunities and Non-Discrimination
OHCHR	Office of the United Nations High Commissioner on Human Rights
OIK	Ombudsperson Institution of Kosovo
OLC	Office of the Language Commissioner
OLSS	Office of Legal Support Service
OP	Office of the President
OPM	Office of the Prime Minister
OSCE	Organization for Security and Co-operation in Europe
OSP	Office of Strategic Planning
PAR	Public Administration Reform
SAPHR	Strategy and Action Plan on Human Rights of Republic of Kosovo 2009-2011
UNDP	United Nations Development Programme
UNMIK	United Nations Interim Administration Mission in Kosovo

EXECUTIVE SUMMARY

This report reviews the existing non-judicial arrangements relating to human rights with a view to clarifying and or simplifying the institutional setup and enhancing its effectiveness. Its methodology consisted of a desk review and analysis of existing legislation and structures, an advance municipal consultation and semi-structured assessments of the capacity and effectiveness of the non-judicial human rights structures. The report was prepared together with three expertises (annexed to it) on existing and draft legislation relating to the Ombudsperson Institution of Kosovo, gender equality and protection against discrimination. The existing structures are first explained and then reviewed by reference to six discrete, but related, activities involved in securing human rights, namely, policy development, implementation, promotion, redress, monitoring and reporting. For each of these activities, this review looks at the specific institutions responsible, their achievements and their shortcomings. The report concludes with its overall assessment of the problems afflicting the existing structures - essentially ones of capacity, confidence, focus and simplicity - and makes a series of recommendations for reconfiguring the structures and their responsibilities.

1. INTRODUCTION

1. Upon the request of the Legal Office within the Office of the Prime Minister of Kosovo (LO), in December 2012, the Council of Europe delivered an Opinion (the Council of Europe Opinion) on the Draft Regulation on Mechanisms for Cooperation, Coordination, Monitoring, Reporting, Protection and Promotion of Human Rights (the Draft Regulation). This opinion was prepared under the Joint Project between the European Union and the Council of Europe entitled "Enhancing Human Rights Protection in Kosovo" (the Joint Project).

2. The Council of Europe Opinion established that there had been shortcomings in terms of focus, outreach and purpose of the Draft Regulation, and recommended that a thoroughgoing analysis of the present non-judicial human rights structures should take place before any further steps are taken to develop them. This approach was accepted by the LO and endorsed by the Joint Project's Steering Committee, which gave the Joint Project a mandate to provide active support for this process within the limits of its operational and fiscal capacities.

3. Pursuant to this mandate, it was decided to review, with local and international assistance, the strengths and weaknesses of the non-judicial arrangements concerned with human rights at both central and local levels so as to be able to formulate a reform proposal that would not only clarify or simplify the institutional set-up but also lead to an enhancement of its effectiveness. Furthermore, it was considered appropriate to link this analysis to the provision of legislative expertise on Law No. 03/L – 195 on Ombudsperson, the Draft Law on Amending and Supplementing Law No. 03/L – 195 on Ombudsperson of July 2013 the Law on Ombudsperson, the Draft Law on Gender Equality and the Draft Law on Protection from Discrimination in order to ensure that the structures to be utilised for their implementation were suitably adapted to the reforms being proposed.

4. This report is the outcome of the review of the existing non-judicial arrangements relating to human rights. The following chapter explains the methodology adopted and the one after that outlines the range and responsibilities of the different non-judicial structures that are currently in place. There are then six further chapters dealing in turn with the different elements of activity undertaken by the non-judicial structures with respect to human rights, reviewing the institutions responsible, as well as their achievements and shortcomings. The six elements are respectively policy development, implementation, promotion, redress, monitoring and reporting. Although treated as discrete activities, it is recognised in the report that there is an inevitable overlap between various aspects of them. However, the aim of breaking them up was to enable the analysis of the various strengths and weaknesses of indivual non-judicial structures in relation to the six above-mentioned topics to be more clearly identified.

5. After these chapters there is a final chapter setting out the conclusions reached and making recommendations as to the reforms considered necessary in the light of those conclusions to simplify and enhance the effectiveness of the non-judicial human rights structures, in particular through the strengthening of the focus of individual actors while promoting greater integration between them in the performance of their respective roles. Annexed to the report are the legislative expertises concerning the Law on the Ombudsperson and the three Draft Laws, as well as the agendas for the assessment missions undertaken in the preparation of the report and of the expertises and for the round table at which a provisional version of this report was discussed..

2. METHODOLOGY

6. Under the overall leadership of one senior international expert[1], two teams of international and local experts were responsible respectively for formulating the institutional reform proposal[2] and for preparing the legislative expertise on the human rights related legislation[3]. The two teams worked in close collaboration with each other between June and August, sharing the information gathered (such as interview summaries, analyses, reports and other material) and reviewing and commenting on each other's suggestions wherever necessary. The team dealing with the reform proposal commenced its work three weeks earlier than that of the team preparing the legislative expertises so that the latter could take into account the preliminary findings and recommendations of the former.

7. The methodology of the overall reform proposal consisted of:
   - **Desk review and analysis** of the existing human rights related laws and sub-legal acts as regards their efficiency in regulating the existing human rights structures in Kosovo, taking into account the work already delivered through the Project;
   - **Advance municipal consultation** involving a series of short questions prepared by the experts in advance to be directed to the Human Rights Units and to senior management at municipal level (Mayor, or Deputy Mayor) regarding the functioning and challenges of the units. These questions were prepared in collaboration with and distributed by field teams of the Organization for Security and Cooperation in Europe (OSCE); and
   - **Semi-structured assessments** of the capacity and efficiency of human rights structures based on interviews and on-job assessment of their performance with all relevant structures at the central level and a representative sample of municipalities inluding the substantive input from OSCE.

8. The experts responsible for the legislative expertises took into consideration relevant findings of other international actors and those of the Council of Europe summarised in previously published reports, together with the developing findings of the reform proposal and other evaluations of the legislation under review. In addition, the experts undertook an assessment missions to Kosovo during which they met with the relevant human rights actors.

9. The preparation of this report and the expertises was coordinated by the senior international expert.

10. A provisional version of this report was discussed at a round table held on 4 October, in which public officials from central and local levels, civil society and representatives of international organisations took report. It was finalised after taking account of many helpful comments and suggestions made both orally at the round table and in writing afterwards.

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1 Jeremy McBride (Barrister, Monckton Chambers, London, Visiting Professor, Central European University, Budapest and former Chairperson of the Scientific Committee of the European Union's Agency for Fundamental Rights)).

2 Natyra Avniu (an independent consultant with the intensive experience in the field of human rights with particular focus on anti-discrimination issues), Arben Hajrullahu (an independent consultant with a PhD in Political science, and extensive experience in the field of human rigths), Bardhyl Hasanpapaj (an independent consultant with intensive experience in the field of public administartion) and Gülcan Yeröz (an independent consultant with degrees in international relations and human rights who previously worked with the OSCE Presence in Albania and Mission in Kosovo).

3 Jelena Besedic (an independent consultant with a Master's degree in human rights law and with extensive experience in post-conflict development, including on gender issues), Dejan Palic (Member of European Commission against Racism and Intolerance and former Deputy Ombudsman of Croatia (2004-2013), Jørgen Steen Sørensen (Ombudsman of Denmark and Member, European Commission for Democracy through Law (the Venice Commission)) and George Tugushi (Member, European Commission against Racism and Intolerance, European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment and the United Nations Committee against Torture and the former Public Defender (Ombudsman) of Georgia).

3. EXISTING HUMAN RIGHTS STRUCTURES[4]

11. Kosovo has a wide range of judicial and non-judicial structures at both the central and local levels, whose primary mandate is intended to be the promotion and protection of human rights and fundamental freedoms laid down by the Constitution, laws and secondary legislation. In addition to these structures, there are also other institutions and bodies in place, which ought directly or indirectly to be able to contribute to the fulfilment of the various obligations for the realisation of the prescribed human rights standards, for example, in the areas of good governance, minority rights and gender mainstreaming.

12. This report is concerned only with the non-judicial structures but it is still important also to keep in mind the judicial ones that exist as they are a key part of the context within which the non-judicial ones function. Moreover, there are instances in which the non-judicial structures can make use of the judicial ones or can provide support to those who might wish to do so and so the latter are clearly of relevance for the way in which the former structures should function. The non-judicial human rights structures and the judicial ones can thus play an important complementary role to each other in the performance of their respective functions.

13. The judicial structures are comprised of both the regular courts – whose jurisdiction lies in the fields of civil, criminal and public law and the operation of which can all impact on the enjoyment of human rights but can also be a means of securing those rights - and the Constitutional Court (CC)[5].

14. The regular court system is comprised of a Supreme Court, as the highest judicial authority, including the Appeals Panel of the Kosovo Property Agency and the Special Chamber of the Supreme Court, the Court of Appeals, seven Basic Courts and 20 Branches of Basic Courts throughout Kosovo[6].

15. The jurisdiction of the CC is twofold. Firstly, it has the authority to rule on the constitutional compatibility of a law, decree, regulation and municipal statute at the request of the Assembly of Kosovo (AoK), the President of the Republic, the Government, and the Ombudsperson Institution of Kosovo (OIK)[7]. Furthermore, the CC can rule on matters relating to elections, emergencies, referenda and treaties (at the request of the AoK, the President of the Republic and the Government)[8], on the constitutionality of laws or acts affecting municipalities (at the request of a municipality)[9], the constitutionality of a law within 8 days of its adoption (at the request of 10 or more deputies of the AoK)[10], on allegation of serious violation of the Constitution by the President (by 30 or more deputies of the AoK)[11], cases of alleged violations by public

4 This chapter draws upon information in Council of Europe Opinion; Commissioner for Human Rights, Report of the Council of Europe Commissioner for Human Rights' Special Mission to Kosovo, (CommDH(2009)23), (2009); OSCE Mission in Kosovo, Exercise Your Rights! A Catalogue of Remedies and Assistance for Community Members, (date not specified); Office for Community Affairs, Annual Bulletin – Projects and activities in 2012, (date not specified); and the relevant legislation cited in the following paragraphs.

61 persons.

Law No. 03/L-199 on Courts, (2010) and its amendment, Law No. 04/L-171, (2012). As of 4 January 2013, the judicial system in Kosovo has been restructured. See the new Regulation on Internal Organization of the Courts, http://www.kgjk-ks.org/repository/docs/REGULATION_ON_INTERNAL_ORGANISATION_OF_THE_COURTS_and_Decion_40_270759.pdf *and also the KJC's report 'Statistics on Regular Courts – 1st Quarter of 2013', p. 2,* http://www.kgjk-ks.org/repository/docs/RAPORTI-I-PERGJITHSHEM-TREM-I-2013_ANGLISHT_769601.pdf *(both accessed November 2, 2013). There are 345 judges and 1437 support staff KJC's report 'Statistics on Regular Courts – 1st Quarter of 2013', p. 3,* http://www.kgjk-ks.org/repository/docs/RAPORTI-I-PERGJITHSHEM-TREM-I-2013_ANGLISHT_769601.pdf *(accessed November 2, 2013))., plus 561 state prosecutors, 24 staff in the Kosovo Judicial Institute*

7 Article 113.2 of the Constitution.

8 Article 113.3 of the Constitution.

9 Article 113.4 of the Constitution.

10 Article 113.5 of the Constitution.

11 Article 113.6 of the Constitution.

authorities of constitutionally guaranteed rights and freedoms referred to it by individuals after their exhaustion of all legal remedies provided by law[12] and a dispute in judicial proceedings as to the constitutional compatibility of a law (by the relevant court)[13].

16. The array of non-judicial structures concerned with human rights is much more extensive than the judicial ones. The roles that these structures perform ranges over policy development, implementation, promotion, monitoring, redress and reporting. Generally each structure will play more than one of these roles.

17. It is only possible to make an approximate calculation of the number of staff working for the different non-judicial human rights institutions but even this may not necessarily reflect the entirety of all those who are actually doing the job.In particular, one should keep in mind that the numbers provided during the fieldwork/appeared in the reports do not mean that all these people are primarily engaged with the assigned duties (as observed in the example of HRUs). Unless stated, the numbers given in the footnotes for those working for the specific bodies mentioned below are taken from the 2013 Consolidated Budget of Kosovo[14].

18. Of all the different structures, the OIK, the Office for Good Governance, Human Rights, Equal Opportunities and Non-Discrimination (OGG) and the Agency for Gender Equality (AGE) can be regarded as having potentially the most significant mandates. However, of these three institutions, only the OIK is an independent one as the other two are entities within the Office of the Prime Minister (OPM).

19. The OIK is mandated by the Constitution and the law with monitoring, defending and protecting the rights and freedoms of individuals from unlawful or improper acts of, or failures to act by, public authorities. It conducts investigations, issues public reports or raises concerns via the media, provides legal services and engages with public advocacy[15]. The institution deals with individual complaints that are submitted directly to its offices, and can also act independently to open an investigation without receiving any complaint (i.e., *ex officio*). If, during its investigations, it identifies a human rights violation, the OIK is able to seek remedies through a variety of channels, such as recommending actions to the authorities, and mediating disputes between the complainant and the authorities. In extreme cases, it is empowered to issue a request for an interim measure to ensure the protection of the complainant. In order to ensure access by everybody, including non-majority communities, the lawyers of OIK regularly visit municipalities, prisons and detention facilities[16]. In addition, as noted above, it can seek a ruling from the Constitutional Court on the constitutional compatibility of a law, decree, regulation and municipal statute.

20. The OGG is, as already noted, established within the OPM[17] and has a reviewing and advisory role with respect to the work of the government on the four mentioned areas in its title[18]. It also has a capacity building and advocacy role which allows the OGG to establish additional mechanisms, organize public awareness campaigns and co-operate with civil society. In addition, the OGG is supposed to serves as a Secretariat and a Coordination Unit for various Government bodies and mechanisms and also to serve as a Secretariat to an extensive number of national

12 Article 113.7 of the Constitution.
13 Article 113.8 of the Constitution. In addition, the President of the AoK is required to refer proposed constitutional amendments before approval by the AoK to confirm that the proposed amendment does not diminish the rights and freedoms guaranteed by Chapter II of the Constitution; Article 113(9). The CC can also be seized by the Deputy Chairperson of the Municipal Assembly for Communities; see para. 32. The jurisdiction of the CC is further regulated by Law No. 03/L-121 on Constitutional Court, (2008).
14 http://www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20Budget%20of%20Kosovo%202013.pdf
15 55 staff.
16 Articles 132-135 of the Constitution; Law No. 03/L-195 on Ombudsperson, (2010).
17 633 staff.
18 It comprises a Director and 7 support staff.

committees and councils in the area of human rights and good governance[19], although not all meet frequently. The OGG's role also includes responsibility for guiding the work of Human Rights Units (HRUs) at both the central and municipal level[20].

21. The AGE, another body under the auspices of OPM, is in charge of monitoring the implementation of the Law on Gender Equality, developing and proposing policies to central-level institutions, and conducting awareness-raising campaigns to ensure gender equality and representation[21]. The Chief Executive of AGE also chairs the Inter-Ministerial Council for Gender Equality, which is composed of the Officers for Gender Equality (OGEs) from all ministries. This Council is mandated to monitor the implementation of the Kosovo Programme for Gender Equality (KPGE) and it is also supposed to provide recommendations on draft legislation affecting gender equality[22].

22. In addition to these three bodies, there are many other structures working in the field of human rights.

23. The HRUs were established within most of the ministries[23] and municipalities[24] with the responsibility for drafting and implementing policies and activities whilst monitoring the proper implementation of laws to ensure the promotion and protection of human rights. Some of these units also serve as focal points for submitting complaints by residents and officials, and also conduct public awareness-raising activities on human rights.

24. However, in line with the ongoing Public Administration Reform (PAR), the Government has recently issued a regulation to standardise the internal scheme of ministries in a way to allow only the Office of the Minister, the Office of the General Secretary, departments and divisions

19 The Council for the Protection and Justice for Children, the Inter-Ministerial Council on Children's Rights, the Inter-Ministerial Group against Corruption, the National Council for Persons with Disabilities, the National Council for the Cooperation between the Government and Civil Society, the Steering Group on the Monitoring of Implementation of Action Plan for Persons with Disabilities, the Working Group on Making the Sign Language official in Kosovo, the Working Group on Monitoring and Assessment of Strategy and Action Plan for the Right of Children and the Working Group for Monitoring the implementation of Children's Rights Convention.

20 The OGG was established by the UNMIK Regulation No. 19/2001 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo, (2001), and its amendment, UNMIK Regulation No. 15/2005, (2005). Until recently, it was entitled as the 'Advisory Office of Good Governance, Human Rights, Equal Opportunities and Gender Matters', and mandated with assisting policy development in the area of gender equality as well. This field is now under the responsibility of the Agency for Gender Equality. See the Regulation No. 16/23 on the Organizational Structure of the Office of the Prime Minister, for new duties and responsibilities of the OGG, (2013).

21 18 staff.

22 The AGE was established in February 2005 as the 'Office for Gender Equality' in compliance with the Law No. 2004/2 on Gender Equality in Kosovo, (2004). The Office was transformed into an agency as of 1 September 2006. See the Regulation No. 16/23 on the Organizational Structure of the Office of the Prime Minister, (2013), for current duties and responsibilities of the AGE.

23 Established by the Prime Minister's Instruction No. 04/2007 (2007, reinforcing earlier 2005 decisions). See the Administrative Instruction of Prime Minister No. 8/2005 on Terms of Reference for Human Rights Units, (2005), Section 7 for their duties and responsibilities. There are - based on interviews during the First Assessment Mission - 51 staff in these, distributed as follows: Ministry of Finance – HR Office: 4; Ministry of Public Administration: 5 (not budgeted separately); Ministry of Agriculture, Forestry and Rural Development – HR Office: 3; Ministry of Trade and Industry: not budgeted separately and not available as the HRU members were on leave); Ministry of Infrastructure: 2 (not budgeted separately) Ministry of Health: 4 (not budgeted separately); Ministry of Culture, Youth and Sport: 4 (not budgeted separately); Ministry of Education, Science and Technology: 3 (not budgeted separately); Ministry of Labour and Social Welfare: 3 (not budgeted separately and the Co-ordinator post is currently vacant); Ministry of Environment and Spatial Planning – HR Unit: 3 ; Ministry of Communities and Returns: 4 (not budgeted separately); Ministry of Local Government Administration: 5 (not budgeted separately / Division for Advancement of Human Rights in Municipalities); Ministry of Economic Development: 4 (not budgeted separately) Ministry of Internal Affairs:3 (not budgeted separately); Ministry of Justice: not budgeted separately and not available as the HRU members were on a workshop abroad); Ministry of Foreign Affairs: not budgeted separately / non-existing; Ministry of the Kosovo Security Force: 2 (not budgeted separately); Ministry of European Integration: none following the restructuring (not budgeted separately); and Ministry of Diaspora:2 (not budgeted separately).

24 Established by the Ministry of Local Government Administration (MLGA) through the Administrative Instruction No. 02/2008 on Human Rights Units, (2008), and its amendments 01/2011 and 04/2011, (2011). There are 85 staff in these units (30 full-time and 55 part-time (OSCE field teams' feedback to the Questionnaire on the Municipal Human Rights Units).

to remain[25]. As a result the former 'unit' structures are set to disappear from the organogram of ministries. The same regulation also obliges each state administration to draft and submit their internal regulations on internal organization and systematization of jobs to the government for approval within four months of issuance[26]. To date, the government has approved only five regulations that have been submitted by the respective ministries[27]. It is highly likely that staff in ministerial HRUs will either be merged into the human resources/personnel departments or remain under the Office of the General Secretary as one person (just the Coordinator), depending on the particular needs of each ministry[28], leaving uncertain their future role.

25. The Ministry of Communities and Returns (MCR) is the primary central institution tasked with policy development, implementation, monitoring, and promotion of the rights of communities and their members, including their right to return[29].

26. The Office for Community Affairs (OCA) within the OPM carries out a coordinating, advisory and promotion role on all matters concerning communities[30].

27. Another body, the Consultative Council for Communities (CCC) serves as a consultative mechanism within the Office of the President (OP) and is comprised of community and government representatives whose aim is to further community members' access to, and participation in, political, economic and social life[31]. The CCC provides a forum for communities to comment at an early stage on legislative or policy initiatives that might affect them, and to ensure that their views are incorporated in the relevant projects and programmes[32].

28. A relatively new mechanism, the Office of the Language Commissioner (OLC) is established only for preserving, promoting, and protecting the official languages and languages in official use, as well as their equal status, as stipulated by the Law on the Use of Languages[33]. The OLC was established in April 2012, replacing the former Language Commission that had been established in 2007 but which had been very inactive, mostly due to lack of permanent staff and budget to conduct its activities and did not receive a single complaint. The Law on the Use of Languages envisages a fully staffed and financially supported OLC, as well as two mechanisms which would support the Language Commissioner's work; the Language Policy Board and the Language Policy Network. It is still too early to make a proper assessment of OLC's work and so the actual operation of this mechanism is not analysed in this report.

29. The Committee on Human Rights, Gender Equality, Missing Persons and Petitions is one of the nine functional committees of the AoK, mandated by the latter's Rules of Procedure[34]. In addition to having a role in the formulation of draft laws and monitoring their implementation, the Committee can highlight human rights issues and trends at the AoK, and is able to forward individual complaints/ petitions that are addressed to the AoK to the relevant body, if considered appropriate[35].

25 Regulation No. 09/2012 on Standards of Internal Organization and Systematization of Jobs in State Administration, 25 April 2012.
26 Respectively to the Ministry of Public Administration (MPA) for verification of legality and compliance with development and policies of public administration, to the Ministry of Finance (MoF) for verification of financial impact assessment, and to the Government for approval and publish in the Official Gazette and the website of the relevant ministry (see Articles 23 and 25 of the Regulation 09/2012).
27 Information provided by the Director of LO.
28 Interview with the MPA representatives, First Assessment Mission.
29 UNMIK Regulation No. 2005/15, (2005), Annex XII; Law No. 03/L-047 on the Protection and Promotion of the Rights of Communities and their Members in Kosovo, (2008), and its amendment, Law No. 04/L-020, (2011).
30 Established by the Prime Minister's Decision on 03/49, (2009). For an updated list of responsibilities, see the Regulation No. 16/23 on the Organizational Structure of the Office of the Prime Minister, (2013). It has 7 staff.
31 It has 26 members and 7 staff.
32 Article 60.3(2) of the Constitution; Law No. 03/L-047 on the Protection and Promotion of the Rights of Communities and their Members in Kosovo, (2008), and its amendment, Law No. 04/L-020, (2011).
33 Law No. 02/L-37 on the Use of Languages, (2006); Regulation No. 07/2012 on the Office of the Language Commissioner, (2012). It has 8 staff.
*34 9 staff (*http://www.kuvendikosoves.org/?cid=2,110,109*).*
35 Rules of Procedure of the Assembly of the Republic of Kosovo, (2010), Annex No. 2, Article 12.

30. The Committee on the Rights and Interests of Communities and Returns, one of the four permanent committees of the AoK, reviews any proposed laws and makes recommendations on them within two weeks after their submission[36]. The Committee may also submit recommendations to another relevant committee or to the AoK, propose its own initiative laws and such other measures within the responsibilities of the AoK, and issue individual opinions/reports to address the concerns of communities[37].

31. There is one other non-judicial mechanism at the central level which has an indirect impact on the state administration bodies dealing with human rights. This is the Independent Oversight Board for Civil Service of Kosovo (IOBCSK), which is responsible for supervising the functioning of public administration to ensure its accountability and legality[38].

32. In municipalities where non-majority communities make up at least ten per cent of the population, additional community protection mechanisms were also put in place, such as the Deputy Mayor for Communities (DM**C**) and the Deputy Chairperson of the Municipal Assembly for Communities (DCMAC). In addition to its advisory and reviewing role, the DCMAC acts as a focal point for complaints against acts or decisions by the municipal assembly which constitute an alleged violation of community rights under the constitutional guarantee. If the deputy chairperson is of the opinion that the matter warrants further investigation, it is his/her responsibility to refer that matter on to the municipal assembly for its consideration. In case of dissatisfaction with the assembly's response, he/she may submit a complaint directly to the CC for review[39].

33. Moreover, the Communities Committee[40] (one of the two permanent committees of each municipal assembly), the Municipal Offices for Communities and Return (MOCRs)[41], the Municipal Working Group on Returns (MWGR)[42]**,** the Municipal Community Safety Council (MCSC)[43]**,** the Local Public Safety Committee (LPSC)[44] and other municipal committees (i.e., *ad hoc* committees established by the municipal assembly on education, health, children's rights, etc; Consultative Committees[45]) provide a platform to the members of communities and civil society to review and advice on draft municipal acts, decisions and legislation, thus having the potential to strengthen public participation in the decision-making process.

34. In addition, there are some structures specifically focusing on the rights of children, namely, the the Inter Ministerial Committee on Children's Rights and the Child Protection and Justice for Children Council[46]. Their work has not, however, been reviewed for the purpose of this report and, as noteed in Chapter 10, further consideration needs to be given to the place of specialist childrens' rights bodies, procedures and teams within the reform being proposed for the non-judicial human rights structures.

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*36 12 staff (*http://www.kuvendikosoves.org/?cid=2,110,97*).*

37 Article 78 of the Constitution; Rules of Procedure of the Assembly of the Republic of Kosovo, (2010), Annex No. 2, Article 2.

38 UNMIK Regulation No. 2001/36, (2001), Chapter III; Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, (2010).

39 Articles 62.1-62.4 of the Constitution; Law No. 03/L-040 on Local Self-Government, (2008), Articles 54 and 55.

40 Law No. 03/L-040 on Local Self-Government, (2008), Article 53.

41 OPM, Regulation No. 02/2010 for the Municipal Offices for Communities and Return, (2010).

42 As provided in the 2006 Revised Manual for Sustainable Return (p. 13), the MWGR is composed of government officials, representative of communities, displaced persons, civil society and international organizations, and acts as the local co-ordination and implementation forum for all returns-related issues, projects and activities.

43 Law No. 04/L-076 on Police, (2012), Article 7(4); Administrative Instruction No. 08/2009 MIA - 02/2009 MLGA for Municipal Community Safety Councils, (2009); Administrative Instruction No. 27/2012 MIA - 03/2012 MLGA for Municipal Community Safety Councils, (2012).

44 General Conditions for Establishment and Functioning of Local Public Safety Committees, Article 2.

45 Law No. 03/L-040 on Local Self-Government, (2008), Article 73.

46 The Committee was established to communicate and coordinate policies, programmes and processes on children's rights among Kosovo institutions and to facilitate the realization of children's rights as well as to protect and advance children's rights in Kosovo. It was established on December 2008 but, although supposed to meet twice per year according to the Strategy and Action Plan on Children's Rights, it is understood that it has only met two times since its establishment. The Council was established in 2011 with a mandate in respect of protection and justice, to define priorities and necessary measures to improve the situation of children, to facilitate and monitor the implementation of policies, programmes and other measures and to analyse and evaluate the implementation of developing policies and legislation. The OGG serves as the Secretariat of the Council.

4. POLICY DEVELOPMENT

4.1 Relevant Institutions

35. In Kosovo, public administration is responsible for proposing, developing and drafting all internal and external policies across the whole range of governmental activity. This responsibility is discharged through various central and local institutions.[47]

36. In the particular areas of good governance, human rights, equal opportunities, and anti-discrimination, the main body at the central level supposed to be in charge of drawing up policies is the OGG, which is expected to do this in co-ordination and consultation with various government bodies, relevant mechanisms and civil society. Additionally, the ministerial HRUs have some responsibility for drafting policies and instructions relating to human rights in areas within the competence of their respective ministries, although their role is more in the nature of reacting to proposals emanating from their ministries than initiating them. The AGE has the specific responsibility of drafting gender equality promotion policies and coordinating the preparation of the KPGE by a working group of representatives of ministries, municipalities, public institutions, civil society and other experts.

37. In addition, the OIK and the AoK's two committees on human and community rights, will potentially be in a position to exercise some influence over policy development through the presentation of their annual or *ad hoc* reports as these can identify problems that need to be addressed.

38. Furthermore, although not directly involved with policy development, two offices within the OPM, namely, the Office of Strategic Planning (OSP) and the Legal Office (LO), also play an advisory and coordinating role in identifying and prioritising areas which require the government's attention for the development of necessary policies, and support institutions in the legislative drafting process[48].

39. In the particular field of community rights, there are a number of specific institutions charged with policy development at the central and local levels.

40. Thus, the MCR is mandated with developing policies for the promotion and protection of the rights of communities and their members, including drafting the government outreach strategy relating to communities and returns. The OCA within OPM also contributes to this process through providing advice and recommendations on draft policy documents and legislation. Likewise, the CCC within the OP provides a forum for communities to comment at an early stage on legislative or policy initiatives that might affect them, and to have their views incorporated in the relevant projects and programmes.

41. At the local level, the MOCRs are tasked with developing municipal return strategies or action plans in co-operation with MWGR to implement laws and government policies, in order to provide municipal institutions with a framework to guide their activities in this area. In addition, the MCSC and LPSC have the mandate to identify local concerns of communities regarding public safety and propose action plans aimed at addressing those concerns.
42. Overall policy development relating to human rights at the municipal level is in the hands of the municipal executive. Municipal HRUs do not necessarily have any specific responsibility in this regard but their existence could provide them with the opportunity to influence decision makers.

47 Law 03/L-189 on the State Administration of Kosovo, (2010).
48 For more information on the duties of these two offices, see the Regulation No. 16/23 on the Organizational Structure of the Office of the Prime Minister, (2013).

4.2 Achievements

43. To date, the majority of key policy documents on human rights and gender equality have been drafted under the coordination of OGG and AGE, through a participatory and consultative process with all relevant stakeholders. The OGG can also be seen to benefit from support provided by the LO, particularly in the drafting process of strategies and action plans on human rights[49].

44. Examples of key policy documents that have been produced using the process and support just indicated include the KPGE Equality (2008-2013); the Strategy and Action Plan on Human Rights in Kosovo (2009-2011); the National Disability Action Plan for the Republic of Kosovo (2009-2011); the Strategy and National Action Plan on Children's Rights in the Republic of Kosovo (2009-2013); the Kosovo Programme against Domestic Violence and Action Plan (2011-2014); the Strategy and Action Plan on Prevention and Elimination of Child Labour in Kosovo (2011-2016); the Strategy on Integration of Kosovo Roma, Ashkali and Egyptian Communities (2009-2015) and the Action Plan for its implementation. Most recently, the Kosovo* government adopted a new Anti-Corruption Strategy and Action Plan (2013-2017), a new Youth Strategy and Action Plan (2013-2017), the Strategy and Action Plan on Co-operation with Civil Society (2013-2017), the Strategy for the Rights of People with Disabilities (2013-2023) and its Action Plan (2013-2015)[50].

45. However, in August 2013, the OGG prepared the initial draft of the Strategy and Action Plan for Human Rights (2013-2017) without first following the participatory and consultative process seen previously. This document can be found on the website of the OPM[51] and is currently open for public consultation.

46. According to their terms of reference, the HRUs in ministries are tasked to develop policies on human rights. However, they have so far only contributed to this process through their participation in the inter-ministerial working groups on various issues and strategies[52] and through providing comments and recommendations on draft documents when, or if, provided to them. In preparing the latter, most HRUs appear to rely on the support of the legal departments in ministries, mainly on account of their own lack of legal expertise.

47. Nonetheless, there are a few good examples of the contributions made by HRUs. Thus, upon the request of the Human Rights Division of the Ministry of Local Government Administration (MLGA), an additional paragraph to the Article 17 of the Law on Local Self-Government was included in order to further highlight local government's responsibility to promote and protect human rights as an additional guarantee to the Constitution. Likewise, a recommendation by the HRU of the Ministry of Finance (MoF) to include the right to appeal for property tax disputes was accepted when the relevant administrative instruction was being drafted. Moreover, the HRUs of the Ministry of Public Administration (MPA) and the Ministry of Labour and Social Welfare (MLSW) gathered nation-wide figures on civil servants and others in the labour force disaggregated, for example, on gender, from their own personnel office and shared this information with the OGG, the AGE and other relevant institutions. Such baseline data is crucial for the purpose of making a proper analysis of the situation and thereby identifying problems of equal access to employment in civil service and the labour market generally and then developing the remedial policies that might be required. Similar collecting and sharing of data with regards

49 Meeting with the Directors of OGG and LO, First Assessment Mission.
50 European Commission, Commission Staff Working Document Kosovo 2013 Progress Report accompanying the document Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2013-2014 {COM(2013) 700 final}, 16 October 2013 (SWD (2013) 416). Available at* http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/ks_rapport_2013.pdf *(accessed November 9, 2013).*
51 http://www.kryeministri-ks.net/repository/docs/Pjesa_Narrative_e_Draft-Strategjise_per_te_Drejtat_e_Njeriut_%282013-2017%29_05_gusht_2013_EN.pdf *(in English) (accessed November 8, 2013).*
52 For example, national strategies and action plans on domestic violence, anti-trafficking, integration of Kosovo Roma, Ashkali and Egyptian communities.

to school registration and attendance was undertaken by the HRU of the Ministry of Education, Science and Technology (MEST)' together with the Kosovo Agency for Statistics (KAS)[53].

48. Policy making in the area of human rights relating to communities and returns has also had some positive outcomes. For example, the MCR as the responsible line ministry took the lead in the coordination of the drafting process and in adopting the relevant strategies and action plans.[54] Another positive initiative can be seen in OCA's contribution to the reform process in respect of the Language Commission in 2011 and 2012 through its active participation in the central-level working group meetings and by playing a coordinator role amongst relevant institutions in order to ensure that their representatives were appointed to the Language Policy Network[55]. The CCC also provided an opportunity to the Kosovo Croat community to influence the policy approach in promotion of the identity of non-majority communities. As a result of their successful advocacy, the Kosovo Croat community is now recognised as one of the non-majority communities in the Law on Promotion and Protection of Communities' Rights and the Rights of their Members in Kosovo.[56]

49. Municipal HRU Coordinators noted some successful examples of their engagement with policy development to an extent when the Coordinator, at her/his own initiative or with the support of senior municipal management and civil society, decided to play an active role. This was particularly observed in the field of gender equality in municipalities where the municipal OGE is also the HRU Coordinator. For example, the Prizren HRU took over the coordinating, and at times the leading, role in drafting the municipal action plan on gender equality 2012-2014 (initially planned as strategy) which was adopted by the municipal assembly. A similar contribution on drafting the local action plan for Roma, Ashkali and Egyptian communities was also made by for the Fushë Kosovë/Kosovo Polje HRU. Likewise, the MOGE in Dragash/Dragaš, who is a member of the HRU, initiated the endorsement of municipal gender strategy in 2012 by the municipal assembly[57].The Prizren HRU Coordinator stated that the data on school drop-outs were used as the baseline for these strategies and that this data had been gathered through questionnaires and in close co-operation with civil society organizations. Another example cited regarding policy development concerned a draft municipal Regulation on Fines, Taxes and Subsidiaries, in respect of which the HRU Coordinator, who is also a member of the commission on municipal taxes, had proposed exemptions for women business owners from certain fines. However, this suggestion was ultimately rejected as the municipality feared that the businesses would change their ownership to women, on paper at least, in order to benefit from this exemption and the collection of municipal revenues through fines would be harmed.

50. HRU Coordinators can also be seen to contribute to the policy development process through regular attendance at meetings of municipal senior management and various inter-municipal working groups where the Coordinators provide advice on the end result of this process, i.e., policy ideas, draft municipal acts, decisions and legislation. However, their engagement with the policy making process relies heavily on the particular perception/attitude of individual municipal staff towards them, i.e., this determines whether they receive invitations to attend the regular meetings of the municipal executive bodies at which the strategy and actions in specific areas are discussed). For example, the HRU member in Dragash/Dragaš informed that the municipal legal officer and/or relevant municipal officials draft municipal documents of all kinds without consulting the HRU as the organ[58]. The same issue was raised by the HRU Coordinator in

53 The information is provided by the HRU coordinators and/or members during the First Assessment Mission.
54 For example, MCR's Strategy for Communities and Return 2009–2013, (2010).
55 OCA's Annual Bulletin, (date not specified), pp. 5-7.
56 See the Law No. 04/L-020 amending the Law No. 03/L-047 on the Protection and Promotion of the Rights of Communities and their Members in Kosovo, (2011), Article 1.4.
57 OSCE field teams' feedback to the Questionnaire on the Municipal Human Rights Units, Regional overview Prizren, (June 2013).
58 OSCE field teams' feedback to the Questionnaire on the Municipal Human Rights Units, Regional overview Prizren, (June 2013).

Kaçanik/Kačanik[59]. In Prishtinë/Priština region, only in Shtime/Stimlje municipality the HRU contributes in the drafting process of municipal acts and policies as the municipal legal officer if also the HRU Coordinator[60]. Likewise, in Pejë/Peć region Istog/Istok is the single municipality where the HRU contributes to the preparation of municipal acts. Recently, they have supported the municipal legal officer in drafting the regulation on the work of municipal assembly and the regulation on the discipline and code of conduct in schools[61]. In Gjilan/Gnjilane region, a similar picture was provided as the HRUs' attempts to contribute to municipal legislation are usually disregarded with the exceptions of drafting municipal documents relating to gender equality[62]. A positive example was nonetheless noted again by the Prizren HRU Coordinator, who indicated that she enjoyed much involvement in municipal work and felt well respected by the municipal directors and the mayor. She exemplified this by reference to her regular invitations to the mayor's meetings with municipal directors and her recommendations being taken into consideration by the senior management[63]. Similarly, in Gjakovë/Đakovica, Mitrovicë/Mitrovica and Suharekë/Suva Reka, the HRU Coordinators endevour attending sessions of the municipal assembly and its two mandatory committees to observe and react when any municipal decision is against human rights principles. They also provide comments on the draft municipal acts and decisions on the spot during these meetings. [64]

4.3. Shortcomings

51. There are a mixture of general and institution-specific factors that have resulted in shortcomings in policy development in the field of human rights.

52. The first factor is undoubtedly poor legal education and insufficient knowledge of human rights standards amongst many policy makers. Despite the high number of training opportunities provided predominantly by international organizations, not all central and local government officials in charge of policy development can be regarded as being equipped with a sound understanding of the notion of human rights and its practical application in their day-to-day work. Moreover, issues relating to human rights are often perceived as being the responsibility of certain bodies, e.g., the HRUs, instead of being mainstreamed into the overall work of institutions. The failure to match the qualifications of newly recruited personnel with particular job requirements, as well as a high turnover of staff, also contribute to this problem[65].

53. Secondly, human rights-specific policies are developed with little or no consideration of their contribution to the more general policy frameworks, such as the. European Partnership Action Plan, Government Annual Work Plan and sector strategies. The linkage between human rights-specific policies and the fulfilment of obligations towards international bodies also appears to be very weak. For example, the special status of Kosovo means that reporting to UN treaty bodies

59 OSCE field teams' feedback to the Questionnaire on the Municipal Human Rights Units, Regional overview Gjilan/Gnjilane, (June 2013).

60 OSCE field teams' feedback to the Questionnaire on the Municipal Human Rights Units, Regional overview Prishtinë/Priština, (June 2013).

61 OSCE field teams' feedback to the Questionnaire on the Municipal Human Rights Units, Regional overview Pejë/Peć, (June 2013).

62 Reported by the HRUs in Kaçanik/Kačanik, Novo Brdo/Novobërdë, Ranilug/Ranillug and Hani i Elezit/Elez Han. OSCE field teams' feedback to the Questionnaire on the Municipal Human Rights Units, Regional overview Gjilan/Gnjilane, (June 2013).

63 Meeting with the Prizren HRU Coordinator, First Assessment Mission. Such advocacy does not always result in success. For example, the Mitrovicë/Mitrovica HRU coordinator stated during the First Assessment Mission that not all recommendations were necessarily taken into account by the senior municipal management. In Prizren, however a modest positive example was observed when recommendations of the HRU Coordinator led to municipal officials considering gender balance when appointing members to municipal committees.

64 OSCE field teams' feedback to the Questionnaire on the Municipal Human Rights Units, Regional overview Prizren, Mitrovicë/Mitrovica and Pejë/Peć, (June 2013).

65 Interview with the Ministry of Local Government Administration (MLGA)'s Division for Advancement of Human Rights in Municipalities, First Assessment Mission. Also mentioned in M A Jones and I Roagna, Assessment Report (Annex V to Enhancing Human Rights Protection in Kosovo, European Union/Council of Europe Joint Project Inception Report), (2012), concerning the OIK and HRU's staff.

has generally been done through the United Nations Interim Administration Mission in Kosovo (UNMIK) rather than by any of the central level human rights structures[66] and, although this should not be relevant to the quality of the report, this does seem to have had some negative impact on the development of the skills and experience of the staff of these structures[67].

54. Thirdly, policy development is not based on a proper needs assessment or situation analysis. Moreover, the institutions do not systematically collect internal data or use statistics as a policy tool even when available.[68] For example, KAS produces and issues relevant data, including gender, education, health and labour, on its website, as well as in forms of public reports. However, with the exception of the MEST, there is no formal cooperation between KAS and other government institutions in data collection and use[69]. Some statistics are available internally, stored within the personnel departments of institutions, and there have been occasions on which HRUs or OGEs in ministries and municipalities have disaggregated them by reference to gender and community and shared the results with the OGG, the AGE and other institutions upon their request. However, even when such requests are forthcoming, some overlapping and lack of coordination between institutions such as the OGG, the AGE and the MLGA is still evident[70]. Moreover, no real account is taken of the findings of the monitoring process - whatever its deficiencies - in the policy planning process.

55. Fourthly, policy documents such as strategies and action plans are at times vague and do not provide realistic targets to achieve their goals within the given time-frame and the available human and financial resources. For example, the SAPHR is a particularly significant instrument for the setting of the overall policy approach to human rights and should be closely linked to the obligations both to implement international and regional human rights instruments and to fulfil the European Union (EU) *acquis* and accession criteria for human rights and equal opportunities. However, it lacks proper situation analysis, clear objectives, measurable indicators, statistical benchmarks, expected targets and the financial means for its implementation. Likewise, the KPGE – which ought to be equally significant in respect of gender mainstreaming - suffers from unclear definition of measures which severely impacts the proper identification of implementing institutions and estimating costs. Both documents do not address the issue of methodological capacity of respective institutions (i.e., the line ministries) to effectively evaluate the human rights and gender perspectives in the process of designing their policies.[71]

56. Fifthly, while the transparent and inclusive approach of the AGE and the OGG is commendable, certain shortcomings related to their capacity (i.e., limited human resources[72], lack of expertise required for preparing high quality documents[73] and an increasingly widening mandate[74]) have resulted in their greater dependence on external assistance over the long term. As a consequence, they have either remained only as a coordinator among various stakeholders - and thus done very little substantial work themselves in developing policies - or at times have even failed to carry out the policy development functions in all areas of their mandates. For example, as OGG acknowledged, the "extraordinary support and valuable contributions from international

66 But see para. 164.

67 For a complete discussion of this point, see the FRIDOM, Functional Review of Human Rights and Gender Equality System, (2010), pp. 14-16. The issue of reporting to international bodies is also raised during interview with the United Nations Office of the High Commissioner on Human Rights (OHCHR) Stand-Alone Office in Kosovo representative, First Assessment Mission.

68 OGG report (2012), pp. 23-25.

69 Interview with the Director of KAS, First Assessment Mission.

70 Interviews with the HRU coordinators and staff, First Assessment Mission.

71 For a detailed assessment, see the FRIDOM report, (2010), pp. 9-10.

72At the time of reporting, OGG has only 8 staff (Director and 7 senior officers), and AGE 17 staff (based on the organogram at AGE's website).

73 For example, a UNICEF-funded consultant was integrated into the structure to provide assistance in establishing a new monitoring framework that changes the methodology and method of collecting data on the implementation of the National Strategy and Action Plan for Children's Rights (2009-2013). For more information, see the OGG's Report on implementation of the Strategy and Action Plan for Human Rights in the Republic of Kosovo (2009-2011), Period January-December 2011, (2012), p. 18.

and civil society organizations" (CSO) were instrumental in preparing the Strategy and Action Plan on Human Rights in Kosovo (SAPHR) 2009-2011.[75] The reliance on such contributions continues to have an inhibiting effect on any efforts being made to strengthen the OGG's institutional capacity. At the time of writing, almost two years had elapsed since the SAPHR 2009-2011 expired and the OGG was relying on external assistance to be secured in order to finalise its replacement. Likewise, with the financial support of the United Nations Development Programme (UNDP), the AGE has commissioned a local CSO, Kosovo Women's Network (KWM), to conduct research on the first National Strategy and Action Plan against Domestic Violence in Kosovo for use as a baseline study for its policy development on domestic violence.[76] AGE's incapability to produce such a key document itself also highlights its own lack of capacity and sufficiently qualified staff.

57. Lastly, the over-layered structure of human rights mechanisms can result in confusion over particular institutional responsibility for policy development. For example, until recently both the OGG and the AGE were in charge of gender equality, creating a dual structure in policy coordination and development. Moreover, a lack of public awareness as to the mandate and work of human rights mechanisms also hampers the possible contribution of, and the participation by, civil society in the policy making process. For example, the majority of CSOs said that they were not aware of the existence and work of HRU structures at central and local levels.

58. Overall, there is insufficient clarity as to which institutions are in charge of particular aspects of policy development and as to what are their exact duties and responsibilities. Furthermore, their area of responsibility, as seen in the case of the OGG, can be vast and quite unrealistic to achieve, particularly considering the human resources available to them. The members of staff working for these institutions do not properly possess the necessary understanding and skills for human rights policy making. This often results in heavy reliance on external assistance and a failure at a later stage to take ownership in respect of the implementation and monitoring of the policies once adopted. Together with a lack of proper reporting obligations on human rights instruments/standards, it is often not possible to hold these institutions accountable for fulfilling their obligations on policy development. The absence of public pressure and of the performance of a scrutiny role by civil society also contributes to this shortcoming.

74 Since its establishment, the Director of OGG has gradually assumed the additional positions, acting as the national coordinator for human rights, anti-corruption, rights of the child and disabled.
75 SAPHR 2009-2011, pp. 5 and 6.
76 AGE, Security Begins at Home: Reserach to inform the First National Strategy and Action Plan against Domestic Violence in Kosovo, (2008).

5. IMPLEMENTATION

5.1 Relevant Institutions

59. The primary responsibility for implementation of policies and laws relating to the protection of human rights clearly rests with the relevant ministries and municipalities since those policies and laws prescribe the activities to be undertaken, and the standards to be observed, by them. This can entail requirements for ministries and municipalities of a positive character (such as the provision of certain standards of education and health care), as well as ones that are negative in nature (such as the duty not to discriminate and the duty not to encroach upon an individual's liberty or privacy).

60. Although the specific responsibilities regarding implementation lie with the ministries and the municipalities, the non-judicial human rights structures at both the central and local levels also have some role to play in ensuring and facilitating the discharge of those responsibilities. This is, however, a role involving more the provision of support, encouragement and exhortation than the giving of directions.

61. At the central level, the OGG is the main coordinating body for the implementation of human rights specific strategies and action plans, such as SAPHR by ministries, local government and other institutions. The HRUs are also mandated to ensure the implementation of laws adopted by the AoK and government that fall within the responsibilities and competencies of the relevant ministries and municipalities. To this end, the HRUs attend the regular meetings in the decision making process, and provide advice on human rights standards to be observed and fulfilled by the ministries and municipalities concerned.

62. However, the role relating to implementation of the Law on Gender Equality is assigned to a separate institution within OPM, the AGE, which aims to promote, protect and advance the equal participation of women and men in all spheres of political, economic, social and cultural life. To this end, the AGE coordinates the implementation of the KPGE 2008-2013. The KPGE, as the main policy instrument on gender equality, is intended to provide a roadmap for the AGE, linking strategic objectives to the measures for implementation and budgetary costs in its Action Plan. The OGEs across ministries and municipalities assist the AGE in seeking to ensure the integration of a gender equality perspective in general institutional developments through providing recommendations and comments on draft acts, decisions and legislation.

63. The MCR has some responsibility for implementing legislation, strategy and action plans for the promotion and protection of communities and their members. This duty is carried out through, among others, project design, planning and implementation for organized and individual returns, as well as supporting municipal efforts and civil society initiatives to address community issues and returns.

64. At the local level, the MOCRs are concerned with the implementation reintegration and development initiatives that are intended to create conditions conducive to sustainable returns, notably in terms of guaranteeing access to essential rights and services, including property rights, health care, education and employment. Their duties of the MOCRs include advising and assisting relevant municipal institutions and other public service providers on the implementation of government policies on non-majority communities, including as regards returns and reintegration issues[77]. They are also tasked with developing municipal returns strategies or action plans to implement laws and government policies, in order to provide municipal institutions with a framework to guide their activities in this area[78].

77 As a positive example, the MOCR members in Dragash/Dragaš reported interventions when they notice human rights violations, particularly in the area of language use by the public institutions. OSCE field teams' feedback to the Questionnaire on the Municipal Human Rights Units, Regional overview Prizren, (June 2013).

5.2. Achievements

65. Municipal HRUs appear to have engaged with the implementation of key policy frameworks only in a few areas, such as gender equality, equal access to job opportunities, and rights of the child, the disabled and civil servants. However, the HRU Coordinators in general perceive their role as advisory rather than executive in the implementation of human rights policies, legislation and strategies[79]. For example, the HRU Coordinators, who are also OGEs, have pressed for the implementation of the forty per cent gender representation standard in municipal services and the decision making process[80]. Also the participation of HRUs in disciplinary committees[81], as well as their intervention with the aim of raising potential violations and wrongdoings and the participation of some of them in recruitment panels, probably helps to ensure the proper implementation of anti-discrimination and gender equality framework in practice[82].

66. A similar picture emerges with respect to ministerial HRUs, which ensure human rights compliance by the ministries through providing advice to relevant departments on human rights and pressing for the implementation of the OIK's recommendations in cases where it has found rights to have been violated. Moreover, the Ministry for the Kosovo Security Force (MKSF) has taken account of a report on complaints by staff with a view to discrimination or harassment among the members of the Kosovo Security Force[83].

67. An instance of implementation by the MCR in 2012 was its co-funding of the construction of 75 houses in various locations with the aim of supporting the families of returnees. Likewise, the MCR assisted the Klinë/Klina municipality in repairing the house of a returnee in Drenovc village which had caught fire[84].

5.3. Shortcomings

68. There are several factors which have a negative impact on the implementation of the policies and laws in general, let alone ones that specifically concern human rights.

69. Firstly, a lack of political will and/or a low prioritisation for an issue in the government's agenda can result in the failure to allocate the appropriate human resources and budget for the realization of human rights related strategies and action plans, especially where there was insufficient engagement with the process leading to their adoption.

70. Moreover, approved frameworks for action can remain unimplemented when the officials that are in charge of their implementation lack knowledge of the relevant policies and legislation or when there is no pressure for action from the general public because it has no faith in the capacity or willingness of officials to discharge their responsibilities.

71. In any event, for the implementation of any framework, the policy needs to be well-thought and planned in a comprehensive and transparent consultation process involving all relevant

78 OSCE Mission in Kosovo, An Assessment of the Voluntary Returns Process in Kosovo, (2012), pp. 8-9.
79 According to the HRU Coordinator in Malishevë/Mališevo, the municipal officials do not understand the importance of HRU's role; as a result they do not share information, involve or seek the opinion of HRU prior to implementing policies and legislation. OSCE field teams' feedback to the Questionnaire on the Municipal Human Rights Units, Regional overview Prizren, (June 2013).
80 In 2010, the HRU Coordinator in Fushë Kosovë/Kosovo Polje played a proactive role in requesting to the mayor for supporting the participation of women in two mandatory committees of the municipal assembly by introducing quotas. OSCE field teams' feedback to the Questionnaire on the Municipal Human Rights Units, Regional overview Prishtinë/Priština, (June 2013).
81 For example, the composition of the municipal interview panel and complaints commission includes a member of the HRU in Malishevë/Mališevo. Likewise, the HRU Coordinator in Fushë Kosovë/Kosovo Polje regularly attends recruitment panels in the municipality. OSCE field teams' feedback to the Questionnaire on the Municipal Human Rights Units, Regional overview Prizren and Prishtinë/Priština, (June 2013).
82 As reported by HRUs in the OGG's 2011 report on the implementation of SAPHR, pp. 153-232.
83 Interview with Ministerial HRUs during June 2013, First Assessment Mission
84 MCR, Objektiv 6, (date unspecified).

actors. The means of implementation should be clearly identified and reflected in the document, detailing the next steps (i.e., approval of secondary legislation, strategies and actions plans; designation of implementing institutions, budget costs, timeline and expected results). However, as the FRIDOM report highlights, the SAPHR 2009-2011, which is meant to set the overall policy approach to human rights protection and fulfilment, brings little added value to the existing complex human rights mechanisms in Kosovo. The document lacks certain elements that are much needed for its implementation: clear designation of institutional responsibility, establishment of a baseline for comparative analysis (i.e. reporting templates, data collection, etc.) and measurable benchmarks or expected targets, financial planning.

72. The mandate of OGG as the coordinating body for its implementation brings an extra layer to its already complicated nature, and hampers the relevant actors to take full ownership of its implementation[85]. The OGG's 2011 report on the implementation of the SAPHR 2009-2011 supports this analysis, as it presents a disintegrated list of activities conducted by institutions to implement the strategic document.

73. Furthermore, some of the ministries and municipalities indicate external donors or CSOs as the responsible actors for realizing objectives which are core to their mandate. The implementing partner of a project activity seems to be mixed up with the overarching institution whose duty is to implement the objectives as set forth by the SAPHR[86].

74. A similar shortcoming can also be seen with regard to the implementation of the Strategy on Integration of Roma, Ashkali and Egyptian Communities in Kosovo (SRAEC) 2009-2015, and its Action Plan. The commitment of an institution for its implementation increased only where a particular (and more managable) part of the SRAEC was left to the line ministry concerned. For example, the MEST took the lead in drafting, implementing and monitoring the education component of the Strategy.

75. Furthermore, due to lack of clarity on the responsible institutions and their mandate, the stakeholders appear to not commit resources to implement the strategic documents. This is particularly observed in the OGG's 2011 report on the implementation of SAPHR. Indeed, only a few institutions reported the resources/funds available to realize the objectives and implement the activities. Often they seemed to rely on the external donors (international organizations, Embassies, etc) to carry out their core responsibilities. This is a shortcoming in the policy development process which necessarily has an adverse effect on the the implementation of the policies concerned.

76. Finally, the designated staff in charge of the implementation of SAPHR also appear to lack sufficient tools and skills to realize their duties. For example, the HRUs in the majority of municipalities are not fully-staffed, and do not have their own budget lines to implement their work plan, if there is any[87]. On the other hand, the HRUs at the ministerial level, although equipped with sufficient man-power and budget, do not appear to focus on their role of ensuring the implementation of policies and legislation for the benefit of people. Their focus is somehow diverted from residents to their colleagues in the ministry. When requested, they do compile information and statistics, where available, from relevant departments/bodies and provide a rather descriptive picture of the level of policy and legislation implementation. The dependence of all HRUs on the senior management (i.e., the mayor/director of administration and permanent secretary) for their performance appraisal causes undoubtedly results in some reluctance to make entirely objective assessments about their employers[88].

85 For a detailed assessment, see the FRIDOM report, (2010), p. 9-10.
86 OGG's Report on implementation of the Strategy and Action Plan for Human Rights in the Republic of Kosovo (2009-2011), Period January-December 2011, (2012), pp. 27-239.
87 Ministry of Local Government Administration (MLGA) Division of Human Rights, Promotion of Human Rights in Municipalities of the Republic of Kosovo, (2013); questionnaires completed by HRU coordinators in co-operation with the OSCE Mission in Kosovo.
88 Interviews with ministerial HRUs, First Assessment Mission.-the "Methodology" chapter should explain what "First assessment mission" means.

6. PROMOTION

6.1 Relevant Institutions

77. Particular aspects of the responsibility to promote human rights are given to a number of specific institutions but it is also something that is expected of all public institutions within their respective areas of responsibility.

78. Thus, the OIK is specifically charged with promoting human rights and thus undertakes public advocacy in support of them. However, promotion is also an inevitable by-product of the reports that it issues, as well as concerns raised via the media.

79. In addition, a specific capacity building and advocacy role has been given to the OGG which allows it, in particular, to organize public awareness campaigns and co-operate with civil society.

80. Furthermore, the AGE has been made responsible for conducting awareness-raising campaigns to ensure gender equality and representation[89]. Moreover the OGEs in ministries and municipalities conduct promotional activities aiming to mainstream gender equality and human rights.

81. The ministerial and municipal HRUs also have some responsibility for promoting human rights, as do the MCR (with regard to communities and returns) the OCA (also on matters concerning communities) and the OLC (with respect to the official languages and languages in official use).

82. At the same time, the administration as a whole is required to promote both the principles of a multiethnic society and equal gender rights[90]. Moreover, there is a requirement to promote human rights at the local level[91].

6.2 Achievements

83. The MLGA has conducted public awareness campaigns, printing and distribution of leaflets in co-ordination with the ministry's public information officer[92]. These have concerned, for example, civil registration of Roma, Ashkali and Egyptian community children, combating domestic violence and early marriage, encouraging the public to complain about human rights violations (through OSCE-supported billboards) and marking particular human rights dates.

84. Some ministerial HRUs are more active in promotion of human rights than others. For instance, the HRU at the MEST has been involved in a significant number of human rights promotion activities, such as in promoting inclusive education, publishing brochures and other promotion materials as well as in marking human rights related days[93] In addition, this HRU aims, through its advisory role in respect of complaints from the staff within the ministry, to promote their human rights. Moreover, the HRU staff at the MIA produced in 2008/2009 brochures on human rights and contributed to the campaign 16 Days of Activism to End Violence Against Women, which was lead by the UN Women Office.

85. Other good practices are more related to the outreach capacity of HRUs and internal support that they receive. For example, the MED's HRU conducted outreach visits to small businesses and planned to visits to socially owned enterprises although this was not approved by the Secretary General[94].

89 Law 2004/2 on Gender Equality in Kosovo, Articles 4.4, 4.7, 5.2 (c).
90 Law No.03/L –189 (2010) on the State Administration of the Republic of Kosovo, Article 18.1.6.
91 Law Nr. 03/L-040 Law on Local Self-Government, Article 17 (i).
92 Ministry of Local Government Administration, Summary Report, Promotion of Human Rights in Municipalities of the Republic of Kosovo, Pristina, February 2013.
93 See http://www.masht-gov.net/advCms/?id=51&lng=Alb#id=51,,&limitId=0 *(accessed July 27, 2013).*
94 Interview with the MED HRU, First Assessment Mission.

86. Municipal HRUs have also undertaken some promotional activities. However, these activities appear to be organized on *ad hoc* basis, usually around the dates marking international days, i.e. human rights day, children's day, week of violence against women, and supported/funded by other organizations. For example, the HRU in Fushë Kosovë/Kosovo Polje has been involved, with an international organization, in public awareness activities supporting vulnerable groups and disadvantaged people, persons with disabilities, women minorities, and children. Similarly, the HRU in Prishtinë/Priština has been involved in implementing public awareness raising campaigns on anti-trafficking[95], protection of environment, heritage rights of women, early marriages, and employment opportunities for persons with disabilities. The HRU in Malishevë/Mališevo also participated in a radio debate, produced leaflets and held lectures for school children on children's rights, and organized public awareness campaign on preventive measures of breast cancer and haemorrhagic fever[96].

87. Furthermore, the OGE in Prizren has, with the support and assistance of the OSCE, organized every year a public awareness campaign against domestic violence and in 2012 the HRU there also organised an anti-trafficking public awareness campaign. In addition the HRU in Prizren organizes regular meetings with CSOs and in 2010-2011 supported radio debates on gender issues and the broadcast of a TV programme entitled 'Beauty and Powerful', which aimed at empowering women leaders in the society.

6.3 Shortcomings

88. The Government has adopted several human rights instruments aiming at promoting human rights. However, as the FRIDOM report states the "main shortcomings stands in the weak connection with the documents stating general Government policy, and a lack of specificity in terms of objectives, responsibilities and budgetary impact."[97] Activities in promotion and protection of human rights at central and local levels remain limited and, are generally ad hoc and not usually followed up to establish what has been their impact, as well as too diffuse in scope because of the wide range of issues covered. Efforts to raise public awareness about human rights and how to secure them are also undermined by the reluctance of institutions with overlapping competencies to cooperate with each other.

89. Furthermore, insufficient funds can undoubtedly hamper the undertaking of promotional activities. Thus, the HRU at the MLSW stated that it was the lack of a specific budget that meant that it could not organize public awareness campaigns or any human rights promotion activities within the ministry. However, there also seems to be an absence of any initiative to use material that might be available. Thus, the gender and other disaggregated data that is obtained for reporting to the AGE and OGG has never been used by the HRU at the MLSW for any promotional purposes. Moreover, while the HRU at the MESP, felt that a campaign to inform the public about their role would be useful, this has never been undertaken and no reason for not doing so was forthcoming.

90. There is also a lack of any substantial and lasting cooperation between the institutions charged with promoting human rights and CSOs, as well as a general perception that the human rights structures are just a tool to promote the Government and not the rights of citizens. The latter is undoubtedly reinforced by the failure to implement the recommendations of the OIK, which must necessarily undermine the credibility of its efforts to promote human rights.

91. Taken cumulatively, the domestic and international efforts through campaigns, trainings and

95 Organised and supported by the OSCE.
96 OSCE field teams' feedback to the Questionnaire on the Municipal Human Rights Units, Regional overview Prizren, (June 2013).
97 FRIDOM, Functional Review of Human Rights and Gender Equality System, 2010, p. 3. http://map.rks-gov.net/userfiles/file/FRIDOM/Fridom_en/Horizontal_Reviews/Functional_Review_of_Human_Rights_and_Gender_Equality_System_211e.pdf *(accessed August 21, 2013).*

distribution of human rights promotion materials do not, so far, seem to have led to any significant improvement in the population's knowledge of and willingness to use their rights, at least if the volume of complaints and litigation about alleged human rights violations is taken as an indicator.

7. REDRESS

7.1 Relevant Institutions

92. The Constitution provides for the protection of a range of human rights including the right to pursue legal remedies against judicial and administrative decisions[98]. Similarly, the Law on Administrative Procedure[99] stipulates that any citizen who believes their rights have been violated is able to seek redress through respective administrative remedies. As a result, a range of judicial and administrative remedies do exist depending on the decision that is being challenged.

93. However, a number of institutions other than the courts are also mandated to provide redress for those who allege that their human rights have been violated.

94. Of these institutions, the OIK is the only independent body providing redress to citizens throughout Kosovo regarding allegations of all forms of human rights violations by the public administration. Its work in handling complaints is potentially assisted by the role of HRUs at the ministerial and municipal level both in providing to victms and referring on their complaints to the OIK.

95. Wiithin Parliament, the Committee on Human Rights, Gender Equality, Missing Persons and Petitions, is also envisaged as having a role in providing redress to citizens, as it can be petitioned by citizens regarding alleged human rights violations.

96. Furthermore, the IOBCSK may be able to provides redress to civil servants who allege that their rights have been violated by the state administration, which can include human rights issues such as the prohibition of discrimination among others.

97. However, there are also certain institutions that focus on one particular area. These include the OLC, which is responsible for dealing with complaints regarding violations of the Law on the Use of Languages and the CCC, which has at times issued recommendations concerning the rights of persons belonging to communities.

98. At the same time, the HRUs can play a role in facilitating redress by the foregoing institutions or in achieving redress informally, notwithstandding that they have no explicit mandate in this regard.

7.2 Achievements

99. The OIK fulfils its role through its central office and 5 regional offices,[100] with one more regional office being opened[101] and another being planned.[102] Through these contact points, the OIK is able to reach out to citizens. Complaints can be directly submitted to any of the OIK's offices or during one of the Deputy Ombudsperson's visit to the municipalities (open days). Based on the Law on Gender Equality[103] and the Law on Ombudsperson[104], the OIK also established the Gender Equality Unit (GEU), which is mandated to review complaints related to gender based

98 Article 32 of the Constitution.
99 Law No. 02/L-28
100 Gracanica, Peje, Prizren, Gjilan, Mitrovica (sub office in Mitrovica North)
101 Ferizaj
102 Gjakova
103 No. 2004/2 on Gender Equality in Kosovo, (2004), Article 6.
104 Law No. 03/L-195 on Ombudsperson, (2010), Article 31.

violations and to promote and monitor gender equality.

100. In the course of 2011 a total of 1453 complaints were received, resulting in 546 investigations being conducted.[105] Whilst the subject matter of complaints varied, the top three respondents in the investigated cases were the courts (31%), ministries (21%) and municipalities (17%). Overall the OIK reported that 60% of finalised cases were positively solved, while 32% were declared inadmissible[106]. Furthermore, during this period, the Prizren regional office recalled that their office in 2011 received approximately 270 – 300 cases, of which 120 were admissible and 100 of which it handled[107].

101. The 2012 statistics[108] show an increase in the number of complaints received - 1670 - with a slight increase - up to 33% - of those found inadmissible, with over half of them resulting from a failure to use legal remedies[109]. The subject matter of the complaints continued to vary but the top three respondents were the same as in 2011, although there were more complaints regarding the municipalities than ministries[110]. Just over 51% of the cases finalised were positively solved[111] and some a16.5% of cases were closed due to the complainant's lack of interest[112].

102. According to the Ombudsperson[113], there has been a 60% increase in the number of received complaints in the first five months of 2013, compared to 2012. This seems to be borne out by information from the regional offices. Thus the one in Gjilan reported that it had received a total of 138 cases thus far[114], the one in Peje that it had received a total of 144 cases covering a range of issues such as length of court proceedings, alleged violations by the local government and private disputes such as divorce[115] and the one in Mitrovica that it had accepted a total of 98 complaints, of which 58 were inadmissible and 40 proceeded to the investigation stage. Likewise, the number of *ex officio* cases has also doubled. The OIK has explained this trend by the increasing interest of the public towards the institution, particularly in view of the general ignorance of public institutions about the complaints of individuals. Moreover, in fulfilling its role the OIK regional office in Peje recognises that having a workable relationship with other stakeholders such as CSOs and the municipal HRUs is particularly important[116].

103. The majority of the ministerial HRUs view the provision of redress to persons who allege that their human rights have been violated by a particular ministry as one of their competences and achievements[117]. Such complaints have been lodged from members of the public or by civil servants within the ministry; and the subject matter of the complaints greatly varies. Thus the HRU in the MLGA noted that it has dealt with two individual complaints from victims of human trafficking who whad not been provided with shelter for over six months[118]. Similarly, the HRU in the MLSW recalled a case relating to an application for a pension, which was denied. The HRU investigated the matter and drafted a referral to the relevant department stating that a violation had occurred and recommending remedial action to be taken by the Ministry.[119] Additionally, the HRU in the MED referred to 14-15 complaints that they have received from citizens relating to employment disputes in the energy sector, although further details were not provided[120].

105 Ombudsperson Institution of Kosovo, Annual Report 2011, Pristina 2012, p. 138.
106 Ibid, p. 148.
107 Interview with the OIK Regional Office in Prizren, First Assessment Mission.
108 Ombudsperson Institution of Kosovo, Annual Report 2012, Pristina 2013.
109 619 cases.
110 Of the 610 cases investigated, 215 concerned the courts, 137 the municipalities and 105 ministries.
111 276 cases out of 538.
112 89 cases out of 538.
113 Interview with the Ombudsperson, First Assessment Mission.
114 Interview with the OIK Regional Office in Gjilan, First Assessment Mission
115 Interview with the OIK Regional Office in Peja, First Assessment Mission
116 Interview with the OIK regional office in Peje, First Assessment Mission
117 Interview with Ministerial HRUs during 24 – 28 June 2013, First Assessment Mission
118 Interview with the HRU in the MLGA, First Assessment Mission
119 Interview with the HRU in the MLSW, First Assessment Mission
120 Interview with the HRU in the MED, First Assessment Mission

104. Another line of cases where the ministerial HRUs have provided redress is by dealing with the grievances of civil servants within the respective ministries, upon the receipt of their, often, verbal complaints. Thus the HRU in the MESP recalled one case they have dealt with relating to an allegation of age discrimination during the recruitment process within the Ministry, where the HRU made recommendations to the Ministry[121]. Whereas the HRU in the MIA during 2012 dealt with approximately 3-4 cases in relation to which it recommended that the salaries of staff within the Ministry should be harmonized. Whilst the HRU in the MoF cited the practice that they ensured that all staff within the Ministry had valid employment contracts[122]. Additionally, the HRU in the MCYS successfully intervened in a case of a Ministry employee when her contract was being terminated during maternity leave[123]. The HRU in that case gave recommendations to the Ministry in accordance with the legislation in force, which resulted in the Ministry withdrawing the termination and the employee continuing in her position. The HRU in the MPA also received three complaints from employees of the Ministry; although, as they were anonymous, the HRU was not able to proceed. In addition the Ministry of Labour and Social Welfare (MLSW)'s HRU also monitored and solved a case of denied pension. After obtaining relevant facts from the complainant and the respective department, the HRU drafted a letter on behalf of the Secretary General acknowledging the violation of the right to have pension and requesting for remedial action to be taken by the ministry[124].

105. At the municipal level, the municipal HRUs also deal with complaints and these are not generally from employees in the municiplalities. Thus, the HRU in Pejë/Peć reported that their office deals with approximately 10 human rights complaints per month[125]. In respect of Mitrovicë/Mitrovica, it was reported that members of the public are able to address the HRU on any given human right issue and that all complaints addressed to the municipality generally are entered onto a central database of the municipality for all municipal employees to access[126]. In the past the Mitrovicë/Mitrovica HRU received a number of complaints about the social security that individuals were receiving but which had subsequently been stopped. This action occurred because the claimants did not fulfil the conditions, particularly the requirement of having a child under the age of five years old. However, the HRU raised this issue with the OGG, although it has since been left to be considered by the MLSW.[127]

106. Additionally, the HRU in Prishtinë/Priština, received one complaint from a Kosovo Turkish citizen in relation to the spelling of her name on official documents, in which case she was advised to follow another procedure. The HRU has also received some complaints from municipal employees but these tended to be only verbally communicated and advice was provided at the time of the communication. The HRU in Ferizaj/Uroševac recalled a number of cases that it had dealt with covering employment disputes, lack of implementation of court judgements and disputes regarding utility bills/supply of electricity. In one particular case, the HRU successfully intervened to ensure that a pregnant pupil could continue her schooling. Another positive example was provided by the HRU in Podujevë/Podujevo regarding a resident's complaint in 2013. Upon the successful intervention of the HRU, the mayor allocated municipal funds to the complaintiff to build a new house[128].

107. There are, however, some unsuccessful interventions of the HRUs due to the negative attitude of municipal officials towards them. For example, in Lipjan/Lipljan in October 2012, the HRU took actions against several complaints from the pupils of secondary education that have been expelled from the school. Despite the inquiries of HRU, none of the relevant municipal institutions (director of education and school principle) took into consideration of the HRU's

121 Interview with the HRU in the MESP, First Assessment Mission
122 Interview with the MoF HRU Coordinator, First Assessment Mission.
123 Interview with the MCYS HRU, First Assessment Mission.
124 Interview with the MLSW HRU, First Assessment Mission.
125 Interview with the MHRU in Peje/Peć, First Assessment Mission
126 It is not clear whether the data protection implications of this have satisfactorily been taken into account.
127 Interview with the MHRU in Mitrovica, First Assessment Mission
128 OSCE field teams' feedback to the Questionnaire on the Municipal Human Rights Units, Regional overview Mitrovicë/Mitrovica, (June 2013).

opinion nor did they provide any explanation[129].

108. On the other hand, in 2009 the DCMAC in Prizren filed a complaint against the municipal assembly's decision regarding its emblem/logo to the CC, which subsequently ruled that the municipal emblem has been anti-constitutional as it does not reflect the commune's 'multi-ethnicity'[130]. Following a heated discussion and several delays in the municipal assembly, the emblem was amended.

109. Furthermore, following the receipt of petitions received from citizens, the Committee on Human Rights, Gender Equality, Missing Persons and Petitions has made some recommendations and also highlighted particular problems faced by individuals[131]. Although the OLC has received some complaints, these have not so far been dealt with because of internal restricturing [132].

110. Finally, the CCC, through its working groups, has issued a number of recommendations. For example, in May 2013 a recommendation was sent to the Municipality of Prizren calling on the responsible bodies to undertake necessary measures to implement the Law on Use of Official Languages for Bosnian and Turkish language for all official documents of the municipality. Additionally, in relation to schools in two other municipalities (Gjakovë/Djakovica and Fushë Kosovë/Kosovo Polje), the CCC issued recommendations relating to the segregation of Roma pupils from other communities. Also, the CCC recommended that the Law on Official Holidays should include a memorial day for the Croatian community. However, for the majority of its recommendations, the CCC has never received any response[133].

7.3 Shortcomings

111. Whilst the availability of redress is especially important to ensure effective human rights protection, having a complex structure of institutions can create obstacles, which hampers citizens from having access to an effective remedy.

112. The OIK's ability to handle individual complaints is also affected by a range of shortcomings.

113. Firstly, one the biggest challenges identified is that public institutions tend to cooperate with the OIK at the investigation stage but not in implementing its recommendations, as the majority of them - particularly with respect to systemic problems - have not been implemented[134]. Whilst, it cannot be expected that all recommendations will be implemented, paying little attention to them has an impact on the institution, as well as the individual, who is addressing it to obtain redress.

114. Secondly, the lack of visibility of the OIK and of the public awareness as to its role is another shortcoming[135]. This is reflected by the relatively low number of complaints being received and even less being admissible. Additionally, it has an impact in the regional offices as well; resulting in inefficiencies as at times complaints are addressed that they receive are outside the OIK's mandate[136].

115. Thirdly, the OIK has also faced a number of operational and financial constraints. For example,

129 OSCE field teams' feedback to the Questionnaire on the Municipal Human Rights Units, Regional overview Prishtinë/ Priština, (June 2013).

130 http://eudo-citizenship.eu/caselawDB/docs/KOS%2001%2009%20vendimi%20%28English%29.pdf *(accessed November 11, 2013).*

131 Please note there is no published data on the number of petitions received or the outcome of recommendations

132 Interview with Centre for Peace and Tolerance NGO, First Assessment Mission

133 Interview with the Communities Consultative Council, First Assessment Mission

134 Interview with the Ombudsperson and the Regional Office in Prizren, First Assessment Mission

135 Council of Europe, Opinion on Draft Regulation et al, p. 14

136 M A Jones and I Roagna, Assessment Report (Annex V to Enhancing Human Rights Protection in Kosovo, European Union/ Council of Europe Joint Project Inception Report), p.27

the institution does not have security of tenure for its main office, as well as inadequate working space in a number of offices, particularly the regional ones. Recently, the OIK has benefited from a significant increase in its budget but there is no certainty as to whether this will be maintained. Additionally, the apparent lack of immunity protecting the Ombudsperson, deputies and staff once they leave office necessarily affects their confidence to perform their tasks and thus undermines the institution's independence[137].

116. Finally, increased centralisation of operations within the OIK, with staff with specialist skills being located only in its office in Prishtinë/Priština rather than in the regions, has also been highlighted as a shortcoming, which affects the ability of the institution to effectively protect human rights[138].

117. Although the legal basis for the ministerial HRUs does not per se refer to them providing redress to citizens or members of the public generally or to civil servants specifically[139], they have been doing so in practice However, the number of cases dealt with is quite variable and not that large. Thus, the HRU at the MCYS between 2006 and 2011 received 17 complaints but in the last two years has not received any at all[140]. The HRU in the MoF stated that, since being established, it had not received any complaints from the general public[141]. Additionally, regarding violations of the prohibition of discrimination in the public sector it has been reported in 2011[142] and 2013[143] that the majority of HRUs did not receive any complaints based on the Anti-Discrimination Law[144]. The Pejë/Peć HRU on the other hand receives nearly ten complaints every month, and just refers the complainants to the relevant institutions (municipal bodies or OIK)[145].

118. It must be noted though that comprehensive data does not exist on complaints received by the Ministerial HRUs either from the general public or civil servants on any given issue, despite biannual reporting. However, the low number of complaints was explained by the HRU Coordinator at the MCYS as being due to a number of reasons including the public lacking knowledge about their rights, lack of information about the role of the HRUs since the web information on them is not updated regularly and lack of trust in the HRUs as they are perceived as not having the power to make binding decisions. At the same time, HRUs do not often regard dealing with individual complaints from the public as one of their competencies but rather as a matter for the OIK[146]. According to the HRU Coordinators/staff, the low number and, at times, the absence of complaints that are directly addressed by residents to HRUs proves that[147].
119. In the circumstances, it is not surprising that the majority of the HRUs have not conducted any promotion or awareness raising in order to inform the public about the availability of this form of redress.

120. However, it should be noted that those working in the HRUs lack sufficient capacities in order to effectively deal with such complaints. Over the years the HRUs they have been transformed

137 Council of Europe, Opinion on Draft Regulation et al, p. 14
138Youth Initiative for Human Rights – Kosovo, 'An insight into the work of the Ombudsperson Institution', June 2013, pp. 29-30.
139 Administrative Instruction of Prime Minister No. 8/2005 on Terms of Reference for Human Rights Units, Section 7
140 Interview with the HRU in the MCYS, First Assessment Mission
141 Interview with the HRU in the MoF, First Assessment Mission
142 Youth Initiative for Human Rights – Kosovo, 'Anti-Discrimination Law in Kosovo: seven years on', December 2011, pp. 164-65
143 Youth Initiative for Human Rights – Kosovo, 'Discrimination cases in Kosovo – do they exist?', July 2013, pp. 8-9
144 Law No. 2004/03
145 Interview with the Pejë/Peć HRU, First Assessment Mission.
146 One of the few exceptions was reported by the MESP HRU during interviews in the First Assessment Mission. This HRU, as a unique example among all ministerial HRUs, chaired a ministerial complaints committee for residents. However, it was not able to assess their impact on such active monitoring role given the fact that that the ministry's Legal Department took over the chairmanship role from the HRU. No specific reasons are reported for such decision.
147 The number of complaints received from the public greatly varies, but overall remains in a low level. For example, the MED HRU reported dealing with only 14-15 complaints from the members of public, which were mainly comprised of employment disputes in the energy sector (no time frame was given).

into contact points and they feel uncomfortable about accepting a range of complaints[148]. Further, since the HRUs lack any executive power[149], this is also affects their ability to offer an effective remedy to the complainant and, as already noted, probably dissuades some from coming forward in the first place. Therefore, successful resolution of complaints has been limited, as the procedure for dealing with them is not clear and it seems the outcome depends on the individual dealing with such a complaint, rather than the institution. In certain cases, the complaint has been only referred to another institution such as the Ombudsperson[150], which is perhaps the more appropriate approach given the lack of any legal basis for the HRUs to provide redress themselves.

121. A range of shortcomings affect the ability of municipal HRUs to act as a redress mechanism.

122. Firstly, their competencies are not particularly clear as Administrative Instruction 2011/04 does not as such specify that these HRUs should be dealing with individual complaints.[151] Another key shortcoming affecting the majority of the HRUs relates to their staffing, as the majority do not have a consolidated team as required by the Administrative Instruction 2011/04[152]. For example, the MHRU in Prizren employs only the Coordinator and Communities Officer on a full time basis, whilst two other employees allocated to the MHRU have other primary duties within the municipality and as such dedicate approximately only 2% of their time to the HRU[153]. This situation is seen in other MHRUs. Thus, the HRU in Ferizaj is run by the Coordinator with one employee, who works in the HRU as a secondary job.

123. The number of complaints received by the municipal HRUs is generally low yet none of them have conducted any awareness raising activities to inform the public about their office's availability as a redress mechanism. It has been said that this also impacts on the public's perception of the municipal HRUs, with very little confidence being bestowed upon them as to their ability to resolve problems that members of the public may face.[154] Whilst, the capacities available within the municipal HRUs are not wholly adequate to be able to effectively deal with individual complaints, many of the employees in them do not possess the necessary experience or skills for such a task[155].

124. Furthermore, the Committee on Human Rights, Gender Equality, Missing Persons and Petitions is also facing shortcomings. Firstly, it does not have a procedure in place to deal with the petitions it receives and it has been suggested by CSOs that this results in some hesitation during Committee meetings as to how petitions should be dealt with[156]. Another shortcoming concerns the capacities within the AoK and, in particular, the lack of sufficient professional support for dealing with such petitions.

125. With regard to the OLC, as this mechanism is currently being reconsolidated, it is not possible to identify whether any shortcomings exist. The CCC is also facing challenges in terms of suitable working conditions the main problem is that they do not generally get any response from respective institutions to the recommendations that they make[157].

148 FRIDOM Report, p. 13
149 M A Jones and I Roagna, Assessment Report (Annex V to Enhancing Human Rights Protection in Kosovo, European Union/ Council of Europe Joint Project Inception Report)
150 Council of Europe, Opinion on Draft Regulation et al p. 16
151MALG on Amending and Supplementing the Administrative Instruction 2011/01 on the Establishment of Human Rights Units in the Municipalities, Article 7
152 MALG on Amending and Supplementing the Administrative Instruction 2011/01 on the Establishment of Human Rights Units in the Municipalities
153 Interview with the MHRU in Prizren, First Assessment Mission
154 M A Jones and I Roagna, Assessment Report (Annex V to Enhancing Human Rights Protection in Kosovo, European Union/ Council of Europe Joint Project Inception Report), p. 26
155 Ibid, p.25
156 Interviews with CSOs, First Assessment Mission
157 Interview with the Communities Consultative Council, First Assessment Mission

8. MONITORING

8.1 Relevant Institutions

126. As with other roles, various aspects of the task of monitoring of compliance with human rights standards has been entrusted to a wide range of non-judicial bodies.

127. The Constitution gives the OIK the task of monitoring respect for, as well as that of protecting and promoting, the rights and freedoms of individuals. The OIK can thus issue recommendations and propose actions when violations of human rights and freedoms by the public administration and other state authorities are observed.

128. In addition, the HRUs in ministries are obliged to co-operate with OIK and oversee the implementation of its recommendations. Furthermore, they are also expected to assess the implementation of human rights within the ministries.

129. Furthermore, the AoK has a general oversight role in respect of human rights, and particularly through its two committees on human and community rights, can supervise the observance of human rights by public institutions, thereby potentially assisting or complementing the work of OIK.

130. Moreover, the MLGA (through its Division for Advancement of Human Rights in Municipalities and the municipal HRUs) is supposed to monitor proper implementation of human rights related laws and their full compliance by authorities at the local level. The Ministry's Division for Monitoring Municipalities, through its Department of Legal Affairs and Monitoring Municipalities, is additionally in a position to undertake monitoring activities either by using special cameras installed in most municipal assembly halls or by the attendance of its monitoring advisers at sessions of municipal assemblies.

131. The OGG is particularly responsible for monitoring the implementation of the measures envisaged by the SAPHR 2008-2011. In addition, the OGG is responsible not only for coordinating but also monitoring the implementation of both the National Strategic Action Plan on the Rights of the Child 2009-2013 and the Strategy on Integration of Roma, Ashkali and Egyptian Communities in Kosovo (SRAEC) 2009-2015. However, the Ministry of European Integration (MEI) has gradually undertaken some monitoring in the field of human rights as part of its obligation to report on the progress made in the framework of the European Partnership Action Plan (EPAP) and other documents. In a recent example, MEI took over the monitoring of the implementation of the SRAEC 2009-2015 from the OGG[158].

132. Monitoring of the implementation of the Law on Gender Equality and of gender policies is conducted by another body within OPM, namely the AGE, which carries out this duty with the support of the OGEs in ministries and municipalities. In addition, the AGE - through chairing and coordinating the Inter-Ministerial Council for Gender Equality - plays a monitoring role with respect to the implementation of the KPGE 2008-2013.

133. In the field of community rights there are a number of institutions that carry out monitoring activities.

134. For example, the MCR is mandated to oversee the implementation of the Government's outreach strategy relating to communities and returns. It is also involved in monitoring returns policies and programmes. The MCR fulfils these responsibilities with the support of MOCRs which conduct regular monitoring and report on the progress to the ministry. The MOCRs also oversee the implementation of all associated projects for return.

158 Interview with the MEI representatives, First Assessment Mission.

135. The Communities Committee, one of the two permanent committees of the municipal assemblies, is another body responsible for monitoring s compliance by municipalities with community rights standards and existing legislation through the revision of draft municipal acts, decisions and legislation. With the aim of ensuring full respect for community rights and interests, the committee can also recommend to the municipal assembly concerned any measures that would ensure the implementation of provisions related to the needs of persons belonging to communities.

136. In addition to the MCR, the OCA monitors the effects of measures taken by each institution in protecting the rights of communities. Concerning language rights, the OLC has the competency to monitor the compliance of institutions with the Law on the Use of Languages.

137. There are also many CSOs working for the promotion and protection of human rights, particularly ones having a special focus on the rights of children, women, non-majority communities, youth, and persons with disabilities. As acknowledged by the SAPHR 2009-2011, many of these monitor the compliance by public institutions with human rights standards and issue public reports on thematic issues with their findings.

8.2 Achievements

138. The OIK monitors the compliance of human rights standards and legislation by public authorities through dealing with complaints received from the individuals, as well as starting investigations on the suspected cases of human rights violations at its own initiative (*ex officio*). As part of the investigation process, the OIK staff also monitor court cases. The top three subject matters of the investigated cases were right to a fair and impartial trial, right to work and exercise of profession, and protection of property. The respondent parties of investigated cases were mainly the courts (31%), ministries (23%) and municipalities (17%). The OIK issued five reports on the cases, four *ex officio* reports, two recommendations and one request for interim measure.[159] According to the Law on Ombudsperson, OIK officers monitor the detaining institutions at any time and without warning[160].

139. The OIK through its regional offices conduct monitoring visits to detention centres, prisons, police stations and psychiatric centres to evaluate the treatment of persons deprived of liberty. Based on the findings, OIK address recommendations to relevant institutions (i.e. Kosovo Correctional Service, Ministry of Justice, Ministry of Health, etc). As a positive outcome of its activities in this field, a co-operation agreement for the establishment of the National Mechanism for the Prevention of Torture was signed between the OIK and two local CSOs, Kosovo Rehabilitation Centre for Torture Victims (KRCT) and Council for the Protection of Rights and Freedoms (CDHRF), with the support of the OSCE. The mechanism aims regularly to inspect all places and areas where people with limited freedom of movement and action are held[161]. This good practice is particularly significant in its involvement of the CSOs in the monitoring process and benefits from their expertise, internal data and available resources.

140. The OIK also monitors the legislative drafting process and provides recommendations on the areas where further improvement is needed. These recommendations are provided in person through active participation in meetings of AoK committees, public debate on draft laws and in its annual reports. For example, the OIK's comments on the draft Law on Witness Protection were partially taken into account by the AoK[162]. However, its recommendations often also remain neglected by some institutions[163].

159 OIK, Annual Report 2011, (July 2012), pp. 135-145.
160 Law No. 03/L-195 on Ombudsperson, (2010), Section 16.7.
161 OIK's 2011 Annual Report, (2012), p. 15 and pp. 28-31.
162 OIK's 2011 Annual Report, (2012), p. 15 and p. 28.
163 Ibid, p. 18. Despite the OIK's recommendation in the 10th and 11th annual report, the Special Chamber of the Supreme Court continues to not respect the use of official languages during the submission of claims.

141. At the central level, ministerial HRUs are tasked to conduct various monitoring activities to ensure the compliance of ministries with human rights standards, policy documents and legislation. Although their terms of reference do not clearly define the focus of such activities, there is a common assumption among the HRU staff that they should primarily oversee the implementation of anti-discrimination and equality standards in the work environment, as well as, during the recruitment processes. Subsequent to this interpretation, the monitoring undertaken by HRUs appears to largely focus on promotion and protection of the rights of ministry employees, through their participation in recruitment panels[164] and disciplinary commissions and thereby oversee compliance with the Law on Civil Service by the ministry.

142. However, the HRUs do attend and contribute to meetings of the central-level working groups, commissions and task forces that are mandated with monitoring of the legislation, strategy and action plans concerned with human rights. In some instances a proactive approach towards this process can be seen. Thus the MEST's HRU took an active role in monitoring violence in schools and drop-outs, through gathering data in co-operation with KAS and co-drafting a report together with the OGG. It also established a special working group aiming to monitor and address the issue of gender equality in primary and secondary education[165]. The MIA's HRU also visited a detention centre within the framework of a project, aiming to monitor the conditions of the centre[166].

143. At the local level, the HRUs have the responsibility to monitor the municipal activities and advise to the Director of Administration on human rights issues. Due to this vague description in the administrative instruction, the HRU Coordinators appear to interpret their monitoring role in various ways. For example, none of the HRUs (with one exception[167]) interviewed with the support of OSCE reported that they, alone or in co-operation with others, have ever assessed the compliance of human rights policies, legislation and strategies of the municipality. According to some of the HRU Coordinators[168], this is a task of the municipal legal officers, not of the Units. For others, the HRUs do not posses any capacity to undertake such activity therefore this job should be assigned to a special unit within the municipality[169]. On the other hand, the Prizren HRU Coordinator, who is also the municipal OGE, monitors the implementation of the National Gender Equality Plan at local level through proactively attending the municipal meetings, overseeing the draft acts, decisions and legislation, and providing recommendations[170]. In Ferizaj/Uroševac, the HRU is a member of the auditing committee, and monitors recruitment processes as well as the municipal assembly meetings.

144. In addition to dealing with individual complaints, the Prishtinë/Priština HRU receives the OIK requests for information and recommendations through copied correspondence directly submitted by OIK to the municipal directorates. The HRU Coordinator monitors whether the respective municipal body deals with the OIK's request/recommendation[171]. Similarly, the Mitrovicë/Mitrovica HRU, through the municipal database, is able to monitor whether any municipal department is dealing with individual complaints[172], as does the HRU for Ferizaj/

164 With the exception of the MoF HRU, as reported by its Coordinator, First Assessment Mission.
165 Interview with the MEST HRU, First Assessment Mission.
166 Meeting with the MIA HRU, First Assessment Mission.
167 The only exception was reported in Gjakovë/Đakovica where the HRU assessed the accessibility of persons with disabilities in public buildings. OSCE field teams' feedback to the Questionnaire on the Municipal Human Rights Units, Regional overview Pejë/Peć, (June 2013).
168 E.g. Shtime/Shtimlje, Novo Brdo/Novobërdë and Hani i Elezit/Elez Han. OSCE field teams' feedback to the Questionnaire on the Municipal Human Rights Units, (June 2013).
169 Suggested by the Pejë/Peć HRU Coordinator. In Istog/Istok municipality, a municipal commission is established on ad hoc basis for such purposes. OSCE field teams' feedback to the Questionnaire on the Municipal Human Rights Units, Regional overview Pejë/Peć, (June 2013).
170 Interview with the Prizren HRU, First Assessment Mission. A similar example is also reported by the Prishtinë/Priština HRU.
171 Interview with the Prishtinë/Priština HRU, First Assessment Mission.
172 Interview with the Mitrovicë/Mitrovica HRU, First Assessment Mission.

Uroševac municipality[173].

145. When it comes to monitoring and reporting on human rights specific strategic documents, the OGG and AGE act as a coordinating body in charge of this process and utilise the HRUs and OGEs across ministries and municipalities. The SAPHR 2009-2011 provides for the Kosovo Government to establish and strengthen monitoring and reporting mechanisms, with particular emphasis to reporting for international mechanisms, in the three year period which expired at the end of 2011.[174] The OGG, as the responsible body for monitoring the SAPHR, drafted a matrix-standardized reporting format to facilitate effective monitoring and reporting on the implementation of activities as foreseen by the Action Plan. Institutions responsible or the indicated activities report to OGG on an annual basis.[175] Based on these inputs, the OGG has issued so far three consecutive reports that summarise the latest information on activities carried out by Kosovo institutions, international organizations and local CSOs regarding its implementation. The last report covering the period of January-December 2011 mentions a few positive steps taken by the OGG to establish new monitoring and reporting mechanisms: the finalizing of a matrix for implementation of 40 recommendations by the European Commission regarding the integration of Roma, Ashkali and Egyptian communities; the introduction of the use of qualitative and quantitative indicators by ministerial HRUs as tools to promote the implementation and realization of human rights (with the support of the OHCHR); and revised monitoring and evaluation techniques for the use of HRUs at both central and local levels in implementation of the National Action Plan for the Rights of the Child.

8.3 Shortcomings

146. The OIK fulfils its monitoring role through its 48 staff[176] located in its headquarters, five regional offices[177], with one more regional office being opened[178] and another being planned[179]. Following the structural changes in 2011 five Deputy Ombudspersons were appointed, one of which is put in charge of the Anti-Discrimination Department, covering a wide range of human rights issues: children's rights, gender equality, trafficking in persons and domestic violence, persons with disabilities, rights of the communities, social issues, and rights of the lesbian, gay, bisexual and transgender persons[180].

147. Streamlining human rights issues within the same department and designating officers with certain areas of responsibility, together with efforts to promote specialisation on the part of its lawyers, are a positive steps towards creation of expertise in the OIK's centre office[181]. On the other hand, the structure of the regional offices does not mirror these new changes. Each regional office remains to be equipped with two investigating legal officers, who are expected to cover monitoring, investigating and reporting on all the issues that are addressed to them by the OIK's centre office, local institutions and members of the public. Together with the high number of complaints and the lack of training opportunities on specific issues, the OIK field staff remain generalist and do not carry necessary skills and knowledge which would have added value in monitoring speficic issues (e.g., property rights).

148. The lack of implementation of the OIK's recommendations is a serious concern. For example, as reported by the OIK, 40% of its recommendations were not taken into account in 2011. Moreover, the level of co-operation between the OIK and municipal HRUs is somewhat low, and greatly varies from one municipality to another. In Gjilan/Gnjilane, Prizren, and Mitrovicë/

173 Interview with the Ferizaj/Uroševac HRU, First Assessment Mission.
174 SAPHR 2009-2011, (2008), p. 8 and 10.
175 Ibid, p. 23.
176 Statistics taken from the OIK's Annual Report, (2011), p. 150.
177 Gračanica/Graçanicë, Pejë/Peć, Prizren, Gjilan/Gnjilane, Mitrovicë/Mitrovica (sub office in the north).
178 Ferizaj/Uroševac.
179 Gjakovë/Đakovica.
180 Interview with the Ombudsperson, First Assessment Mission.
181 Although it has also been criticised with respect to the provision of redress; see para.116.

Mitrovica regions, both OIK regional offices and HRUs reported not to be cooperating with each other on investigating the individual complaints and monitoring the OIK's recommendations[182]. The relations with ministerial HRUs on the other hand are relatively positive, although this depends on the institutional and personal relations between the OIK, respective ministry and their staff[183].

149. The efforts made by HRUs to monitor the decisions and acts of ministries on general public, the ministerial HRU's efforts are limited. In general, the ministerial HRUs appear to have a relatively better co-operation and communication with the OIK to support its monitoring and advisory role, compared to the municipal HRUs. Some of the HRUs are copied in correspondence between the OIK and their ministries when the OIK requested information on specific cases of alleged violations or provided recommendations to remedy the situations when the OIK found the violation of human rights by the ministries[184]. Others receive this information if/when shared internally with the HRU.[185] For example, the Ministry of Internal Affairs (MIA)'s HRU monitored 15 recommendations that were issued by the OIK concerning their ministry in the past two years, 8-9 of which were from 2012[186]. The MCYS also reported about monitoring of two recommendations by the OIK in 2012[187]. In such cases, the HRUs appear to define their role three folded: coordinating (information gathering from the respective departments), identifying (whether the alleged violation of human rights is well founded based on the legislation), and advisory (providing recommendations to the Secretary General and other relevant ministerial departments). A positive example of co-operation with the ministry's Legal Office/Department is noted here by the MLSW's HRU[188]. Some of the HRUs directly communicate with the OIK on the outcomes of their monitoring activities, whilst others follow a strict reporting line within the ministry[189]. However, it is not at all clear how positive in general is the outcome of such monitoring.

150. The collection of human rights specific data is also part of the monitoring activities of HRUs. The HRUs compile statistics and data disaggregated on gender, disability and ethnic background of the ministry staff, from the Personnel/Human Resources or the relevant departments within the ministry. Their role, however, is either an essentially coordinating one (i.e., distribution of request for information to other departments) or is just reactive with respect to requests from the central level institutions (i.e., OGG, AGE, MLGA, inter-ministerial working groups on specific topics of human rights). For example, the MED's HRU completed a questionnaire sent by the AoK's Committee on Human Rights, Gender Equality, Missing Persons and Petitions, with the internally gathered data. Another example is provided by the MoF's HRU on filling out a questionnaire regarding the number of disabled personnel in the ministry[190].

151. It does not appear that there is a uniform template on data collection followed by any of the HRUs, or by the requesting body at the central level. The data is shared on a regular (i.e., semi- and annual reporting to the OGG and the AGE) or *ad hoc* basis at the request of institutions (i.e., assessment of the implementation of a strategy or action plan as an input to a working group

182 Interviews with the HRUs and OIK offices in five regions, First Assessment Mission.
183 For example, the MoF HRU reported that since a budget related disagreement in 2011, OIK has stopped co-operation with the HRU and no longer copied the correspondence for request of information or implementation of its recommendation. See below for a fuller discussion on this issue.
184 The MoF HRU Coordinator reported that almost for a year now the OIK has stopped copying HRU in correspondence with the ministry; no justification is provided.
185 For example, the MLSW HRU as reported during the First Assessment Mission.
186 Interview with the MIA HRU, First Assessment Mission.
187 Interview with the MCYS HRU, First Assessment Mission.
188 As reported by the MLSW HRU, regarding OIK's requests for information on alleged human rights violations, HRU in co-operation with the Legal Department looks into the cases of complaints and co-ordinates with relevant Department/body to gather background information. Based on the available facts and applicable legislation to this matter, HRU drafts short letters (2-3 sentences) on behalf of the Secretary General to send back to the OIK or individual in concern. A similar example is also provided by the MCYS HRU, First Assessment Mission.
189 This is particularly common among the HRUs which are located under the Secretary General in the ministry's organigram. Examples include the HRUs in MESP, MLSW and MCYS, as reported during the interviews in the First Assessment Mission.
190 Interview with the MoF HRU, First Assessment Mission.

meeting)[191].

152. However, there seems to be some confusion on the designation of roles between various HRUs, the OGG, the AGE and the MEI. For example, the MPA's HRU reported that all the statistics collected by the OGG were actually coordinated through them, given that this ministry has a comprehensive database on the civil servants working in public administration sector. As a result, the MPA's HRU considers itself the most competent institution that can collect statistics, for example, on gender equality issues[192]. Likewise, the MEI's HRU gives a wide interpretation to its monitoring role, including within it the coordination of information collection (e.g., reports and statistics) on the level of implementation of the recommendations provided by the EU in annual progress reports on Kosovo. Through EPAP, the MEI's HRU requests information from all ministerial HRUs and the OGG which would feed into the government's reports to Brussels on the progress achieved[193].

153. With a few exceptions, the ministerial HRUs have not created their own internal data collection mechanism, for example, to keep track of information pertaining to the complaints received from the ministry employees and individuals, as well as the success rate of the implementation of OIK's or their own recommendations on alleged human rights violations. The ability to establish such monitoring systems very much relies on the HRU Coordinators' initiatives and capacities. For example, the MLSW Coordinator kept statistics on the received complaints, but, on account of there being no handover when she left her post and the current staff shortage, this practice has not been continued[194].

154. None of the ministerial HRUs reported using the findings of the monitoring activities, statistics and reports produced by CSOs, although they stated that they had good relations and co-operation with them in general[195]. However, none of the CSOs interviewed was aware of the ministerial HRUs' work and their co-operation with civil society. Indeed, somewhat surprisingly, some of the CSOs did not regard monitoring of human rights compliance as necessarily being a part of the mandate of HRUs[196].

155. It is worth mentioning the special role of the MLGA's former HRU on monitoring of the OIK's recommendations by the municipalities. As a unique practice, the OIK submits requests for gathering information and implementation of their recommendations on alleged human rights violations, to the Legal Department of MLGA, copying the Division. The Division endeavours to put pressuring on municipalities to comply with the OIK's recommendations[197] but at times it becomes difficult to monitor their compliance. This is mainly due to the recent restructuring within the MLGA, which resulted in establishment of another Division for Monitoring Municipalities under the Department of Legal Affairs and Monitoring Municipalities. This new Division is primarily in charge of overall compliance matters, thus ranging from monitoring the municipal assembly session to implementation of the OIK's recommendations. Reportedly, following the PAR, the former HRU has been transformed into a new Division, which was detached from this Department and placed under the existing structure. Currently, the Division co-ordinates the work with the Legal Department. According to the Head of Division, this internal set-up created fragmentation and multiple layers of structures, hampering the overall effectiveness of the MLGA in its monitoring activities[198].

191 The latter is mentioned by the HRUs in MoF and MED during the First Assessment Mission.
192 Interview with the MPA HRU, First Assessment Mission.
193 It should be noted that the HRU structure within MEI changed in accordance with the internal regulation, which entered into force in December 2012. As a result, the Department for Political Criteria has been created, under which the Division of Judiciary, Justice, Freedom and Security and Fundamental Rights functions. This division it is anticipated will have 3 or more staff. At the time of the First Assessment Mission, the information is gathered from a ministry employee who was not directly working with the HRU.
194 Interview with the MLSW's acting HRU Coordinator, who is also the equal opportunities and gender equality officer, First Assessment Mission.
195 Good relations are particularly reported by the HRUs in MEST and MoF.
196 Interview with the CSOs in Prishtinë/Priština region, First Assessment Mission.
197 For example, the OIK recommendation on school drop-outs in the municipalities of Mitrovicë/Mitrovica, Vushtrri /Vucctrri and Skenderaj
198 Interview with the MLGA HRU, First Assessment Mission.

156. The MLGA's Division for Advancement of Human Rights in Municipalities monitors the work of municipal HRUs, as well as gathering information to identify the achievements and obstacles related to the respect of human rights. The Division through its latest report in 2012[199] issued its monitoring findings and recommendations, providing a list of statistics on the number of complaints received by the municipal HRUs. Despite the positive attempt to draft an analytical report with baseline data, the report is only based on the information provided by the HRU Coordinators and the OGEs to the MLGA's questionnaire and not all of the figures appear to be complete. The findings often refer to the statement of municipal officials, without providing any evidence.

157. Overall, there is clearly a lack of experience amongst staff responsible for monitoring. For example, the reports of ministries, municipalities and a few other institutions and NGOs, annexed to the OGG's 2011 annual report, appear to be descriptive and also not providing entirely correct information under the matrix columns. Moreover, the results of activities are not measurable or result-oriented. Often, the completion of an activity, i.e., the organization of a roundtable meeting, is regarded as a success[200]. The reporting institutions have not included a proper budget calculation on used funds for realizing the activities or clearly indicated specific timelines. Furthermore, the report's narrative only focuses on the OGG-oriented activities without providing any evaluation of the reports received from all relevant institutions. Without the allocation of necessary resources (i.e., qualified staff) and suitable training, this weakness is unlikely to be resolved.

9. REPORTING

9.1 Relevant Institutions

158. Reporting on human rights has several dimensions. In part, it is simply the outcome of the monitoring process. However, reports invariably contribute to increasing public awareness about rights supposed to be enjoyed as much as problems with that occurring and thus can also have a promotional value. At the same time, awareness of problems may lead to accountability and thus be an element in securing redress for particular violations.

159. Although reporting is a feature of the internal human rights structures, it is also an important aspect of the specific obligations undertaken when ratifying many human rights treaties as the scrutiny of such reports by committees of experts is one element of the arrangements to secure the implementation of the provisions in those treaties.

160. There are a number of institutions both at the central and local level involved in reporting about human rights in Kosovo.

161. During the assessment mission, some of the institutions, especially municipal ones, referred to reporting being undertaken only in the context of the requirement for them to report about their work and activities to their supervisory authorities[201]. Thus, very few of them referred to the reporting on human rights in the context of reporting human rights violations or the human rights situation in their particular municipality or with respect to their institution. However, in this section, both these aspects of reporting are addressed.

162. The institution that is potentially the most important regarding the production of reports about the

199 MLGA, Promotion of Human Rights in Municipalities of the Republic of Kosovo, (2013).
200 Since the fieldwork was undertaken the OPM/OGG has designed a new 'Monitoring Framework' with specific, measurable, attainable, relevant and timely indicators, which has been used for monitoring implementation of the National Strategy and Action Plan and Children Rights. It has not been possible to assess either the indicators or the effectiveness of the monitoring that resulted.
201 Interview with Ministerial HRUs during June 2013, First Assessment Mission

implementation of human rights and the occurrence of violations of those rights is undoubtedly the OIK. Thus, it is responsible for preparing annual and special reports concerning its work, the situation of human rights and freedoms and the adequacy of responses to recommendations made in respect of a particular violation following an investigation[202]. These reports go to the AoK but, in the case of inadequate responses, they can also go to the highest competent authority and the media.

163. In addition, every two years the Government is supposed to report to AoK on the achievements of the KPGE[203]. Other reporting responsibilities have been given to: the AGE (the implementation of the international acts and agreements, approved by the Government, on gender equality[204]); the MLGA (the summary of the municipal human rights mechanisms reports); municipal HRUs (their activities, including the human rights situation[205]); the OGG (the inclusion of civil society[206]); and the OLC (bi-annually to the Board and annually to the Government and the AoK, as well as special reports at any time to al three on any matter of high urgency or importance within the scope of its competencies and responsibilities[207]).

164. There was, until recently, no specific Kosovo institution vested with responsibility for reporting to international organizations and bodies but reports were in practice prepared by the OGG, with the assistance of international organisations, and generally submitted by UNMIK, although it is understood that the OGG itself submitted a report to the Committee on the Rights of the Child in 2011[208]. The responsibility for reporting has now been formally conferred on the OGG[209].

9.2 Achievements

165. According to the information provided during the assessment mission, most of the institutions do fulfil their particular obligations to produce reports on periodical basis, although these are not always submitted within the prescribed deadlines.

166. Thus the OIK prepares and submits annual reports as envisaged by law, as well as some special reports. All these reports are publicly accessible[210]. The publication of these reports has increased the awareness of the public and the relevant institutions about the human rights situation, as well helping to track trends.

167. The OGG also prepares semi-annual activity reports as well, some of which are published online[211]. However, no such regular reports have been made available since the one in 2008. On the other hand, the OGG issued a few thematic reports on various human rights issues or on the implementation of human rights specific strategic documents. For example, the latest public report on the OGG website *'Broad Survey of the Persons with Disabilities in Kosovo*'* was published in December 2011, in co-operation and funded by the United Nations Development Programme (UNDP)[212]. Likewise, the OGG issued three annual reports on the implementation

202 Law No. 03/L-195 on Ombudsperson, (2010), Articles 16.1.5, 22, 27 and 28..
203 Law No. 2004/2 on Gender Equality (Official Gazette, No. 14, 1 July 2007), Section 4, (paragraph 6)
204 Law No. 2004/2 on Gender Equality (Official Gazette, No. 14, 1 July 2007), Section 5 (Paragraph 5.2 (subparagraph e)
205 Administrative Instruction No. 2011/04 – MALG on Amending and Supplementing the Administrative Instruction 2011/1 on the Establishment of Human Rights Units in the Municipalities, Article 8, paragraphs 4,5 and 7.
206 Regulation No. 16/23 on the Organizational Structure of the Office of the Prime Minister, responsibilities of the OGG, Article 40, paragraph 1 (1.8) (2013)
207 Regulation no. 07/2012 on the Office of the Language Commissioner, Article 18
208 This is not, however, listed in the Treaty database of the United Nations (http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en). UNMIK submitted a report to CEDAW in early 2013 but this was returned because of non-compliance with the guidelines.
209 By Regulation No. 16/23 on the Organizational Structure of the Office of the Prime Minister (2013).
210 For annual reports see http://www.ombudspersonkosovo.org/?id=2,0,151,156,a *and for special ones see* http://www.ombudspersonkosovo.org/?id=2,0,151,157,a.
211 See the available reports on Human rights at http://www.humanrights-ks.org/?cid=2,16
212 See http://www.humanrights-ks.org/repository/docs/Broad%20Survey%20of%20Persons%20with%20Disabilities%20in%20Kosovo.pdf *(accessed November 5, 2013).*

of the Strategy and Action Plan for Human Rights in the Republic of Kosovo* (2009-2011). As stated in its last annual report (2011), the OGG in co-operation and with the support of UNICEF in Kosovo* compiled and published the first report on the implementation of the National Strategy and Action Plan for Children's Rights (2009-2010). A similar support was provided most recently by international community, particularly UNICEF and OSCE among others, in completing a mid-term review of the Action plan of the Strategy for the Integration of Roma, Ashkali and Egyptian communities (2009-2015) in July 2013.

168. According to the information provided during the first assessment mission, HRUs submit regular reports to the OGG and AGE as well as to MLGA. The reports of the ministerial HRUs were included as a separate part of the OGG's reports. Similar reports to the latter ones, with the same type of information for municipal HRUs, have been compiled by the MLGA[213].

169. The AGE has not so far prepared annual reports on its activities and especially on the implementation of the international acts and agreements, approved by the Government, on gender equality in Kosovo. Although the bulletins on its website are fairly informative, this should not replace the proper annual reports. Furthermore, the AGE has not yet issued any reports on the implementation of KGEP whilst the civil society network published a monitoring report on Kosovo*'s Programme and Action Plan against Domestic Violence (2011-2014), National Strategy and Action Plan against Trafficking in Human Beings (2011-2014), and Law on Protection against Domestic Violence[214]. On a positive note, however, the AGE has prepared and published reports relating to the assessment of the gender equality situation, including a number of studies regarding the position of women through using external resources (i.e. civil society, international community and private consulting agencies)[215].

9.3 Shortcomings

170. The institutions vested with such responsibility do not generally themselves have the relevant skills and capacities to prepare comprehensive reports. Thus, even though, the reports of the OIK tend to be fairly well drafted, they could still be improved. The position is even worse in the case of the OGG's thematic reports as they rely mostly on the support provided by international community organizations and technical projects. Concerning the AGE's topical reports that were outsourced, the quality appears to be higher particularly in the cases of involvement of civil society organizations. However, it should be noted that ownership of these reports and follow-up on their recommendations require a closer engagement of government bodies in drafting process. The lack of skills to prepare professional reports is compounded in the case of some HRUs by them not being fully aware of the nature of their mandate.

171. The lack of cooperation and coordination of the non-judicial human rights mechanisms referred to elsewhere in the report is also reflected in the reporting process. Certainly the existence of a

213 See, e.g., 2012 Summary Report on Promotion of Human Rights in Municipalities of the Republic of Kosovo, http://mapl.rks-gov.net/getattachment/0480e499-435a-4882-9a5c-4655a9efe918/Raport---Promovimi-i-te-drejtave-te-njeriut-ne-Kom.aspx *(accessed July 13, 2013). MLGA issues annual public reports, including the inputs of the Division for the Advancement of Human Rights in Municipalities on areas of human rights (i.e., gender equality, domestic violence, human rights, community rights, persons with disabilities, etc). However, the Division reports to the Department of Legal Affairs and Monitoring Municipalities on semi-annual basis.*

214 See http://www.ngo-zana.org/ngarkimet/dokumentet/UNDP_Final_Annual_Monitoring_Report_07%2012%202012_ENG%20%282%29_24.pdf*, (December 2012) (accessed November 7, 2013).*

215 Examples include 'Maternity Leave, the New Law on Labour and the Employment of Women' at http://abgj.rks-gov.net/Portals/0/Pushimi%20i%20lehonis%C3%AB,%20Ligji%20i%20ri%20i%20pun%C3%ABs%20dhe%20pun%C3%ABsimi%20i%20femrave%20n%C3%AB%20tregun%20e%20pun%C3%ABs%20-%20RAPORT%201.pdf; 'Women in the Employment Sector and Decision Making in Kosovo' at http://abgj.rks-gov.net/Portals/0/Raportit%20i%20hulumtimtit%20%27%27Grat%C3%AB%20n%C3%AB%20procesin%20e%20punes%20dhe%20Vendimarrjes%20%27%27shqip%20A5%20-%2088%20faqe.pdf; 'Presentation of Women in Written Media' at http://abgj.rks-gov.net/Portals/0/ABGJ-Hulumtimi%20Grat%C3%AB%20n%C3%AB%20Mediat%20e%20Shkruara%20%202011-20012.pdf *(all accessed November 8, 2013).*

multitude of institutions has created some confusion regarding the chain of reporting[216].

172. Thus municipal HRUs report to their internal structure within the Municipality[217]. The same units have to prepare reports for the MLGA and in addition have to report to the AGE on all gender equality related issues. In addition they have to report to the OGG on all activities related to gender equality (including gender equality).This has created confusion amongst the municipal HRUs[218]. Similarly, all ministry HRUs have to submit reports to: their supervisory bodies of the ministry (being that Permanent Secretary of the Director of the Department under which they operate); the HRU of the MPA, when requested; the OGG; and the AGE. The submission of these reports on similar topics but to different institutions has created duplication which is not necessarily useful, as well as some misunderstandings as to what is required.

173. There is also confusion as to the respective roles and responsibilities of the HRU of the MPA and the OGG. Sometimes it has not been clear as to which of these two entities should communicate with the HRUs in the line ministries and to whom they should report. According to the HRU of the MPA, it - as the one ministry responsible for the entire public administration - should assume, or at least should have assumed, a bigger role in relation with the HRUs in the other ministries. Nonetheless, according to the information provided by the relevant institutions, the OGG has been confirmed as the supervising institution and the one in charge in taking the lead in coordinating Government efforts on human rights issues, including the reporting on human rights. In fact all statistics collected by the OGG are coordinated through the HRU of MPA. This has created more confusion amongst the ministries.

174. As for the municipal HRUs, it is unclear as to whom they should approach at the central level when a human rights issue arises. For instance, several municipal HRU Coordinators referred to failing to obtain feedback, when requested, from the MLGA's Division for the Advancement of Human Rights in Municipalities. As a result most municipal HRUs thought that the MLGA either did not have enough staff or its staff was not entirely dedicated to work of the HRUs. Moreover, all municipal HRUs visited considered that it was very inefficient for them to have to report to three central level offices, namely, the AGE, the MLGA and the OGG. In their view, it would speed up the process and avoid miscommunication and thus much more efficient (as well as leaving them more time to focus on their work), if they only had to report to one single institution at the central level. In this connection, it was stated that they were very often requested to report to the OGG on a topic that had already been reported to the AGE, mainly because there was a lack of communication between these central level institutions.

216 Interview with Ministerial HRUs during June 2013, First Assessment Mission

217 Although some report to the Municipal Director of Administration and Personnel - which is in compliance with AI 2011/04 - and others to the Mayor.

218 Interview with Municipal HRUs during June 2013, First Assessment Mission

10. CONCLUSIONS AND RECOMMENDATIONS

10.1 Conclusions

175. Non-judicial human rights structures have certainly made some contribution towards securing human rights in Kosovo, particularly as regards the development of strategies and action plans and the consideration, if not the resolution, of individual grievances. However, there remain a considerable range of human rights problems that have either not been addressed at all or have not yet been significantly remedied, as well as an insufficient awareness on the part of those adversely affected of either their rights under the law and the Constitution or the mechanisms that can be used to secure them[219]. While not all of these problems can be ascribed to weaknesses in the organisation and functioning of the non-judicial human rights structures, their existence necessarily calls into question the effectiveness of the existing arrangements but only with a view to considering possible ways in which they might be improved.

176. The shortcomings identified in this report, as well as others before it, are essentially ones relating to capacity, confidence, focus and simplicity. All relate to the organisation and functioning of the non-judicial human rights structures but the second of them is also about the way in which they are perceived by those whom they are meant to serve. These shortcomings are compounded by the insufficient public awareness of rights and mechanisms, which the non-judicial human rights structures have yet to satisfactorily counter.

177. Thus. the non-judicial structures certainly have some problems relating to the resources available to them and the competence of those working for them. The former concerns both the adequacy of their facilities for work and gathering data and the sufficiency of staff employed whereas relates to the quality of their staff (covering matters such as an insufficient understanding of human rights standards, a lack of appropriate specialisation, the absence of the technical skills required for the appropriate design of strategies and action plans and the measurement of their impact and an over-dependence on international support for some tasks).

178. The problem of confidence stems from the failure always to take the efforts of the structures seriously and in particular to support their functioning through the provision of resources and acting on their advice and recommendations. This approach to the operation of some human rights structures necessarily undermines public confidence in their ability to perform the roles publicly proclaimed for them and understandably leads to an unwillingness to have resort to them, with the result that genuine problems are not resolved but are left to fester. The rising level of complaints to the OIK might indicate some diminution in the lack of confidence in this institution but the failure to pursue a significant number of admissible ones suggests that the problem is not resolved. Moreover, the overall volume of complaints is still seems relatively low given the obstacles to using judicial mechanisms.

179. The problem of focus arises from an insufficiently joined-up approach towards (a) the operation of the various structures themselves (i.e., institutional cooperation), (b) the impact on planning of the problems revealed by data that is gathered (i.e., the use of data that is available), (c) the array of various strategies and action plans (i.e., not just the attempt to do too many things

219 See further the Council of Europe Opinion, the Commissioner for Human Rights, Report of the Council of Europe Commissioner for Human Rights' Special Mission to Kosovo, (CommDH(2009)23), (2009), European Commission, Commission Staff Working Document accompanying the document Commission Communication on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo {COM(2012) 602}, 10 October 2012 (SWD(2012) 339), FRIDOM, Functional Review of Human Rights and Gender Equality System, (2010), M A Jones and I Roagna, Assessment Report (Annex V to Enhancing Human Rights Protection in Kosovo, European Union/Council of Europe Joint Project Inception Report (2012)), the OSCE Mission in Kosovo, Implementation Measures for Legislation Impacting Human Rights in Kosovo, (September 2012), the Republic of Kosovo Ombudsperson Institution, Annual Report 2011 (2012) and Office on Good Governance, Report on the Implementation of the Strategy and Action Plan on Human Rights in the Republic of Kosovo (2009-2011) Period (January 2011 - December 2011), (2012).

at the same time but the effective coordination of related activities) (d) the arrangements for implementation of strategies and action plans (i.e., the goals to be achieved and the techniques for achieving them are insufficiently connected) and (e) the measurement of what is actually achieved (i.e., the impact of what has been done - which is certainly not inconsiderable - is not properly assessed both to assess its effectiveness and to identify adjustments that could lead to better results).

180. Finally, the issue of simplicity concerns not just the multiplicity of the institutional actors involved (which gives rise to confusion with whom to deal for both officials and citizens as well as duplication of effort) but also the overlapping of functions which undoubtedly contributes to the problem of focus just discussed.

10.2 Recommendations

181. Addressing the shortcomings in the non-judicial human rights structures is unlikely to lead to a resolution of all human rights problems in Kosovo. Indeed, expecting that goal to be attainable there anymore than elsewhere is clearly unrealistic; the need for efforts to be made to secure human rights is unending. However, although other contributing elements for such efforts - such as the functioning of and confidence in the judicial system - also need to be tackled, the non-judicial human rights structures are already a significant component of them both in terms of resources and potential. The aim, therefore, should be to ensure that the deployment of the former enables the latter to be realised.

182. The following recommendations are thus made with a view to bringing about a reconfiguration and enhancement of the non-judicial human rights structures. They aim to do so in a manner that makes better use of the resources devoted to human rights rather than to increase them, although it was not within the remit of the review leading to this report to cost the recommendations and so it is not possible to state that their adoption would necessarily be cost neutral. Nonetheless, as the staffing levels for the different structures indicate, there are already considerable resources being directed to all aspects of human rights and their better exploitation should enhance the value of what is received in return for this input.

183. Insofar as an important element of the institutional support for the non-judicial structures is that provided by the international community, no assumption is made for the purpose of this report that there will be any radical change in its current level. However, more effective use of resources ought to mean that there should ultimately be some reduction in the level of the institutional support provided by the international community. It might then be considered appropriate to redirect any ‘saving’ in such support to the programmatic activities of the non-judicial human rights structures but that would obviously be a matter for individual donors to decide upon.

184. These recommendations build not only upon ones made in previous reports but, more importantly perhaps, on initiatives that are already being taken to strengthen the human rights architecture in Kosovo. Of the latter, the reinforcement of the position of the OIK and the expansion of its mandate envisioned by the three draft laws that are the subject of the expertises annexed to this report and the proposed redeployment of the HRUs pursuant to the ongoing PAR are particularly significant. Moreover, the recommendations have taken into account the specific proposals made in the three expertises annexed to the report and are made on the assumption that those proposals are also adopted.

185. It is not supposed that all the recommendations can be implemented in one fell swoop or ‘big bang’. Changing or expanding responsibilities will certainly require preparation (including some administrative reorganisation) and - as the expertise on the legislation relating to the OIK recognises in respect of adding to its mandate the role of national preventive mechanism - the introduction of some of the proposed modifications will undoubtedly have to be phased so that the

necessary adjustments can be properly digested and implemented. Moreover, some transitional arrangements might be appropriate in respect of some responsibilities to be reallocated where there performance in respect of certain matters is already well under way. Nonetheless, the bulk of the changes being proposed ought to be achievable within a maximum of two years.

186. The recommendations address first those relating to issues of capacity and confidence before turning to those concerned with focus and simplicity. The first two may be the easier of the four to implement but the latter two are likely to bring about more significant benefits in the long term.

Capacity

187. The issue of capacity should be capable of being satisfactorily addressed through appropriate training and recruitment and better resourcing for all areas of activity undertaken by non-judicial human rights structures, which does not necessarily mean the provision of more funding - even if there may be instances where that is needed - but the better use and allocation of existing resources (finance and staff) and this is a task both for Government as a provider and the non-judicial structures as recipients.

188. In terms of the availability of suitable staff for the tasks to be performed, particular problems identified concern the recruitment of persons without the necessary qualifications and experience for the tasks that they are expected to undertake, as well as the insufficient development of competence - whether through the enhancement of specialised areas of knowledge or of the ability to evaluate material produced by others - and the appropriate deployment of qualified staff to ensure their greatest impact, whether at a regional or local level or in entities that are most relevant for the functions that are supposed to be performed. Although failure to secure appropriate levels of suitably skilled staffing is the principal resource constraint affecting non-judicial human rights structures, their capacity to function can also be affected by the adequacy of facilities in which they are expected to operate.

189. In specific terms, addressing this shortcoming requires that:
    - job specifications for posts in non-judicial human rights structures should be clearly linked to the tasks to be performed and fulfilment of those specifications should be a non-negotiable pre-condition for any appointment to those posts;
    - the allocation of posts to particular non-judicial human rights structures - both in terms of function and number - should be governed by the tasks that those structures are expected to perform and should keep pace with the evolution of responsibilities;
    - appropriate specialisation for staff should be developed within those structures that matches the tasks that they are called upon to perform;
    - the internal organisation of non-judicial human rights structures that are intended to service the general public (e.g., the OIK) should avoid both unnecessary centralisation and undue external control (e.g., the appointment process for the OIK's deputies);
    - continuous training should be provided for staff which is directed to their particular responsibilities, thus covering not only the technical aspects of human rights standards but also policy making and implementation, organizational management, monitoring and reporting; and
    - non-judicial human rights structures should be provided with facilities that are suitable for the tasks that they are expected to perform.

Confidence

190. More certainty as to the provision of funding and facilities will also remedy one of the factors undermining public confidence in the non-judicial structures and in particular the OIK. However, there is a need also for the role of non-judicial human rights structures both to be taken more

seriously by those subject to their functioning and to be better known and understood by the public and CSOs.

191. The issue of public confidence is is particularly important for those structures that are supposed to hold public authorities at all levels to account for any failure to respect human rights standards that are applicable to them. However, as has been seen, there have been recurring problems in getting recommendations by the OIK, in particular, but also the CCC, implemented.This places an especial responsibility on those authorities to take such recommendations seriously and on the AoK to ensure that this occurs. Where there is a well-founded disagreement with a recommendation, it should be disputed in a constructive and respectful manner and not just ignored. The authority of independent institutions depends upon certain guarantees for those working for them and there is currently insufficient protection for the staff of the OIK. At the same time, public confidence in the capacities of non-judicial human rights structures turns partly on an awareness of what they can and have done and this still remains at a relatively low level so that resort to these structures is less than might be expected given the problems that exist.

192. In specific terms, addressing this shortcoming requires that:
- effect being given to the recommendations of the non-judicial human rights structures with a mandate to provide redress and identify systemic problems (e.g., the CCC and the OIK), with any disagreement with them being addressed in an appropriate manner;
- all working for the OIK to enjoy functional immunity both while employed and afterwards; and
- outreach activities by non-judicial human rights structures should be increased so that the public and CSOs understand both their particular roles and the scope for using or working with them.

Focus and simplicity

193. The task of addressing the need for focus and simplicity is necessarily linked and concerns both the non-judicial human rights structures themselves and the way in which functions are allocated to them. These twin goals should be to ensure a simplification of the institutional set-up and avoids any confusion as to the responsibilities of individual non-judicial human rights structures.

Policy development

194. In the case of policy development regarding human rights, these goals would best be achieved by first recognising that Kosovo has become overloaded with policies, action plans and strategies - notwithstanding the considerable individual merits of the various objectives that they embody - and by henceforward seeking to reduce somewhat both their number and scope. Certainly an approach that involved the identification of fewer and more achievable priorities for implementation is likely to lead to more successful outcomes in the long-term.

195. Moreover, in pursuing this more limited approach, it should be ensured that the findings of monitoring activities - both that by governmental bodies and by others such as the OIK and the relevant committees of the OIK - are fully taken into account in the development of future policies, strategies and action plans. At present monitoring and policy development are activities that are often unconnected, which not only leads to doubts about the value of the former but also affects the impact of the latter.

196. Certainly, as can seen in examples such as the SAPHR and the KPGE, the development of policies, action plans and strategies has suffered from the absence of sufficiently measurable objectives and the proper methodology that are essential for implementation of such strategies

and action plans. It is essential, therefore, that greater effort be made to formulate policies, action plans and strategies in a way that results in them having genuinely measurable indicators for their successful implementation, both to facilitate that implementation and to allow for effective monitoring to be undertaken as to whether this has, in fact, been achieved. At present, monitoring is itself handicapped by the absence of such indicators[220] and so conclusions reached through it are not particularly helpful for the future development of policies, action plans and strategies.

197. These changes would undoubtedly lead to much greater focus in policy development but simplification of the process itself is not so readily achieved as there are inevitably many actors whose involvement in it is necessarily required by their ultimate responsibility for implementing what is developed, namely, the line ministries and municipalities.

198. Indeed, these institutions ought - in principle - to be best placed to elaborate the details of particular policies, action plans and strategies as they will have the best understanding of what is feasible within a given time line and the constraints of the resources at their disposal. At the same time, there does seem to be a need for some capacity development to ensure that they are in practice able to undertake this role successfully[221] and ensuring that this occurs clearly ought to be a priority.

199. However, there is clearly a need for both direction and coordination in policy development. The former is essential if policies, action plans and strategies are to be consistent with the requirements at the constitutional and international level. Furthermore, the latter is needed because meeting those requirements will often not just be a task for a single ministry or municipality but necessitate several of them making a contribution to this end.

200. These two roles should be performed by the OGG as regards human rights in general and by the AGE and the OCA as regards two specialised aspects of this field, namely, gender equality and communities. However, it is crucial that these three entities within the OPM themselves fully coordinate their activities regarding policy development since there is clearly scope for particular initiatives to cover both the general field and the specialised ones, with some 'competition' in this regard being evident in the past. There should, therefore, be significant information sharing between them and a readiness on the part of the OGG to defer to its specialist counterparts where particular policy development essentially concerns their responsibilities. Furthermore, as policy development in this area can engage issues of European integration, all three bodies within the OPM will need to ensure that there is always effective collaboration with the MEI over such issues.

201. Exactly how the roles of direction and coordination are to be performed does, however, seem to be in need of some clarification. Thus, the OGG serves as the secretariat to a number of inter-ministerial councils and working groups - with the Prime Minister chairing them - whereas the AGE chairs the Inter-Ministerial Council for Gender Equality[222]. It was not possible to establish whether this difference was one of substance or of form but, if it is the former, this might undermine the ability of the OGG to provide the effective leadership and coordination required. Moreover, these entities do not seem to meet frequently and that could affect their utility in this aspect of policy development. There is a need, therefore, to ensure that the AGE, OCA and the OGG all have the appropriate level of authority that will ensure that they are able to properly discharge their responsibilities relating to policy development.

202. When developing policy, there should, of course, also be appropriate consultation with bodies

220 The recently adopted Monitoring Framework' used to monitor the National Strategy and Action Plan on Children Rights appears to be a promising move to remedy this deficiency; see para. 157.
221 See Sigma Assessment on Kosovo (April 2013) (http://www.sigmaweb.org/publications/KosovoAssessment_2013.pdf) and Sigma Priorities on Kosovo* (May 2013) (http://www.sigmaweb.org/publications/Kosovo_Priorities_2013.pdf).*
222 See paras. 20 and 21.

such as the CCC, the Communities Committee, the Consultative Committees, the LPSC, the MCSC, the MOCRs and the MWGR. The responsibility for ensuring that this occurs should rest with the AGE, the OCA and the OGG, depending upon the area of policy development concerned.

203. Nonetheless, there does not seem to be any need for the HRUs (including the OGEs) to retain any discrete policy development role. On the other hand, there should be a re-assignment of those staff in the HRUs with appropriate experience in this field (notably the OGEs) to those offices or departments within the ministries and municipalities where best use could be made of this experience (i.e., the Office of the General Secretary, Department of Strategic Development/ Coordination or the Legal Department in the case of ministries and the legal offices of municipalities). Some reconsideration of the process already under way, pursuant to the PAR, of assigning HRU staff to personnel or human resources departments in ministries might, therefore, be necessary to ensure that a potentially useful resource is not lost.

204. The need, already noted, for training in the case of relevant personnel should focus not only on the technical aspect of human rights but also on policy making and organizational management.

205. Finally, there is a need to promote the involvement of civil society and the general public in the policy development process. To this end, information campaigns to raise public awareness on the respective mandates of ministries and municipalities in this regard ought to be organized. Moreover, their websites should be updated on a regular basis, providing contact information and public reports on their work. In addition, ministries and municipalities should endeavour to conduct regular meetings designed to involve the general public in the decision making process.

206. In summary:
    - there should be a slimming down of the number of strategies and action plans, with fewer and more achievable priorities for implementation being identified;
    - the findings of monitoring activities should always be fully taken into account in all related future policy development;
    - responsibility for the details of policy development should rest with the line ministries and municipalities;
    - the AGE, OCA and OGG should provide a leadership and coordination role in respect of policy development and be given the authority to discharge these responsibilities;
    - staff involved in policy development should have appropriate training on policy making and organizational management; and
    - appropriate steps should be taken to promote the involvement of civil society and the general public in the policy development process.

Implementation

207. As regards implementation, there is no need to change the primary responsibility that ministries and municipalities have for this through the use of the various tools of administration at their disposal.This is, after all, the primary rationale for their existence.

208. However, their specific responsibilities in this regard - including the different responsibilities not only of particular ministries (or municipalities) but also of those working in particular sections of them - need to be much more clearly indicated in the the relevant policy documents and legislation so that there is no room for doubt as to who should do what and when. Furthermore, where implementation requires the assistance of donors or external actors (such as civil society organisations), it should nonetheless be made clear who is responsible for ensuring that this assistance is obtained and who should do what in the event of it not being provided. At present, there seems to be a tendency to give the impression that the responsibility rests with the donor or external actor and the relevant ministry or municipality does not consider that it is required

to do anything to secure the implementation of the policy goal when the projected assistance is not forthcoming.

209. Coordination roles in respect of implementation have been given to the OGG and, in respect of gender equality and communities issues, the AGE and the OCA. The impression gained from the fieldwork was that the present coordination role currently played by the OGG added to the complexity of the process and prevented those directly concerned from having a true sense of their actual responsibility for implementation. Nonetheless, some coordination will clearly be needed where the implementation of a particular law or policy involves more than one ministry or municipality and the central position of the OGG within the OPM puts it in a good position to coordinate the work of several institutions. However, the OGG should only be expected to play a coordination role in such situations, i.e., where implementation requires the involvement of two or more institutions. Where implementation is clearly a matter for a single institution, the appropriate role for the OGG is not then one of coordination (and thus adding an extra level to process before actual implementation) but of monitoring the extent to which the institution concerned has fulfilled its responsibilities. This would make the OGG's role in respect of implementation more comparable with that of the AGE, whose responsibility for securing gender equality is essentially cross-cutting and thus not limited to the specific responsibilities of individual institutions.

210. Advice on implementation is currently provided by HRUs, the MCR, the MOCRs and the OGEs. The impression gained from the fieldwork is that the impact of the HRUs has not generally been that significant, being most relevant to implementation relating to staffing matters within the institutions concerned. In that regard the proposed redployment - pursuant to the PAR - of the HRUs to personnel departments might well be appropriat as regards at least some of the staff but, as similarly noted with respect to policy making, human rights competence needs to be mainstreamed as much as possible within the implementation process so that in the course of it proper account is taken of the relevant standards. At the same time, it would be appropriate to make arrangements for detailed implementation measures to be reviewed by persons with specialist knowledge to ensure that there is no failure of them as regards human rights compliance. This might be provided by advisers - lawyers and/or human rights specialists - within or outside the institution concerned, depending on how exactly this is organised. Ensuring that this is advice is available will be particularly important where municipalities are implementing national policies and the MLGA should take on the responsibility for facilitating access to it. Moreover, in the particular fields of community returns and gender equality, it would be appropriate for institutions at the central and local level to continue to take on board the advice of the MCR, the MOCRs and the OGEs (or gender equality specialists in the institutions if the OGE position is not maintained[223]) in the course of the implementation process.

211. At the same time as providing coordination and leadership over policy development and coordination in respect of implementation, the AGE, the OCA and the OGG also ought to take on a further responsibility, namely, to ensure that the rationale for, and objectives of, particular policies, action plans and strategies are appreciated by all those with responsibility for their implementation. This requires steps not just to inform but raise awareness of part that individual public servants have to play in achieving the objectives concerned. Without their understanding of what is expected of them, the risk of policies, action plans and strategies either not being implemented either at all or only partially will undoubtedly increase. Given their responsibilities for coordination and leadership, the AGE, OCA and OGG are also well-placed to take on this task of communication.

212. Sufficient resources (i.e., both staffing and budget) clearly also need to be made available to those institutions responsible for implementation and the particular requirements in this regard need, therefore, to be identified as soon as possible so that there is an appropriate allocation of resources once a policy is to be implented.

223 See paras. 123-124 of the expertise on the draft Law on Gender Equality.

213. Moreover, since having staff with the necessary capacities is just as crucial for effective implementation as the provision of adequate funding, it will be essential to undertake needs assessments of the situation in the relevant ministries and municipalities and to provide targeted training to meet the needs thereby disclosed. The task of arranging both for the carrying out of the needs assessment and then providing the training required could be one that could usefully be undertaken by either the OGG or the AGE, depending upon the particular nature of the policy or law to be implemented. Neither of them should, however, carry out the assessment or training as they do not have the necessary resources to do this and it would be a diversion from their principal responsibilities.

214. In summary:
- the specific responsibilities of ministries and municipalities, as well as bodies within them, for implementation of policies and legislation needs to be more clearly indicated;
- the coordination role of the OGG should focus on implementation that requires the involvement of two or more institutions;
- appropriate specialist advice and review should be sought in the course of the implementation process and access to this for municipalities should be facilitated by the MLGA;
- there should be a sufficient allocation of resources for the purpose of implementation;
- the AGE, OCA and OGG should be responsible for communicating the rationale and objectives of policies, action plans and strategies to the relevant staff in ministries and municipalities; and
- the AGE and the OGG should arrange for assessments of training needs to facilitate implementation to be undertaken and then for the provision of any training found to be required.

Promotion

215. It has already been noted that there is a need for members of the public to have a much greater awareness of their rights and of the means for securing them. This state of affairs is perhaps surprising in view of the fact that at least some public awareness activities have been undertaken by many of the non-judicial human rights structures. However, pronotional activities that have been undertaken have suffered from inadequate funding, lack of depth and non-existent or insufficient coordination of efforts by, and cooperation between, the different non-judicial structures, as well as limited evaluation of their effectiveness.

216. The problem is definitely not the number of potential actors as the extent of the effort required to bring about the change required means that this is not an undertaking for which responsibility should be entrusted to just one actor. Indeed, given the different substantive and procedural issues in need of promotion, it is something in which clearly all non-judicial human rights should - directly or indirectly - be involved.

217. However, although some increase in the resources provided for human rights promotional activities might be desirable, better coordination of such activities undertaken by the different non-judicial human rights structures could undoubtedly lead both to them having greater impact clearly and making more effective use of the resources currently available for this purpose.

218. The need for some coordination of those undertaking promotional activities within the different governmental structures devoted to human rights - without seeking to preclude the possibility of individual initiatives being launched - would seem to be particularly important so as to avoid unnecessary duplication in both the topics of promotion and those at the receiving end of it, as well as to ensure that specific needs within particular areas are appropriately addressed. This is a role that could appropriately be entrusted to the OGG, except in the field of gender equality where it would be preferable, given its very specific focus on this issue, for the coordinating role

to be performed by the AGE.

219. However, there should also be some efforts to promote cooperation in this sphere between governmental structures and other non-judicial ones such as the OIK, without in any way undermining the ability of the latter to make their own unfettered assessment of the particular issues to which promotional efforts should be directed.

220. At the same time, there seems to be scope for improving the quality of the promotional activities that are undertaken so as to maximise its effectiveness. For this to occur, it is essential that such activities should be based on a clear set of objectives, be well-planned and targeted and use more systematic and sustained. At present, this does not always seem to be the case as activities are often ad hoc and responding to a very immediate need.

221. Undoubtedly, setting some limits - as suggested above - on the range of strategies and action plans being adopted in the future should make it easier to concentrate promotional activies on fewer issues with greater impact. However, where these are undertaken, there should also be follow up to establish their impact both in the short term and over a longer period, with efforts then made to draw on any lessons learnt in future activities.

222. In summary:
- all non-judicial human rights structures can make a contribution to human rights promotion;
- coordination of promotional activities within the structures that are governmental should be undertaken by the OGG and, with respect to gender equality, the AGE;
- cooperation over promotion between governmental and other structures should not undermine the independence of the latter;
- all promotional activities should have a clear set of objectives, be well planned and targeted and use understandable and concrete messages;
- promotional activities should be more systematic than one-off; and
- the impact of promotional activities should be systematically evaluated.

Redress

223. Apart from those non-judicial structures with a clear mandate to provide redress to individual victims of human rights violations, there are various structures that either purport or are perceived to provide such redress. In practice, however, the redress provided by the latter structures is very limited and is not consistently obtained. At the same time, the main non-judicial structure that is genuinely a mechanism for providing individual redress - the OIK - is handicapped in its functioning by various organisational factors (internal and external), insufficient visibility and a failure always to act on its findings and recommendations.

224. As regards the provision of redress, it thus seems essential to focus on strengthening the existing structures that offer the best prospects of securing remedies for individual grievances. This means primarily the OIK but also potentially the OLC, whose functioning in this regard has yet to be put to the test.

225. As regards the OIK this means that the Government and the AoK must ensure that it is supported through adequate financial support and sufficient workspace, as well as by giving effect to its recommendations, matters that have also been noted as relevant to addressing shortcomings with respect to capacity and confidence..

226. However, there is also a need to ensure that the OIK has sufficient powers to deal with the violation of rights to gender equality and to protection from discrimination and this requires the full implementation of the proposals made in the three expertises annexed to the report.

227. At the same time, the OIK itself should increase its outreach efforts - including by utilising social media to reach out to the younger generation - in order to ensure that its competence is better known and understood, as well as used..

228. Furthermore, as the institution is already expanding and will do so more once the laws covered by the three expertises annexed to this report are adopted, it should consider its internal structures to ensure that there isn't unnecessary centralisation and that there are sufficient capacities to provide complainants with redress, including the availability of specialised lawyers amongst the OIK's staff.

229. At the same time, the OLC undoubtedly needs to be supported in its reconsolidation process so that it can start dealing with complaints. However, it should also ensure that the public is well aware of its functions so that is fully utilised by those in need of redress. At the same time there should be a proper evaluation of its effectiveness once it is fully operational to establish whether any adjustments to its powers or organisation are required.

230. There is no real data as to the effectiveness or otherwise of complaint handling by the DCMAC[224] but equally no reason to suggest that this should be reinforced.

231. However, there is certainly no point in seeking to bolster the HRUs as redress mechanisms since it is not actually part of their mandate and, in practice, they operate primarily, in the case of individuals, as a referral agency for the OIK - which could equally well be undertaken by greater publicity being given by ministries and municipalities to the possibility of having recourse to the OIK - and, in the case of public employees, as a go-between them and their employers, something that would more appropriately performed by making use of an internal grievance procedure[225], coupled with recourse to the courts for remedies relating to legislation on discrimination, gender equality and labour[226].

232. While there is no reason for the Committee on Human Rights, Gender Equality, Missing Persons and Petitions to cease receiving petitions, which is a traditional parliamentary function, this is a fairly exceptional aspect of its work that does not seem worthy of any reinforcement.

233. In summary:

- the recommendations above in respect of capacity and confidence, particularly as they concern the OIK, need to be implemented;
- the OIK's powers to deal with discrimination and gender equality should be strengthened;
- the OIK should increase its outreach efforts and increase its visibility;
- the OLC should be supported during its reconsolidation process but its impact should be evaluated once it is fully operational;
- complaint handling by the DCMAC should not be reinforced;
- the HRUs should cease to be portrayed as a redress mechanism;
- internal grievance procedures within ministries and municipalities should be reviewed and strengthened or introduced if none exist; and
- the petition procedure of the Committee on Human Rights, Gender Equality, Missing Persons and Petitions should not be reinforced.

Monitoring

234. Although the fulfilment by the administration of its commitments in the field of human rights is primarly a matter for the political leaders and responsible officials in the relevant ministries and municipalities, it is essential that actual delivery in this regard is kept under review so that

224 Apart from the one instance noted at para. 108.

225 Such as that under Articles 80-82 of Law No.03/L -149 on the Civil Service of Kosovo (9 July 2010); http://www.kuvendikosoves.org/common/docs/ligjet/2010-149-eng.pdf *(accessed November 11, 2013). This provides for the settlements of grievances and appeals through Disputes and Grievances Appeal Committees and the IOBCSK.*

226 Public employees can have recourse, e.g., to the OIK, the OLC and, in the case of the municipalities, the DCMAC.

problems can be identified and promptly remedied.

235. This is undertaken in three ways, two external to the administration and one within it. Firstly, by bodies such as the OIK and, to a much lesser extent, the CCC (as well as potentially the OLC) through communications or complaints received and, in the case of the OIK, the power of investigation even without a complaint. Secondly, by audits undertaken by the AoK or by the administration itself as to how well the latter has achieved the targets laid down in policies and legislation.Thirdly, monitoring by the administration itself involves a considerable number of bodies at both the central and local level.

236. Monitoring by the CCC, the OIK and OLC is an appropriate complement to their redress roles and should continue. However, although there has been suggestion that the monitoring by the CCC and the OIK has been performed in an inappropriate or unreliable manner, its effectiveness is undermined by the failure of the administration to respond to many of their recommendations in respect of problems that they have identified. This situation could be remedied by implementing both the proposals in addressing shortcomings with respect to confidence and the recommendations made in the expertise on legilation relating to the OIK as regards presentation to the AoK of its Annual Report. Apart from that, there does not seem to be a need for this particular function to be specifically reinforced in any way, although that of the OIK and the OLC will inevitably benefit from the other strengthening already proposed for their redress roles.

237. Similarly the monitoring by the AoK's Committee on Human Rights, Gender Equality, Missing Persons and Petitions and its Committee on the Rights and Interests of Communities and Returns is integral to the parliamentary accountability of the Government and this should continue unchanged.

238. Effective monitoring by the administration requires clear reporting lines, a sound methodology and an avoidance of duplication both in requests and evaluation of the data received from them. It also requires an understanding by those being monitored that this process is not a controlling or disciplinary function but one designed to ensure the achievement of common goals.

239. It appears that the separate monitoring on good governance (by the MLGA), human rights (by the OGG), gender equality (by the AGE) and European integration (by the MEI) at the central level has led to confusion amongst some staff in the institutions being monitored. Furthermore, it shoul be noted that monitoring is also being carried out by the Communities Committees, the MCR, the MOCRs and the OCA. Nonetheless, the existence of such a large number of bodies involved in monitoring with respect to human rights matters is not inherently problematic so long as there is a clear division of the issues that the recipients of the requests are required to address and there is an avoidance of unnecessary (and time-consuming) duplication, neither of which seems to be consistently occurring.

240. Given that there is always a risk of there being some overlap in the issues that need to be addressed in monitoring requests, it should be the responsibility of those conducting the monitoring to consider this possibility before issuing such requests, consult with their fellow monitoring body and either issue them jointly or make use of the data that has already been gathered rather than issue a further request. Certainly the dual monitoring on gender equality undertaken in the past by the AGE and the OGG should not be emulated in the future.

241. Such a coordinated approach to monitoring will not just require communication between the responsible bodies. It also requires that they adopt a joint methodology which enables data gathered to be readily exploited by bodies other than the one requesting it.

242. Moreover, this methodology needs to both embody a clearer focus and employ indicators that

are genuinely capable of demonstrating the extent to which what has been done has had a real impact, i.e., they must be measurable. The methodology should not just entail requests for details about activities undertaken. Such an approach will be facilitated by ensuring - as has been recommended with respect to policy development - that the requirements for effective monitoring are properly factored into the development of policies, strategies and action plans.

243. Furthermore, there is no obvious need for intermediaries such as the HRUs between the monitoring bodies and those responsible in the ministries and the municipalities for implementation, as well as to others with appropriate knowledge (particularly statistics officers in the ministries and the KAS). As has been seen, this intermediary role can lead to those working in HRUs being marginalised and the data that they return being 'censored'. More fundamentally, such an intermediary role adds to the layer of administration and inhibits a direct relationship between those being monitored and those doing the monitoring, which contributes to the lack of understanding of the value of this function.

244. Nonetheless, all ministries and municipalities will undoubtedly need some form of focal point for communications between them and the monitoring bodies. This focal point will, in the case of gender equality, need to have particular expertise since achieving this is part of the functional responsibility of any single part of a ministry or municipality. However, having specific officials within ministries and municipalities with the provision of data for monitoring purposes specified as part of their responsibilities would not require the continuation of the position of OGE[227].

245. Given the importance of those being monitored understanding the value of this exercise, efforts should be made to explain why monitoring both in general and in particular instances is being undertaken, as well as to improve the contact between those requesting and providing data. The OGG should have the responsibility for coordinating such efforts.

246. In addition, CSOs often have information that is relevant to the monitoring process and, as much as possible, this should be exploited as it is undertaken rather than waiting for them to comment on any report that might ultimately be produced. This would require giving CSOs advance notice of monitoring exercises to be undertaken and some training as to how they might contribute to such exercises. This training could be provided by the OGG, given its particular responsibilities concerning the CSO sector.

247. These proposals have no implications for the exercise of the general oversight of public administration by the IOBCSK.

248. In summary:
- the particular monitoring role performed by the CCC, the OIK and (potentially) the OLC, as well as by the committee of the AoK should be maintained as it is;
- the bodies responsible for the internal monitoring of the administration should adopt a common monitoring methodology that has a clear focus and uses measurable indicators;
- these bodies should also consult with each other before issuing requests and, in the case of any overlapping issues, either issue joint requests or make use of existing data;
- monitoring requests should, apart from those concerned with gender equality, go directly to those responsible for implementing activities being monitored, statistic officers and the KAS;
- efforts should be made to explain to those being monitored the value of this exercise and to improve the contact between those requesting and providing data, with these being coordinated by the OGG; and
- the potential for CSOs to contribute to monitoring should be exploited, with appropriate training to facilitate this.

227 See para. 210.

Reporting

249. The reporting undertaken by non-judicial human rights structures is partly just the giving of an account of activities undertaken by them. However, some of their reporting is intended to draw attention to particular problems and is, therefore, really an important element of the monitoring process, having the potential both to lead to satisfactory resolution and to increase public awareness of matters needing attention. In addition, some reporting by non-judicial human rights structures, or to which they contribute, concerns the fulfilment of obligations under international human rights treaties that apply in Kosovo.

250. Although the first form of reporting can be a means of securing the accountability of the structures concerned, there seems to be a tendency for some of them to focus just on that at the expense of drawing attention to human rights problems that ought to be within their cognisance. Thus, in order to strengthen the role of the reporting process, a clear distinction needs to be made between reporting on the activities of non-judicial human rights structures and their reporting on human rights issues, particularly as concerns the outcome of monitoring. This requires the relevant structures to appreciate the purpose of these different forms of reporting and this should be emphasised both in the request or requirement to report and the nature of the recipient.

251. Reporting on activities should, therefore, just be to the relevant supervisory body within the rules of the public administration legal framework or, in the case of the OIK, to the AoK so as to facilitate its role in holding the Government to account. Although the OIK's report to the AoK covers problems as well as activities, there is never any confusion between them nor is one or other overlooked and the structure established for its report is thus appropriate.

252. As regards the reporting on human rights issues and the overall situation in Kosovo by governmental bodies (i.e., those other than the CCC, the OIK and the OLC), there is a need both for an appropriate division of responsibilities amongst the bodies concerned and an avoidance of unnecessary duplication in their preparation and submission of reports. However, this ought to be readily achievable if the proposals concerning monitoring are adopted since this should result in a clarification of the human rights issues and themes for which particular central government entities are expected to take the lead. The reports should thus be the culmination of the monitoring process.

253. However, it is essential that all reports are not just public relations exercises and it needs to kept in mind that there is always a risk of this when they emanate, in particular, from governmental bodies. It is important, therefore, that reports are required to identify shortcomings as much as achievements.

254. Moreover, taking account of the need ultimately to report on human rights developments at the international level, the preparation of reports for use within Kosovo should endeavour as much as possible to adopt the structure and approach required for those international reports so that the latter can then be produced - without excessive additional effort - on the basis of reports that have already been produced. In particular, full account should be taken of the guidelines prepared by the Secretary General of the United Nations on the form and content of reporting by States parties to international human rights treaties[228].

255. There is also a clear need for a particular entity to have the specific responsibility for preparing the reports to be submitted at the international level since the material required for such reports will be compiled from the contributions of many different entities - including ministries - with a role in implementing different aspects of the rights concerned. Indeed, the establishment of

228 Compilation of Guidelines on the Form and Content of Reports to be submitted by States Parties to the International Human Rights Treaties, HRI/GEN/2/Rev.2, 7 May 2004. Revision of these is currently under consideration; see http://www2.ohchr.org/english/bodies/treaty/CCD.htm.

a standing national human rights reporting and coordinating mechanism has been specifically recommended as a best practice to be followed as part of the process seeking to strengthen the UN treaty bodies system[229].

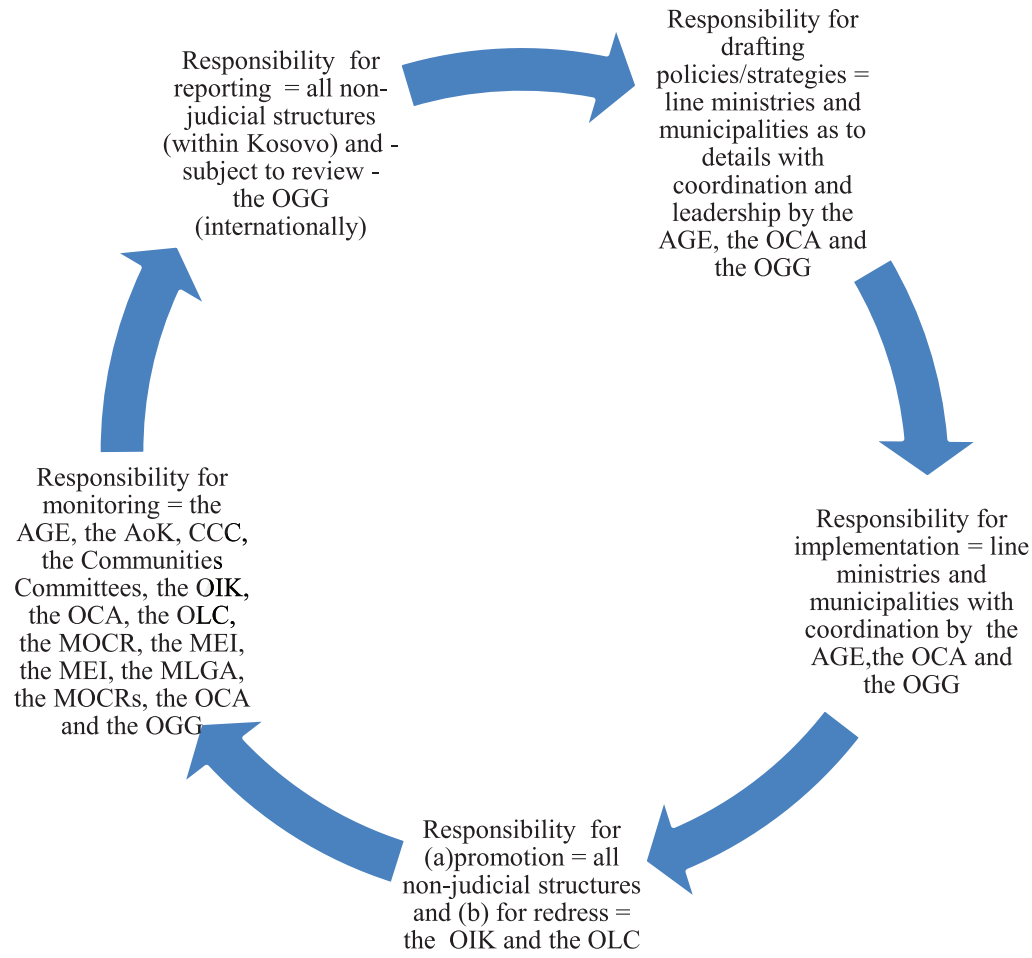
256. While the present report was being prepared, this was a task that was entrusted to the OGG[230]. This may well be the most appropriate body to undertake this task, particularly given its past involvement in preparing reports for the treaty bodies. However, there is a need to review whether, having regard to the resources currently at its disposal and its other existing responsibilities, it is in fact best placed to perform this international reporting role without some further adjustment being made to those resources or responsibilities. Such a review should take into account of the recommendations made in respect of the OGG in this report, the implementation of which might indeed indeed facilitate its performance of this role. In any event, there is a need to ensure that whoever takes on the role also draws upon the highly pertinent experience of reporting gained as part of European integration process.

257. In summary:
- there should be a clear distinction between reporting on institutional activities and on human rights issues or problems;
- reporting by governmental bodies should reflect a clear division of responsibilities and avoid unnecessary duplication;
- reports should identify shortcomings as well as achievements;
- the structure and approach of reports should endeavour to follow the requirements for reports at the international level;
- the allocation to the OGG of the responsibility for reporting to the international level should be reviewed; and
- reporting to the international level should draw on the experience gained in the European integration process.

10.3 Overall conclusion

The cycle relating to the functioning of non-judicial human rights structures that follows from the foregoing conclusions is thus as follows:

229 ' ...the standing national reporting and coordination mechanism should further analyse and cluster recommendations from all human rights mechanisms, thematically and/or operationally (according to the institution(s) responsible for implementing them), identify relevant actors involved in the implementation of the recommendations and guide them throughout the process. This mechanism should also lead periodic consultations with NHRIs, and civil society actors to cooperate on reporting and implementation processes. Within parliaments, appropriate standing committees or similar bodies should be established and involved in monitoring and assessing the level of domestic implementation of the recommendations, particularly those related to legislative reform. SNRCMs should also liaise with members of the Judiciary to inform them on treaty bodies' recommendations and to collect and disseminate judicial decisions relevant to international human rights law'; Strengthening the United Nations human rights treaty body system A report by the United Nations High Commissioner for Human Rights (2012), section 4.5.4.
230 See para. 164.



258. The effect of the proposals is to remove the HRUs from the process and to refine the role played by all the other non-judicial human rights structures. The removal of the HRUs does not entail any criticism of their past functioning or a failure to recognise that they have had some beneficial effects in the course of their existence. However, the present concern is with establishing an institutional set-up that was not only clearer and simpler but also was more effective than the existing arrangements. This goal necessarily requires some rearrangement of the responsibilities of the different actors and there can be no doubt that individual staff members of the HRUs can continue to play a role in securing human rights, albeit in a different institutional framework through redeployment in policy and operational sections within ministries and municipalities.

259. As for the other changes, the goals of enhanced capacity, confidence, focus and simplicity necessarily entail a redrawing of the individual terms of reference of particular structures to ensure that their impact is maximised. Apart from the re-allocation of roles, it is also essential to change practices within them so that the outcome is more effective. Although change can be difficult to accept, it is important to appreciate that the reforms being proposed are based on extensive evaluations of the present arrangements and the limited impact that these have been achieving. A reform process can undoubtedly be painful for individuals expected to adjust to different roles but the ultimate result aimed at is the better implementation of the standards which is the very rationale of the various non-judicial structures concerned.

260. The recommendations in the three opinions annexed to this report - on Law No. 03/L – 195 on Ombudsperson, the Draft Law on Amending and Supplementing Law No. 03/L – 195 on Ombudsperson of July 2013, the Draft Law on Gender Equality and the Draft Law on Protection

from Discrimination - are consistent with the approach that this report and their implementation will be a necessary complement to the recommendations that it makes.

261. Initially it was concluded that it might be better if greater responsibility for human rights were to be mainstreamed within relevant ministries instead of being given to various specially designated offices. In particular, it was thought that the key human rights policy making function should be placed in the respective ministries and not in an understaffed office in the OPM. For example, such an approach has already seemed to work quite well with respect to the fight against human trafficking. Notwithstanding the cross-sectoral and horizontal nature of the issue, the lead in tackling it has been taken by the Ministry of Interior rather than a specialised office within the OPM, with one officer working closely with the Deputy Minister of Interior to form the secretariat which then coordinates the roles played by all other ministries involved.

262. However, for the moment it seems that other ministries are generally reluctant to be coordinated by another ministry. This reluctance has been overcome for the human trafficking issue by having a rotating chairmanship over the coordinating secretariat. This is a model which should be emulated for further aspects of human rights policy making, with particular efforts being made to develop the capacities of ministries to play such a role. Indeed, it should be noted that in many countries the lead role in coordinating human rights policy for other ministries is often taken by the Ministry of Justice.

263. An evolving approach in this area certainly seems to be required since, although a top-level function in the OPM for policy development might appear to be a desirable tool for developing and enforcing policies, it should be recalled that most interviewees have been critical of the performance of the current non-judicial system for protecting human rights protection, especially the OGG in the OPM. It does not seem that the current model has not worked well so far and its retention is being proposed because of doubts as to preparedness of ministries to take on this policy role.

264. The present proposals, taken with the recommendations in the three opinions annexed to this report, should only be seen as a staging post towards giving effect to the obligation found in EU's Feasibility Study for a future SAA for the human rights structures to be worked on and, in particular, to streamline and simplify the multitude of bodies dealing with human rights protection. It is, therefore, essential for the findings in this report to be closely studied by the OPM, the MEI, the MoJ, the MPM and the AoK's Committee on Human Rights, with a view not just to implementing the present proposals but to see how they can be taken much further. Moreover, attention needs to be given to ensuring not only that the structures are streamlined and simplified but also that they are appropriately resourced and staffed.

265. This is the only way to tackle effectively the continuing problem of non-implementation of many of the standards and goals that have been adopted in the field of human rights. It should be borne in mind that the aim of human rights protection in Europe is that the rights guaranteed be practical and effective rather than theoretical or illusory.

ANNEX I

OPINION ON THE LAW NR. 03/L-195 ON OMBUDSPERSON AND THE DRAFT LAW ON AMENDING AND SUPPLEMENTING THE LAW NR. 03/L-195 ON OMBUDSPERSON

EXECUTIVE SUMMARY

This opinion examines the legislative basis of the Ombudsperson Institution and its compatibility with European standards and principles of good practice relating to Ombudsman Institutions. It finds that the current law on Ombudsperson has noticeable qualities but that, at the same time, there are some important problems with the law. A number of provisions raise questions of principle concerning mainly the definition of institutions covered by the OIK´s competence, the procedure for election of the Ombudsperson, the number and appointment of deputies, immunity for the Ombudsperson and his/her staff, dismissal of the Ombudsperson and the deputies, provision of a job after the end of the Ombudsperson´s mandate, the role and competences of the OIK in the prevention of torture and inhumane or degrading treatment or punishment, access to files and documents, the reporting and hearing of the Ombudsperson´s report in the Assembly, and the funding and financial independence of the institution. Also, a number of provisions are in need of technical improvement – some of them should be clearer, and some provisions are not in harmony with each other. The opinion provides suggestions for solutions to these matters.

1. INTRODUCTION

1. This opinion is concerned with Law No. 03/L – 195 on Ombudsperson ('the Current Law') of Kosovo and the Draft Law on Amending and Supplementing Law No. 03/L – 195 on Ombudsperson of July 2013 ('the Draft Amending Law') and to evaluate their compatibility with European standards and principles of good practice relating to Ombudsman Institutions.

2. The opinion has been prepared by Jorgen Steen Sorensen[231] and George Tugushi[232] ('the authors') under the Joint Project between the European Union and the Council of Europe "Enhancing Human Rights Protection in Kosovo" ('the Project'), as part of a larger assessment, which has the aim of specifying the strengths and weaknesses of the institutional arrangements for the protection of human rights both at executive and local levels, and of providing a legislative expertise on the Current Law, the Draft Amending Law, the Draft Law on Protection from Discrimination ('the Draft Discrimination Law') and the Draft Law on Gender Equality in order to build links between these laws and the monitoring bodies/structures established under them[233].

3. The opinion has been prepared following a visit to Kosovo in July 2013, during which meetings were held with national and international stakeholders. It has also taken into account previous studies and reports on the Ombudsperson Institution of Kosovo, and builds on the fieldwork studies and report prepared by the Project's working group of international and local experts responsible for the formulation of the institutional reform proposal.

4. The opinion is structured as follows: a description of the applicable standards (Section II); some basic considerations on the Current Law on Ombudsperson (Section III); an enumeration of certain issues of principle and proposals for their solution (Section IV); an article-by-article commentary on the Current Law and the changes to be made by the Draft Amending Law relating to provisions, or aspects of them, not addressed in Section IV, dealing particularly with issues of a more technical nature (Section V); a summary of all the recommendations (Section VI); and the conclusions of the opinion (Section VII).

5. The term 'OIK' will be used when referring to the Ombudsperson Institution of Kosovo as such and the term 'Ombudsperson' will be reserved for references to the Ombudsperson himself/herself.

6. When recommendations are based on European standards etc., this is indicated. Consequently, if not indicated, recommendations are based on other sources, for example principles of legal clarity, best practice and professional experience regarding independent, professional and efficient management of Ombudsperson Institutions.

2. APPLICABLE STANDARDS

7. Despite a wide use of the terms 'Ombudsperson' and 'Human Rights Commission, etc. to refer to institutions in charge of human rights at the domestic level, it is a fact that such bodies vary the world over in nature, mandate and responsibilities.

8. Although there are no binding international standards applicable to such institutions, most of them comply with the United Nations Principles relating to the status of national institutions,

231 Ombudsman of Denmark.
232 Former Ombudsman of Georgia.
233 The European Union has called on Kosovo, within the Stabilization and Association Process to streamline and simplify the multitude of bodies dealing with the protection of human rights and to ensure effective monitoring and enforcement of the relevant legal framework.*

commonly known as 'the Paris Principles'[234], as to date these represent the most widely followed guidelines outlining the basic elements of any national human rights institution.

9. Also, the International Ombudsman Institute ('IOI') has, in its bylaws, listed various typical features of Ombudsman institutions[235].

10. The European Commission for Democracy through Law ('the Venice Commission') has on various occasions given opinions on Ombudsman institutions in Council of Europe member states, and certain European standards can be said to emerge from these opinions. They have been compiled in the 'Compilation on the Ombudsman Institution'[236].

11. Generally, the Council of Europe has always been attributing particular attention to the Ombudsman and national human rights institutions ('NHRIs'). Thus it has produced a number of documents reflecting on the best practices for establishing NHRIs in member states, providing them with sufficient mandate and resources. In particular, the Committee of Ministers of the Council of Europe, in its Recommendation No. R (97) 14[237], recommended member States to consider the possibility of establishing effective national human rights institutions.

12. Moreover, in its Recommendation no. 1615(2003)1 on the Institution of Ombudsman, the Parliamentary Assembly of the Council of Europe, in paragraph 7, concludes that certain characteristics are essential for any institution of ombudsman to operate effectively:

i. establishment at constitutional level in a text guaranteeing the essence of the characteristics described in this paragraph, with elaboration and protection of these characteristics in the enabling legislation and statute of office;
ii. guaranteed independence from the subject of investigations, including in particular as regards receipt of complaints, decisions on whether or not to accept complaints as admissible or to launch own-initiative investigations, decisions on when and how to pursue investigations, consideration of evidence, drawing of conclusions, preparation and presentation of recommendations and reports, and publicity;
iii. exclusive and transparent procedures for appointment and dismissal by parliament by a qualified majority of votes sufficiently large as to imply support from parties outside government, according to strict criteria which unquestionably establish the ombudsman as a suitably qualified and experienced individual of high moral standing and political independence, for renewable mandates at least equal in duration to the parliamentary term of office;
iv. prohibition of the incumbent from engaging in any other remunerated activities and from any personal involvement in political activities;
v. personal immunity from any disciplinary, administrative or criminal proceedings or penalties relating to the discharge of official responsibilities, other than dismissal by parliament for incapacity or serious ethical misconduct;
vi. the appointment of an identified deputy on the recommendation of the ombudsman and with parliamentary approval, capable of acting in the full capacity of ombudsman when necessary;
vii. guaranteed sufficient resources for discharge of all responsibilities allocated to the institution, allocated independently of any possible interference by the subject of investigations, and complete autonomy over issues relating to budget and staff;
viii. guaranteed prompt and unrestricted access to all information necessary for the investigation;
ix. internal procedures guaranteeing the highest administrative standards in the institution's own work, in particular fairness, efficiency, transparency and courtesy;
x. public accessibility (in terms of both availability and comprehensibility) of information on the existence, identity, purpose, procedures and powers of the ombudsman, along with wide and effective publication of information on the institution's activities, findings, opinions, proposals, recommendations and reports;
xi. application procedures which are easily and widely accessible, simple and free of charge, and which convincingly establish their confidentiality in all cases;
xii. guaranteed confidentiality and, when publicised, anonymity of investigations;
xiii. the authority to give opinions on proposed legislative or regulatory reforms and *proprio motu* to make such proposals with a view to improving administrative standards and, where consistent with the overall mandate, respect for human rights;

234 http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx
235 See http://www.theioi.org/the-i-o-i/by-laws.
*236 CDL(2011)079) (*http://www.venice.coe.int/webforms/documents/?pdf=CDL(2011)079-e).
237 https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&%20InstranetImage=567349%20%20&SecMode=1&DocId=578706&Usage=2

xiv. the requirement that the administration furnish within a reasonable time full replies describing the implementation of findings, opinions, proposals and recommendations or giving reasons why they cannot be implemented;

xv. presentation by the ombudsman of an annual report to parliament, as well as of specific reports on matters of particular concern, or where the administration has failed to implement recommendations.

13. As concerns the competence of Ombudsmen towards the judiciary, the following is said in paragraph 6:

> The Assembly believes that ombudsmen should have at most strictly limited powers of supervision over the courts. If circumstances require any such role, it should be confined to ensuring the procedural efficiency and administrative propriety of the judicial system; in consequence, the ability to represent individuals (unless there is no individual right of access to a particular court), initiate or intervene in proceedings, or reopen cases, should be excluded.

14. Besides the sources of law mentioned above, the authors of the opinion have applied principles of best practice among European countries as well as their personal experiences regarding independent, professional and efficient management of Ombudsperson institutions.

3. BASIC CONSIDERATIONS ON THE OIK AND THE CURRENT LAW

15. The OIK is a young institution, which has been subjected to institutional changes a number of times.

16. It was originally created by UNMIK in 2000 and, until 2005, the institution was led by an international Ombudsperson, assisted by three deputies, one international and two belonging to the ethnic-Serb and ethnic-Albanian communities respectively.

17. In 2006, UNMIK Regulation no. 2006/06 brought about two major changes in the institution: it established that the Ombudsperson would no longer be an international, and that the institution would no longer have oversight over the UNMIK. The transition period, however, lasted much longer than initially foreseen.

18. Upon the declaration of independence and the adoption of the Constitution, the Ombudsperson became one of the Independent Institutions of Kosovo[238]. According to Articles 132-135 of the Constitution, the Ombudsperson's task is to monitor, defend and protect the rights and freedoms of individuals from unlawful or improper acts or failures to act by public authorities.

19. The powers of the Ombudsperson mainly consist of making recommendations and proposing actions when violations of human rights and freedoms by the public administration and other state authorities are established, and challenging at the Constitutional Court laws, presidential decrees, government regulations and municipal statutes. This latter competence, however, does not apply to individual acts or failures to act by state authorities. Apart from the constitutional provisions, currently the function and role of the OIK is regulated by the Current Law, which was adopted by the Assembly on 22 July 2012. The Current Law repealed all previous UNMIK Regulations on the same subject, as well as any other conflicting provision.

20. Numerous interlocutors interviewed in the course of the visit to Kosovo suggested that the OIK is demonstrating rather limited capacity to exert pressure on Central Government and the Assembly. They pointed to a number of reasons for this frustration of the mandate, such as poor human rights sensitivity and sense of impunity of governmental and political leaders and representatives, as well as incapacity of the public to make their representatives truly accountable for their actions, which are linked to the lack of a collective culture[239].

238 Cf. Section XII of the Constitution.

239 Similar conclusions were reached in the European Union/Council of Europe Joint Project "Enhancing Human Rights Protection in Kosovo" Assessment Report Prepared by Mr Mark Andrew Jones and Ms Ivana Roagna.*

21. Also, a number of issues negatively reflecting on the effectiveness and level of independence of the OIK were said to emanate from insufficient legal safeguards and powers provided to the OIK under the Current Law.

22. In the view of the authors, the Current Law has noticeable qualities:
    - it deals with most of the issues that a law on Ombudsperson should deal with;
    - it is in many ways good from a legal-technical point of view.
    - many of its provisions are clear and deal with problems in a logic and reasonable manner.

23. At the same time, there are some important problems with the Current Law:
    - a number of the provisions in the current law raise important questions of principle. This applies mainly to the definition of institutions covered by the OIK´s competence, the procedure for election of the Ombudsperson, the number and appointment of deputies, immunity for the Ombudsperson and his/her staff, dismissal of the Ombudsperson and the deputies, provision of a job after the end of the Ombudsperson´s mandate, the role and competences of the OIK in the prevention of torture and inhumane or degrading treatment or punishment, access to files and documents, the reporting and hearing of the Ombudsperson´s report in the Assembly and the funding and financial independence of the institution; and
    - a number of provisions are in need of technical improvement. Some of them should be clearer, and some provisions are not in harmony with each other.

24. Also, the Current Law needs to be harmonized with the Draft Discrimination Law and the Draft Law on Gender Equality. The Current Law and the two draft laws contain different provisions on the OIK´s competence, and it is essential that all three laws are considered in context and not as three separate pieces of legislation.

25. More generally, it is important to note that there are a number of crucial issues on Ombudsperson institutions that cannot be regulated (and solved) in laws. This concerns, for example, the will of the government to fundamentally respect and implement opinions of the Ombudsperson, as well as the need for the highest quality of the Ombudsperson´s opinions and work in general.

26. Such issues are therefore not dealt with in the following remarks. But they are examples of topics which are nevertheless of essential importance in any country genuinely devoted to the Ombudsperson idea.

27. It is noted that the language used in the Existing Law is often gender insensitive in the English language version and this ought to be addressed when making the other changes proposed in this opinion[240].

240 It has been suggested to the authors that this is also the case with the Albanian version but the authors are not in a position to verify whether this is so.

4. SOME IMPORTANT ISSUES OF PRINCIPLE

(a) The definition of the institutions and persons covered by OIK's competence

28. The Current Law uses varying terminology when defining the institutions covered by OIK competence. For example, Article 1 speaks of 'public authorities, other bodies and organizations exercising public authorizations for their account', while Article 3.2 refers to 'bodies of public authorities', and Article 16.2 refers to 'any natural and legal person'. At the same time, it follows from Article 15.6 that the OIK´s competence does not cover the judiciary except in cases of 'unreasonable delays or apparent abuse of power'.

29. For the purpose of legal clarity, the Current Law should contain, in one and the same provision, a clear formulation as to which institutions are covered by OIK competence.

30. First, Article 1 should, in accordance with Article 132.1 of the Constitution, primarily refer to 'public authorities', indicating that this term applies to both central and local authorities.

31. Second, although Article 1 states that 'public authorities' also covers private bodies and organizations exercising public authorization on their account, it is unclear what this addition more specifically aims to achieve, and, during the visit to Kosovo, interlocutors were not able to provide specific practical examples. Thus, insofar as it is considered necessary to include certain private bodies, Article 1 should be amended to state more clearly which private bodies are being referred to.

32. Third, Article 1 should state that the courts are not covered by OIK competence except in cases of unreasonable delay. Furthermore, it should be stated that the OIK should, in such cases, only be competent to make general recommendations and not to intervene in individual cases. This would also be in line with Venice Commission doctrine that:

> in general, it would seem preferable to give the Peoples´ Advocate the power to make general recommendations about the functioning of the courts system, and exclude the power to intervene in individual cases (not even as regards their length); this should be left to the judiciary itself[241].

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33. The current Article 15.6 also includes 'apparent abuse of power' in the listing of OIK jurisdiction with the courts. Presumably, this refers to the substance of the courts´ decisions. However, the wording is very unclear and would seem to give rise to disputes. Also, issues of substance of the decisions of courts ought to primarily be dealt with through the appeals system and not via non-judicial institutions.

34. For these reasons, 'or apparent abuse of power' should be deleted from Article 15.6. This would also clearly be in better compliance with recommendation no. 1615(2003)1 of the Parliamentary Assembly of the Council of Europe on the Institution of Ombudsman.

35. It should be noted that there is no contradiction between, on the one hand, the proposed limitations on OIK jurisdiction with the courts and, on the other hand, the competence of OIK under Article 15 of the Current Law to initiate matters before the Constitutional Court and the proposals in the opinion on the Draft Discrimination Law concerning the competence of OIK to initiate proceedings in the courts. What is said in the paragraphs above concerns the competence of OIK to intervene in the way the courts are handling their individual cases. What is stated in Article 15 of the Current Law and in the opinion on the Draft Discrimination Law concerns the powers of OIK to initiate court proceeding (without in any way intervening in them).

36. Fourth, Article 1 should contain an explicit reference to the competences for OIK in respect of discrimination and gender equality under the Draft Discrimination Law and the Draft Gender

241 Opinion CDL-AD(2007)024 on the draft law on the Peoples´ Advocate of Kosovo, paragraph 19.

Equality Law that add to those at present in the Current Law. This is particularly important given that the complaints review procedures in Chapter IV of the Existing Law only cover public authorities.

37. It is noted that these competences would allow complaints against private persons and bodies as much as public institutions. As such there is a potential issue of the compatibility of these competences with Article 132.1 of the Constitution, which specifies that the role of the Ombudsperson relates to 'public authorities'. This is an issue which may have to be resolved in the future and it is certainly not one for this opinion. However, there is nothing inappropriate, in principle, in such competences being conferred on an Ombudsman Institution.

38. Fifth, the definition of the institutions within the OIK's competences should also be reflected in the wording used for the bodies and institutions referred to in Articles 22, 23.1, 24, 25 and 26.

(b) Procedures for election of the Ombudsperson

39. The procedures for proposal and election of the Ombudsperson are prescribed in Articles 8 and 9.

40. These procedures seem unnecessarily complicated. They would appear to carry a substantial risk of deadlock in situations where there is not one obvious candidate for the post (such deadlock was indeed experienced during the last election process which led to the election of the current Ombudsperson). It is important that they be simplified (and otherwise improved) to the extent possible.

41. The following amendments should thus be made to the Current Law:
    - Article 8.1 should additionally state that the election procedures also start at the time of the Ombudsperson´s resignation, dismissal or death;
    - Considering the relative (and probably unavoidable) vagueness of some of the conditions set forth in Article 6, the Committee should only under Article 8.6 be able to reject applicants who do not meet objectively stated conditions (e.g. being a citizen of Kosovo and having a university degree);
    - It should be clearly stated in Article 8.9 that the Assembly is free to elect a candidate who does not appear on the shortlist provided by the Committee (but does meet the objectively stated conditions). The shortlist should be a practical working tool for the Assembly, but not a binding limitation of candidates as it is important that it is in fact the full Assembly (rather than a committee) that takes responsibility for the election of Ombudsperson and provides him/her with democratic legitimacy. However, there could be a duty for the Assembly to refer candidates not on the shortlist to the Committee for further vetting in case the Assembly is considering to elect a candidate not on the shortlist;
    - Article 9.2 should provide that the Ombudsperson is to be elected within 30 days from the day of proposal of the candidates and that, if this deadline is not reached, the Assembly should vote for the election of the Ombudsperson in each plenary session for the 30 following days. The existing provision for a new competition if the Ombudsperson is not elected within 60 days should be deleted as there is no reason to expect that other (more) qualified candidates would then turn up. Article 9.2 should thus just state that the election of a new Ombudsperson must be done within 60 days and that, in any event, the current Ombudsperson should be obliged to stay in office until a new Ombudsperson is in place[242].

242 Cf. Article 13.3.

(c) The number and appointment of deputies

42. Under Article 5.1.2, there are 5 Deputy Ombudspersons. This is a choice made in the Current Law since Article 133.2 of the Constitution only provides that there should be 'one or more' deputies.

43. Furthermore, under Article 9.3, the deputies and not just the Ombudsperson are to be elected by the Assembly. This is also a choice made in the Current Law, since the Constitution does not require such election of deputies but allows for the Ombudsperson him/herself to appoint the deputies.

44. This issue should be reconsidered since, based on professional experience and practice, and views expressed by stakeholders, 5 deputies seem to be too many, complicating matters at the OIK and also somewhat blurring the responsibility of the actions of the institution and the accountability of the Ombudsperson towards the Assembly.

45. For the purpose of the best possible management of the institution, it should be left to the Ombudsperson him/herself to determine the number of deputies (respecting of course Article 133.2 of the Constitution, so that there is at least one deputy). This would also allow for the Ombudsperson to change the number of deputies when relevant.

46. In this context, it would also be appropriate to leave to the Ombudsperson exclusively the power to appoint the deputies (and consequently they should not be elected by the Assembly). It is a basic principle that the manager responsible for the overall performance of an institution should be able to decide on the staff of his/her institution, and in this respect it would not seem sufficient that deputies are elected upon proposal of the Ombudsperson[243]. Also, such a change would clarify the Ombudsperson´s accountability to the Assembly, leaving the Ombudsperson without the "excuse" that he/she needs to work with deputies selected by another body. Article 6 should thus refer only to the election of the Ombudsperson.

47. Article 8.13 expresses a principle of diversity within the staff of the OIK. Such a principle should be upheld but it would then be for the Ombudsperson to appoint his/her staff (including deputies) in accordance with such criteria. The transfer of this provision to Article 30 would ensure full compliance in the future with the principle of diversity amongst OIK staff, deputies as well as ordinary staff members and the Existing Law should be amended accordingly. It would, however, be important also to take full account of the extent of ethnic and gender representation in high level positions in the course of appointing the Ombudsperson.

48. However, it is understandable if the Assembly of Kosovo wishes to retain some influence on the appointment of the deputies (for example because the deputies will in certain circumstances be acting in the Ombudsperson´s place). Such a mechanism could be established by either allowing the Assembly to object (within a certain deadline) to the Ombudsperson´s appointment of deputies or by conferring on the Assembly the power to formally approve the relevant candidate[244]. In either case, the Assembly should leave a wide margin of discretion to the Ombudsperson, and the number of deputies should in any event be up to the Ombudsperson to determine.

49. Consequently, the provision in Article 5.1.2 - and thus the amendment proposed in Article 1 of the Draft Amending Law - concerning the number of deputies should be replaced by one specifying that the Ombudsperson should appoint at least one deputy but can appoint more than one if he or she considers this necessary. In addition the references to deputy Ombudspersons in Article 8.2 and 8.14 should be omitted, and Article 8.11-13 and Article 9.3-5 should be deleted in their entirety, which would also entail the deletion of Article 2 from the Draft Amending Law.

243 Article 8.11.

244 Cf. also Recommendation no. 1615(2003)1 on the Institution of Ombudsman, paragraph 7.

(d) Immunity

50. Under Article 11.1 the Ombudsperson and his/her deputies enjoy immunity from prosecution, civil lawsuit and dismissal for activities and/or decisions that are within the scope of responsibilities of the OIK. This is (as concerns the Ombudsperson) a reflection of Article 134.4 of the Constitution.

51. This provision raises various questions.

52. First, this immunity only extends to the Ombudsperson and his/her deputies but not to the staff.

53. The Venice Commission has, on various occasions, stated that immunity should also extend to the staff of the Ombudsperson. Thus, the Commission has (in respect of the Protector of Human Rights and Freedoms in Montenegro) suggested that:

> not only the Protector and his/her Deputies, but also his/her staff should have immunity from legal process in respect of words spoken or written and acts performed by them in their official capacity[245].

54. Immunity should thus be extended to the staff as well (this would not seem to contradict Article 134.4 of the Constitution, although this provision only refers to the Ombudsperson – otherwise, there would also be a problem in the Current Law extending immunity also to the deputies).

55. In this context, it is important to note that immunity will, as with the Ombudsperson and the deputies, only apply to activities and/or decisions that are within the scope of responsibilities of the OIK. There would in no circumstances be immunity for actions outside the scope of such responsibilities, for example suppression of information relating to OIK investigation, stealing from the office or actions completely unrelated to OIK work.

56. Second, it is unclear whether immunity for the Ombudsperson (and deputies) also applies after termination of mandate. In his letter of 31 January 2013 to the Minister of Justice, the Ombudsperson has proposed that 'functional immunity should even apply after the expiry of their terms of office or work period with the Ombudsperson Institution'. This proposal has not been accommodated in the Draft Amending Law.

57. However, immunity may be of little worth if the Ombudsperson should fear for arbitrary prosecution, etc. as soon as his mandate expires, and it is strongly recommended that functional immunity, i.e., immunity from legal process in respect of works spoken or written and all acts performed by them in their official capacity and within the limit of their authority, be granted even after expiry. In the opinion on Montenegro cited above, the Venice Commission ventured to state that such

> immunity shall continue to be accorded even after the end of the Protector´s mandate or after the members of staff cease their employment with the Protector´s institution.

58. The Current Law should thus be amended to make it clear that functional immunity remains applicable after the terms of office and employment respectively of the Ombudsperson and his/her staff.

(e) Dismissal of the Ombudsperson

59. Under Article 12.1, the Ombudsperson, as well as the deputies, may be dismissed for reasons

245 Cf. Opinion CDL-AD(2009)043 on the draft amendments to the law on the Protector of Human Rights and Freedoms of Montenegro, paragraphs 12, 27 and 29.

concerning:
- physical or mental inability;
- committing a criminal offence;
- personal conduct; and
- actions in contradiction with various provisions of the Current Law.

60. The provision should be seen in context with Article 8.14. Under this provision, the procedure for dismissal of the Ombudsperson (and currently the deputy Ombudspersons) shall be regulated with a special Regulation of the Assembly of Republic of Kosovo.

61. According to the information provided, no specific regulations are in place concerning the Ombudsperson and his/her deputies.

62. It is a common European principle that Parliament should be able, in extraordinary circumstances, to dismiss a parliamentary elected Ombudsperson. On the other hand, it is important that the Ombudsperson, once elected, is able to perform his/her duties independently, which should include the existence of protection from any fear of dismissal due to decisions unpopular within Parliament. The latter principle is also expressed in Article 132.2 of the Constitution according to which the Ombudsperson exercises his/her duty independently and does not accept any instructions or intrusions from other institutions.

63. It is not easy to find a balance between these principles. However, the combination of (a) rather vague criteria for dismissal and (b) the fact that no specific procedural arrangements are in place, in principle leaves the Ombudsperson in a very problematic position.

64. It may be difficult to formulate criteria for dismissal in a very specific manner. However, the notion of "personal conduct" in Article 12.1.3 clearly seems too broad as it could in fact cover any reason for wishing to dismiss (including for purely political reasons) the Ombudsperson. It is suggested that this part of the provision is deleted. If the notion of "personal conduct" is meant to cover specific and valid reasons for dismissal not covered by the remaining criteria in Article 12.1, such reasons should then be explained and added to the provision.

65. In any event, it is essential that procedures be in place which offer safeguards against misuse of the competence to dismiss the Ombudsperson. Such procedures should include:
- open and public proceedings;
- guarantees for the Ombudsperson to be heard publicly;
- inquiry by and advice from independent institutions, such as the Constitutional Court;
- need for qualified majority in the Assembly[246].

66. This is also in line with Venice Commission standards[247].

67. The detailed rules of procedure could be set out in regulations of the Assembly, as foreseen in the current provision in Article 8.14 but the basic principles, as outlined above, should be vested in Article 12 of the Current Law itself, which should be amended accordingly.

68. As it has already been suggested that the deputy Ombudspersons be appointed by the Ombudsperson (and not elected by the Assembly), their dismissal should also be a matter within the competence of the Ombudsperson and not the Assembly. The Current Law should set criteria in Article 30 for such dismissal - which should be the same as those applicable to the Ombudsperson - but Article 12 should be amended to deal only with the dismissal of the Ombudsperson.

246 Cf. Article 134.5 of the Constitution.
247 See for example Joint opinion (CDL-AD(2004)041 on the draft law on the Ombudsman of Serbia, paragraphs 12 and 9.

(f) Provision of a job after the end of mandate

69. Under Article 14.1, after completion of the mandate, the Ombudsperson may return to his/her post or public work that he/she had prior to election as Ombudsperson. If this is not possible, the previous employer must provide a suitable job, depending on skills and profession.

70. However, the second sentence is problematic, at least in cases where the previous employer is an institution covered by the OIK´s competence as it leaves discretion to the employer, both as to whether the previous position should still exist and as to what is a 'suitable' job. The existence of this possibility might be seen to influence the Ombudsperson´s exercise of his/her functions towards that institution.

71. A solution would thus be to amend Article 14 so that it prescribes that the previous employer must provide a post that is at least at, the same level, including financial conditions, as when the Ombudsperson left that position.

72. Either Article 14.1 or Article 3 of the Draft Amending Law (amending Article 14 of the Current Law) should be amended accordingly.

(g) Competences of the Ombudsperson

73. Article 15 of the Current Law provides the list of competences granted to the OIK. The mandate of the OIK is rather broad. Though the need to provide the OIK with additional competences to implement its mandate more effectively persists.

74. The OIK, while exercising his/her competences, might deal with the cases where the delegation of the case for further scrutiny to the bodies authorised to conduct criminal investigation is required. Article 15 of the Current Law is not providing the OIK with the clear authority to send particular requests and materials to the investigative bodies with a recommendation to initiate a criminal investigation if the OIK reaches the conclusion that a crime has been committed. Given that the OIK is not an institution entrusted with the authority to carry out criminal investigations itself, the Article 15 should be amended to provide OIK with a clear competence to address investigative and prosecutorial bodies directly with a request to launch criminal investigation. The latter should treat the OIK's requests with due attention.

75. Under Article 16.7 of the Current Law, the Ombudsperson and his/her representatives are authorized to enter without prior notice and inspect any place for the deprivation of liberty in Kosovo.

76. In practice the OIK conducts monitoring of the places for the deprivation of liberty in partnership with two local non-governmental organizations specialized in the field, based on the tripartite MoU signed by the parties. Taking into consideration a number of important elements, including the current mandate, experience and capacities of the OIK, it is obvious that the OIK could act as the National Preventive Mechanism ('NPM') envisaged by the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('the OPCAT') and it would be appropriate to expand the scope of the OIK's activities accordingly. However, considering that the OIK will acquire new functions as a consequence of the adoption of the Draft Discrimination Law, it might be sensible to amend the law so as to designate the OIK as NPM and postpone the latter's establishment so as to prioritize the implementation of the functions relating to discrimination part. This should be dealt with as part of the Draft Law's transitional provisions.
77. The process for amending the Current Law should thus be employed to address this important issue as well and introduce required provisions in the law to improve the monitoring and preventive role of the OIK in fight against torture and inhumane or degrading treatment or

punishment in Kosovo.

78. Article 16.7 should thus be amended to stipulate that the OIK exercises the function of an NPM.

79. In addition, the text of the current Article 16.7 should be moved to newly introduced Article 16.7.1 with the following wording::

> Officials of the OIK may, at any time and without notice, enter and inspect any place where persons are deprived of their liberty and can be present at meetings or hearing sessions where such persons are included. Officials of the OIK may hold meetings with such persons without the presence of officials of respective institution. Any kind of correspondence of these persons with the OIK is not prevented or controlled.

(h) The OIK´s access to information

80. Under Article 16.6, the Ombudsperson is supposed to have access to files and documents of every institution of the Republic of Kosovo and can review them in cases that are under review. The provision contains no limitations on such access and so appears to imply that access is unconditional, regardless of the confidentiality provisions in other laws.

81. This is in line with many European laws on Ombudspersons as it is a basic principle that an Ombudsperson cannot investigate a case without having access to (all) its files and documents. It is also in line with Recommendation 1615(2003)1 on the Institution of Ombudsman, paragraph 7.viii, requiring 'prompt and unrestricted access to all information necessary for the investigation'.

82. However, in practice there appear to be problems with this. The authors were told that it happens that authorities, for example the police, decline to submit files based on their duty of confidentiality.

83. It is essential that this problem be solved as it might otherwise undermine the powers and authority of the OIK.

84. There should (in accordance with the wording of Article 16.6) be unlimited access for the OIK to relevant files and documents in cases which he or she investigates. It is therefore suggested that a specific sentence is added to Article 16.6 stating that obligations of confidentiality cannot be invoked as a reason for not providing OIK with requested files and documents. Furthermore, the law should also grant the OIK, when exercising the competences of the NPM, access to the medical files of persons deprived of their liberty.

85. Regardless of what is being said above, procedures should of course be in place to ensure that the files and documents which the OIK receives for the purpose of its investigations are treated with sufficient confidentiality. Such procedures may, for example, mean that only some members of staff have access to files and documents beyond a certain level of confidentiality. They may also mean that OIK personnel can only examine such documents at the premises of the authorities.

86. Also, it is obvious that the OIK should not be free to disclose any information in its opinions, etc. In Article 16.1.10, there is a provision on the duty of confidentiality of the Ombudsperson, the deputies and the staff. In this provision, it should be added that the OIK must pay attention to issues of confidentiality when making its opinions, etc., public.

(i) Reporting and hearing the Ombudsperson's report in the Assembly

87. The Current Law regulates the issues concerning the submission and hearing of the annual report of the Ombudsperson. Thus, Article 27.2 stipulates that the Ombudsperson submits the report for the previous year to the Assembly no later than 31 March of the following year. In practice the Assembly might unreasonably delay the hearing of the Ombudsperson. According to the accounts of numerous interlocutors interviewed by the Project's working group of international and local experts responsible for the formulation of the institutional reform proposal, that has been the practice of the Assembly on a number of occasions. This negatively affects the work of the OIK, keeps it in a state of uncertainty and diminishes the importance of the report covering the previous reporting year.

88. This matter is not dealt by the Draft Amending Law. However, the Current Law should be amended to provide a clear deadline to the Assembly to allow the Ombudsperson to present the report to the plenary session. It should be provided that the Ombudsperson is to present the annual report to the Assembly during its spring session.

89. The Current Law says nothing about the general content of the Ombudsperson's annual report. Introducing such a standard should establish general requirements for every Ombudsperson when working on the annual report. According to good practices, the report of the Ombudsperson should include information about those bodies and officials that were found to have violated human rights and freedoms and failed to act upon the OIK's recommendations concerning the measures of redress.

90. The report should also provide a general assessment of the human rights and freedoms situation in Kosovo, as well as a summary of the findings and recommendations with a view to addressing identified problems.

(j) Funding and financial independence of the OIK.

91. Article 34 of the Current Law deals with the financing of the OIK. The adoption of the budget raises a number of concerns related to the genuine independence of the OIK. The way it is framed now, the Current Law does not provide for a system of checks and balances capable of ensuring that the adoption of the budget cannot be used as a way to put pressure on the institution. Taking into account the past attempts of the Government to reduce the budget of the OIK and the negative effects of that process on the effectiveness and operation of the institution, some legal safeguard should be introduced in the law to limit the powers of the executive negatively affecting the financial independence of the OIK.

92. The Current Law should thus stipulate that the budget of the OIK should not be less than the one approved for the previous year. There should also be a stipulation that the budget of the OIK can be reduced only with the consent of the Ombudsperson.

93. The Current Law should also be amended to stipulate that the OIK receives additional funding necessary for the implementation of its newly acquired competences. More specifically, the OIK should be provided with additional financial resources for covering increased operational and human resource costs generated from the additional responsibilities and tasks enshrined in the Draft Discrimination and Gender Equality Laws once these are adopted. It goes without saying that the NPM functions will also require additional funding to the provided. A new provision should thus be added to Article 34 stating that the OIK is to be provided with additional financial resources to fulfil the competences that are being added to its mandate.

94. Another important issue directly related to the effectiveness and quality of work produced by the OIK relates to the salaries of the Ombudsperson, his/her deputies and staff. Non-alignment

of the salary of the Ombudsperson and its Deputies to that of senior public officials and arbitrary exclusion of the OIK staff from the increase of salary foreseen for other civil servants have been considered as the main impediments for the OIK to pursue its mission as 'people's advocate'.

95. Article 9 of the Draft Amending Law proposes to regulate the issue related to the salary of the Ombudsperson and his/her deputies in a manner recommended by the Ombudsperson himself, though the issue of salaries for the staff remain unresolved. Thus, the Draft Amending Law in not providing for a solution to the overall problem that has been outlined.

96. Thus, Article 32 of the Current Law should be amended so as to provide that the level of salary of the Ombudsperson is equal with that of the President of the Constitutional Court and that the salaries of the Deputies of the Ombudsperson are equal with those of Constitutional Court Judges. The salaries of the investigators in the OIK should be fixed at the level of those of the advisors in the Constitutional Court.

5. COMMENTS ON INDIVIDUAL PROVISIONS OF THE LAW

97. There are a number of technical areas in the Current Law which require further changes and amendments to bring the current law in line with international standards and good practices. The proposed changes should also enable the OIK to function more effectively and produce better quality work

Article 3

98. Paragraph 1 of this provision states that the OIK is an independent institution governed by 'the principles of impartiality, confidentiality and professionalism'. However, considering the fundamental purpose of the institution, 'supremacy of human rights' should be added to the list of principles governing its activity.

99. The principle of independence of the Ombudsperson is fundamental. In view of this, it is suggested that a provision be inserted to the effect that undue influence (or attempt of such influence) on the OIK´s exercise of its duties is a criminal offence. The authors leave it to the Kosovo authorities to determine whether such a provision should technically be inserted in the Law on Ombudsperson or in the Criminal Code.

Article 6

100. The conditions in this provision governing the election of the Ombudsperson seem reasonable and proportionate. However, it is doubtful whether a sentence for a criminal offence should in all circumstances preclude a person from qualifying as Ombudsperson. It is, therefore, suggested that Article 6.1.5 is deleted so that it is up to the discretion of the Assembly whether a committed offence should disqualify a candidate. In any event, it is important to note that the candidate must have 'character, honesty and high moral'[248] and such a requirement would clearly allow for criminal offences to be taken into consideration.

101. The suggested amendment also seems to be in better harmony with Article 134.2 of the Constitution.

Article 7

102. Under paragraph 3 of this provision, the Ombudsperson and his/her deputies cannot exercise any duty for which they are paid, except for 'teaching at the institutions of higher education'.

103. This could be a problem in certain situations, for example if the Ombudsperson is to take other responsibilities deriving from his/her position, such as membership of the Pardons

248 Cf. Article 6.1.3.

Commission etc. The problem could be solved by inserting that the Assembly may permit the Ombudsperson to hold other offices as well. Such a mechanism is known in many European countries.

Article 13

104. Resignation and dismissal should be added to the circumstances in paragraph 2 for the Ombudsperson to be replaced by a deputy. The provision should, as a consequence of the suggested limitation of the number of deputies, also refer to 'deputy or deputies or other senior members of staff'.

105. Article 13.3 should be amended to refer only to the Ombudsperson and not the deputies, in line with the recommendation already made that these be appointed by the Ombudsperson and so will not be elected with a 'mandate'.

Article 15

106. Under paragraph 2 the OIK can provide good services to 'the citizens of the Republic of Kosovo who temporarily live outside the territory of the Republic of Kosovo'. However, under Article 17, 'any person' can complain to the OIK, so the principle seems to be – and should be – that any person regardless of nationality can turn to the OIK. Furthermore, it is not usually a condition for complaining to an Ombudsperson that the complainant lives within the territory of the country in question. Also in practice, there would seem to a number of potential situations where individuals living permanently outside the territory of Kosovo (whether Kosovo nationals or not) would need to turn to the OIK, for example on tax issues.

107. In view of this, it is recommended that Article 15.2 be amended to authorise the provision of good services also to 'persons living outside territory of the Republic of Kosovo'.

108. Paragraph 4 deals with the need for consent in certain cases, namely, where the OIK starts procedures on his/her own initiative or where someone other person than the damaged person makes the complaint. However, it should be added to this provision that, where the damaged person is dead or otherwise unable to consent, consent should be sought from close relatives and that, if such relatives do not exist or cannot be reached, consent is not necessary.

Article 16

109. It is not clear from the English text of Article 5 of the Draft Amending Law that any change is being made to the text of Article 16.1.8 and its implementation thus does not seem necessary.

110. Consequent upon the recommendation previously made regarding the addition of the NPM competence, the following additional provisions should be introduced into Article 16:

- 16.7.2: 'The Ombudsperson Institution shall undertake regular visits to places of deprivation of liberty';
- 16.7.3: 'A specialized branch shall be set up at the Ombudsperson's Institution that will be tasked with functions of the National Preventive Mechanism. The staff of this branch shall include a variety of professionals, including medical doctors, with relevant experience and expertise';
- 16.7.4: 'Specialists and experts contracted by the Ombudsperson in respect of its functions as the National Preventive Mechanism shall have the same rights and duties as Representatives of the Ombudsperson, including the right to visit places of deprivation of liberty and with the right to take pictures and make sound and video recording, enjoy protection against interferences in their activities, as well as the right not to give evidence or explanation on facts that were disclosed to them in the process of exercising their functions';
- 16.7.5: 'When exercising functions of the National Preventive Mechanism, the

Ombudsperson and his/her Representatives shall have the right to access information about the health status of any person held in places of deprivation of liberty, including access to the relevant medical records, as well as, with consent of the person, they shall be entitled to access his/her personal data';

- 16.7.6: 'The Ombudsperson can make recommendations for bringing legislation, draft legislation and administrative rules, guidelines and practices of Kosovo in line with the Constitution of Kosovo and international standards as concerns the prevention of torture and other cruel, inhuman or degrading treatment or punishment';
- 16.7.7: 'The Ombudsperson shall further develop co-operation with international, regional and other national bodies in charge of prevention of torture and other cruel, inhuman or degrading treatment or punishment';
- 16.7.8: 'The Ombudsperson can make observations and recommendations to those who are in charge of persons deprived of their liberty in all types of facilities and circumstances on how to improve the treatment and conditions of the latter'.

Article 19

111. In accordance with paragraph 1 the OIK has 30 days to decide on the admissibility of the case (complaint). The OIK should provide an example of effectiveness and deliver services to the complainants in a descent and timely manner. It should be taken into account that most of the complainants when addressing the OIK are already frustrated because of delayed services from other bodies. They are expecting their complaints to be treated in a timely and effectively manner by the OIK. In order not to keep complainants in a state of uncertainty for unreasonable time period, this provision should thus be amended so as to provide a maximum of 10 working days for the OIK to take a decision on the admissibility or non-admissibility of a complaint.

112. Although paragraph 1.3.3. of Article 19 of the Current Law authorises the Ombudsperson to reject anonymous complaints, this provision should not be regarded as preventing the Ombudsperson from examining the case *ex-officio*.

113. Article 19 also regulates the procedure after receiving the complaint. It sets the criteria for admissibility of the complaints. In practice the Ombudsperson might be approached with a complaint that has already been considered. This might be the case especially after a new Ombudsperson has been elected, with some complainants not satisfied with the response of the previous one approach him or her on the same matter.

114. There should, therefore, be added to this provision a paragraph authorising the Ombudsperson to reject a complaint, which has already been considered and rejected unless some new factual evidence is presented in relation to the complaint.

Article 20

115. This provision lists the conditions for rejecting the complaint and paragraph 1.3 stipulates that the Ombudsperson can refuse to review the case when procedures for a case are being held in judicial or other competent bodies 'except in cases specified by this Law'. This limitation regarding judicial authorities is acceptable and should remain in the Current Law but the part of this sub-paragraph mentioning 'other competent authorities' is rather vague and should be removed.

116. In case of a refusal, the complainant should always be provided with clear reasoning and grounds for so doing and a paragraph requiring this should be introduced to Article 20.

Article 21

117. This provision stipulates that the Ombudsperson should not initiate proceedings to investigate violations of human rights if a complaint is submitted to the OIK in more than 6 months from the date on which a party has received the final form of decision or is informed about it.

118. This limitation might leave many important human rights cases beyond the OIK's review. Moreover, taking into consideration current caseload of OIK, the need for such a limitation is not at all justified.

119. It has to be noted that it is not very typical of Ombudsman institutions for such a limitation to be imposed and it, therefore, recommended that the period of 6 months be increased, with 3 years being suggested as appropriate.

Article 22

120. Paragraph 1 deals with the procedure after launching the investigation. Under this provision the Ombudsperson has the obligation to communicate his/her decision on launching the investigation to the author of the complaint and the body against which the complaint is filed. This provision could create a risk that the bodies concerned attempt to hinder the OIK's investigation after they receive notification of the complaint against them. Consequently the timing of the above notification should be within the OIK's discretion and should not be imposed as an immediate obligation on the institution.

121. Paragraph 2 provides for a range of days to be used by the OIK when setting the time period within which a body concerned must submit to it all the information required in accordance with paragraph 1. However, a uniform approach towards all institutions concerned would minimize the risk of delay in the response to the OIK and thereby enable the OIK to perform the duties timely and more efficiently.

122. It is, therefore, recommended to amend this provision so as to set a deadline of 10 working days for all bodies dealt with by the OIK.

Article 26

123. This provision deals with the responses to the requests of the OIK. This Article should be rephrased so that it explicitly includes the requests/recommendations of the OIK to the prosecutorial authorities on launching the criminal investigations in the cases of alleged crimes identified by the OIK in accordance with the amended Article 15 of the Current Law.

Article 28

124. This provision authorises the Ombudsperson to publish special reports through the media. This can be a good tool to publicize the work of the OIK. However, special reports addressing particular human rights concerns should also be used to generate debate in the Assembly and to promote accountability of the authorities. The OIK should, therefore, be authorised to submit its special reports to all bodies concerned including the Assembly and the relevant state authorities. Article 28 should be amended accordingly.

Article 29

125. Article 7 of the Draft Amending Law proposes a rewording of the existing paragraph 2 of this provision, as well as the insertion of a new paragraph into it. The former clarifies that, in general, it is the Government that is responsible for providing the OIK with facilities and equipment needed to perform its functions. This rewording of paragraph 2 is appropriate. The new paragraph is concerned with the provision of regional offices and appropriate facilities for work by the municipalities. Certainly it is appropriate to require the municipalities to provide the working space for the OIK's regional offices but these do not necessarily have to be, as the new paragraph proposes, in the facility of the municipality itself. In this regard, it should be recalled that the OIK has on a number of occasions been subjected to threats of eviction from the local Municipalities in Gjilan and Mitrovica. Thus, in order to strengthen the independence of the OIK and to ensure proper working conditions, the ownership of premises that are provided to the OIK, both in Pristina and the regions, should be transferred to it. Article 29 should be amended accordingly.

Article 30

126. Under this provision, the OIK can select his or her personnel only from the citizens of Kosovo. However, in practice it might need to hire foreign experts and advisors for assistance in various activities. This provision should thus be amended to allow the OIK to contract foreign citizens as well. However, they should not be considered as civil servants of Kosovo.

127. Furthermore, this Article should be amended to require the principle of diversity to be respected not only in the appointment of the OIK's staff in general but also as between the Ombudsperson and his or her deputies.

Article 31

128. Under paragraph 1 the OIK is to issue its rules of procedure. However, the authority to approve and issue such rules should be granted exclusively to the Ombudsperson.

6. SUMMARY OF RECOMMENDATIONS.

129. The following changes should be made to the Current Law (whether through amendment to the Draft Amending Law or otherwise):

1. The text should be amended to ensure that the language is gender sensitive (para. 27);
2. Article 1 should clearly define the institutions covered by OIK's competence and this definition should also be reflected in Articles 22, 23.1, 24, 25 and 26 (paras. 29, 30,31,32,36,38);
3. Article 1 should limit the OIK's competence to deal with the courts to cases of unreasonable delay and then only to make general recommendations (para. 32);
4. Article 1 should explicitly refer to the competences that will be conferred by the Draft Discrimination Law and the Draft Law on Gender Equality (para.36);
5. The principles listed in Article 3 should also include the 'supremacy of human rights' (para. 98);
6. Article 3 should include a provision making undue influence (or attempt of such influence) on the OIK´s exercise of its duties a criminal offence (para. 99);
7. Article 5.1.2 should provide for one or more deputies appointed by the Ombudsperson (para. 49);
8. Article 6 should deal only with the election of the Ombudsperson (para. 46);
9. Article 6.1.5 should be deleted (para. 100);
10. Article 7.3 should additionally authorise the Assembly to permit the Ombudsperson to hold other compatible offices as well (para. 103);
11. Article 8.1 should state that election procedures also start at the time of the Ombudsperson's resignation, death or dismissal (para. 41);
12. The reference to 'deputies' in Article 8.2 and 8.14 should be deleted (paras. 41 and 49):
13. Article 8.6 should only allow the rejection of applicants who do not meet objectively stated conditions (para. 41);
14. Article 8.9 should authorise the Assembly to consider applicants not on the list prepared by the Committee (para. 41);
15. Article 8.11-13 should be deleted (para. 49);
16. Article 9.2 should be amended to state that the Ombudsperson should be elected within 60 days (para. 41);
17. Article 9.3-5 should be deleted (paras. 41 and 49);
18. The immunity in Article 11 should be extended to the staff of the OIK and continue after the termination of the Ombudsperson's mandate and the staff's employment (paras. 54 and 58);
19. The reference to 'personal conduct' should be deleted from the reasons for dismissal in Article 12 (para. 64);
20. Article 12 should provide sufficient procedures governing the dismissal of the Ombudsperson (paras. 65-68);

21. Article 13.2 should also include resignation and dismissal to the circumstances allowing replacement of the Ombudsperson and allow such replacement by the 'deputy or deputies or other senior members of staff' (para. 104);
22. Article 13.3 should refer only to the Ombudsperson and not the deputies (para. 105);
23. Article 14.1 should be amended so that the previous employer must provide a job at least at the same level, including financial conditions, as when the Ombudsperson left that position (para. 70-72);
24. Article 15 should provide the OIK with a clear competence to address investigative and prosecutorial bodies directly with a request to launch criminal investigation (para. 74);
25. Article 15.2 should authorise the provision of good services to 'persons living outside the territory of the Republic of Kosovo' (paras. 106-107);
26. Article 15.4 should additionally provide that consent is not necessary where the damaged person is dead or otherwise unable to consent, consent should be sought from close relatives and that, if such relatives do not exist or cannot be reached, consent is not necessary (para. 108);
27. Article 15.6 should be deleted (paras. 33-34);
28. Article 16.6 should grant the OIK, when exercising the competences of the NPM, access to the medical files of persons deprived of their liberty and provide that confidentiality cannot be invoked as a reason for not providing any file or document (para. 84);
29. Article 16.7 should stipulate that the OIK exercises the function of NPM and the existing text, with suggested modifications, should become Article 16.7.1 (paras. 76-79 and 110);
30. Article 16.1.10 should additionally require that the OIK must pay attention to issues of confidentiality when making its opinions, etc., public (para. 86);
31. Article 19.1 should provide for the admissibility procedure to be handled in 10 days (para. 111);
32. Rejection of a complaint under Article 19.1.1.3 on the grounds of anonimity should not be regarded as preventing the Ombudsperson from handling it *ex-officio* (para. 112);
33. Article 19 should authorize the Ombudsperson to reject complaints previously considered and rejected (para. 114);
34. The reference in Article 20 to 'and other competent bodies' should be deleted (para. 115);
35. Article 20 should also introduce an obligation to provide complainants with the clear grounds for any rejection of their complaints (para. 116);
36. The reference to '6 months' in Article 21 should be replaced by a longer period, with 3 years being suggested as appropriate (paras. 118-119);
37. Article 22.1 should provide for the timing of notification to the body against which an investigation is launched to be within the OIK's discretion (para. 120);
38. Article 22.2 should stipulate just a single deadline of 10 working days for the submission of the information to the OIK (paras. 121-122);
39. Article 26 should specify that the recommendations/requests include those to the prosecutorial authorities (para. 123);
40. Article 27 should specify a deadline for the Assembly to listen to the Ombudsperson in connection with his/her and general requirements for its (paras. 88-90);
41. Article 28 should authorised the OIK to submit its special reports to all bodies concerned, including the Assembly (para. 124);
42. Article 29 should guarantee that the OIK is provided with adequate working space and that the ownership of the premises concerned, both in Pristina and in the regions, is transferred to it (para. 125);
43. Article 30 should include the principle of diversity currently found in Article 8.13, in particular as between the Ombudsperson and his or her deputies, provide criteria for the dismissal of the deputies and allow the OIK to contract foreign citizens (paras. 47, 68, 126 and 127);
44. Art 31.2 should provide for the Ombudsperson (not the OIK) to issue the rules of procedure (para. 128);

45. Article 32 should provide that level of salary of the Ombudsperson is equal with the salary of the President of the Constitutional Court, that the salaries of the Depury Ombudspersons be equal to those of Constitutional Court Judges and the salaries of investigatiors in the OIK are to be fixed at the level of those of advisors in the Constitutional Court (para. 96);
46. Article 34 should stipulate that the budget of the OIK should not be less than the budget approved for the previous year and that its budget can be reduced only upon the consent of the Ombudsperson (para. 92);
47. Article 34 should also stipulate that the OIK is to be provided the additional resources required to fulfil its mandate as NPM and under the Draft Discrimination and Gender Equality Laws (para. 93); and
48. A transitional provision be added to defer the start of the OIK's functions as NPM for one year from the entry into force of the amended version of the Existing Law (para. 76).

7. CONCLUSION

130. Although the Current Law provides for a significant legal basis for the effective operation of a national human rights institution, it requires to be further amended with a view to bringing the OIK's legal framework closer to the standards and best practices existing within the Council of Europe member states.

131. The recommendations in this opinion, developed as a consequence of the comprehensive analysis of the Current Law and assessment of the challenges faced by the OIK in practice, are not just of a technical nature but entail a number of substantive changes. Implementation of the proposed amendments would contribute to broadening the mandate of the Ombudsperson and increasing the scope of his/her competences with a view to establishing a strong human rights protection mechanism within the country.

132. Furthermore, taking into account the additional competences and responsibilities provided for the OIK by the Draft Discrimination Law and the Draft Law on Gender Equality, the need for further reinforcement of the institution appears to be of the utmost importance. The proposed amendments should enable OIK to deal effectively and efficiently with new challenges that these draft laws.

133. Therefore implementation of the recommendations proposed in the present opinion would further improve the legal framework on the OIK, ensure compliance of the Current Law with European standards, strengthen the institutional and operational capacities, develop better safeguards for the independence of the institution and enhance its key role in protecting and promoting human rights and fundamental freedom in Kosovo.

134. The authors have seen the opinions on the Draft Discrimination Law and the Draft Law on Gender Equality and endorse the conclusions and recommendations in them.

ANNEX II

OPINION ON THE DRAFT LAW ON GENDER EQUALITY

EXECUTIVE SUMMARY

This opinion assesses the draft Law on Gender Equality against European and international human rights standards, as well as good practices. It also discusses its efficiency in regulating the institutional set-up within the context of the existing legislative and institutional frameworks in the field of human rights, with a view to ensuring that this draft Law, the Law on Ombudsperson, and the Draft Law on Protection from Discrimination are harmonized in substance and in the monitoring bodies/structures that they establish. While the Draft Law strives to address the deficiencies identified in the current Law and, for most part, adequately reflects European standards, there is a need for some simplification, as well as a clearer allocation of responsibilities to public bodies and the institutional mechanisms for gender equality, most notably on gender mainstreaming and gender budgeting. It is recommended that the existing Gender Equality Officers be re-allocated to policy positions either within central policy coordination units or in key departments but that the Agency for Gender Equality be kept in its current form and position. This opinion further recommends expanding some of the Articles to make the Draft Law the reference point for all gender related issues. It recommends that provisions on available remedies, including legal protection, sanctions and compensation follow the Draft Law on Protection from Discrimination but are mentioned in the draft Law for clarity. Finally, in order to address the challenges in the implementation of the Draft Law, this opinion calls for clear political support at all levels, gender mainstreaming in policy making, an increase in capacity of the institutions for using gender mainstreaming tools, awareness raising and the visible use of all available remedies.

1. INTRODUCTION

1. This opinion assesses the draft Law on Gender Equality ('the Draft Law') against European and international human rights standards, as well as good practices; and discusses its efficiency in regulating the institutional set-up within the context of the existing legislative and institutional frameworks in the field of human rights in Kosovo.

2. The opinion has been prepared by Jelena Besedic[249] under the Joint Project between the European Union and the Council Europe "Enhancing Human Rights Protection in Kosovo" ('the Project'), as part of a larger assessment, which has the aim of specifying the strengths and weaknesses of the institutional arrangements for the protection of human rights both at executive and local levels, and of providing a legislative expertise on the Law on Ombudsperson, the Draft Law on Protection from Discrimination ('the Draft Discrimination Law') and the Draft Law in order to build links between the three laws and the monitoring bodies/structures established under them[250].

3. In assessing the Draft Law, this opinion relies primarily on the Convention on the Elimination of All Forms of Discrimination against Women ('CEDAW'), as an international bill of rights for women and as an international agreement directly applicable in Kosovo pursuant to Article 22(6) of the Kosovo Constitution ('the Constitution').

4. Further, it compares the Draft Law with the requirements of the European Union *acquis* on gender equality[251].

5. In addition, it takes into consideration the other relevant European and international Conventions, as well as the Council of Europe Recommendations[252] and the General recommendations made by the CEDAW Committee.

6. This opinion will first look into the background for the current Law No.2004/2 on Gender Equality in Kosovo ('the Current Law'), and the circumstances that have led to its proposed replacement. It will provide an overall view of the Current Law and make a comparison between it and the Draft Law. The opinion will then discuss the Draft Law Article by Article and provide specific recommendations for its improvement. A number of more important themes, such as the institutional set-up, will be discussed in greater detail and the opinion will include some regional examples, for better clarity. Finally, it will briefly mention the implementation of the Draft Law.

7. The comments on the Draft Law refer to the version received on 22 July 2013 from the Legal Office of the Office of the Prime Minister ('OPM'). The number and the name of Articles is mentioned in the comments on the Draft Law since it has not been consistently re-numbered after changes were made to an earlier version.

249 Jelena Besedic is an independent consultant with a Master's degree in human rights law and with extensive experience in post-conflict development, including on gender issues.
250 The European Union has called on Kosovo, within the Stabilization and Association Process to streamline and simplify the multitude of bodies dealing with the protection of human rights and to ensure effective monitoring and enforcement of the relevant legal framework.
251 EU Gender Equality Law: Update 2010, December 2010.
252 Council of Europe, Make Equality in Law a Reality in Fact: Compilation of recommendations by the Committee of Ministers in the field of equality between women and men, November 2011.

2. METHODOLOGY

8. This opinion is based on the desk review of the relevant documents, laws and reports, including those by Kosovo institutions, international organizations and civil society organizations, an assessment visit that included meetings with relevant stakeholders, and a technical working group organized to discuss the Draft Law.

9. The author met with national and international stakeholders according to the meeting schedule prepared by the Project team.

10. The technical working group, chaired by the author, was held with relevant experts from international organizations in Kosovo and they provided detailed comments on the Draft Law.

11. This opinion has also taken into account the fieldwork conducted as a part of the research for the institutional reform proposal dealing with human rights bodies in Kosovo.

3. BACKGROUND

12. The Constitution provides the basis for both the Current Law and the Draft Law by guaranteeing equality between men and women in Article 7.2:

> The Republic of Kosovo ensures gender equality as a fundamental value for the democratic development of the society, providing equal opportunities for both female and male participation in the political, economic, social, cultural and other areas of societal life.

13. As has already been noted, Article 22 of the Constitution also provides for the direct applicability of enumerated international agreements and instruments, including the Convention on the Elimination of All Forms of Discrimination against Women ('CEDAW'). These agreements and instruments have priority over provisions of laws and other acts of public institutions.

14. Article 24 of the Constitution prohibits discrimination on the grounds of gender and allows special measures to redress inequality.

15. However, inequalities still persist between men and women in Kosovo necessitating a strong legal instrument on gender equality. According to the Kosovo Agency for Statistics[253], only 27.3% of women have completed secondary education, compared with 60.6% of men; a higher percentage of women are unemployed; a higher percentage of women are illiterate. Women are also under-represented in the decision-making positions at all levels of authority. Moreover, violence against women is prevalent. According to the 2008 survey[254], approximately 46% of women respondents had experienced domestic violence at some point in their lives. Kosovo is a strongly traditional and patriarchic society where the position of women is strongly tied to home. Women have traditionally had limited access to inheritance and the joint matrimonial property[255].

16. The Current Law was first issued in 2004 and was promulgated by UNMIK Regulation 2004/18[256]. It provided for the establishment of an Office for Gender Equality 'as a separate government institution' and this was transformed into the Agency for Gender Equality under the Kosovo Prime Minister in 2007[257]. The Agency is the central policy coordinating unit for gender

253 Kosovo Agency of Statistics, Women and Men in Kosovo, 2011.
254 Security Begins at Home: National Strategy and Action Plan against Domestic Violence in Kosovo, by Nicole Farnsworth and Ariana Qosaj-Mustafa, Agency for Gender Equality, Kosovo, 2008, p.2.
255 Norma Lawyers Association, Research and Monitoring the Implementation of the Law on Gender Equality, 2011.
256 The Law on Gender Equality.
257 By Administrative Direction No 2007/3 implementing UNMIK Regulation 2001/19 on the Executive Branch of the Institutions of Self-Government.

issues inside the government[258].

17. The then Advisory Office on Good Governance, Human Rights, Equal Opportunities and Gender Issues ('the AOGG')[259], established within the OPM 2002, had some competence for gender equality issues as an integral part of human rights. The Current Law provides for coordination of activities between the Office/Agency for Gender Equality and the AOGG but the competences of two offices were somewhat overlapping and this led to disagreements and insufficient cooperation between them.

18. Kosovo has a relatively new administration and has only been fully responsible for law-making since 2008, until which time each law needed to be promulgated, and oftentimes amended in the process, by the UN Special Representative of the Secretary General. Currently, the sources of law in Kosovo confusingly include laws adopted by the Assembly, laws promulgated by UNMIK and some former Yugoslav laws. Kosovo authorities lacked ownership over UNMIK law and some of the UNMIK promulgated laws also had reference numbers from the Assembly procedure that are different from the officially promulgated reference number but still preferred by the Kosovo authorities. For example, the Agency for Gender Equality on its website refers to Assembly reference numbers for the decisions on the establishment of the Agency, which cannot be traced online since the actual documents were promulgated under completely different UNMIK reference numbers.

19. There is an additional problem of translation and re-translation. Until 2008, the official version of laws was the English version. Since then and many amendments, the laws have been translated and re-translated so that the English version became unrecognizable in some instances. Laws, including the Draft Law, often lack a concept note explaining the reasoning and justification for their adoption or amendment[260]. Legal drafting guidelines still need to be more prescriptive and detailed especially taking into account the influence of both common and civil law approaches during legal drafting, depending on the international legal expert involved.

The Draft Law and the Current Law

20. The background for preparing the Draft Law is somewhat unclear. As already observed, there is no concept note providing the justification and reasoning for replacing the Current Law, and, while some reports identified shortcomings in the latter, such as the SIDA commissioned Gender Study[261], it is unclear whether these prompted the process of amendment. The European Union ('the EU') assessed the legal framework for the protection of women's rights in Kosovo to be adequate but emphasized the lack of implementation as a problem.

21. The Current Law is a relatively good instrument. UNIFEM (now UN Women), praised the current law in Kosovo as a good practice for, among other things, its strong provisions on temporary special measures to achieve a 40% target in legislative, executive and judicial bodies, as well as political parties[262]. The Current Law most notably lacked clear provisions on available remedies, including legal protection, sanctions and compensation. It also was not sufficiently clear in allocating responsibilities to all public bodies, including the Agency for Gender Equality, and it lacked clear provisions on gender mainstreaming and gender budgeting, which the Agency identified as a deficiency to be addressed in the Draft Law. It also needed to be aligned with the

258 Its responsibilities are now defined by Regulation No. 16/23 on the Organizational Structure of the Office of the Prime Minister (2013).
259 Now the Office for Good Governance, Human Rights, Equal Opportunities and Non-Discrimination ('OGG') following the adoption of Regulation No. 16/23 on the Organizational Structure of the Office of the Prime Minister, (2013).
260 As required under Article 29 of the Regulation No. 09/2011 of Rules and Procedure of the Government of the Republic of Kosovo and Article 54 of the Rules of Procedure of the Assembly of the Republic of Kosovo.
261 SIDA, by Ulf Färnsveden and Nicole Farnsworth, Gender Study in Kosovo: Review of the Implementation of the Law and Program on Gender Equality in Kosovo, December 2012.
262 UNIFEM, Gender Equality Laws: Global Good Practice and a Review of Five Southeast Asian Countries,' March 2009.

European standards.

22. The Working Group for the preparation of the Draft Law included the Agency for Gender Equality, Legal Office of the OPM, gender equality officers from municipalities and ministries, the OIK, representatives of the courts and two civil society organizations[263].

23. The last workshop on the Draft Law took place in Albania in March 2013. UN Agencies and the EU Delegation provided their comments in writing. The Legal Office of the OPM was in charge of preparing the text and the version shared with the Council of Europe experts had not been shared with all relevant counterparts. However, the Legal Office has given assurances that further consultations on the Draft Law would take place after receiving the present opinion on it.

24. The Draft Law is a very early draft with uneven language in English, as well as in Albanian and Serbian. It is unclear in parts and seems too long for effective implementation. The Draft Law would benefit from simplification, also in line with the EU principles of simplifying legislation by 'weeding out the superfluous by rigorously applying the principles of necessity and proportionality'[264]. The terminology needs to be consistent throughout the law and its provisions need to be harmonized with other laws, in particular with the Draft Discrimination Law and the Law on Ombudsperson. In addition, it needs to go through a more comprehensive consultation process[265].

25. At the same time, the Draft Law strives to address the deficiencies identified in the Current Law and, for most part, it adequately reflects European standards. There is still a need for it to be much clearer in allocating responsibilities to public bodies and the institutional mechanisms for gender equality to promote better implementation. Nonetheless, it should become the reference point for all gender related issues, particularly those that mostly affect women in Kosovo today.

4. ARTICLE BY ARTICLE DISCUSSION

Article 1 Purpose

26. Articles 1 and 2 refer to the Purpose and the Scope of the law but in the actual language of the Draft Law, it is unclear which is which. The Purpose should be shorter and perhaps more in line with the terms of Article 7.2 of the Constitution[266].

27. Paragraph 1 omits the goal of promoting gender equality and the word 'promote' should thus be added to it so that this provision reads:

> This law shall protect, guarantee and promote equality between genders as a basic value of democratic development of society.

28. Paragraph 3 is repetitive, unnecessary and unclear. It should be deleted.

29. Paragraph 4 is too long and, as the powers and responsibilities of institutions will be further defined in the body of the Draft Law, everything after the word 'competencies' could be deleted.

Article 2 Scope

30. CEDAW requires the inclusion of a positive duty of the state to achieve substantive equality for men and women, with all states parties having undertaken to take:

> all appropriate measures to eliminate discrimination against women by any person, organization or enterprise[267]

263 Partners Kosova and the Kosovo Centre for Gender Studies.
264 Europa EU Glossary, http://europa.eu/legislation_summaries/glossary/legislation_simplification_en.htm*, accessed 2 September 2013.*
265 In three languages in line with Article 40 of the Regulation No. 09/2011 of Rules and Procedure of the Government.
266 See para. 12.
267 CEDAW, Article 2 e).

which necessitates the law binding the state, public authorities and their representatives, as well as private organizations and individuals.

31. Thus, under paragraph 1 it should be clearer that the Draft Law is concerned with the public and private spheres and that it guarantees equal opportunities in:

> public and private areas of societal life, including in political and public life, employment, education, health, social benefits, sports and culture.

32. In its case law[268], the European Court of Justice has held that discrimination arising from the gender reassignment of the person is considered discrimination on the ground of sex. While this understanding of discrimination is found in the second sentence of paragraph 3 of the Draft Law, it would be more appropriate for it to be combined with the definition of scope in paragraph 1 so that this would then read:

> This law regulates gender equality, protection and equal treatment of men, women and persons who have a protected characteristic of gender reassignment ....

33. Paragraph 3 should then be deleted.

34. Paragraph 2 should specify that the Draft Law should determine the institutional framework necessary for its 'implementation' instead of 'supervision'.

35. There should be an additional paragraph included in this Article providing something to the effect that:

> Nothing in this law shall be construed so as to restrict or diminish any existing rights provided for in other laws, or applicable international agreements and instruments

as a safeguard against the risk of the Draft Law diminishing the enjoyment of rights that are possibly better regulated in other laws.

36. The CEDAW Committee has stated that, although CEDAW only refers to sex-based discrimination, its applicability to gender-based discrimination is made clear by the definition of discrimination contained in Article 1 together with Articles 2 (f) and 5 (a) [269]. The Committee has further stated that the term sex:

> refers to biological differences between men and women, and the term gender refers to socially constructed identities, attributes and roles for women[270].

The Draft Law should also be explicitly deemed to refer to both sex and gender and Article 2 should be amended accordingly.

Article 3 Definitions

37. While the definition of gender equality in paragraph 1.1 remains the same as that in the Current Law, its re-translation into English is no longer as clear. The last part of the paragraph (after the word 'rights') should again read in English:

> and make use of their individual skills for the development of the society and equal benefit from the results of such development.

38. Alternatively, a longer OSCE definition[271] could be used

> **Gender equality** is the equal enjoyment by women and men of opportunities, resources, socially valued goods, rights and rewards. It is de facto the absence of discrimination and distinction on the basis of being

268 P v. S and Cornwall County Council, Case C-13/94, 1996 E.C.R. I-2143.
269 CEDAW Committee, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 19 October 2010, CEDAW/C/2010/47/GC.2 .
270 Ibid., at para. 5.
271 Gender matters in the OSCE, Ed. Jamila Seftaoui. Vienna, 2010.

> a woman or a man in opportunities, in the allocation of resources or benefits, in access to services and the enjoyment of rights. It is thus, the full and equal exercise by men and women of their fundamental rights. The aim is not that women and men become identical, but that their opportunities and their benefits become and remain equal.

39. The definitions under this Article include parts that would be more appropriate under the main body of the Draft Law, such as the prohibition of discrimination based on sex, and the fact that harassment and sexual harassment constitute discrimination under this law. Thus, sub-paragraphs 1.2.1, 1.2.2 and 1.2.3 are not definitions but they do form a central part of this law and belong more appropriately under Article 4 (currently titled Prohibition and Prevention of Gender Discrimination). Similarly, sub-paragraphs 1.5 and 1.6 should also be under Article 4 and not among the definitions[272].

40. The definition of Equal treatment in sub-paragraph 1.2 should be reduced to:

> Equal treatment shall mean the elimination of direct and indirect discrimination on the grounds of sex.

41. The Article should include, as first paragraphs, a definition of gender, sex, and persons with the protected characteristic of gender reassignment, and equal opportunity as follows:

> **Sex** refers to the biological and physiological characteristics that define men and women.
> **Gender** refers to the socially constructed roles, behaviors, activities, and attributes that a given society considers appropriate for men and women.
> **Persons with protected characteristic of gender reassignment** refers to persons who have proposed, started or completed a process (or part of a process) of reassigning the person's sex by changing physiological or other attributes of sex.
> **Equal opportunity** refers to ensuring the full and equal participation of men and women in all aspects of political, social, cultural, and economic life.

The definitions proposed above for 'gender' and 'sex' have been adapted from the World Health Organization definitions; the proposed definition for persons with protected characteristic of gender reassignment was adapted from the United Kingdom's Equality Act; and the proposed definition for 'equal opportunity' was adapted from the OSCE Glossary of Gender-Related Terms.

42. The definitions are harmonized with the Draft Discrimination Law, in particular, the definition of direct and indirect discrimination. However, the relevant definition of both direct and indirect discrimination on the basis of sex should be retained in the Draft Law. The latter's definitions of direct and indirect discrimination are in line with the Directive 2006/54/EC.

43. While the definitions of harassment and sexual harassment - in sub-paragraphs 1.6.1 and 1.6.2 - seem to follow those in Article 2(2) of Directive 2006/54/EC, the language in English should be corrected to bring it fully into line with the Directive.

44. Thus, in sub-paragraph 1.6.1 the words 'because of gender affiliation' should be deleted and the definition should be corrected in English to:

> harassment is a situation where an unwanted conduct related to the sex of a person occurs with the purpose or effect or violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

45. Similarly, sub-paragraph 1.6.2, should be corrected to:

> sexual harassment is a situation where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.

46. The definitions of legal measures, general measures and special measures - in sub-paragraphs

272 See paragraph 60 and paragraphs 64-68.

1.7, 1.8 and 1.9 - are copied from the Current Law. However, the definition of legal measures is unclear since the definition of general measures seems to be more normative, and legal measures are not mentioned elsewhere in the Draft Law. Furthermore, general measures are specified under Article 5 and special measures should be defined and specified under Article 6 making further definition unnecessary. As a result, sub-paragraphs 1.7- 1.9 should be deleted.

47. Sub-paragraph 1.10 defines gender budgeting but, as it refers to gender mainstreaming defined under sub-paragraph 1.12, the order of these provisions should be reversed.

48. The CEDAW Committee has stated that violence against women is:

> a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men[273].

In order to prohibit this form of discrimination under Article 4[274], violence against women should be defined in this Article as:

> all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

This definition proposed here is taken from the Council of Europe Convention on preventing and combating violence against women and domestic violence.

49. Sub-paragraph 1.12 is a definition of gender mainstreaming and should be titled as such in English. The beginning of the definition should read:

> Gender mainstreaming is inclusion of gender perspective in every stage ...

The last part of the sentence should correct 'ehnansing' to 'enhancing' in the English text.

40% representation

50. The Draft Law introduces a definition of unequal representation - in sub-paragraph 1.11 - of when the participation or representation by one sex is below 40%. This requirement is in line with the Council of Europe's Recommendation Rec(2003)3 of the Committee of Ministers to member states on balanced participation of women and men in political and public decision making, which provides for:

> balanced participation of women and men (...) to mean that the representation of either women or men in any decision-making body in political or public life should not fall below 40%[275].

51. The countries of the region have included some type of quota in their gender equality legislation. Thus Article 20 of the Gender Equality Law of Bosnia and Herzegovina defines equal representation to exist when one of the sexes is represented with at least 40% but it restricts its applicability to public institutions, institutions under public control and political parties. Unequal representation is considered discrimination but it is unclear how sanctions for such discrimination could be implemented and who could be sanctioned.

52. The Albanian Law on Gender Equality in the Society is similar and defines 'equal gender representation' as those cases where neither of the genders is represented by less than 30% in any institution, hierarchical instance, nominated body, political parties.

53. The Serbian Gender Equality Act is more cautious about implementation and in Article 14 provides for obligatory affirmative measures only where there is less than 30% representation.

273 CEDAW General Recommendations Nos. 19 and 20, adopted at the Eleventh Session, 1992, A/47/38.
274 See paragraph 69.
275 Adopted on 12 March 2003.

It requires employers with more than 50 employees to have an action plan[276], foresees at least 30% less represented candidates being proposed for steering boards and management boards of public institutions[277], requires 30% representation for delegations[278] and has a 30% quota in its Election Law.

54. The Croatian gender equality legislation similarly ties specific measures to cases where one sex is substantially under-represented, and this is defined as less than 40% of representatives in political and public decision-making bodies.

55. CEDAW provides in Article 4 for the adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women and the CEDAW Committee has explained that the term 'measures' encompasses 'numerical goals connected with time frames; and quota systems'[279]. Furthermore, the Council of Europe calls for the:

> establishment of targets and time frames for the effective implementation of gender equality plans and programs in all relevant public policy areas

and the existence of targets indicates a need for their progressive realization[280].

56. The Assembly Committee on Human Rights, Gender Equality, Missing Persons and Petitions has monitored the implementation of the Current Law. The Committee recommended a 50% quota for the Draft Law because of the fact that women constitute close to 50% population in Kosovo. However, 40% target is better since 50% would no longer be a quota and it would provide little flexibility for representation in professions to which one sex is more inclined than the other.

57. A definitive target is very much needed in Kosovo as women are under-represented in the positions of power. While Kosovo has a woman president and 33.3% of women, as Assembly members, the percentage of women at the decision-making level in the Assembly and the Government is low. In the Assembly, the President and five Deputy Presidents are male. Only two posts of presidents of parliamentary committees, out of 13, are held by women. In the Government, two out of six Deputy Prime Ministers are women, and only two out of 19 Ministers are women. In the municipalities, there is only one woman mayor, in the Municipality of Mitrovica North.

58. As Article 6 (Special measures) of the Draft Law refers to equal representation of men and women, and special measures are linked with its achievement, the definition in sub-paragraph 1.11 should follow the same wording – 'equal representation of men and women' - and it should be positively defined as 'representation of both women and men by at least 40%'.

59. By defining equal representation of women and men in the way proposed in paragraph 1.11, Kosovo would create the expectation of progressive realization of the target for all political, public and publicly controlled bodies, as well as their leading structures. In this way, special measures will be designed with the law-mandated quota in mind and will be implemented as long as the quota is not reached. However, the Draft Law should also set some immediately implementable targets, such as the election quota, and quotas for representation in international bodies[281].

Article 4 Prohibition and Prevention of gender discrimination

60. This Article should be the one clearly prohibiting both direct and indirect discrimination, and

276 Article 13.
277 Article 32.
278 Article 38.
279 CEDAW General Recommendation No. 25: Article 4, Paragraph 1, of the Convention (Temporary Special Measures), 2004.
280 Council of Europe Recommendation CM/Rec(2007)17 of the Committee of Ministers to member states on gender equality standards and mechanisms, 21 November 2007.
281 See paragraph 136, and paragraph 72.

ensuring that the prohibition of discrimination against women includes the basis of marital status, pregnancy, race, disability, sexual orientation and other grounds in harmony with the Draft Discrimination Law.

61. As the prevention of discrimination is one of the tasks of the Kosovo institutions and it should be mentioned under Article 5 (General measures for ensuring gender equality) and under Article 12 (Functions and responsibilities) instead of in this provision. Article 4 should be thus re-named 'Prohibition of Discrimination'.

62. Paragraphs 1 and 2 refer to the obligation to ensure gender mainstreaming and gender budgeting, and these contain a very important duty of the public authorities. However, the main obligations of public authorities should be covered under one Article for full clarity and, as this will be Article 5 (General measures for ensuring gender equality), paragraphs 1 and 2 should become a part of that provision[282], with the present one becoming devoted just to the prohibition of discrimination.

63. Paragraphs 3 and 4 repeat the definitions of direct and indirect discrimination already covered under Article 3 and should, therefore, be deleted.

64. Article 3.1.2.1 should be inserted in the present provision as paragraph 1. Other relevant grounds should be added after the word 'maternity', and the suggested wording would include:

    marital status, nationality, race, disability, sexual orientation or any other basis prescribed by law or applicable international agreements or instruments.

65. Article 3.1.2.2 should be inserted here as paragraph 2.

66. While the general provision recommended to be added to Article 2[283] would cover the content of Article 3.1.2.3, the inclusion of the latter provision here would give it an additional emphasis.

67. Article 3.1.5 should be inserted here as the next paragraph.

68. Article 3.1.6 should then be inserted as the following paragraph.

69. The CEDAW Committee has determined that violence against women is:

    a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men [284].

    However, while Kosovo has a Law on Protection against Domestic Violence, it does not establish the link with discrimination, and a reference to that in the Draft Law would be a good pointer for a comprehensive gender equality law. A new paragraph should thus be added to the present provision, as its last paragraph, stating:

    Violence against women is a form of discrimination against women and is prohibited.

Article 5 General Measures for Ensuring Gender Equality

70. This Article should be the one defining clearly the responsibilities of all Kosovo institutions in regard to gender equality. However, the wording in the Draft Law is not specific enough to promote good implementation and, as has been seen, that is an important shortcoming of the Current Law. The Article should logically combine parts of Article 7, Article 8, Article 9 and Article 16 to simplify the Draft Law because these deal separately with some of the same general measures required from the public authorities. The necessary elements required from all

282 See paragraph 72.
283 See paragraph 35.
284 CEDAW General Recommendations Nos. 19 and 20, adopted at the Eleventh Session, 1992, A/47/38.

public authorities should include gender analysis, specific action plans, gender mainstreaming of all policies and laws, gender sensitive recruitment and appointments, gender budgeting and collection of sex disaggregated data[285].

71. The CEDAW Committee has clearly distinguished between temporary special measures designed:

> to accelerate the achievement of a concrete goal for women of de facto or substantive equality, and other general social policies adopted to improve the situation of women[286].

This Article should deal with the latter.

72. The first sentence of the first paragraph of this provision should thus enumerate the Kosovo institutions to include (as, for example, in the Current Law) 'legislative, executive, judicial bodies at all levels and public institutions' and then continue, combining and developing the existing sub-paragraphs 1 and 2 to provide that they:

> shall have the responsibility to implement legislative and other necessary measures with the aim of protecting and promoting gender equality and eliminating discrimination against women, including by:
> Analyzing the status of women and men in the respective organization and field;
> Adoption of action plans for the promotion and establishment of gender equality;
> Gender mainstreaming of all policies, documents and laws;
> Ensuring that the selection, recruitment and appointment processes, including for leading positions, are in line with the requirement for equal representation of women and men;
> Using gender budgeting in all areas, as a necessary tool to guarantee that the principle of gender equality is respected in the distribution and allocation of resources;
> Ensuring equal representation of women and men in all national delegations to international organizations and fora;
> Allocating adequate human and financial resources to programs, projects and initiatives for the achievement of gender equality and women's empowerment.

73. The Council of Europe[287] and many CEDAW Committee recommendations emphasize the importance of gathering and analyzing sex-disaggregated data and statistics 'in all areas and regarding all policies and programs', as indispensable tools to monitor progress on the way to achieving substantive gender equality. Article 16.1 of the Draft Law should thus become a sub-paragraph in this Article and be rephrased as follows:

> Disaggregating by sex all data and statistical information which is gathered, evidenced and processed.

74. Sub-paragraph 1.3 should be revised in English to be in line with above formulation to start with 'changing or repealing (...)'.

75. Article 7.1.4 should become one of the paragraphs in the present provision and it should be re-phrased in English as:

> taking gender into account while naming institutions, schools, and streets.

76. Sub-paragraph 1.4 does not add any substance to this provision and should be deleted.

77. Sub-paragraph 1.5 is unclear and, since court protection will be specified in the last part of the Draft Law, should be deleted.

Article 6 Special Measures

285 General measures rely on the Council of Europe Recommendation Rec(2003)3 of the Committee of Ministers, on balanced participation of women and men in political and public decision making, 12 March 2003; Council of Europe Recommendation No. R (85)2 of the Committee of Ministers on legal protection against sex discrimination, 5 February 1985; and the Council of Europe Recommendation CM/Rec(2007)17 of the Committee of Ministers on gender equality standards and mechanisms, 21 November 2007.

286 CEDAW General Recommendation No. 25: Article 4, Paragraph 1, of the Convention (Temporary Special Measures), 2004.

287 The Council of Europe Recommendation CM/Rec(2007)17 of the Committee of Ministers on gender equality standards and mechanisms, 21 November 2007.

78. The Constitution allows for special measures and provides in Article 24 that:

> principles of equal legal protection shall not prevent the imposition of measures necessary to protect and advance the rights of individuals and groups who are in unequal positions. Such measures shall be applied only until the purposes for which they are imposed have been fulfilled.

79. CEDAW also provides for the adoption by states parties of temporary special measures aimed at accelerating de facto equality between men and women[288]. The CEDAW Committee has further explained that the:

> term 'measures' encompasses a wide variety of legislative, executive, administrative and other regulatory instruments, policies and practices, such as outreach or support programmers; allocation and/or reallocation of resources; preferential treatment; targeted recruitment, hiring and promotion; numerical goals connected with time frames; and quota systems[289].

80. The present provision should thus define possible special measures but should also be combined with Article 7 (Gender Parity in Institutions and Managing Bodies) to link special measures with the equal representation target. The definition and some of the possible special measures proposed here are taken from the Council of Europe's Recommendation No. R (85) 2 of the Committee of Ministers to Member States on Legal Protection against Sex Discrimination[290].

81. The first paragraph of this provision should define special measures (using some of the wording from Article 6.2) as:

> temporary measures aimed at accelerating the realization of actual equality between women and men in those areas where inequalities exist.

82. The present paragraph 1 should become the second paragraph and it should be re-formulated to state:

> Special measures could include quotas to achieve equal representation of women and men, outreach and support programs to increase participation of less represented sex in decision making and public life, economic empowerment and steps to improve the position of women or men in the field of labor, improvement of equality in education, allocation and/or reallocation of resources, preferential treatment, recruitment, hiring and promotion, and other measures in each area where inequalities exist.

83. Paragraph 2 should be re-phrased in English to state:

> Special measures do not constitute acts of discrimination

and become the third paragraph.

84. Paragraph 3 should also be re-phrased, to provide the link with the equal representation target, stating that:

> legislative, executive, judicial bodies at all levels and public institutions shall be obliged to adopt and implement special measures to increase representation of under-represented sex until the equal representation of women and men within the meaning of this law is achieved

and become the fourth paragraph.

Article 7 Gender Parity in Institutions and Managing Bodies

85. As the content of this provision has already been incorporated into Articles 5 (General measures for ensuring gender equality) and 6 (Special measures), this provision should be deleted[291].

Institutional Mechanisms for Gender Equality

86. As the responsibilities of all institutions in Kosovo in regard to gender equality have been

288 CEDAW Article 4.
289 CEDAW General Recommendation No. 25: Article 4, Paragraph 1, of the Convention (Temporary Special Measures), 2004.
290 Adopted on 5 February 1985.
291 ee paragraph 70, paragraph 72, paragraph 75, and paragraph 80.

defined under general and special measures, the next Chapter should be more appropriately titled 'Institutional Mechanisms for Gender Equality' and should logically deal with the specific institutional mechanisms for gender equality, which have been defined by the Council of Europe as

> institutional governmental and, in some cases, parliamentary structure set up to promote women's advancement and to ensure the full enjoyment by women of their human rights. Its main function is to monitor and to ensure the implementation of the law, of the principle of non-discrimination and equality between women and men[292].

The Beijing Platform for Action includes 'institutional mechanisms for the advancement of women' as one of its twelve areas of concern, and calls them:

> the central policy-coordinating unit inside government. Its main task is to support government-wide mainstreaming of a gender-equality perspective in all policy areas[293].

87. The main gender related tasks of the institutions covered under Articles 8 (Assembly of Kosovo), 9 (Government) and 10 (Local Self- Government Bodies have already been listed under Articles 5 (General measures for ensuring gender equality) and 6 (Special measures). The definition of institutional mechanisms for these bodies should thus follow the definition of the central policy coordinating body for gender issues in Kosovo. As a result, the text of Article 11 (Agency for Gender Equality) should be the first provision in Chapter II of the Draft Law.

Article 11 Agency for Gender Equality
Central Policy Coordinating Unit for Gender Equality

88. Directive 2006/54/EC requires the establishment of a body:

> for the promotion, analysis, monitoring and support of equal treatment without discrimination on the grounds of sex,

mandating the existence of a central policy-coordinating unit.

89. However, the decision needs to be made how specific the Draft Law should be, and which issues should be regulated in bylaws, to avoid the need to amend the Draft Law frequently after its adoption. More specifically, a decision needs to be made whether the Draft Law should actually specify the title and the position of the central policy-coordinating unit. An alternative formulation for Article 11 could be 'a Central State Administration Body, established pursuant to a Government regulation, shall be the central policy coordinating unit for gender equality'. In the case of Kosovo, this would mean the existing Agency for Gender Equality.

90. It is important to note that the Beijing Platform for Action called for such a mechanism to be located:

> at the highest possible level in the Government, falling under the responsibility of a Cabinet minister[294].

The FRIDOM Report[295] noted that the Agency, in its current set-up lacked the:
> political clout and technical capacity to influence policy in other portfolios.

and it proposed that the Agency be either under a special Minister without portfolio, or be incorporated into an existing ministry.

91. However, the CEDAW Committee, in its Concluding Comments on a periodic report of Bosnia and Herzegovina, criticized the fact that the Gender Equality Agency in Bosnia and Herzegovina was placed within one State-level ministry which could:

292 Council of Europe, Handbook on National Machinery to Promote Gender Equality and Action Plans: Guidelines for establishing and implementing National Machinery to promote equality, with examples of good practice, May 2001, EG (2001) 7.
293 Beijing Declaration and Platform for Action, The Fourth World Conference on Women, September 1995, paragraph 201.
294 Ibid, Paragraph 201.
295 FRIDOM Project, Functional Review of Human Rights and Gender Equality System, 2010.

create obstacles to its effectiveness in working with other ministries,

and it recommended that it would be better for the Agency to directly report to the state government[296], and the Kosovo Agency, located in the OPM, is in the position to report to the government. It is doubtful that the Kosovo Agency located under another Ministry could better influence other portfolios than when directly located in the OPM and the creation of another Ministry would be too costly.

92. In order to continue tackling existing inequalities in the Kosovo society today, it is very important for the Agency for Gender Equality to have sufficient political support and for its work to be visible. Any changes to the current set-up would weaken the Agency. As a result, the best course of action might be to enhance the status of the Agency by specifically naming it in the Draft Law.

93. During the consultations about the Current Law, questions were raised about the use of the word 'agency' as an entity connoting some independence from the Government, especially in view of the provision for 'independent agencies' in Article 142 of the Constitution. The position of the Agency for Gender Equality should thus be made clearer by introducing the word 'government' between 'Executive' and 'Agency' in the text of the Article 11.

94. Article 13 (Agency Organization) provides details that already exist as a part of the Administrative Direction No 2007/3 and indeed are generally of such specificity that they are better regulated through a bylaw. Article 13.1-3 should thus be deleted, while Article 13.4 - without the words 'proposed by the Agency' - should then become the second paragraph of Article 11.

Article 12 Functions and Responsibilities

95. This provision should first set the standards for the Agency for Gender Equality and determine its responsibilities. It should then be followed by an entirely new Article dealing with the Kosovo Program for Gender Equality ('KPGE') and the role of other institutions with regard to this program. Thereafter the subsequent Articles should deal with the other institutional mechanisms concerning gender equality.

96. However, paragraph 1 is repetitive, provides no added value to the Draft Law and should be deleted.

97. The words 'Implement and' should be inserted at the beginning of paragraph 2.1 since the Agency will be responsible for implementation and not only monitoring. Such wording also existed in the Current Law.

98. Paragraph 2.2 should be clearer in English. This seems to be the same provision as in the Current Law. It should read similarly:

Propose to the Government amendments of laws and sub-legal acts, and the approval of other measures to implement this law.

99. The Beijing Platform for Action regarded it as crucial for the gender equality machinery to have an

opportunity to influence development of all government policies[297].

This Article should clearly mention the pre-screening of laws and other policy documents by the Agency as an obligation. There should, therefore, be an additional sub-paragraph that provides for pre-screening of laws using gender mainstreaming and gender budgeting approaches. It

296 CEDAW Committee, Concluding Comments on the combined initial, second and third periodic report of Bosnia and Herzegovina, 2006, CEDAW/C/BIH/CO/3.

297 Beijing Declaration and Platform for Action, The Fourth World Conference on Women, September 1995, Paragraph 201.

could read:

> Participate in the preparation of laws, sub-legal acts, strategies, and programs to ensure gender mainstreaming and gender budgeting is applied.

100. Paragraph 2.4 should end after the first mention of 'equality' (and just before the word 'coordinates'). The wording

> coordinates and prepares reports for the implementation of the convention CEDAW

should be entirely deleted as the general obligation to contribute to reporting on the international obligations should be contained in paragraph 2.5, below but the last sentence of paragraph 2.4 should become a separate paragraph in the proposed new Article on the KPGE[298].

101. Paragraph 2.5 should be amended to read 'contribute to reporting on the implementation of international obligations concerning gender equality',[299] to allow for channeling all reporting to international/regional bodies through one body[300].

102. Paragraph 2.6 should be moved to the new Article on KPGE[301].

103. The wording for paragraph 2.7 should revert back to that used in Current Law and thus should provide that other public institutions:

> cooperate with public institutions and with institutional mechanisms for gender equality in the ministries and local governments,

since the Agency should not coordinate their work as this would create a separate line of supervision which could hinder their work especially if they are placed, as recommended, in a position to directly influence policy development[302].

104. Paragraph 2.8 should be dedicated to cooperation with non-governmental organizations. It would read:

> Cooperate with non-governmental organizations operating in the field of gender equality.

105. The Current Law requires the Agency to provide partial funding for relevant non-governmental organizations and public institutions. However, it is unclear how well this functions, and according to the SIDA Gender Study[303], it might only have been used in a very limited number of cases. Such funding could be a useful tool to promote gender equality programs and special measures but it would either require a bigger budget (which is unlikely in the current circumstances) or a mostly donor-funded financial instrument (such as exists in Bosnia and Herzegovina). While the provisions in the Current Law make it an obligation of the Agency, its implementation of such partial funding programs could probably be undertaken, should the funding become available, even without any specific legal provisions in the Draft Law. In the Draft Law, the obligation to provide partial funding was removed but paragraph 2.9, in which the Agency proposes conditions and criteria for partial funding, stayed. Paragraph 2.9 should be deleted or rephrased to add possible recipients of partial funding.

106. Since the general measures foreseen by the Draft Law include the mainstreaming of gender into all activities by the Kosovo institutions[304], there is a question of their capacity to

298 See paragraphs 113-116.
299 I.e., 'on' to replace 'for'.
300 See UNHCHR, by Navanethem Pillay, Strengthening the United Nations human rights treaty body system, June 2012
301 See paragraphs 113-116.
302 See paragraph 123, and paragraphs 127-129.
303 SIDA, by Ulf Färnsveden and Nicole Farnsworth, Gender Study in Kosovo: Review of the Implementation of the Law and Program on Gender Equality in Kosovo, December 2012.
304 See paragraph 72.

implement such mainstreaming. Reports from the Council of Europe fieldwork dedicated to the reform proposal for the human rights institutions in Kosovo indicate that the capacity of existing gender equality officers is variable[305] and that the position of some will be significantly affected by the Public Administration Reform. The CEDAW Committee[306] called for the gender mechanisms to undertake:

> specific education and training programs about the principles and provisions of the Convention directed to all Government agencies, public officials and, in particular, the legal profession and the judiciary.

It should thus be a responsibility of the Agency to increase the capacity of public officials, including the designated gender equality officers in the ministries and municipalities, and such training should focus in particular on gender mainstreaming tools and gender budgeting.

107. However, although the text of paragraph 2.10 also existed in the Current Law, its wording is very unclear. It should, therefore, be revised to state:

> Organize education and training in gender mainstreaming and gender budgeting for public institutions, and in particular for designated gender equality officers in the institutions.

108. Paragraph 2.11 also needs to be make clearer that the Agency for Gender Equality is responsible for analyzing the status of gender equality in Kosovo and it should thus be re-worded to read:

> Analyze the status of gender equality in Kosovo on the basis of reports, research, and monitoring; and present the findings in annual reports, special reports, guidelines, codes of conduct, opinions and recommendations to relevant authorities.

109. The wording of the first sentence of paragraph 2.13 was clearer in the English text of the Current Law:

> Report before the Government on the activities of the Agency for the previous year, no later than the end of March.

and this should be used also in the Draft Law. However, the last sentence of paragraph 2.13 should be deleted since, although the Agency should chair the Interministerial Council (not lead it), this is something to be regulated elsewhere[307].

Article 13 Agency Organization

110. As has already been recommended, paragraph 4 should become part of Article 11 and the remainder of this provision should be deleted[308].

Article 14 Financing

111. Paragraph 1.1. should be amended to read:

> Budget of the Republic of Kosovo as the primary source of funding;

112. Paragraphs 1.2 and 2 regulate the same thing and one of them should be deleted, which should be the former if the longer explanation in the latter is really required.

New Article Kosovo Program for Gender Equality

113. In 2004, the Agency for Gender Equality developed the KPGE 2008-2013, which covers women and the economy, education, health, labor, social welfare, domestic violence and decision making. The KPGE is the main and most visible strategic document for action in the gender equality field. The Draft Law should regulate the responsibility for the development of

305 See paragraphs 72 and 157 of the report. See also, OSCE, The Role and Functioning of the Municipal Officers for Gender Equality in Kosovo, 2006.
306 CEDAW Committee, General recommendation No. 28 on the core obligations of States parties under Article 2 of the CEDAW, CEDAW/C/GC/28, 2010.
307 See paragraphs 127-129.
308 See paragraph 94.

the new KPGE and future programs. The Council of Europe advises that:

> the global nature and horizontal character of gender equality objectives be acknowledged and pursued through comprehensive action plans and programs that encompass different areas and different levels of governance and that must be closely monitored and evaluated[309].

114. The Current Law requires that every two years the Assembly of Kosovo reviews and approves the Government's report on the implementation of the KPGE but this has not been done to date. The Agency claimed that the Assembly never requested such a report but the new Article should clearly assign the responsibility to the Agency to monitor and report on the implementation of the KPGE.

115. Article12.2.6 of the Draft Law should become the first paragraph of this new Article and it should be re-worded to provide:

> The Agency for Gender Equality shall coordinate the preparation of the Kosovo Program on Gender Equality, monitor its implementation; and report biannually to the Government on its implementation.

116. Article 9.2 of the Draft Law should become the second paragraph and it should be revised to read:

> The Government shall review and approve the Kosovo Program on Gender Equality, provide for its budget, and report biannually to the Assembly on its implementation.

Article 8 Assembly of Kosovo

117. Article 71 of the Constitution decrees that the composition of the Assembly shall respect internationally recognized principles of gender equality.

118. As previously noted, the Assembly has a Committee on Human Rights, Gender Equality, Missing Persons and Petitions with gender equality related competences.

119. Both the Current Law and the Draft Law include a separate Article on the Assembly. However, this seems unnecessary as the general measures for the establishment of gender equality are applicable to the Assembly and the duties regarding KPGE will - as recommended above - be covered in a separate Article and include a positive duty for the Government to submit the KPGE and reports thereof to the Assembly. Article 8 should thus be deleted.

Article 9 Government and Article 10 Local Self-Government Bodies

120. Articles 9 and 10 should be combined and re-titled 'Institutional Mechanisms for Gender Equality in Ministries and Municipalities'. The duties of the ministries and municipalities have already been enumerated under the Articles defining general and special measures making two further separate Articles unnecessary[310].

121. This combined Article should define the institutional mechanisms for gender equality at the central and local level. Although all ministries and municipalities should have at least one gender equality officer, it should be up to individual ministries and municipalities themselves to determine the precise set-up because their particular needs are bound to be different.

122. A number of gender equality mechanisms have been established at the ministerial level and at the municipal levels with gender officers being the focal points, however, the reports consulted identified shortcomings in the functioning of both the ministerial and municipal structures. The most important shortcomings include the fact that many gender equality officers and units are outside the policy and decision-making process; they have been isolated in Human Rights Units with double reporting lines; the level of their activity depended on individual personalities; there

309 The Council of Europe Recommendation CM/Rec(2007)17 of the Committee of Ministers on gender equality standards and mechanisms, 21 November 2007.
310 See paragraphs 70-84.

was insufficient support for them in terms of clear programmatic tasks; and they had insufficient access to budgetary funds for their activities[311].

123. The FRIDOM Report[312] rightly advised not to maintain the current Human Rights Units, as the effect of these separate arrangements has been mostly not to integrate, but to detach human rights and gender concerns from the general approach to policy, but to re-allocate Gender Equality Officers to policy positions either within central policy coordination units or in key departments. It further recommended that reallocated staff continue to serve as gender focal points within their departments or municipalities. Implementation of this proposal would provide for the effective implementation of the obligations defined by the Draft Law.

124. The Government has already issued the Regulation No. 1/2006 on Establishment, Competences and Assignments of the Interministerial Council for Gender Equality and the Ministry of Local Government Administration has issued the Administrative Instruction 2005/8 on Determination of Competences and Description of Duties of Officers for Gender Equality in Municipalities of the Ministry of Local Government Administration. These sub-legal acts need to stay in place until new ones – establishing institutional gender structures or gender officers at Ministries and Municipalities with clearer duties as required by the Draft Law[313] - have been adopted to replace them.

125. The substance of Articles 9.1 and 10.1 has already been included in the Purpose of the Draft Law[314] and in the definition of general measures and special measures[315]. They should, therefore, be deleted.

126. Article 9.2 should, as already recommended[316], be moved to the new Article on the KPGE.

127. A new paragraph should be introduced:

> All Ministries and Municipalities shall be obliged to establish adequate institutional mechanism for gender equality, with sufficient resources allocated from the budget and with sufficient professional capacity, to coordinate implementation of this law and ensure respect for international standards in gender equality.

128. Articles 9.3, 10.2 and 10.3 should be revised to outline the elements for their duties:

> Duties for institutional mechanisms for gender equality should include: coordination of the implementation of this law and of the Kosovo Program for Gender Equality; policy development guidance; cooperation with the Agency for Gender Equality; preparation of biannual reports on the implementation of the Kosovo Program for Gender Equality and other reports submitted to the Agency; and implementation of other general measures foreseen by this law.

129. Articles 9.4 and 10.4 should be revised to read:

> Institutional mechanisms for gender equality shall operate in accordance with sub-legal acts on their establishment.

Article 15 Gender Equality Unit within the Ombudsperson

130. This provision should define the OIK as the equality body dealing with discrimination complaints. It should be in line with the Law on Ombudsperson and since that law does not define the office structure in such a way as to include a Gender Equality Unit, this should not be a part of the Draft Law either. 'Gender Equality Unit within the Ombudsperson' in this provision should thus be replaced by the 'Ombudsperson's Institution in Kosovo'.

311 See the findings of the Council of Europe fieldwork dedicated to the reform proposal for the human rights institutions in Kosovo (paragraphs 69, 76, 120, 122 and 172 of the report) and OSCE, The Role and Functioning of the Municipal Officers for Gender Equality in Kosovo, 2006.
312 FRIDOM Project, Functional Review of Human Rights and Gender Equality System, 2010.
313 See paragraph 190.
314 Article 2.
315 See paragraphs 27-30 and paragraphs 70-84.
316 See paragraph 116.

Article 16 Information Collection and Gender Statistics

131. The content of this Article has already been included under in general measures required from all institutions and could thus be deleted[317].

132. However, the importance attached to gathering and analyzing sex-disaggregated data and statistics by the CEDAW Committee and the Council of Europe might warrant a separate article for greater emphasis on the requirement to undertake such activities. If it is so chosen, this Article needs to be simplified by combining Article 16.1 and 16.2, which are essentially to the same effect. However, this provision should then specifically include the 'budget' within its scope. In addition, Article 16.3, if retained, needs to be clearer on what does it mean to include a 'gender aspect' or 'gender indicator'.

133. Article 16.4 does not belong in the Draft Law and should be deleted.

Article 17 Political Parties

134. While the requirement for political parties to promote equal representation of women is praiseworthy, their refusal to do so incurs no sanctions unless it is tied in with the Election Law and Party Financing Law. Additionally, this provision would seemingly make it illegal to have for example, a Women's Party.

135. Nonetheless, this provision should also be read in line with the current Kosovo circumstances, where political parties are fully dominated by men and such a weak provision on promotion of gender equality in political parties might still be useful as a policy reminder for the parties.

136. However, the parties should respect the 40% quota in the submission of the lists of candidates during the elections and the Election Law should be amended to reflect such a requirement and ensure enforcement by disqualifying from the election parties not complying with this quota. A new paragraph should be added to make this clear:

> Political parties shall observe the principle of equal gender representation in submission of lists of candidates for the elections at all levels of state authority.

137. The English version of Article 17 should be edited so as to use 'promote' instead of 'enhance'.

Article 18 Civil Society

138. The Draft Law should not provide obligations for civil society organizations but for the institutional mechanisms for gender equality to cooperate with civil society. The latter is already covered amongst the responsibilities of the Agency for Gender Equality[318] but is worth emphasising in a separate Article. It would be more appropriate for the amended Article to follow the one dealing with the Agency's functions and responsibilities.

Article 19 Prohibition of Gender Discrimination in Employment and Occupation

139. This provision is in line with Directive 2006/54/EC.

Article 20 Prohibition of Gender Discrimination in Occupational Social Security Schemes

140. This provision is in line with Directive 2006/54/EC.

Article 21 Obligations of Employer in Labor Relations

141. This is a very detailed provision, some of which is already covered under Article 19. For

317 See paragraph 73.
318 See paragraph 104.

example, the definition of indirect discrimination in paragraph 1.1 and 1.7 is already covered by Article 19.1.1's prohibition of direct and indirect discrimination in access to employment, selection criteria and recruitment conditions. If the intention is to provide more details for better clarity, the language should be harmonized and edited.

142. Thus the last part of the first sentence of paragraph 1.1 in the English text should be edited to read:

> and ensure equal opportunities for women and men to apply for vacant positions.

The second sentence of the English text should also be edited to read:

> Encouragement by the vacancy notice for the under-represented sex to apply, in cases when a vacant position belongs to the category of work without equal representation of men and women, shall not constitute discrimination.

143. The last part of this paragraph 1.2 should read 'persons of one sex'.

144. Paragraph 1.4 should use 'men and women' instead of 'males and females'.

145. In paragraph 1.8 the word 'genders' should be deleted.

146. Paragraph 1.9 should be edited to read 'equal pay for equal work and work of equal value' in line with the Article 141 of the EU Treaty.

147. Paragraph 1.10 is in line with Directive 2006/54/EC.

148. Paragraph 1.12 is in line with Directive 2006/54/EC but in English the word 'correspond' should be replaced with 'combine'.

149. While paragraph 1.13 is the same provision as in the Albanian Law on Gender Equality in the Society, it is here only declaratory since the provision that such women

> shall benefit from the community services, work and employment policies and vocational training based on the legislation in force

from the Albanian Law has not been included. Similarly, the Council of Europe recommended that:

> all unpaid persons who devote themselves to household tasks or to social work should be placed on the same footing as workers as regards protection in cases of old age and invalidity, or be entitled to non-contributory old-age and invalidity benefits, or be allowed to be affiliated to a voluntary old-age/invalidity insurance scheme under the social security system[319].

150. However, as paragraph 1.13 does not provide any obligation for an employer, it should be deleted, or placed elsewhere only if it will also include some benefits that the 'contribution to the development of the family and society' entails.

151. Paragraph 2 is in line with Directive 2006/54/EC.

Article 22 Prohibition of Gender Discrimination in Access to and Supply of Goods and Services

152. This provision is in line with Directive 2004/113/EC.

Article 23 Compliance

153. This provision is taken from Directive 2006/54/EC but it might be too general for the Draft Law. It should be part of the Draft Discrimination Law or the Labor Law. Otherwise it

319 Council of Europe Recommendation No R (87) 5 of the Committee of Ministers on mailing old-age and invalidity benefits generally available.

should be a part of the legal protection/sanctions section.

Article 24 Prohibition of Gender Discrimination and Unequal Treatment

154. This provision, dealing with education, is much less developed in comparison with those provisions concerned with employment. It seems to follow the Albanian Law on Gender Equality in the Society. However, the provision misses some crucial parts from the Albanian Law and the Current Law is clearer in parts. Thus, it misses the clear provision on equal right to education, which is crucial when taking into account the situation in Kosovo evidenced by the statistics on school enrollment of girls. Moreover, this provision should be more in line with CEDAW Article 10 and further enumerate that educational institutions should not discriminate in admission process, access to services, facilities and benefits, such as scholarships, assessment results, achievement of diplomas and degrees, access to vocational training, continuing education, sports.

155. Paragraph 1 should include 'by' and not only 'within'. It should further state before 'is prohibited' and after 'at all levels':

including in access to education, admission process, access to services, facilities and benefits, such as scholarships, assessment results, achievement of diplomas and degrees, access to vocational training, continuing education, sports and other areas.

156. The opening phrase of paragraph 2, in the English text, should declare:

The following shall constitute discrimination based on sex:.

157. Paragraph 2.1 is unclear in English, and unclear in the English translation of the Albanian law. If my interpretation is correct it should prohibit:

any gender based restriction, or barriers in the creation of necessary facilities, to be educated in public or private institutions which offer education or other qualification and training services.

158. Paragraph 2.2 is again unclear in English and my reading is that it should prohibit

different opportunities for men and women in the selection of a special study, training or graduation, and with regards to duration of classes unless justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Article 25 Education of Gender Equality

159. When using the Albanian Law on Gender Equality in the Society as an example, an important element of it that should be noted is that educational materials have a role in:

promoting and building an equality mentality and in preventing gender discrimination, negative stereotypes, prejudices, and canon practices or any other practices violating the principles of gender equality.

Furthermore, it should also be noted that CEDAW calls for:

the elimination of any stereotyped concept of the roles of men and women[320].

and that the Council of Europe has invited member states to

incorporate into school curricula education and training activities aimed at sensitising young people about gender equality and preparing them for democratic citizenship[321].

160. Paragraph 1 should thus be expanded to say after 'gender equality':

and education about gender equality shall be included in school curricula at all levels.

320 CEDAW, Article 10.

321 Council of Europe Recommendation Rec(2003)3 of the Committee of Ministers, on balanced participation of women and men in political and public decision making, 12 March 2003.

161. Similarly, paragraph 2 should be expanded to include after 'gender perspective':

> and elimination of negative stereotypes, prejudices, traditional practices and other practices contrary to the principle of gender equality.

Article 26 Gender Equality in Media

162. Article 5 of CEDAW requires measures to be taken to achieve:

> the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

Furthermore, the CEDAW Committee calls for:

> Enlisting all media in public education programs about the equality of women and men, and ensuring in particular that women are aware of their right to equality without discrimination[322].

Paragraph 1 of this provision thus serves as a reminder to the media of their role in eliminating discrimination.

163. Paragraph 2 contains the actual prohibition. The question is how such prohibition is to be implemented, in particular with regard to private media outlets and whether it could affect their right to freedom of expression. Guidance in applying this prohibition will be needed and might be derived from the case law of the European Court on Human Rights on hate speech.

Article 27 Joint Wealth in Matrimony

164. The Council of Europe recommends to governments to take into consideration the possibility of adopting systems of co-ownership and co-leases as one of the means for strengthening the right of occupation of the family home[323]. In addition, the Council of Europe has recommended that

> no cultural tradition or social custom that negatively affects, in particular, women's and girls' full enjoyment of human rights or their human dignity be accepted or tolerated[324].

165. This is a subject that is already well regulated in the Kosovo Family Law and Inheritance Law, which provides for the joint property of the spouses and the need to register such property in the name of both spouses. However, the implementation of this law remains problematic in view of the cultural tradition where inheritance and property ownership follow the male line[325]. Thus, an interviewee reported to the Project's working group of international and local experts responsible for the formulation of the institutional reform proposal that he attempted to register the property he and his spouse bought in the name of both spouses, but the cadastral officer resisted doing so because the purchase contract was only in his name.

166. This title of this provision should refer, in English, to 'joint property' rather than 'joint wealth'.

167. The provision should perhaps also first deal more generally with the equality of all persons regardless of family or marital status (it could, for example, be entitled 'Marriage and Family Relations'), stipulating that 'all persons shall be equal regardless of family or marital status'. In addition, it could provide that:

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322 CEDAW Committee, General recommendation No. 28 on the core obligations of States parties under article 2 of the CEDAW, CEDAW/C/GC/28, 2010.

323 Council of Europe Recommendation No. R (81) 15 on the rights of spouses relating to the occupation of the family home and the use of the household contents, 16 October 1981.

324 Council of Europe Recommendation CM/Rec(2007)17 of the Committee of Ministers on gender equality standards and mechanisms, 21 November 2007.

325 Norma Lawyers Association, Research and Monitoring the Implementation of the Law on Gender Equality, 2011.

spouses from marriage and factual relationships shall have equal rights and responsibilities, including in administration and disposition of joint property in accordance with law.

168. The Family Law in Kosovo provides protection against early marriages but it allows them from the age of 16 after the competent court is satisfied that 'physical and psychological maturity' has been reached and after hearing the minor, parents and the custodian body[326]. CEDAW in Article 16 provides for annulment of the legal effect of child marriages and calls for the legislation to specify a minimum age for marriage. The CEDAW Committee recommends that the minimum age for marriage should be 18 years[327]. The lawmaker should consider expanding protection of the Family Law to 18 years of age. This Law could further provide that

Child marriages are prohibited and shall have no legal effect.

169. The existing paragraph 1 could be located after the more general stipulation just suggested about the equality of spouses, with the last part of paragraph 4 'and shall not be alienated without the consent of both spouses' added at the end; and after the suggested prohibition of child marriages.

170. Paragraph 2 is already covered in paragraph 1 and should be deleted.

171. Paragraphs 3 and 4 are covered in the Family Law and should be deleted.

172. Paragraph 6 should be more in line with the Law on Inheritance and should be:

Women and men under the same conditions are equal in inheritance.

Articles 28-37 in Chapter VIII

173. The original text of the Current Law made provision for a Gender Attorney to receive complaints alleging discrimination but, in the process of promulgation, the UNMIK Special Representative of the Secretary General replace the Gender Attorney with the OIK in order to prevent overlapping jurisdictions.

174. The Draft Law envisages in these provisions the establishment of another Legal Representative within the Agency to receive complaints but this would again lead to duplication of the Ombudsperson's powers, it would be costly and is not in line with the Draft Discrimination Law. Articles 28-37 in Chapter VIII should thus be deleted.

Legal Protection

175. Directive 2006/54/EC stipulates that the provision of adequate judicial or administrative procedures for the enforcement is essential for the effective implementation of the principle of equal treatment. The Council of Europe provides that effective remedies and sanctions discourage discrimination by, for example,

orders to prevent discrimination (prohibiting or requiring the discontinuation of an act, requiring a certain act to be carried out, setting aside a decision of a discriminatory nature); adequate sanctions in case of failure to comply with such orders, administrative and, where necessary, criminal sanctions to punish acts of discrimination (such as fines, suspension of license, public disclosure of discrimination); and damages to compensate victims of discrimination[328].

176. The issue of legal protection has been identified as a shortcoming in the Current Law and so the Draft Law should be clearer on remedies.

177. The legal protection to be guaranteed by the Draft Law should include the possibility of complaints to the Ombudsperson, as well as of administrative, civil, criminal disciplinary

326 Family Law in Kosovo 2004/32, Articles 15 and 16.

327 CEDAW General Recommendation No. 21 on Equality in Marriage and Family Relations, CEDAW/C/GC/21,1994.

328 Council of Europe Recommendation No. R (85)2 of the Committee of Ministers on legal protection against sex discrimination, 5 February 1985.

and minor offence proceedings and finally constitutional court appeals. However, not all these remedies need to be set out in full in the Draft Law. For this reason, the latter should include a general safeguard provision that nothing in Chapter VIII - which should be merged with Chapter IX and be given the title of the latter - could be interpreted as a limitation to initiate judicial procedure, reading

> Nothing in this Chapter can be interpreted in such a way to limit the right to initiate civil, criminal or minor offence proceedings for the violation of rights guaranteed by this law.

178. The Law on Ombudsperson and the Draft Discrimination Law prescribe the complaints procedure before the Ombudsperson and the Draft Law should merely provide that this is applicable to complaints about non-compliance with its provisions.

179. Article 193 of the Criminal Law provides protection against violating equal status of citizens and residents of the Republic of Kosovo and it should be provided in the Draft Law that this protection is to be interpreted in the light of the Draft Law's provisions.

180. The Law on Minor Offences from the time of former Yugoslavia[329] is still applicable to Kosovo to guide the minor offence procedure. The applicability of this law should be clearly defined under Article 29 (Punishment Provisions)[330].

181. The Law on Administrative Procedure regulates the procedure for persons adversely affected by an administrative decision and the Draft Law should make it clear that it is applicable to non-compliance with its provisions.

182. The Law on Labor and the Law on Labor Inspectorate provide for the possibility of employees submitting appeals to the Labor Inspectorate for issues falling under this body's competence. Serious consideration should be given to extending the Labor Inspectorate's jurisdiction to the labor relations provisions in the Draft Law given the extensive protection afforded by those provisions and the effective remedies that could thereby be provided. However, this would require further consultations and amendments to the relevant laws.

Article 38 Judicial Protection

183. However, civil proceedings are perhaps the ones mostly likely used and it would be beneficial to have all the relevant details defined - including the burden of proof, the courts that will have jurisdiction, the persons who can initiate proceedings and whether the case will be expedited - either in the Draft Law or in the Draft Discrimination Law. If the procedure were to be fully defined in the Draft Law, the Serbian Gender Equality Act could be used as a good model.[331] However, since it is intended that the Draft Discrimination Law will define the procedure to be followed, it will be sufficient for the Draft Law just to specify that that procedure is applicable to complaints concerning its provisions.

184. Article 38 should, therefore, be revised to state that:

> A person who considers him/herself to be the victim of discrimination or finds that his/her right to equal treatment has been violated based on gender shall be able to seek protection in a competent court pursuant to the procedure for protection from discrimination (including the payment of compensation) in compliance with the Law on Protection from Discrimination.

Article 39 Regional Competence

185. This provision should become a part of Article 38 for the purpose of defining the competent court unless it would be sufficient to rely again on the Draft Discrimination Law. However, if retained, the title in English should be 'Territorial Competence'.

329 The Official Gazette of the SAP Kosovo, No. 23/79.

330 This provision was not re-numbered in the Draft Law; see paragraphs 188-189.

331 Gender Equality Act Serbia, Articles 43-51; see the Annex.

Article 28 Disciplinary Measures (this Article was not re-numbered in the Draft Law)

186. It is unclear why disciplinary measures refer to Article 21.1.8 only (no discrimination in job classification system where used). It is also unclear whether disciplinary measures referred to are applicable in line with the administrative procedure or labor inspectorate procedures. This provision should be deleted.

Article 29 Punishment Provisions (this Article was not re-numbered in the Draft Law)

187. The references in this provision are mixed up and it is thus difficult to comment on them. The Draft Law should determine the violation of which provisions would constitute a minor offence and define the applicable sanctions. In order to be clear about which conduct described in the Draft Law is to be considered a minor offence, the conduct should be repeated. For example:

> An employer who includes discriminatory elements in vacancy notices in violation of Article (…) of this law is punishable by fine from (…) until (…).

188. The amount determined as payable for fines also needs to be harmonized with the Draft Discrimination Law.

Article 31 Repeals

189. The Draft Law should not repeal sub-legal acts concerning matters that must still to be regulated in the sub-legal acts before the new ones required under the Draft Law have been adopted. Paragraph 3 should, therefore, be deleted.

Final Recommendations

190. The lawmakers should consider including in the Draft Law a prohibition on discrimination based on sex in the exercise of rights to health care, including the prevention and early detection of diseases, reproductive health care: during pregnancy, confinement and motherhood, health care in cases of disease and injury and family planning health care in addition to the general discrimination protection provided by the Draft Discrimination Law.

191. UNFPA has suggested the inclusion of prohibition of sex selective abortions and sanctions towards individuals and health institutions. However, an investigation into the appropriateness of and need for such a provision is beyond the scope of this opinion.

5. SUMMARY OF RECOMMENDATIONS

192. The scope of the Draft Law should refer to both **public and private institutions**. It should include persons with the protected characteristic of gender reassignment.

193. The definitions should include **sex, gender, persons with protected characteristic of gender reassignment,** and **violence against women.**

194. The definition of **equal representation of men and women** should be positively phrased and the same terminology should be used throughout the law.

195. The Draft Law should include **a clear prohibition of both direct and indirect discrimination**, and should ensure that prohibition of discrimination against women includes the basis of marital status, pregnancy, race, disability, sexual orientation etc. in harmony with the Draft Discrimination Law and CEDAW. Only one Article should be dedicated to this.

196. The Draft Law should very clearly define responsibilities of all Kosovo institutions in regard to gender equality. This should be the main part of this law, and it could be the part of **general measures** required of all institutions in order to send the message that the respect and promotion of gender equality is the duty of all institutions and their responsibilities should include

gender analysis, specific action plans, gender mainstreaming of all policies and laws, gender sensitive recruitment and appointments, gender budgeting and collection of sex disaggregated data.

197. Special (affirmative) measures should be linked with the equal representation target (at least 40% of the under-represented sex).

198. A separate chapter should be dedicated to **institutional mechanism for gender equality.**

199. A decision needs to be taken as to how specific the Draft Law should be, and which issues should be regulated in bylaws, to avoid the need for too frequent amendment. The specification of the title and the position of the central policy coordinating unit for gender equality could be regulated in a bylaw but any changes to the current set-up would weaken the **Agency for Gender Equality** since it is already well located at the highest possible level in the Government, thereby ensuring its effectiveness in working with other ministries, and since it is vital for the Agency to have sufficient political support and visibility for its work. The best course of action might, therefore, be to **specify the name and position of the Agency** in the Draft Law but its organization should be regulated by a sub-legal act.

200. The Draft Law should clarify the functions and responsibilities of the Agency for Gender Equality to include **pre-screening of laws and other policy documents**; **capacity building on gender equality standards,** including gender mainstreaming tools and gender budgeting, for all institutions, and not only limited to gender equality officers and units; and analyzing the status of gender equality in Kosovo.

201. The **Kosovo Program for Gender Equality** is the main and most visible strategic document for action in the gender equality field. Any fund-raising from donors will depend on the strength of this Program. For better clarity, it should be covered in a separate Article, with responsibility for the development of the new Program and future programs being assigned to the Agency for Gender Equality and the Government, subject to the Assembly's oversight, having overall responsibility for all these Programs.

202. In contrast to the position of the Agency for Gender Equality, it should be up to the **ministries and municipalities** to determine their own **institutional set-up for gender equality** because the particular needs of individual ministries and municipalities are bound to be different. However, all ministries and municipalities should have at least one gender equality officer or a focal point, with sufficient budget, and the existing gender equality officers should be utilized because of their training, experience and the institutional know how. Their set-up and duties should be defined in sub-legal acts but should include: coordination of the implementation of this law and of the KPGE; policy development guidance; cooperation with the Agency for Gender Equality; preparation of biannual reports on the implementation of the KPGE and other reports submitted to the Agency; and implementation of other general measures foreseen by this law.

203. The Ombudsperson's Institution in Kosovo should remain the **equality body** dealing with gender discrimination complaints. Introducing a Legal Representative within the Agency to receive complaints would lead to duplication of the OIK's powers, would be costly and not in line with the Draft Discrimination Law.

204. Political parties should respect the 40% quota in the submission of the lists of candidates during the elections and the Draft Law should require that this be done.

205. Legal protection was one of the aspects of the Current Law that was criticized for being unclear. Legal protection for gender equality should include administrative, civil,

criminal, disciplinary and minor offence jurisdiction, as well as the OIK's complaints procedure, constitutional appeals and possibly the labor inspectorate. However, not all these remedies need to be set out in detail in the Draft Law. The civil procedure is likely to be the one mostly used and it would be beneficial for the relevant details to be defined either in the Draft Law or in the Draft Discrimination Law.

206. Serious consideration should be given to extending the jurisdiction of the **Labor Inspectorate** to the labor relations provisions in the Draft Law. This would require further consultations and amendments to the relevant laws but it could be expected to provide effective remedies for violations of rights within this field without the need to rely solely on judicial system.

207. The Draft Law should clearly define what constitutes a minor offence under its provisions, as well as determine the level of **fines** and other amounts payable for violations of those provisions.

6. CONCLUSION

208. The adoption of the Draft Law presents an opportunity to make a really good legal instrument that will be adapted to the current circumstances in Kosovo and will be in harmony with other laws including with the Draft Discrimination Law and the Law on Ombudsperson. The Draft Law could clearly address shortcomings identified in the Current Law and clarify the functions and responsibilities to foster easier implementation.

209. However, it is unlikely that the Draft Law will have significant effect on the challenges of implementation, at least initially, unless there is a clear political support, the ownership of the need for gender equality is taken up within policy making areas, and the capacity of the institutions using gender mainstreaming tools is increased. Successful implementation will be further dependent upon awareness raising and the visibility for the use of available remedies.

210. The new Kosovo Program for Gender Equality is an opportunity for the Agency for Gender Equality to consult and include all relevant authorities in the process leading to its adoption. It is also an opportunity to define the steps that would promote better implementation of the Program. Since the KPGE is expiring this year, the development process should start as soon as possible. Moreover, the process should be very realistic about what can be achieved within the designated time-frame and the design of the KPGE should be impact-based. When discussing the new KPGE, it would be good to keep in mind the FRIDOM Report recommendations that the clear definition of measures, indicators of success, and of the budget resources are necessary for successful implementation.

211. The author has seen the opinions on Law No. 03/L – 195 on Ombudsperson and the Draft Law on Amending and Supplementing Law No. 03/L – 195 on Ombudsperson of July 2013 and on the Draft Law on Protection from Discrimination and endorses the conclusions and recommendations in them.

ANNEX

1. Bosnia and Herzegovina Law on Gender Equality

Article 23

(1) Every person who considers to be victim of discrimination or finds that a certain right has been violated due to discrimination shall be able to seek for protection of that right in the procedure in which this right shall be decided as a main issue, and shall be able to seek for protection in a special proceedings for protection from discrimination in compliance with the Law on Prohibition of Discrimination ("Official Gazette of Bosnia and Herzegovina" No, 59/09).

(2) A victim of discrimination according to provisions of this Law shall have the right to compensation according to regulations defining obligations.

(...)

2. Serbia Gender Equality Act

VI JUDICAL PROTECTION

Civil Law Protection

Article 43

Any one whose rights and freedoms are allegedly violated on account of gender may institute proceedings before competent court and demand that:

1) alleged violation resulting from discriminatory treatment be determined;
2) injunction prohibiting performance of acts causing threat of violation be ordered;
3) injunction prohibiting further performance and/or repetition of acts causing violation be ordered;
4) instruments and/or objects which are means of violation (e.g. textbooks representing gender in discriminatory and stereotyped manner, newspapers, publications, advertisements and publicity matter) be withdrawn from circulation);
5) violation be removed and situation and position be restored to a state as it was prior to violation;
6) intangible and tangible loss be repaired and compensated;
7) judgement be announced by mass media or published at defendant's expense;
8) information on third parties involved in violation of rights or freedoms be disclosed.

Trade unions or associations actively involved in gender equality may, with prior consent of any discriminated person, on this person's behalf, institute proceedings referred to in paragraph 1 hereof. These entities may join the plaintiff in the capacity of intervening party.

In case of discrimination entailing alleged violation of rights of more than one person, the entities referred to in paragraph 2 hereof may institute proceedings on their own behalf. Any person whose rights were allegedly violated may join the plaintiff in the capacity of intervening party.

After the initiation of proceedings, and/or its institution, the entities referred to in paragraph 2 hereof shall be authorized to inform, through media of mass communication or in any other adequate manner, other injured parties, trade unions and associations on initiation of civil proceedings and call on them to join plaintiff in the capacity of intervening or opposing parties.

New plaintiff may subsequently join the civil proceedings alongside existing plaintiff without the defendant's consent after defendant's involvement in main hearing.

Applicable Law

Article 44

Unless otherwise provided for in this Law, provisions of the law governing civil procedure shall be applied to lawsuit for protection from discrimination based on gender.

Initiation of the Proceedings

Article 45

Civil proceedings may be initiated prior to completion of a proceedings instituted before a competent

authority for protection of rights arising form employment and on the basis of work.

Jurisdiction
Article 46
District court shall have jurisdiction over civil cases instituted due to violation of gender equality.
Court on the territory of which plaintiff has residence, place of abode or domicile shall have jurisdiction over the civil cases referred to in paragraph 1 hereof in addition to the court of general territorial jurisdiction.

Emergency of the Proceedings
Article 47
Civil proceedings initiated for protection from gender-based discrimination shall be of extreme urgency.
The first hearing shall be held within period of 15 days from filing civil action. Time for responding to action filed shall be eight days.
Court shall reach decision on motion to order provisional remedy within three days after the receipt of motion.
Time for plea against decision to order provisional remedy shall be 48 hours after the receipt of the decision. Plea shall be responded to within further 48 hours.
Time for appealing against final judgment shall be three months from its filling, in accordance with the law governing civil proceeding.

Exemption from Advance Payment of Costs of Proceedings
Article 48
In case of civil proceedings initiated for protection from gender-based discrimination a plaintiff shall be exempt from advance payment of costs of the proceedings, which shall be disbursed from resources of court.

Presumption of Innocence and Burden of Proof in Lawsuits
Article 49
If it is undisputable among the parties or court has determined that an act of direct discrimination was performed, it shall not be a matter of proof if direct discrimination based on gender has been done without fault
If in the course of proceedings plaintiff has made it probable that genderbased discrimination was engaged in, the burden of proof rests with defendant to show that principle of equality was not infringed upon.

Provisional Remedy
Article 50
Prior to or in course of civil case for protection from discrimination based on gender, injured party and/or entities authorized to initiate proceedings may emand that provisional remedy to prohibit discriminatory treatment be ordered pending final completion of the proceedings.
Proponent shall make probable that there is a real threat to violation of the rights due to discriminatory treatment and that without injunction considerable tangible or intangible loss would be inflicted.
Court may order an injunction ex officio under the conditions referred to in paragraphs 1 and 2 hereof.
Appeal against decision on ordering provisional remedy shall not postpone enforcement of the decision.

Records and Documentation on Protection
Article 51
Court shall communicate to the ministry responsible for gender equality all final decisions awarded as the result of the civil cases instituted for protection from gender-based discrimination.
Provision of paragraph 1 hereof shall also be applicable to the proceedings before administrative authorities.
Ministry responsible for gender equality shall maintain records on the data referred to in paragraph 1 and 2 as well as keep other documents of the bodies responsible to act in the proceedings for protection of gender equality.
The minister responsible for gender equality shall proscribe a method and manner in which records are to be maintained and documents are

ANNEX III

OPINION ON THE DRAFT LAW ON PROTECTION FROM DISCRIMINATION

EXECUTIVE SUMMARY

This opinion examines the Draft Law on Protection against Discrimination and its compatibility with European and international standards. It finds that the Draft Law embodies almost all European standards for the protection of equality but effectively does so only in a declaratory way. The obstacle to effectiveness lies in its insufficient clarity as to how victims of discrimination are to be able to protect their rights, the forms of redress to be provided and the imposition of penalties for misdemeanours. Notwithstanding this serious shortcoming, the Draft Law rightly gives a central role to the Ombudsperson in addressing complaints about discrimination - which could be made more explicit - but the effectiveness of this is also dependent upon reforms to the existing Law on the Ombudsperson. It is also essential that the provisions of the Draft Law are harmonised with the Draft Law on Gender Equality. Moreover, it is imperative that these three Laws are considered as a coherent package of measures rather than as three separate pieces of legislation.

1. This opinion assesses the Draft Law on Protection against Discrimination ('the Draft Law') against European and international human rights standards, as well as good practices. It also discusses the efficiency of the Draft Law in regulating the institutional set-up within the context of the existing legislative and institutional frameworks in the field of human rights in Kosovo.

2. The opinion has been prepared by Dejan Palic[332] under the Joint Project between the European Union and the Council Europe "Enhancing Human Rights Protection in Kosovo" ('the Project'), as part of a larger assessment, which has the aim of specifying the strengths and weaknesses of the institutional arrangements for the protection of human rights both at executive and local levels, and of providing a legislative expertise on the Draft Law, the Draft Law on Gender Equality ('the Draft Gender Equality Law'), the Law on the Ombudsperson and the Draft Law on Amending and Supplementing Law No. 03/L – 195 on Ombudsperson of July 2013 in order to build links between the three laws and the monitoring bodies/structures established under them[333].

3. In assessing the Draft Law, this opinion draws upon the European Convention on Human Rights ('the European Convention'), European Union Directives concerning discrimination[334], the case law of the European Court of Human Rights and the European Court of Justice and General Policy Recommendations of the European Commission against Racism and Intolerance of the Council of Europe ('ECRI'). In addition it takes account of relevant reports by Kosovo institutions and international and civil society organizations. The opinion also examines the Draft Law in the light of practice under Law No. 2004/3 The Anti-Discrimination Law ('the Current Law') and within the context of both of other pertinent legislation, particularly the Law on Ombudsperson, and the general institutional framework for the protection of human rights in Kosovo.

4. This opinion has also taken into account the fieldwork conducted as a part of the Project's working group of international and local experts responsible for the formulation of the institutional reform proposal.

332 Member of European Commission against Racism and Intolerance and former Deputy Ombudsman of Croatia (2004-2013).

333 The European Union has called on Kosovo, within the Stabilization and Association Process to streamline and simplify the multitude of bodies dealing with the protection of human rights and to ensure effective monitoring and enforcement of the relevant legal framework.

334 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('Directive 2000/43/EC'); Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ('Directive 2000/78/EC'); *Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services ('Directive 2004/113/EC'); and* Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) ('Directive 2006/54/EC').

5. In the course of preparing this opinion, the author met with national and international stakeholders according to the meeting schedule prepared by the Project team.

6. The opinion first looks at the context within which the Draft Law is to be located. It then makes a general comparison between the Draft Law and the Current Law, before making an Article by Article analysis of the provisions in the Draft Law. Finally, there is a summary of all the recommendations made and an overall conclusion.

2. CONTEXT

7. The system for the protection of human rights is based on the Constitution of the Republic of Kosovo ('the Constitution') and legislation subsequently adopted but also the legislation promulgated by (the United Nations Interim Administration Mission in Kosovo[335] ('UNMIK'), as well as some even dating from the era of the Federal Republic of Yugoslavia.

8. However, the legislation is not always sufficiently clear and there appears to be much difficulty with the process of securing its implementation, including delays in court proceedings and failure to execute administrative and court decisions[336].

9. The whole system for protection of human rights is not well balanced as there are often several bodies dealing with the same, or closely related, issue. This can lead to confusion as to which to use and potentially undermine the authority of those bodies with the scope to provide more effective remedies, giving rise to a negative effect on public perceptions.

10. This is particularly so in the field of discrimination where overlapping roles with respect to the handling of complaints are given to the courts, the Ombudsperson Institution of Kosovo ('the OIK'), the Agency for Gender Equality ('the AGE') and Municipal Human Rights Units.

11. It is, therefore, very important that full advantage be taken of the current reform of legislation regarding discrimination, gender equality and the OIK to ensure that the synergy of all these institutions concerned with tackling discrimination is maximised.

12. This is all the more necessary in Kosovo at present since it is not a member of the Council of Europe and there is thus no possibility of access to the European Court of Human Rights[337].

13. Apart from the role that should be played by the courts, there are good reasons for according the OIK additional powers for the protection of equality.

14. Firstly, a great number of citizens already know the basic facts about the OIK and so extending its powers to secure equality is likely to be seen as a significant improvement.

15. Secondly, the provisions governing the institution and for handling complaints - even if in need of some improvement - already exist. It is not, therefore, necessary or appropriate to build a whole system for protection against discrimination from scratch, particularly give the expense that this would entail.

16. Thirdly, the OIK also already has a good team of experts in field of human rights - albeit one

335 The mandate of UNMIK was established by the Security Council in its resolution 1244 (1999). The Mission is mandated to help the Security Council achieve an overall objective, namely, to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo and advance regional stability in the western Balkans.

336 See OSCE "Execution of Judgments" Report from 2012 at http://www.osce.org/kosovo/87004. See also the following statement in the Annual Report for 2011 of the OIK: "Municipal Court in Pristina, in response to the Ombudsperson's letter regarding the delay of cases by this court, Ms. M. S., Acting President of the Court announces that "the Court is unable to observe the standard time limits set by law and therefore incurred claims of the parties, the court has 65.000 outstanding civil, criminal and court bailiff cases and there are not enough judges to deal with them ".

337 United Nations special procedures are, however, available and it is understood some have been successfully invoked.

that should be enhanced - which has experience in handling complaints and the ability to identify systemic problems from the individual issues raised with them.

17. It is, therefore, highly undesirable for the Draft Gender Equality Law to propose the establishment of a Legal Representative within the AGE to receive complaints. The model envisaged for the Draft Law of making use of the Ombudsperson's powers is certainly to be preferred.

18. However, public awareness of human rights is also very weak and considerable efforts to remedy this - especially as regards the prohibition on discrimination - are clearly essential. In this regard, therefore, some specialist promotional focus - such as is proposed for the AGE - as an addition to the work that should be undertaken by the OIK would certainly be helpful.

19. At the same time, the role envisaged by the Draft Law for the courts - one that is a feature of all legislative efforts in Europe to tackle discrimination - underlines the need for considerable efforts to be made to improve the effectiveness of the judicial system. This would entail not just strengthening the judiciary but ensuring that victims had access to free legal aid, granted through a simple and fast procedure. However, these are matters that cannot be addressed in the Draft Law but it is an undoubted precondition for its success.

20. It is a serious indictment of the contribution made by the Current Law to challenging discrimination that, nine years after its introduction, there has not yet been one final adjudication of a complaint under its provisions, as well as the continued existence of a general reluctance of victims of discriminatory treatment to have resort to the courts for redress.

21. Above all, it is crucial that the Draft Law is harmonized with the Draft Gender Equality Law and the Law on the Ombudsperson so as to maximise their effect in providing services to the public and ensuring a smooth workflow. At present, these three laws contain different provisions on the OIK´s competence and it is essential that they are considered as a coherent package of measures rather than as three separate pieces of legislation. Moreover, the use of terminology in the three laws needs to entirely be consistent so as to ensure that contradictions do not undermine the protection which they are seeking to afford.

3. A GENERAL OVERVIEW

22. There are several general points that need to be considered before turning to the analysis of the individual provisions of the Draft Law.

23. It should first be noted that there is a potential problem of constitutionality in the authorisation to determine complaints about discrimination given not only by the Draft Law but also by the Current Law to the OIK. This authorisation relates to both the public and *private* sectors but Article 132.1 of the Constitution specifies that the role of the Ombudsperson relates to 'public authorities'. There is, of course, nothing inappropriate in such competences being conferred on an Ombudsperson Institution. This is an issue which will probably have to be resolved in the future by a constitutional amendment - as has already occurred in the case of Croatia[338] - but it is not one that can be pursued further in this opinion. Another potential legislative obstacle that might need to be taken into account concerns the stipulation in Article 17.1 of the Law on Local and Self Government that the municipalities have full and exclusive powers in area of promotion and protection of human rights since this leads to the level of protection of human rights not being equal in all municipalities and there are insufficient powers available to remedy this situation.

24. Secondly, the Current Law fulfils almost all the necessary elements required by international standards. Thus, it contains the basic anti-discrimination principles, lists the grounds of

338 The following sentence was added to the Constitution: "For the protection of fundamental constitutional rights, the ombudsperson can be entrusted by the law with certain powers related to the legal and natural persons".

discrimination, provides for fines and compensation for discriminatory conduct and sets up an independent body for the investigation of complaints.

25. However, there are two that it omits, namely, the provision of effective protection for victims of discrimination and the giving of sufficient importance to the promotion of the requirements of the Current Law.

26. Thus, as concerns legal protection for victims, the Current Law - and the Draft Law as well - does not contain any clear provisions regarding the jurisdiction of the competent bodies or the content of the claim and the decision, and it has failed to develop appropriate arrangements governing the award of compensation and the imposition of fines. All these shortcomings have undoubtedly contributed to the absence of any case law under the Current Law.

27. Similar shortcomings can be seen in the Draft Law's provisions on court proceedings, compensation for the victims and fines for perpetrators. This is important as victims should have a clear picture about the procedure for obtaining protection for their rights and perpetrators should be aware of the real possibility of consequences ensuing from their conduct. Indeed, an important requirement of the European Union *aquis* is that sanctions should be *dissuasive*[339]. Moreover, clarity is vital if judges are to have a proper instrument to apply, enabling them to protect the victims of discrimination.

28. The weakness of the Current Law regarding promotion is the failure to entrust this role to the Ombudsperson. It is welcome, therefore, that the Draft Law does include provisions relating to its promotion and has, in particular, enhanced and made clearer the role of the Ombudsperson in this regard.

29. Thirdly, the Draft Law omits two important provisions to be found in the Current Law, namely, those concerning (a) the consequences for parties awarded a public contract, loan or grant, who are not acting in compliance to the law[340] and (b) the inapplicability of the burden of proof for defendants in cases of alleged discrimination where the particular proceedings relate to alleged criminal and minor offences[341].

4. ARTICLE BY ARTICLE DISCUSSION

Article 1

30. The inclusion in this provision defining the Draft Law's purpose of the wording:

> principle of equal treatment of all the citizens of Republic of Kosovo under the rule of Law

is inconsistent with Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination and Article 3 of Directive 2000/43/EC and Article 3 of Directive 2000/78/EC. Neither of these provisions mentions 'the rule of law' and both make clear the connection between the grounds of discrimination and the principle of *equal treatment*.

31. The current text is in fact an interpretation of principle of the rule of law, which is not the same thing as the prohibition of discriminatory conduct. Indeed, Article 24 of the Constitution makes a distinction between the term 'equal before the law' in its first paragraph and the ban of discrimination in the second one.

32. Furthermore, this provision wrongly refers to the 'equal treatment of all citizens' since (a) the Draft Law is applicable to non-citizens and (b) treating everybody equally could lead to discrimination contrary to European and international standards.

339 Article 15 of Directive 2000/43/EC, Article 17 of Directive 2000/78/EC, Article 14 of Directive 2004/113/EC and Article 25 of Directive 2006/54/EC .
340 Article 6.3.
341 Article 8.3.

33. Article 1 should thus be redrafted following the example of the Article 1 of the Directive 2000/78/EC and Article 1 of Directive 2000/43/EC but with all grounds mentioned in Article 3 of the Draft Law specified, together with four further grounds, namely, 'sex', 'political or other opinion', 'birth' and 'genetic heritage'. The definition of 'sex'[342] as a ground of discrimination is explained in this Report within the analysis of the Gender Equality Law. 'Political or other opinion' refers on freedoms protected in Articles 9 and 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms. 'Birth' is specified in Article 14 of the European Convention and the main European and international treaty provisions prohibiting discrimination and the 'genetic heritage' is not only found in Article 11 of Convention on Human Rights and Biomedicine[343] but is also amongst the requirements listed in the Kosovo visa roadmap[344]. Furthermore, problems involving genetic heritage are already arising in the fields of health insurance and employment can be expected to do even more frequently in the near future. Article 1 should read:

> The purpose of this Law is to lay down a general framework for combating discrimination on the grounds of nationality, national or social origin, race, ethnicity, colour, birth, origin, sex, gender, gender identity, sexual orientation, language, citizenship, religion and belief, political affiliation, political or other opinion, personal or social status, age, family or marital status, property status, health status, disability, genetic heritage or any other basis, with a view to putting into effect the principle of equal treatment.

Article 2

34. The first three paragraphs of this provision dealing with the Draft Law's scope are formulated in a very complicated way so it is not clear who are the subjects of the matter. Moreover, the Draft Law is not the place to elaborate the jurisdiction of Kosovo's legal system, it is confusing to mention that the Draft Law will be implemented outside Kosovo and, as already noted[345], the specific reference to 'citizens' is unjustified.

35. The first three paragraphs should, therefore, be deleted, with this provision just comprising the current paragraph 4, with its opening sentence recast in a more simple fashion as follows:

> This Law shall apply to all actions and inactions of all state and local bodies, natural and legal persons both in public and private sectors, which violate, has violated or could violate the rights of any natural or legal person or persons, in all areas of life, especially regarding: ...

36. However, some areas of life are missing from those listed in the current paragraph 4, such as science and sport, cultural and artistic creation[346]). These areas should be expressly mentioned also, between sub-paragraphs 4.10 and 4.11, notwithstanding the recasting of the opening sentence of paragraph 4 to state that the Draft Law is applicable in *all* areas of life.

Article 3

37. The structure of this provision should follow the approach of Article 2 of the Directive 2000/78/EC, with the heading 'The concept of discrimination' and the following two paragraphs:

- The principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on any of the grounds referred in Article 1[347].
- Discrimination is any distinction, exclusion, restriction or preference, based on any grounds mentioned in Article 1 of this law, that has the purpose or effect of nullifying or impairing the recognition, enjoyment or

342 'Sex' is one of the forbidden grounds listed in Article 1 of the Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms.
343 'Any form of discrimination against a person on grounds of his or her genetic heritage is prohibited'.
344 BLOCK 4: Fundamental Rights related to the Freedom of Movement requires Kosovo to: 'Ensure that the freedom of movement of Kosovo citizens is not subject to unjustified restrictions, including measures of a discriminatory nature, based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, belonging to a minority, property, birth, disability, age or sexual orientation' (emphasis added).
345 See para. 32.
346 Cf. Article 15 of the International Covenant on Economic, Social and Culture Rights.
347 The list of grounds should be in Article 1, as recommended in para. 33.

exercise, in the same way with others, the fundamental rights and freedoms recognized by the Constitution of the Republic of Kosovo and other applicable laws of the Republic of Kosovo.

Article 4

38. This provision should retain the heading 'Types of unequal treatment' but the definition of discrimination in sub-paragraph 1.1 should be deleted as it is not acceptable to put the definition of the discrimination under the types of discrimination. On the other hand, the protection from victimisation in sub-paragraph 1.6 should be expanded to include the protection of any individual who did not participate in a complaint about discrimination but who is believed to have done it.

39. However, the list of types of unequal treatment is not complete. After the segregation, there should be added three other types of unequal treatment.

40. The first is that a failure to provide reasonable adaptation/accommodation for disabled persons, in line with their specific needs, should be deemed to be discrimination, unless it is unreasonable burden for the person that is obliged to provide for it taking into account for this purpose factors such as the use of publicly available resources, participation in the public and social life and ensuring access to the workplace and appropriate working conditions[348].

41. Secondly, prevention is an important function of the Draft Law and rather than leaving the matter hidden by the 'real or presumed' reference in sub-paragraph 1.2, it should be expressly provided that:

> Violation of the principle of equal treatment based on a misconception of the existence of the grounds referred to Article 1 shall also be, within the meaning of this Law, deemed to be discrimination.

42. Thirdly, there should be a paragraph regarding discrimination by association, i.e., the targeting not of persons belonging to a particular group but third persons who are closely associated with them and do not themselves belong to the group[349].

Serious forms of discrimination

43. After Article 4, a new article should be added to the Draft Law concerning protection in cases of more serious forms of discrimination

44. Discriminatory conduct that was motivated by more than one ground, was committed more than once, lasted for a long period of time or had particularly harmful consequences for the victim should be considered as a more serious form of discrimination[350].

Article 5

45. The substance of this provision is addressed by Article 17[351] and by the Law on Minor Offences[352] but the repetition is not problematic

Article 6

46. At the end of this provision, it would be appropriate to replace:

on condition that purpose is legitimate and requests proportional to the purpose

by

if that provision, criterion or practice is justified by a legitimate aim and there is a reasonable relationship of

348 See Article 5 of Directive 2000/78/EC.

349 See Article 1 of Protocol No. 12 to the European Convention, ECRI General Policy Recommendation N°7: National legislation to combat racism and racial discrimination, adopted by ECRI on 13 December 2002 and Case C-303/06 S. Coleman v. Attridge Law and Steve Law [GC], 2008 ECR 1-05603.

350 See also para. 83.

351 See para. 89.

352 'Against a legal entity and a responsible person in the legal entity a unique offence procedure is led, except if there are legal grounds for the procedure to be conducted only against one of them'.

proportionality between the means employed and the aim sought.

Article 7

47. In the first sentence of this provision, the word 'necessary' and the phrase 'for prevention and advance of rights of' should be deleted. This sentence should be further amended to read:

> Affirmative actions are measures conducted with the aim to prevent or compensate disadvantages of groups or persons linked to any of the grounds referred to in Article 1 of this Law.

Article 8

48. All institutions - amongst other subjects - are required by Articles 1-3 to respect the provisions of the Draft Law. Furthermore, specific duties to draft policies and to promote the Draft Law (and its values) are prescribed by stipulated Articles 9 and 10.

49. However, it would be impossible - as Article 8 provides - for *all* institutions in Kosovo to promote the Draft Law and to draft and adopt 'specific and temporary policies'. Such a requirement would result in excessive production of (copy-pasted) documents without any real effect but at great cost.

50. Furthermore, the responsibility of the Ombudsperson to undertake promotional activities is addressed in Articles 9 and Article 10 creates the obligation to draft policies for the OGG.

51. It would, therefore, be better for Article 8 to be rephrased to state that all institutions shall comply with the principles of the Draft Law when fulfilling their duties, something that could then be given effect to through an amendment to the statutes of the institutions concerned.

Article 9

52. The heading 'Powers of the Ombudsperson' for this provision should be changed to 'The Ombudsperson' because it deals with both powers and duties.

53. There is no definition of the OIK in paragraph 1 but only a statement that it is the 'authorized body'. However, it should be explicitly stated that this institution is the central and independent national equality body as part of its overall responsibility for the promotion and protection of human rights. As the Commissioner for Human Rights Thomas Hammarberg has explained:

> Independence is key to the effectiveness of national structures for promoting equality. The independence of the bodies can be understood in terms of being able to allocate their resources as they see fit, to make decisions in relation to their own staff, to determine their own priorities and exercise their powers as and when they deem necessary[353].

54. In sub-paragraph 1.1 it should be stipulated before 'provides opinion' that the OIK can 'undertake mediation'. Moreover, the words 'if court proceedings have not yet been initiated' need to be inserted after the word 'persons' to make clear this limit on the OIK's competence.

55. Sub-paragraph 1.2 appears to be incomplete as there are other proceedings that might be undertaken apart from those in court, such as administrative proceedings and internal labour dispute procedures. It should, therefore, read

> Provide necessary information to the persons that have filed a complaint on account of discrimination with regard to their rights and obligations and possibilities of court and other means of protection.

Sub-paragraph 1.3 is not clear, since it does not explain the meaning of the term 'competent authorities'. The word 'authorities' associates and refers on the administrative bodies, but these are already encompassed in paragraph 1.1 If the meaning of this sub-paragraph was to accord

353 Opinion on National Structures for Promoting Equality; https://wcd.coe.int/ViewDoc.jsp?id=1761031&Site=COE&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679.

the OIK the power to file a lawsuit (class action), it should be stipulated in separate article[354]. Therefore, this sub-paragraph should be deleted and replaced with the following powers:

> Address investigative and prosecutorial bodies directly with a request to launch criminal and minor offences investigation and request the institution of applicable disciplinary proceedings.

The argument for introducing this provision is the necessity to have an effective instrument to suppress discrimination in general, but also due to the fact that this Law applies to the private sector, unlike the Law on Ombudsperson.

56. The words 'to public authorities' in sub-paragraph 1.6 should be deleted since the OIK should also be able to issue recommendations to private entities.

57. In sub-paragraph 1.9 the power of cooperation should be extended to social partners, NGOs dealing with the promotion and protection of human rights, as well as churches and religious organisations registered in Kosovo.

58. In sub-paragraph 1.10 it should be provided that

> shall report on the implementation of the Law in its Annual Report to the Assembly and can also issue special reports on its implementation.

59. The current paragraph 2 should be deleted in line with the recommendations concerning the budget in the Opinion on the Law Nr. 03/l-195 on Ombudsperson and the Draft Law on Amending and Supplementing the Law Nr. 03/l-195 on Ombudsperson.

Article 10

60. In sub-paragraph 1.2 it would be appropriate to add 'strategies and action plans' after 'policies'.

61. However, as a precondition for drafting any policy, there is a need to build a database with disaggregated data on the main vulnerable groups and the need for this to be undertaken ought to be specified for the data gathering responsibility in Article 10.1.4[355]. The OGG should collect disaggregated data on employment rate, social and educational status regarding members of all national minorities, women and people with disabilities. The Ombudsperson should have access to all this data.

62. A new sub-paragraph should be introduced in paragraph 1, providing that the OGG monitors the implementation of Ombudsperson's recommendations in respect of discrimination[356].

63. Paragraph 2 should be deleted because there is no justified reason to treat employees in public institutions differently.

64. It is not clear that paragraph 4 is necessary or what would be the substance of the regulation mentioned since the Draft Law should provide a clear enough instruction to ministries and municipalities. This paragraph should, therefore, be deleted.

Articles 11 and 12

65. Provisions relating to complaints to the OIK, administrative disputes and lawsuits, as well as proceedings for minor offences, should dealt with in separate Articles and not be mixed up as is the case with the present provisions. There is no need for the existing paragraph 1 of Article 11 if there is an appropriate heading for the provisions dealing with the respective proceedings.

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354 See para. 86.

355 See the last sentence of ECRI's General Policy Recommendation No. 1 at http://www.coe.int/t/dghl/monitoring/ecri/activities/GPR/EN/Recommendation_N1/Rec01en.pdf.

356 This should presumably also be mentioned in Regulation NO.16/2013 on the Organisational structure of the Office the PM.

66. Article 11 should just deal with proceedings before the Ombudsperson and should be entitled 'Complaints of Discrimination'. The wording in the former paragraph 2 'submit a lawsuit before the institution of the Ombudsperson' is wrong since lawsuits can only be addressed to courts.

67. The first paragraph of the new Article 11 should provide

> Any person or group of persons can lodge a complaint to the Ombudsperson about discriminatory conduct on the grounds mentioned in Article 1 if court proceedings have not yet been initiated.

68. A new paragraph 2 should specify that the submission and handling of complaints of discrimination by the Ombudsperson shall be carried in accordance with the procedures specified in Chapters III and IV of the Law on the Ombudsperson.

69. A new paragraph 3 should provide that the OIK has the additional power to require the provision within 30 days all information and documents related to a complaint of discrimination made to as, without such a power, the whole system will not be effective.

70. The new Article 12 should be entitled 'Lawsuits disputes concerning discrimination'.

71. Paragraph 1 of the new Article 12 should state:

> Any person or group of persons complaining that they have been discriminated against on the grounds mentioned in Article 1 may file a lawsuit before the competent court.

72. Paragraph 3 of the existing Article 11 should become paragraph 2 of the new Article 12.

73. Paragraph 5 of the existing Article 11 should become paragraph 3 of the new Article 12.

Article 13

74. It is too restrictive for paragraph 1 to set a time limit of one year for filing a lawsuit, particularly having in mind that in other proceedings the time limit is generally longer than one year, a period that applies under the Law on Obligational Relationships only to matters such as claims for supplied electricity[357]. It is not acceptable to compare claims for supplied electricity with claims for discriminatory behaviour, which is very severe social evil forbidden by the Constitution. Moreover, according to the same Law on Obligational Relationships, the time limit for filing a lawsuit for damage to a car is 3 years. Such a period would also be an adequate time limit for claims involving alleged discriminatory treatment, particularly as there are cases where victims do not react for some time for justified reasons, such as fear, health conditions and the reluctance of witnesses to support their claims. Finally, it should be noted that three years is the time limit in Croatia and Bosnia and Herzegovina for bringing proceedings in respect of discrimination.

75. Paragraph 2 should have the following second sentence because paragraph 4 should be deleted consequent upon the recommended deletion of Article 2.3:

> For persons not resident either temporarily or permanently, the competent court is the Basic Court in Pristina.

76. Paragraph 3 should be deleted because it is in contrary to the Law on Courts (articles 14 and 16), but also the Law on Administrative Procedure and the Law on Contested Procedure. The Administrative Matters Department of the Basic Court has no jurisdiction in civil proceedings. Lawsuits for determination of discrimination surely cannot be considered as administrative

357 See Article 360 of Law No. 04/l-077: Law on Obligational Relationships (http://www.kuvendikosoves.org/?cid=2,191,911): '1. The following shall become statute-barred after one (1) year:
1.1. claims for supplied electricity, thermal energy, gas, and water, for chimney-sweeping services and for municipal cleaning services, if the supply or service was carried out for the needs of a household;...'.

disputes. Deleting paragraph 3 will solve the problem, because, it is already mentioned in paragraph 1 that lawsuit will be filed at the competent court (and the Law on Courts regulates which court is competent).

77. The problem of discriminatory conduct is specific in administrative procedures and disputes. When person is a party in administrative procedure, the main issue is not a claim for establishing the fact that discrimination has occurred but something else (e.g., a building permit) and it should be possible to request the protection from discrimination in that procedure or in appeal. However, although finding that discrimination has occurred, the relevant decision has an impact only in this particular matter and it is not possible to request compensation. Nonetheless, a new Article should thus be added (after Article 14), stating that:

> any person who considers that his/her right has been violated on account of discrimination may request this form of protection in administrative proceedings in addition to any request for protection in special proceedings provided in Article 14 of this Law.

78. According to paragraph 5, a Court may invite the Ombudsperson to act as a friend of the court but it is not made clear that this invitation can be rejected. This paragraph should be amended to confirm that this is possible because Ombudsperson is independent and should be free to decide how to respond to any such invitation.

Article 14

79. The existing paragraphs of this article are relevant only for civil proceedings.

80. However paragraph 1 is problematic in that it authorises potential victims to request the court to establish the fact that discriminatory behaviour occurred (an *action for determination of discrimination*) but nothing else; i.e., they cannot ask for compensation or anything else. Moreover, court decisions must respect the Law on Contested Procedure and decide strictly within the limits of what has specifically been requested in the claim by a plaintiff[358]. There should be inserted, therefore, after 'the mode of action' at the end of paragraph 1

> and also to request any or all of the remedies specified in the following paragraph.

81. As both the construction of the lawsuit and the remedial powers ought to be more detailed, the existing sub-paragraphs 2.1-2.3 in paragraph 2 should be replaced by the following:

> 2.1 to prohibit the undertaking of activities which violate or may violate the plaintiff's right to equal treatment, or to carry out activities which eliminate discrimination or its consequences (*action for prohibition or elimination of discrimination*);
> 2.2 to compensate for pecuniary and non-pecuniary[359] damage caused by the violation of the rights protected by this Law (*action for damages*)[360];
> 2.3 to order temporary measures (if the claimant has made it plausible that his/her right to equal treatment was violated, and if it is necessary to order a measure with a view to eliminating dangers of irreparable damage, particularly of serious violations of the right to equal treatment, or with a view to preventing violence);
> 2.4 to order the time limit for the execution of the judgment shorter than it is stipulated in Law on Executive Procedure[361];
> 2.5 to publish in the media the ruling establishing the violation of the right to equal treatment, at the defendant's cost.

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358 Article 2.1 of the Law on Contested Procedure (Law No. 03/L-006) provides that: 'The court of the contentious procedure decides within limits of claims submitted by the litigants'.

359 See Articles 182-189 of Law No. 04/l-077: Law on Obligational Relationships (http://www.kuvendikosoves.org/?cid=2,191,911).

360 These damages can be expected to cover all financial losses arising from the discrimination (especially lost wages or salary), compensation for injury to feelings (such as hurt or distress) suffered as a result of the discrimination, compensation for any personal injury (such as stress or depression) that can be shown to have been caused by the discrimination and interest on the sums involved.

361 http://www.kuvendikosoves.org/?cid=2,191; Law on Executive Procedure: Law No. 03/L-008.

82. Furthermore, in order to prevent any arbitrary conduct in the process of the execution, there should be added at the end of paragraph 4, the phrase 'according to the Law on Executive Procedure'.

83. A new paragraph 5 should be inserted to take account of the addition of the provision on serious forms of discrimination, which should state that:

> In determining an award of compensation for non-pecuniary damage the court shall have regard to whether the case involved the more serious form of discrimination.

84. There is a need to clarify, for the sake of legal certainty, what exactly is intended by the existing paragraph 5 - which should become paragraph 6 - in its reference to the 'imposition of measures by other laws'.

85. There should be additional paragraph - paragraph 7 - providing that proceedings in discrimination cases are urgent.

New Article on class action

86. After Article 14 there should be another entirely new article to replace and develop the existing paragraph 4 of Article 11, authorising a special form of lawsuit, namely, a class action. Cases of a discrimination affecting groups of persons can be very significant but members of such groups do not always initiate court proceedings for many reasons: their vulnerability, financial costs, protection of their private life, lack of trust in judiciary and the length of the procedures involved. However, their problems can be tackled through a class action undertaken on their behalf by non-governmental organizations and the Ombudsperson, in such cases, the consent of the group members is not required[362].

87. Because of their importance, such legal actions are to be filed, in some countries, in the County Court or Court of Appeal, with the following claims:
    - to establish that the defendant's conduct has violated the right to equal treatment in relation to members of the group;
    - to prohibit the undertaking of activities which violate or may violate the right to equal treatment, or to carry out activities which eliminate discrimination or its consequences in relation to members of the group;
    - to publish in the media the ruling establishing violation of the right to equal treatment, at the defendant's cost.

In these proceedings, no damage compensation could be claimed, but, on the basis of the judgment in class action case, persons belonging to the group in question could file a lawsuit and request a redress. The Ombudsperson would not be able to act as a friend of the court[363] in such cases. Furthermore, the bringing of a class action by the Ombudsperson would be exceptional and restricted to particularly significant issues in view of the other demands on the resources of the OIK.

Article 15

88. This provision - which concerns the burden of proof - does not indicate the nature of the proceedings to which it would apply and, as the existing Article 11.2 refers to 'prosecution', it is possible that it is intended to apply to criminal or minor offence proceedings. This would not be in compliance with European standards as under Article 10 of Directive 2000/78/EC Member States are not required to apply the principle of the shifting of the burden of proof in criminal proceedings and to do so would be contrary to Article 6(2) of the European Convention on Human Rights. As the principles of criminal procedures are also the basis for minor offence

362 Arguments could be found in the famous case, initiated by the Belgium Equality Body, Case C-54/07 Centrum voor gelijkheid van kansen en voor racismebestrijding v. Firma Feryn NV, 10 July 2008 (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62007J0054:EN:HTML).

363 See para. 78.

proceedings, this principle should not be applied in those procedures too. A third paragraph for the present provision should thus provide that:

> Paragraph 1 is not applicable to criminal and minor offence proceedings.

In addition, it would be better if the word 'fact' in Article 15.1 were replaced by 'evidence'.

Article 16

89. This provision is perhaps unnecessary as everybody has a right to solve the dispute through mediation in accordance with the Law on Mediation[364] but at the same time it is a useful reminder of the merits of finding a solution in this way.

Article 17

90. This provision is perhaps the most problematic in the Draft Law. Sanctions and compensation are essential elements of the system for the protection of human rights, required by all relevant international documents. This provision is muddled in that it purports to regulate fines and compensation in a way that cannot be implemented Victims will not be capable of understanding this provision and how to use it for their protection. Compensation and fine are two different legal categories and decisions relating to them are reached in different proceedings by different courts. Civil courts cannot issue a fine as this is just a matter for the criminal or misdemeanour courts (except in cases of some behaviour for not respecting the court or of some violation of the Law on Contested Procedure). Victims can request a decision on financial compensation in civil, criminal[365] and offence[366] proceedings but the amount of the compensation must be judged according to the circumstances of the concrete case and cannot be laid down in a law. Claims for compensation cannot be decided in administrative proceedings.

91. The present provision should, therefore, only be concerned with the minor offences arising from violations of the Draft Law. Moreover, there is a need for it to contain a provision prescribing that a violation of specified Articles of the Draft Law is a minor offence and that the person responsible is liable to a fine (with the lowest and highest amounts being set out). The existing Article 17 should thus be deleted and drafted using the same methodology as it was used for Article 29 (Violation Provisions) of the Draft Gender Equality Law.

92. In addition, the redrafted provision should also contain a paragraph that specifies that a violation of the proposed obligation to require the provision within 30 days of all information and documents related to a complaint of discrimination[367] is a minor offence and that perpetrator will be fined (in amount of x EUR) so as to underline the fact that the suppression of the discrimination has a priority.

Specific sanctions

93. A new Article should be included that provides for two special sanctions.
94. The first should be for contractors participating in public procurements, such as already exists in Article 6.3 the Current Law. This should state that:

> A public contract from a public body shall be declared null or void by the body awarding it where the contractor concerned has violated any of the provisions of this law.

364 Law No. 03/L-057.

365 Article 62 of the Criminal Procedure Act provides: 1. The injured party shall have the following rights: ... 1.4. the injured party has the right to a reasonable, court-ordered restitution from a defendant or defendants who have admitted to or been adjudged to be guilty for the financial, physical and emotional harm caused by the commission of a criminal offence for which the defendant or defendants have been adjudged guilty.

366 Article 118 of the Law on Minor Offences provides: A damaged person may, before making the first instance decision on an offence, submit a claim for compensation of damage which is made to him/her by such an offence, i.e. claim recovery of things taken away from him/her. In a decision on an offence in which penalty or protection measure is pronounced shall be also decided on the legal-property claim."

367 See para. 69.

It should be the responsibility of the OGG and the AGE to keep the list of these contractors and to publish it on their web pages.

95. Also, in compliance to the Article 14 of the Directive 2000/43/EC, Article 16 of Directive 2000/78/EC, Article 13 of Directive 2004/113/EC and Article 23 of Directive 2006/54/EC, and consistent with Article 23 of the Draft Gender Equality Law, there should be a paragraph providing that:

> Any provisions contrary to the principle of equal treatment which are included in individual or collective contracts or agreements, internal rules of undertakings, rules governing profit-making or non-profit-making associations, and rules governing the independent professions and workers' and employers' organisations, are or may be declared null or void or shall be amended.

Article 18

96. This provision is somewhat incomplete and should be redrafted to take into account Article 27 of Directive 2006/54/EC[368].

Article 19

97. This provision is in accordance with EU standards, but, as has already been noted, public awareness activities need to be continually undertaken.

98. However, this provision could usefully be replaced by another requiring all public bodies to put a notice on their web page with the information about possibility to submit a complaint concerning discrimination to the OIK and giving its contact details.

Article 20

99. As already noted with respect to Article 10[369], it is not clear that any secondary legislation is required and, in the absence of further clarification, this provision should be deleted.

Article 21

100. Administrative Instruction (AI) No. 04/2006 (regarding competent body, time limit of 30 days, appeal procedure and administrative dispute procedure) does not fit in with the system proposed by the Draft Law and should, therefore, be abrogated. This should be effected by adding after the word 'implementation' in the present provision the phrase ',as well as Administrative Instruction (AI) No. 04/2006'.

368 1. Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive. 2. Implementation of this Directive shall under no circumstances be sufficient grounds for a reduction in the level of protection of workers in the areas to which it applies, without prejudice to the Member States' right to respond to changes in the situation by introducing laws, regulations and administrative provisions which differ from those in force on the notification of this Directive, provided that the provisions of this Directive are complied with.
369 See para. 64.

5. SUMMARY OF RECOMMENDATIONS

101. The following changes should be made to the Draft Law:

1. Article 1 should be redrafted to read like Article 1 of the Directive 2000/78/EC but with the addition of all grounds mentioned in Article 3 of the Draft Law plus birth, sex, political or other opinion and genetic heritage (para. 33);
2. Article 2 should contain only paragraph 4 with a recast opening sentence and specific reference to science and sport, cultural and artistic creation (paras. 35 and 36);
3. Article 3 should be recast to follow the concept of Article 2 of Directive 2000/78/EC, with the heading 'The concept of discrimination' (para. 37);
4. The definition of discrimination in paragraph 1.1 of Article 4 should be deleted but the protection from victimisation in sub-paragraph 1.6 should be expanded to include the protection of any individual who did not participate in a complaint about discrimination but who is believed to have done it and this Article should also include three other types of equal treatment relating to the failure to provide reasonable adaptation/accommodation for disabled persons, a misconception of the existence of the grounds of discrimination referred to in the Draft Law and discrimination by association (paras. 38-42);
5. A new article should be added after article 4 defining what should be considered as more serious form of discrimination (paras. 43 and 44);
6. Article 6 should be rephrased (para. 46);
7. Article 7 should be rephrased (para. 47);
8. Article 8 should be rephrased (para. 51);
9. In Article 9 it should state that the OIK is the central and independent equality body, sub-paragraphs 1.1, 1.2 , 1.3, 1.6, 1.9 and 1.10 should be rephrased and paragraph 2 deleted (paras. 52-59);
10. In Article 10 sub-paragraph 1.2 should be rephrased, sub-paragraph 1.4 should define data collection more detailed, a new sub-paragraph introduced and paragraphs 2 and 4 deleted (paras. 60-64);
11. Article 11 should be concerned only with complaints to the OIK and all the existing provisions of should be replaced by three new paragraphs (paras. 65-69);
12. Article 12 should be concerned with lawsuits and administrative disputes and comprised of an entirely new paragraph 1 and the former paragraphs 3 and 5 of the original text of Article 11 (paras. 70-73);
13. Paragraphs 1, 2 and 5 of Article 13 should be modified, and paragraph 3 should be deleted (paras. 74-78);
14. Paragraph 1, 2 and 4 of Article 14 should be modified, a new paragraph 5 should be inserted, the existing paragraph 5 should be clarified and become paragraph 6 and a new paragraph 7 should be added providing that proceedings in discrimination cases are urgent. (paras. 79-85)
15. A new article should be added after Article 14 introducing a class action procedure (paras. 86-87);
16. In paragraph 1 of Article 15 the word 'fact' should be replaced by 'evidence' (para. 88);
17. A third paragraph should be added to the existing Article 15 to exclude its applicability to criminal and minor offence proceedings (para. 88);
18. The existing Article 16 should be deleted (para. 89);
19. Article 17 should be replaced by an entirely new provision (paras. 90-92);
20. A new article should be added after Article 17 concerning the annulment of public contracts and provisions contrary to the principle of equal treatment (paras. 93-95);
21. Article 18 should be redrafted to take into account Article 27 of Directive 2006/54/EC (para. 96);
22. Article 19 should be replaced by an entirely new provision (paras. 97-98);
23. Article 20 should be clarified and possibly deleted (para. 99); and
24. The phrase ',as well as Administrative Instruction (AI) No. 04/2006' should be inserted in Article 21 after the word 'implementation' (para. 100).

6. CONCLUSION

102. The Draft Law undoubtedly includes almost all European standards for the protection of the principle of the equality. However, there is still a need to ensure that it has identical provisions to the Draft Gender Equality Law regarding the definition and types of discrimination.

103. More fundamentally, there is a need to make substantial changes to mechanisms for implementing those standards and, in particular, for securing redress for the victims of discrimination. Until the shortcomings that have been identified are rectified, the Draft Law will not become more than a declaratory instrument. At present, the Draft Law fails to provide the effective and coherent machinery needed to tackle inequality, something that is also the defining feature of the Current Law which it is intended to replace.

The author has seen the opinions on the Draft Law on Gender Equality and on Law No. 03/L – 195 on Ombudsperson and the Draft Law on Amending and Supplementing Law No. 03/L – 195 on Ombudsperson of July 2013 and endorses the conclusions and recommendations in them.

ANNEX IV

The Joint Project between the European Union and the Council of Europe entitled

"Enhancing Human Rights Protection in Kosovo"

First Assessment Mission[370]

17 June-5 July 2013

Agenda

Date/Time	Purpose	Venue	Participants
Monday, 17 June 2013			
11.00-12.30	Meeting with the Council of Europe (CoE) Project Team	CoE (Small meeting room)	CoE Project Team: - Ms Tea Jaliashvili, Project Manager - Ms Remzije Istrefi, Project Officer Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant - Mr Bardhyl Hasanpapaj, Consultant
12.30-14.30	Lunch break		
Tuesday, 18 June 2013			
08.00-09.00	Meeting with the United Nations Development Programme (UNDP) Kosovo	Coffee shop opposite the UNDP premises	CoE Project Team: - Ms Tea Jaliashvili, Project Manager Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant - Mr Bardhyl Hasanpapaj, Consultant UNDP Representative: - Mr D. Christopher Decker, Programme Coordinator

370 The first assessment mission to draft a reform proposal to energise non-judicial human rights institutions in Kosovo is conducted within the framework of the Joint Project. Experts involved are Mr. Arben Hajrullahu, Mr. Bardhyl Hasanpapaj, Ms. Gülcan Yeröz, and Ms. Natyra Avniu.

09.10-10.00	Meeting with the United Nations Interim Administration Mission in Kosovo (UNMIK)	CoE (Small meeting room)	CoE Project Team: - Ms Tea Jaliashvili, Project Manager Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant - Mr Bardhyl Hasanpapaj, Consultant UNMIK Representatives: - Ms Almaz Zerihun, Acting Senior Human Rights Adviser - Ms Chiara Sponzilli, Human Rights Officer
10.10-11.00	Meeting with the Office of High Commissioner for Human Rights (OHCHR) Stand-alone Office in Kosovo	OHCHR premises	CoE Project Team: - Ms Tea Jaliashvili, Project Manager Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant - Mr Bardhyl Hasanpapaj, Consultant OHCHR Representative: - Ms Theodora Krumova, Human Rights Officer

11.10-12.10	Meeting with the United Nations Children's Fund (UNICEF) Kosovo Office	UNICEF premises	CoE Project Team: - Ms Tea Jaliashvili, Project Manager Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant - Mr Bardhyl Hasanpapaj, Consultant UNICEF Representatives: - Ms Laila Omar Gad, Head of Office - Mr Dren Rexha, Social Policy Officer - Ms Beate Dastel, Monitoring and Evaluation Specialist
12.30-13.30	Lunch break		
14.00-15.00	Meeting with the Organization for Security and Co-operation in Europe (OSCE) Mission in Kosovo	OSCE premises	CoE Project Team: - Ms Tea Jaliashvili, Project Manager Team 1: - Ms Gülcan Yeröz, Consultant OSCE Representatives: - Mr Hjortur Sverrisson, Department of Human Rights and Communities, Director - Ms Jasna Dobricik, Chief of Equality, Non-Discrimination and Anti-Trafficking (ENA) Section - Ms Beata Ristowska, Field Coordinator

15.15-16.15	Meeting with the United Nations High Commissioner for Refugees (UNHCR) Kosovo Mission	UNHCR premises	CoE Project Team: - Ms Tea Jaliashvili, Project Manager Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant - Mr Bardhyl Hasanpapaj, Consultant UNHCR Representatives: -Mr Luca Curci, Senior Protection Officer -Ms Merita Ahma, Associate Protection Officer -Ms Fahrunnisa Akbatur, Protection Officer
Wednesday, 19 June 2013			
10.15-11.15	Meeting with the Kosovo Agency for Statistics (KAS)	KAS premises	CoE Project Team: - Mr Rrahim Sylejmani, Linguistic Assistant Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant KAS Representative: - Mr Bashkim Bellaqa, Department of Social Statistics, Director
11.30-12.30	Lunch break		
13.00-14.00	Meeting with the Office for Community Affairs (OCA)/Office of the Prime Minister (OPM)	OCA Office, Government building 6th floor	Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant - Mr Bardhyl Hasanpapaj, Consultant OCA Representative: - Mr Srdjan Popovic, Director of OCA/Senior Adviser to PM

15.30-16.30	Meeting with the Communities Council for Communities (CCC)/ Office of the Presidency	Assembly building S105	CoE Project Team: - Mr Rrahim Sylejmani, Linguistic Assistant Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant - Mr Bardhyl Hasanpapaj, Consultant CCC Representative: - Mr Petar Miletic, Former CCC Head/Current Deputy Speaker of the Assembly and Secretary General of the Political Party 'SLS'
Thursday, 20 June 2013			

09.00-11.00	Focus group meeting with civil society organizations (CSOs)	CoE (Large meeting room)	CoE Project Team: - Ms Tea Jaliashvili, Project Manager - Ms Remzije Istrefi, Project Officer - Mr Rrahim Sylejmani, Linguistic Assistant Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant - Mr Bardhyl Hasanpapaj, Consultant EU Office in Kosovo/EU Special Representative: - Mr Patrick Schmelzer, Policy Officer CSO Representatives: - Ms Raba Gjoshi, Youth Initiative for Human Rights (YIHR), Executive Director - Ms Fatmire Haliti, Kosovo Rehabilitation Centre for Torture Victims (KRCT), Project Manager/Lawyer - Ms Vatra Abrashi, Council for the Defense of Human Rights and Freedoms (CDHRF), Coordinator - Mr Bekim Blakaj, Humanitarian Law Centre (HLC), Executive Director

11.15-12.00	Meeting with the Ministry for European Integration (MEI)	MEI premises, Office of the Deputy Minister	CoE Project Team: - Ms Tea Jaliashvili, Project Manager - Mr Rrahim Sylejmani, Linguistic Assistant Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant - Mr Bardhyl Hasanpapaj, Consultant EU Office in Kosovo/EU Special Representative: - Mr Patrick Schmelzer, Policy Officer MEI Representatives: - Mr Gezim Kasapolli, Deputy Minister - Mr Besnik Vasolli, Technical Coordinator for Visa Liberalization
12.15-13.25	Lunch break		
13.30-14.30	Meeting with the CoE Project Team	CoE (Small meeting room)	CoE Project Team: - Ms Tea Jaliashvili, Project Manager - Ms Remzije Istrefi, Project Officer Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant - Mr Bardhyl Hasanpapaj, Consultant Team 1 & 2 Coordinator: - Mr Jeremy McBride, Consultant

15.00-16.00	Meeting with the EU Office in Kosovo	EU Office in Kosovo premises	CoE Project Team: - Ms Tea Jaliashvili, Project Manager Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant Team 1 & 2 Coordinator: - Mr Jeremy McBride, Consultant EU Office in Kosovo/EU Special Representatives: - Mr Patrick Schmelzer, Policy Officer - Mr Samir Selimi, Task Manager - Mr Visar Bivolaku, Human Rights Advisor
16.30-17.30	Meeting with the Ombudsperson Institution of Kosovo (OIK)	OIK premises	CoE Project Team: - Ms Tea Jaliashvili, Project Manager Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant Team 1 & 2 Coordinator: - Mr Jeremy McBride, Consultant OIK Representatives: - Mr Sami Kurteshi, Ombudsperson - Ms Shqipe Ibraj-Mala, First Deputy Ombudsperson - Ms Arberita Kryeziu, Assistant to Ombudsperson
20.00-21.30	Working dinner	Hotel Sirius Restaurant, 8th floor	CoE Project Team: - Ms Tea Jaliashvili, Project Manager Team 1: - Ms Gülcan Yeröz, Consultant Team 1 & 2 Coordinator: - Mr Jeremy McBride, Consultant
Friday, 21 June 2013			

09.00-10.00	Meeting with the Constitutional Court of Kosovo (CC)	CC premises	CoE Project Team: - Mr Andrew Forde, Deputy Head of Country Office - Ms Tea Jaliashvili, Project Manager - Mr Rrahim Sylejmani, Linguistic Assistant Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant - Mr Bardhyl Hasanpapaj, Consultant Team 1 & 2 Coordinator: - Mr Jeremy McBride, Consultant CC Representatives: - Ms Arbëresha Raça Shala, Secretary General - Mr Milot Vokshi, Acting Director of Finance Department - Ms Besarta Osmani, Office Assistant
10.15-11.00	Meeting with the Assembly of Kosovo (AoK) Commission on Human Rights, Gender Equality, Missing Persons and Petitions	AoK building, Office no. 6	CoE Project Team: - Mr Andrew Forde, Deputy Head of Country Office - Ms Tea Jaliashvili, Project Manager - Mr Rrahim Sylejmani, Linguistic Assistant Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant - Mr Bardhyl Hasanpapaj, Consultant Team 1 & 2 Coordinator: - Mr Jeremy McBride, Consultant EU Office in Kosovo/EU Special Representatives: - Mr Patrick Schmelzer, Policy Officer Commission Representative: - Ms Suzan Novobrdali, Chairperson

11.15-12.15	Meeting with the Ministry of Public Administration (MPA)	MPA, Cabinet of Ministers 5th floor	CoE Project Team: - Mr Andrew Forde, Deputy Head of Country Office - Ms Tea Jaliashvili, Project Manager - Mr Rrahim Sylejmani, Linguistic Assistant Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant - Mr Bardhyl Hasanpapaj, Consultant Team 1 & 2 Coordinator: - Mr Jeremy McBride, Consultant EU Office in Kosovo/EU Special Representatives: - Mr Patrick Schmelzer, Policy Officer MPA Representatives: - Mr Fitim Sadiku, General Secretary - Mr Fatos Mustafa, Department for Public Administration Reform Management, Director
12.30-13.25	Working lunch	Amelie	CoE Project Team: - Mr Andrew Forde, Deputy Head of Country Office - Ms Tea Jaliashvili, Project Manager - Ms Remzije Istrefi, Project Officer Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant - Mr Bardhyl Hasanpapaj, Consultant - Ms Natyra Avdiu, Consultant Team 1 & 2 Coordinator: - Mr Jeremy McBride, Consultant

13.30-14.30	Meeting with the Ministry of Local Government Administration (MLGA)	MLGA, Rilindja building, 10th floor	CoE Project Team: - Ms Tea Jaliashvili, Project Manager - Mr Rrahim Sylejmani, Linguistic Assistant Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant - Mr Bardhyl Hasanpapaj, Consultant Team 1 & 2 Coordinator: - Mr Jeremy McBride, Consultant MLGA Representatives: - Mr Blerim Hasani, Head of the Office of Permanent Secretary - Ms Faketa Kuka, Head of Division for Advancement of Human Rights in Municipalities - Mr Xhevat Tafa, Head of Division for Monitoring Municipalities
14.35-16.00	Meeting with the Legal Office (LO)/OPM	LO, Government building, 5th floor	CoE Project Team: - Ms Tea Jaliashvili, Project Manager - Mr Rrahim Sylejmani, Linguistic Assistant Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant - Mr Bardhyl Hasanpapaj, Consultant Team 1 & 2 Coordinator: - Mr Jeremy McBride, Consultant EU Office in Kosovo/EU Special Representatives: - Mr Patrick Schmelzer, Policy Officer LO Representative: - Mr Besim M. Kajtazi, Director of LO

15.30-16.30	Meeting with the Office of Strategic Development (OSD)/OPM	OSD, Government building, 5th floor	CoE Project Team: - Ms Tea Jaliashvili, Project Manager Team 1 & 2 Coordinator: - Mr Jeremy McBride, Consultant EU Office in Kosovo/EU Special Representatives: - Mr Patrick Schmelzer, Policy Officer OSD Representative: - Mr Ruzhdi Halili, Director of OSD
16.35-17.30	Meeting with the Office of Good Governance (OGG)/OPM	OGG, Government building, 6th floor	CoE Project Team: - Ms Tea Jaliashvili, Project Manager - Mr Rrahim Sylejmani, Linguistic Assistant Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant - Mr Bardhyl Hasanpapaj, Consultant Team 1 & 2 Coordinator: - Mr Jeremy McBride, Consultant EU Office in Kosovo/EU Special Representatives: - Mr Patrick Schmelzer, Policy Officer OGG Representative: - Mr Habit Hajredini, Director of OGG
17.45-18.30	Internal meeting - Report outline - Weekly reporting structure	CoE (Small meeting room)	CoE Project Team: - Ms Tea Jaliashvili, Project Manager Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant - Mr Bardhyl Hasanpapaj, Consultant - Ms Natyra Avdiu, Consultant Team 1 & 2 Coordinator: - Mr Jeremy McBride, Consultant
Monday, 24 June 2013			

09.00-12.00	Internal meeting - 2nd week planning: drafting semi-structured questions for the ministerial Human Rights Units (HRUs), finalizing the agenda - 3rd week planning: division of workload, drafting the agenda	CoE (Small meeting room)	Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant - Ms Natyra Avdiu, Consultant
12.15-13.25	Lunch break		
13.30-14.45	Meeting with the MLGA HRU	MLGA premises	CoE Project Team: - Mr Rrahim Sylejmani, Interpreter Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant - Ms Natyra Avdiu, Consultant MLGA Representatives: - Ms Faketa Kuka, Head of Division for Advancement of Human Rights in Municipalities - Mr Shkelzen Gashi, Human Rights Officer
Tuesday, 25 June 2013			
09.00-10.00	Meeting with the MEI HRU	CoE (Small meeting room)	Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant - Mr Bardhyl Hasanpapaj, Consultant - Ms Natyra Avniu, Consultant MEI Representative: - Mr Besnik Vasolli, Technical Coordinator for Visa Liberalization

10.30-11.30	Meeting with the Ministry of Agriculture, Forestry and Rural Development (MAFRD) HRU	MAFRD premises	CoE Project Team: - Mr Rrahim Sylejmani, Linguistic Assistant Team 1b: - Ms Gülcan Yeröz, Consultant - Mr Bardhyl Hasanpapaj, Consultant MAFRD Representative: - Ms Sherife Sekiraca, Officer for Equal Opportunities and Children Rights
12.00-13.00	Lunch break		
13.30-14.30	Meeting with the Ministry of Finance (MoF) HRU	CoE (Small meeting room)	CoE Project Team: - Ms Tea Jaliashvili, Project Manager - Mr Rrahim Sylejmani, Linguistic Assistant Team 1b: - Ms Gülcan Yeröz, Consultant - Mr Bardhyl Hasanpapaj, Consultant MoF Representatives: - Mr Xhevat Shabani, HRU Coordinator - Ms Minire Qyqalla, HRU Officer - Ms Hasime Bardhi, HRU Officer
15.00-16.00	Meeting with the Ministry of Labour and Social Welfare (MLSW) HRU Coordinator	MLSW premises	CoE Project Team: - Mr Rrahim Sylejmani, Linguistic Assistant Team 1b: - Ms Gülcan Yeröz, Consultant - Mr Bardhyl Hasanpapaj, Consultant MLSW Representative: - Ms Ferinaze Isufi, Officer for Gender Equality and Equal Opportunities
15.00 – 16.	Meeting with the Ministry of Health (MoH) HRU	MoH premises	Team 1a: - Mr Arben Hajrullahu, Consultant - Ms Natyra Avdiu, Consultant MoH Representative: - Ms Sanie Kiçmari, HRU Coordinator
Wednesday, 26 June 2013			

09.00-10.00	Meeting with the Ministry of Environment and Spatial Planning (MESP) HRU	MESP, Rilindja building, 14th floor	Team 1a: - Mr Arben Hajrullahu, Consultant - Ms Natyra Avdiu, Consultant MESP Representatives: - Ms Shpresa Sheremeti, HRU Coordinator - Ms Sevim Berveniku, Anti-Discrimination Officer
10.30-11.30	Meeting with the Ministry of Communities and Returns (MCR) HRU	MCR premises, Fushë Kosovë/ Kosovo Polje	CoE Project Team: - Mr Rrahim Sylejmani, Linguistic Assistant Team 1b: - Ms Gülcan Yeröz, Consultant - Mr Bardhyl Hasanpapaj, Consultant MCR Representatives: - Ms Emsal Misini, Officer for Children's Rights, Persons with Disabilities and Anti-Trafficking - Ms Liljana Peric, Officer for Rights of Minorities, Returnees and Anti-Corruption - Ms Besa Qirezi, Officer for Gender Equality - Ms Shkurte Pllana, Human Rights Officer
	Meeting with the Ministry of Infrastructure (MoI) HRU	MoI premises	Team 1a: - Mr Arben Hajrullahu, Consultant - Ms Natyra Avdiu, Consultant MoI Representative: - Mr Mirdit Emini, HRU Coordinator
12:00-13:00	Lunch break		

13:30-14:30	Meeting with the Ministry of Culture, Youth and Sports (MCYS) HRU	MCYS premises	CoE Project Team: - Mr Rrahim Sylejmani, Linguistic Assistant Team 1b: - Ms Gülcan Yeröz, Consultant - Mr Bardhyl Hasanpapaj, Consultant MCYS Representatives: - Ms Fatmire Sahiti, HRU Coordinator
	Meeting with the Ministry for the Kosovo Security Force (MKSF) HRU	CoE (Small meeting room)	Team 1a: - Mr Arben Hajrullahu, Consultant - Ms Natyra Avdiu, Consultant MKSF Representative: - Ms Halime Morina-Lupçi, HRU Coordinator
15.00-16.00	Meeting with the Ministry of Economic Development (MED) HRU	MED premises (Toskana building)	Team 1a: - Mr Arben Hajrullahu, Consultant - Ms Natyra Avniu, Consultant MED Representative: - Ms Arbërore Bërnica, HRU Coordinator - Officer for Community Rights; - Officer for Gender Equality.
	Meeting with the Ministry of Diaspora (MoD) HRU	MoD premises	CoE Project Team: - Mr Rrahim Sylejmani, Linguistic Assistant Team 1b: - Ms Gülcan Yeröz, Consultant - Mr Bardhyl Hasanpapaj, Consultant MoD Representatives: - Ms Elmas Shufta, Officer for Gender Equality and Human Rights
Thursday, 27 June 2013			

09.20-10.45	Meeting with the Ministry of Public Administration (MPA) HRU	CoE (Small meeting room)	CoE Project Team: - Mr Rrahim Sylejmani, Linguistic Assistant Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant - Mr Bardhyl Hasanpapaj, Consultant - Ms Natyra Avdiu, Consultant MPA Representative: - Mr Armend Rugova, HRU Coordinator
10.15-11.15	Meeting with the Ministry of Internal Affairs (MIA) HRU	CoE (Large meeting room)	Team 1a: - Mr Arben Hajrullahu, Consultant - Ms Natyra Avdiu, Consultant MIA Representative: - Mr Ismail Musa, HRU Coordinator - Ms Rrezan Zborca, Communities Officer
11.30-12.00	Internal meeting - Exchange of information on the 2nd week's meetings	CoE (Small meeting room)	Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant - Mr Bardhyl Hasanpapaj, Consultant - Ms Natyra Avdiu, Consultant
12.10-13.45	Working lunch	Fresco Restaurant	CoE Project Team: - Ms Tea Jaliashvili, Project Manager - Ms Remzije Istrefi, Project Officer Team 1: - Ms Gülcan Yeröz, Consultant International Senior Legal Adviser: - Mr Ronald Hooghiemstra, Constitutional Court

15.00-16.00	Meeting with the Ministry of Education, Science and Technology (MEST) HRU	MEST premises, 2nd floor	CoE Project Team: - Mr Rrahim Sylejmani, Linguistic Assistant Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant - Mr Bardhyl Hasanpapaj, Consultant - Ms Natyra Avdiu, Consultant MEST Representative: - Ms Merita Jonuzi, HRU Coordinator
16.15-18.00	Meeting with the EU Office in Kosovo	CoE (Small meeting room)	CoE Project Team: - Ms Tea Jaliashvili, Project Manager Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant - Mr Bardhyl Hasanpapaj, Consultant - Ms Natyra Avdiu, Consultant EU Office in Kosovo/EU Special Representative: - Mr Patrick Schmelzer, Policy Officer
Friday, 28 June 2013			
09.00-10.00	Meeting with the Communities Council for Communities (CCC)/ Office of the Presidency	CCC premises	Team 1: - Mr Arben Hajrullahu, Consultant - Mr Bardhyl Hasanpapaj, Consultant - Ms Natyra Avdiu, Consultant CCC Representatives: - Mr Selim Selimi, Acting Head of CCC - Ms Nafije Gash, CCC Secretary - Mr Avni Gashi, Legal Advisor

10.30-11.30	Internal meeting - Drafting questions for the 3rd week semi-structured meetings (municipal HRUs, OIK regional offices and CSOs)	CoE (Small meeting room)	Team 1: - Mr Arben Hajrullahu, Consultant - Mr Bardhyl Hasanpapaj, Consultant - Ms Natyra Avdiu, Consultant
Monday, 1 July 2013			
Team 1a: Arben Hajrullahu and Natyra Avniu *(Visit to Gjilan/Gnjilane)*			
09.30-10.45	Meeting the Mayor of Gjilan/Gnjilane municipality	Mayor's office	Team 1a: - Mr Arben Hajrullahu, Consultant - Ms Natyra Avdiu, Consultant Municipal Representative: - Mr Qemajl Mustafa, Mayor
11.00-12.00	Meeting with the municipal Human Rights Unit (HRU) Coordinator	HRU Coordinator's office	Team 1a: - Mr Arben Hajrullahu, Consultant - Ms Natyra Avdiu, Consultant Municipal Representative: - Mr Fazli Abdullahu, HRU Coordinator
12.00-13.30	Lunch break		
14.00-15.00	Meeting with the Ombudsman Institution of Kosovo (OIK) Regional Office in Gjilan/Gnjilane representatives	OIK Regional Office in Gjilan/Gnjilane	Team 1a: - Mr Arben Hajrullahu, Consultant - Ms Natyra Avniu, Consultant OIK Representative: - Mr. Kadrush Syla, Legal Advisor
15.30-17.00	Meeting with the representatives of civil society organizations (CSOs) in Gjilan/Gnjilane region	OSCE Mission in Kosovo, Regional Centre in Gjilan/Gnjilane, Conference Room	Team 1a: - Mr Arben Hajrullahu, Consultant - Ms Natyra Avdiu, Consultant CSO Representatives: - Ms. Besime Tusha, Executive Director - Network of Peace Movement - Nebojša Sibic, CDKS/ KPAN President - Shyrehte Stublla, Orgnisation Liria - Imrane Ramadani, Organisation Liria
Team 1b: Gulcan Yeroz and Bardhyl Hasanpapaj *(Visit to Prizren)*			

09.30-09.50	Meeting with the Mayor of Prizren municipality	Municipal building 'White House', Mayor's office	CoE Project Team: - Mr Rrahim Sylejmani, Linguistic Assistant Team 1b: - Ms Gülcan Yeröz, Consultant - Mr Bardhyl Hasanpapaj, Consultant Municipal Representatives: - Mr Ramadan Muja, Mayor - Ms Mybexhele Zhuri, HRU Coordinator
09.55-11.00	Meeting with the HRU Coordinator	Municipal building 'White House', Policy and Finance Committee meeting room	CoE Project Team: - Mr Rrahim Sylejmani, Linguistic Assistant Team 1b: - Ms Gülcan Yeröz, Consultant - Mr Bardhyl Hasanpapaj, Consultant Municipal Representatives: - Ms Mybexhele Zhuri, HRU Coordinator
12.00-13.30	Working lunch with the OSCE Regional Office staff	Vila 100, Prizren town	CoE Project Team: - Mr Rrahim Sylejmani, Linguistic Assistant Team 1b: - Ms Gülcan Yeröz, Consultant - Mr Bardhyl Hasanpapaj, Consultant OSCE Representatives: - Ms Sehida Miftari, Communities Team - Mr Umit Aynaci, Communities Team - Ms Georgia Tasiopoulou, Municipal Team
14.00-15.00	Meeting with the OIK Regional Office in Prizren representatives	OIK Regional Office in Prizren	CoE Project Team: - Mr Rrahim Sylejmani, Linguistic Assistant Team 1b: - Ms Gülcan Yeröz, Consultant - Mr Bardhyl Hasanpapaj, Consultant OIK Representative: - Ms Fitnete Mala, Legal Advisor

15.30-17.00	Meeting with the representatives of CSOs in Prizren region	OSCE Mission in Kosovo, Regional Office in Prizren, Conference Room	CoE Project Team: - Mr Rrahim Sylejmani, Linguistic Assistant Team 1b: - Ms Gülcan Yeröz, Consultant - Mr Bardhyl Hasanpapaj, Consultant CSO Representatives: - Mr Krenare Hajradini, SH.F.SH - Ms Drita Vukshinaj, "FFAK" - Ms Shpresa Siqera, "Shtjefen Gjecovi" - Mr Shaip Kryeziu, HANDIKOS - Mr Isak Meta, Bosnjacki Saojet Kosova - Mr Amil Kaplani, "OAL" - Ms Sanela Lutvic, "Equality" - Mr Lavdim Bajraktari, "Civil Rights Program Kosovo" - Mr Nexhip Mevecshe, "Durmish Aslano" - Mr Refik Kasi, "ICEC" OSCE Representatives: - Ms Sehida Miftari, Communities Team - Mr Umit Aynaci, Communities Team - Ms Georgia Tasiopoulou, Municipal Team
Tuesday, 2 July 2013			
Team 1a: Arben Hajrullahu and Natyra Avniu *(Visit to Pejë/Peć)*			
09.30-10.00	Meeting the Mayor of Pejë/Peć municipality	Mayor's office	Team 1a: - Mr Arben Hajrullahu, Consultant - Ms Natyra Avdiu, Consultant Municipal Representative: - Mr Ali Berisha, Mayor

10.00-11.30	Meeting with the HRU Coordinator	HRU Coordinator's office	Team 1a: - Mr Arben Hajrullahu, Consultant - Ms Natyra Avdiu, Consultant Municipal Representative: - Ms Sebahate Qorkadiu, HRU Coordinator
12.00-13.00	Lunch break		
13.30-14.30	Meeting with the OIK Regional Office in Pejë/Peć representatives	OIK Regional Office in Pejë/Peć	Team 1a: - Mr Arben Hajrullahu, Consultant - Ms Natyra Avdiu, Consultant OIK Representative: - Ms Naile Alaj, Legal Officer
15.30-17.00	Meeting with the representatives of CSOs in Pejë/Peć region	OSCE Mission in Kosovo, Regional Centre in Pejë/Peć, Conference Room	Team 1a: - Mr Arben Hajrullahu, Consultant - Ms Natyra Avdiu, Consultant CSO Representatives: - Mr Sahit Kandic, "OAZA"
Team 1b: Gulcan Yeroz and Bardhyl Hasanpapaj ***(Visit to Gračanica/Graçanicë)***			
09.45-10.15	Meeting with the Mayor of Gračanica/Graçanicë municipality	Mayor's office	CoE Project Team: - Mr Rrahim Sylejmani, Linguistic Assistant Team 1b: - Ms Gülcan Yeröz, Consultant - Mr Bardhyl Hasanpapaj, Consultant Municipal Representatives: - Mr Bojan Stojanevic, Mayor
10.20-11.30	Meeting with the Communities Officer/HRU	Municipal restaurant	CoE Project Team: - Mr Rrahim Sylejmani, Linguistic Assistant Team 1b: - Ms Gülcan Yeröz, Consultant - Mr Bardhyl Hasanpapaj, Consultant Municipal Representatives: - Mr Edi Ibrahimi, Communities Officer of the HRU

12.00-13.30	Working lunch with the OSCE Regional Office Pristinë/Priština staff	Restaurant 'Ciao', Čaglavica/Cagllavicë	CoE Project Team: - Mr Rrahim Sylejmani, Linguistic Assistant Team 1b: - Ms Gülcan Yeröz, Consultant - Mr Bardhyl Hasanpapaj, Consultant OSCE Representatives: - Ms Elibetta Iberni, Communities Team - Mr Neil Tobin, Head of Office/Senior Human Rights Officer
13.45-14.45	Meeting with the OIK Regional Office in Gračanica/Graçanicë representatives	OIK Regional Office in Gračanica/Graçanicë	CoE Project Team: - Mr Rrahim Sylejmani, Linguistic Assistant Team 1b: - Ms Gülcan Yeröz, Consultant - Mr Bardhyl Hasanpapaj, Consultant OIK Representatives: - Ms Alexsandra Dimitrijevic, Lawyer - Mr Bogoljub Staletoviq, Deputy Ombudsperson
15.30-17.00	Meeting with the representatives of CSOs in Gračanica/Graçanicë	OSCE Mission in Kosovo, Regional Office in Pristinë/Priština, Conference Room	CoE Project Team: - Mr Rrahim Sylejmani, Linguistic Assistant Team 1b: - Ms Gülcan Yeröz, Consultant - Mr Bardhyl Hasanpapaj, Consultant CSO Representatives: - Mr Nenad Maksimovic, "Center for Peace and Tolerance"
Wednesday, 3 July 2013			
Team 1a: Arben Hajrullahu and Natyra Avniu ***(Visit to Mitrovicë/Mitrovica)***			
10.30-11.00	Meeting the Deputy Mayor of Mitrovicë/ Mitrovica municipality	Deputy Mayor's office	Team 1a: - Mr Arben Hajrullahu, Consultant - Ms Natyra Avdiu, Consultant Municipal Representative: - Mr Riza Haziri, Deputy Mayor

11.00-12.00	Meeting with the HRU Coordinator	HRU Coordinator's office	Team 1a: - Mr Arben Hajrullahu, Consultant - Ms Natyra Avdiu, Consultant Municipal Representative: - Mr Fitim Rama, HRU Coordinator - Mr Enes Kočapor, Communities Officer
12.00-13.00	Lunch break		
13.30-14.30	Meeting with the OIK Regional Office in Mitrovicë/Mitrovica representatives	OIK Regional Office in Mitrovicë/Mitrovica south	Team 1a: - Mr Arben Hajrullahu, Consultant - Ms Natyra Avdiu, Consultant OIK Representative: - Mr Arber Berisha, Legal Advisor - Ms Makfire Krasniqi, Legal Advisor
15.30-17.00	Meeting with the representatives of CSOs in Mitrovicë/Mitrovica	OSCE Mission in Kosovo, Regional Centre in Mitrovicë/Mitrovica, Conference Room	Team 1a: - Mr Arben Hajrullahu, Consultant - Ms Natyra Avdiu, Consultant CSO Representatives: - Ms Hilminjeta Apuk, Executive Director of Little People of Kosovo - Ms Vetone Veliu, Mitrovica Women's Association
Team 1b: **Gulcan Yeroz** ***(Visit to Pristinë/Priština and Fushë Kosovë/Kosovo Polje)***			
09.45-10.00	Meeting with the HRU Coordinator	Municipal building 'White House', Policy and Finance Committee meeting room	CoE Project Team: - Mr Rrahim Sylejmani, Linguistic Assistant Team 1b: - Ms Gülcan Yeröz, Consultant Municipal Representative: - Ms Premtime Preniqi, HRU Coordinator

10.00-10.45	Meeting with the Deputy Mayor of Pristinë/ Priština municipality	Deputy Mayor's office	CoE Project Team: - Mr Rrahim Sylejmani, Linguistic Assistant Team 1b: - Ms Gülcan Yeröz, Consultant Municipal Representatives: - Mr Abdullah Hoti, Deputy Mayor
12.00-13.30	Lunch break		
14.00-15.00	Meeting with the representatives of Fushë Kosovë/Kosovo Polje municipality	Mayor's office	CoE Project Team: - Mr Rrahim Sylejmani, Linguistic Assistant Team 1b: - Ms Gülcan Yeröz, Consultant Municipal Representatives: - Mr Burim Berisha, Mayor - Mr Afrim Krasniqi, Director of General Administration - Ms Nurije Fazliu, European Integration Officer – Mr Hasan Gjyrevci, Head of Personnel
16.00-17.00	Follow-up meeting with OSCE on the Draft Law on Anti-Discrimination	OSCE premises	Team 1b: - Ms Gülcan Yeröz, Consultant OSCE Representative: - Ms Jasna Dobricik, Chief of Equality, Non-Discrimination and Anti-Trafficking (ENA) Section
Thursday, 4 July 2013			
Team 1a: Arben Hajrullahu and Natyra Avniu ***(Visit to Ferizaj/Uroševac)***			
14.00-15.00	Meeting with the HRU Coordinator	HRU Coordinator's office	Team 1a: - Mr Arben Hajrullahu, Consultant - Ms Natyra Avdiu, Consultant Municipal Representative: - Ms Vjollca Krasniqi, HRU Coordinator
Team 1b: Gulcan Yeroz and Bardhyl Hasanpapaj ***(Visit to Obiliq/Obilić)***			

09.55-11.00	Meeting with the HRU staff	HRU office	CoE Project Team: - Mr Rrahim Sylejmani, Linguistic Assistant Team 1b: - Ms Gülcan Yeröz, Consultant - Mr Bardhyl Hasanpapaj, Consultant Municipal Representatives: - Mr Nazmi Restelica, HRU Coordinator - Ms Jasmina Radanovic, Communities Officer - Ms Ganimete Aliu, Municipal Officer for Gender Equality
10.00-10.45	Meeting with the Mayor of Obiliq/Obilić municipality	Mayor's office	CoE Project Team: - Mr Rrahim Sylejmani, Linguistic Assistant Team 1b: - Ms Gülcan Yeröz, Consultant - Mr Bardhyl Hasanpapaj, Consultant Municipal Representatives: - Mr Mehmet Krasniqi, Mayor
Friday, 5 July 2013			
09.30-11.30	Internal meeting - Sharing findings of meetings - Brainstorming on ways forward/reform proposal	CoE (Small meeting room)	CoE Project Team: - Mr Andrew Forde, Deputy Head of Country Office - Ms Remzije Istrefi, Project Officer Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant - Mr Bardhyl Hasanpapaj, Consultant - Ms Natyra Avdiu, Consultant EU Office in Kosovo/EU Special Representative: - Mr Patrick Schmelzer, Policy Officer

11.45-12.30	Internal meeting - Setting up internal deadlines, sharing workload etc.	CoE (Small meeting room)	Team 1: - Ms Gülcan Yeröz, Consultant - Mr Arben Hajrullahu, Consultant - Mr Bardhyl Hasanpapaj, Consultant - Ms Natyra Avdiu, Consultant

ANNEX V

The Joint Project between the European Union and the Council of Europe entitled

"Enhancing Human Rights Protection in Kosovo"

Second Assessment Mission[371]

22-26 July 2013

Agenda

Monday, 22 July		Venue	Participants
10:00 -11:00	Meeting with the Project team	CoE Small Meeting Room	The Project team/Consultants
11:00 – 12:30	Experts' internal meeting	CoE Small Meeting Room	Mr Jeremy McBride; Mr Dejan Palić; Mr George Tugushi; Ms Jelena Besedić; Mr Jørgen Steen Sørensen; Ms Natyra Avdiu; Mr Bardhyl Hasanpapaj;
12:30 – 13:30	Working lunch with the Deputy Head of the Council of Europe Office in Pristina		Mr Andrew Forde Mr Jeremy McBride; Mr Dejan Palić; Mr George Tugushi; Ms Jelena Besedić; Mr Jørgen Steen Sørensen; Ms Natyra Avdiu; Mr Bardhyl Hasanpapaj;

371 The second assessment mission to provide legislative expertise on the three draft laws on anti-discrimination, gender equality and ombudsperson is conducted within the framework of the Joint Project. Experts involved are, Ms. Jelena Besedic, Mr. Jeremy McBride, Mr Dejan Palic, Mr. Jørgen Steen Sørensen and Mr. George Tugushi.

14:00–15:15	Meeting with Ombudsperson Institution in Kosovo(OIK)	OIK Office premises	Mr Sami Kurteshi, Ombudsperson Mr Jeremy McBride; Mr Dejan Palić; Mr George Tugushi; Ms Jelena Besedić; Mr Jørgen Steen Sørensen; Ms Natyra Avdiu; Mr Bardhyl Hasanpapaj;
15:30 – 16:30	Meeting with representatives of EU Office	CoE Small Meeting Room	Ms Karin Marmsoler, Policy Advisor for Rule of Law; Mr Visar Bivolaku Human Rights Officer Mr Jeremy McBride; Mr Dejan Palić; Mr George Tugushi; Ms Jelena Besedić; Mr Jørgen Steen Sørensen; Ms Natyra Avdiu; Mr Bardhyl Hasanpapaj;
16:30 - 18:00	Consultants' internal meeting	CoE Small Meeting Room	Mr Jeremy McBride; Mr Dejan Palić; Mr George Tugushi; Ms Jelena Besedić; Mr Jørgen Steen Sørensen; Ms Natyra Avdiu; Mr Bardhyl Hasanpapaj;
Tuesday, 23 July			
10:00 -11:00	Meeting with Legal Office Office of Prime minister	LO Government Building	Mr Besim Kajtazi, Head of LO Mr Jeremy McBride; Mr Dejan Palić; Mr George Tugushi; Ms Jelena Besedić; Mr Jørgen Steen Sørensen; Ms Natyra Avdiu; Mr Bardhyl Hasanpapaj;
11:00-12:30	Meeting with Agency for Gender Equality(AGE)	AGE Government Building	Ms Edona Hajrullahu, Head of AGE Ms Jelena Besedić; Mr Bardhyl Hasanpapaj.

11:00 –12:30	Meeting with Office for Good Governance(OGG)	OGG Government Building	Mr Habit Hajredini, Head of OGG Mr Jeremy McBride; Mr George Tugushi; Mr Jørgen Steen Sørensen; Mr Dejan Palić; Ms Natyra Avdiu.
12:30 – 13:30	Lunch		
14:00-15:00	Meeting with Ministry of Public Administration (MPA)	MPA premises Rilindja Building	Mr Fatos Mustafa, Director of Public Administration Reform; Mr Armend Rugova, HRU Coordinator. Mr Jeremy McBride; Mr Dejan Palić; Mr George Tugushi; Ms Jelena Besedić; Mr Jørgen Steen Sørensen; Ms Natyra Avdiu; Mr Bardhyl Hasanpapaj;
15:30 – 16:30	Meeting with Ministry of European Integration (MEI)	CoE Small Meeting Room	Mr Besnik Vasolli, Technical Co-ordinator for Visa Liberalisation Mr Jeremy McBride; Mr Dejan Palić; Mr George Tugushi; Ms Jelena Besedić; Mr Jørgen Steen Sørensen; Ms Natyra Avdiu; Mr Bardhyl Hasanpapaj;
16:30- 17:30	Meeting with Commission on Human Rights, Gender Equality, Missing Persons and Petitions	Assembly Building, Room S006	Ms Suzan Novobrdali, Head of the Commission Mr Jeremy McBride; Mr Dejan Palić; Mr George Tugushi; Ms Jelena Besedić; Mr Jørgen Steen Sørensen; Ms Natyra Avdiu; Mr Bardhyl Hasanpapaj;
Wednesday 24 July			

10:00 -11:00	Meeting with Ministry of Local Government Administration(MLGA) Meeting did not take place due to unavailability of MLGA staff to meet with the experts	MLGA, premises Rilindja Building	Mr Agron Maxhuni, Head of Legal Office; Ms Fakete Kukaj , Head of Human Rights Division. Mr Jeremy McBride; Mr Dejan Palić; Mr George Tugushi; Ms Jelena Besedić; Mr Jørgen Steen Sørensen; Ms Natyra Avdiu; Mr Bardhyl Hasanpapaj;
12:00 – 13:00	Lunch		
13:00 – 17:30	Multilateral technical working meeting with international community; Topics to be discussed: The harmonisation of the system, the way in which the laws relate to each other and the overall human rights architecture in Kosovo*; The Law on the Ombudsperson.	Hotel Sirius	Representatives of the CoE, EU Office in Pristina, EULEX, OHCHR, OSCE, UNDP, UNHCR, UNICEF, UNMIK, UN Women.
Thursday 25 July			
10:00 – 12:45	Multilateral expert consultation process with the international community, Topic to be discussed :the draft law on Protection from Discrimination	Hotel Sirius	Representatives of the CoE, EU Office in Pristina, EULEX, OHCHR, OSCE, UNDP, UNHCR, UNICEF, UNMIK, UN Women.
12:45 – 13:45	Lunch		
13:45 – 17:30	Multilateral expert consultation process with the international community. Topic discussed: the draft Law on Gender Equality;	Hotel Sirius	Representatives of the CoE, EU Office in Pristina, EULEX, OHCHR, OSCE, UNDP, UNHCR, UNICEF, UNMIK, UN Women.
Friday , 26 July			

10:00-11:00	Debrief with Ombudsman Institution in Kosovo	OIK Office Premises	Mr Sami Kurteshi, Ombudsperson Mr Jeremy McBride; Mr Dejan Palić; Mr George Tugushi; Ms Jelena Besedić; Mr Jørgen Steen Sørensen; Ms Natyra Avdiu; Mr Bardhyl Hasanpapaj;
11:15–12:30	Multilateral meeting with NGOs	CoE Small Meeting Room	YIHR, Ms Raba Gjoshi; ECMI, Mr Adrian Zeqiri (was not available) CDHRF, Mr Behxhet Shala; KRCT, Mr Alban Muriqi; CRPK, Mr Hilmi Jashari (was not-available;) Fund for Humanitarian Law, Mr Betim Zllanoga; Kosovo Women's Network (was not available); Norma's Lawyers Association; Kosovo Centre for Gender Studies (was not-available); Mr Jeremy McBride; Mr Dejan Palić; Mr George Tugushi; Ms Jelena Besedić; Mr Jørgen Steen Sørensen; Ms Natyra Avdiu; Mr Bardhyl Hasanpapaj;
12:30 – 13:30	Lunch		

14:00 – 15:30	Debrief with OPM , OGG and MIE	CoE Small Meeting Room	Mr Besim Kajtazi, Head of LO Mr Habit Hajredini, Head of OGG Mr Besnik Vasolli , Technical Co-ordinator for Visa Liberalisation Mr Jeremy McBride; Mr Dejan Palić; Mr George Tugushi; Ms Jelena Besedić; Mr Jørgen Steen Sørensen; Ms Natyra Avdiu; Mr Bardhyl Hasanpapaj;
15:30 – 16:30	Debrief with Commission on Human Rights, Gender Equality, Missing Persons and Petitions	TBC	Ms Suzan Novobrdali, Head of the Commission Mr Jeremy McBride; Mr Dejan Palić; Mr George Tugushi; Ms Jelena Besedić; Mr Jørgen Steen Sørensen; Ms Natyra Avdiu; Mr Bardhyl Hasanpapaj;
17:00 – 18:00	Internal Concluding Meeting	CoE Small Meeting Room	The Project team/Consultants

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ANNEX VI

Joint Project between the European Union and the Council of Europe

Enhancing Human Rights Protection in Kosovo[1*]

Round table on reform proposals to energise non-judicial human rights institutions in Kosovo and the legislative expertise on the human rights related draft law package.

4 October 2013,

Hotel Sirius, Pristina

Agenda

4 October, 2013	
9:15 – 9:30	Registration of participants
9:30 – 9:45	Opening/Welcoming remarks: Mr Tim Cartwright, the Head of Office, Council of Europe Office in Pristina; Mr Patrick Schmelzer, Policy Officer, EU Office/EU Special Representative.
9:45– 11:15	Plenary session – The Reform Proposals, the harmonization of the system, the way in which the laws relate to each other and the overall human rights architecture in Kosovo. Facilitator – Mr Jeremy McBride, (co-facilitator - team 1).
11.15 – 11.30	Coffee Break
11.30 – 12.45	Plenary session –The Opinion on the Current and Draft Law on Amending and Supplementing the Law NO. 03/L – 195 on Ombudsperson. Facilitators - Mr George Tugushi; Mr Jørgen Steen Sørensen; (co-facilitators Ms Natyra Avdiu; Mr Bardhyl Hasanpapaj).
12.45 – 13.45	Lunch break
13.45 – 15.00	Plenary session – The Opinion on the Draft law on the Protection from Discrimination. Facilitators – Mr Dejan Palić; Mr Jeremy McBride (co-facilitators Ms Natyra Avdiu; Mr Bardhyl Hasanpapaj)
15.00 – 15:15	Coffee Break
15.15 – 16:30	Plenary session – The Opinion on the Draft law on Gender Equality. Facilitators – Ms Jelena Basedić; Mr Jeremy McBride (co-facilitators Ms Natyra Avdiu; Mr Bardhyl Hasanpapaj)
16:30- 17:00	Concluding comments and ways forward; who does what?