



The Provisional Institutions of Self Government
The ministry of Local Governance Administration

GUIDE ON MUNICIPAL STATUTES

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Introduction

This Guide on Municipal Statutes (hereinafter: Guide) is intended to assist municipalities in Kosovo to draft Municipal Statutes.

Following the United Nations Mission in Kosovo (UNMIK) Regulation No. 2000/45 on Self-Government of Municipalities in Kosovo, the Municipal Statutes (Statutes) were promulgated for the first time in 2000.¹ The Statutes were written in line with the Model Municipal Statute that was drafted by representatives from UNMIK Pillar II (UN Civil Administration) and Pillar III (the OSCE Mission in Kosovo (OSCE)) and a representative from the Council of Europe.

In October 2007, a new legislative framework for local government was promulgated. The UNMIK Regulation No. 2007/30 amending UNMIK Regulation No. 2000/45 on Self-Government of Municipalities in Kosovo² and the UNMIK Regulation No. 2007/27 on Municipal Elections in Kosovo³ changed the institutional design of local self-governance. After the elections of 17 November 2007 municipalities will have to adjust their Statutes accordingly. This Guide has been written to assist municipalities to re-draft their Statutes.

Chapter I of the Guide discusses the main international and domestic instruments that serve for orienting respectively regulating the local governance in Kosovo. Chapter II elaborates on the main guiding principles of a Statute: the necessity of the Statutes to comply with the legal framework for local government, why and how the Statute should represent the characteristics of a community and the importance of including articles on public participation in the Statutes. It highlights the importance of public meetings and civil participation and presents participatory instruments such as the petition. Chapter III explains how the Statutes should reflect the structure of the local government. It further elaborates on the executive branch of the municipality and pays special attention to the role of the Mayor as chairperson of the Municipal Assembly and the Board of Directors. The role of the legislative organs in the Statutes with a special emphasis on the role of the Communities Committee, is also discussed. Chapter III also addresses the relationship between the executive authority and the administration. Possible forms of co-operation with municipal sub-levels such as villages, settlements, or urban quarters are addressed in Chapter IV.

The Guide concludes each Chapter with a list of recommendations, e.g. that Municipal Assemblies establish a temporary working group to draft their respective future Statutes. The proposed composition of the committee is recommended to be as follows: members of the Municipal Assembly, the Mayor, the Municipal Legal Officer, and members from civil society.

The Guide was drafted by the OSCE in close co-operation with the Ministry of Local Government and Administration.

¹ UNMIK Regulation No. 2000/45 on Self-Government of Municipalities in Kosovo, promulgated on 11 August 2000.

² UNMIK Regulation No. 2007/30 amending UNMIK Regulation 2000/45 on Self-Government of Municipalities in Kosovo, promulgated on 16 October 2007.

³ UNMIK Regulation No. 2007/27 on Municipal Elections in Kosovo, promulgated on 29 August 2007.

Chapter I. Local governance framework

1.1 International instruments

The European Charter on Local Self-Government (Charter) provides the basis for recommendations in the Guide. This chapter describes the background, the role and the substance of the Charter.

The Charter was adopted in the form of a convention by the Committee of Ministers of the Council of Europe (see Annex 1) and was opened to signature by the Member States of the Council of Europe on 15 October 1985.⁴ It delineates the basic principles for local self-government and serves as a reference for the legal framework for local self-government in all Member States of the Council of Europe.

The Charter determines that the principle of local self-government shall be recognized in domestic legislation and, where practicable, in the constitution.⁵ The concept of local self-government, as envisaged in Article 3 of the Charter, includes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interest of the local population. The preamble of UNMIK Regulation No. 2007/30 refers explicitly to the Charter, particularly to Article 3. Therefore, the Charter should be used by municipalities as a model setting out European standards which should be followed in Kosovo.

Article 3 of the Charter continues describing “own” competencies. In Article 4 paragraph 5 the Charter describes “delegated” competencies. Delegated competences allow local authorities, where powers are delegated to them by a central or regional authority, discretion in adapting their exercise to local conditions.

The scope of local self-government is described in Article 4 of the Charter. Paragraph 3 of this Article requires that “[p]ublic responsibilities shall generally be exercised, in preference, by those authorities who are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.” This principle is also known as the principle of subsidiarity.

Taking into consideration the importance of the principle of subsidiarity, the Committee of Ministers of the Council of Europe has adopted Recommendation No. R(95) 19 on the implementation of the principle of subsidiary.⁶ It recommends to the governments of the Member States, *inter alia*, to “[...] specify in the relevant legislation a core set of powers pertaining to each level of local and regional authorities in addition to any assumption of general competence; to set up procedures or mechanisms, of a legal or political nature, where these do not already exist, to promote the implementation of the principle of subsidiarity and to

⁴ The European Charter on Local Self-Government has been signed and ratified by 43 out of 47 Member States of the Council of Europe.

⁵ Article 2 of the Charter.

⁶ Adopted by the Committee of Ministers of the Council of Europe on 12 October 1995.

deal with any possible associated dispute; to apply all these provisions not only to relations between central government and local authorities [...].”⁷

Therefore, Kosovo authorities when establishing new Statutes should take into consideration the principles of the Charter that “The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.”⁸

1.2 Domestic instruments

Municipal Statutes should be in compliance with the legal framework for local governments in Kosovo. This section describes the respective legal framework. The current legal framework for municipalities in Kosovo is characterised by a specific hierarchy.

UNMIK Regulation No. 2007/30 refers to the Charter, in particular to Article 3, which denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population. The Charter states that “local authorities are one of the main foundations of any democratic regime” and should provide an administration which is both effective and close to the resident.

UNMIK Regulation no. 2007/30 and other relevant UNMIK regulations define the general functions and responsibilities transferred to the municipalities.⁹ UNMIK regulations, having their legal basis in the United Nations Security Council Resolution 1244 of 10 June 1999 and UNMIK Regulation 1999/1 on the Authority of the Interim Administration in Kosovo,¹⁰ rank as the highest legislative acts in Kosovo. Every law adopted by the Assembly of Kosovo has to be in compliance with the regulations promulgated by UNMIK.

The Statute shall regulate the implementation of the responsibilities of the municipality as established.¹¹ The Statute is the highest normative act of the municipality. It determines the municipality’s internal organization, taking into consideration the characteristics of its communities, culture, economic interests and linguistic and social composition as well as their specific priorities and resources. The Statute is adopted by the Municipal Assembly and regulates the implementation of the responsibilities and political arrangements of the municipality.¹²

The Rules of Procedures shall provide for the efficient management and control, including financial control, of the administration of the municipality.¹³ The Municipal Assembly shall

⁷ For more detailed information, see page 2 of the Council of Europe Committee of Ministers’ Recommendation No. R (95) 19.

⁸ Article 4 paragraph 1 of the Charter.

⁹ See for example UNMIK Regulation No. 2001/09 on a Constitutional Framework for Provisional Self-Government in Kosovo, promulgated on 15 May 2001.

¹⁰ UNMIK Regulation 1999/1 on the Authority of the Interim Administration in Kosovo, promulgated on 25 July 1999.

¹¹ Section 11.1 of UNMIK Regulation No. 2007/30.

¹² Section 11.1, *ibid.*

¹³ Section 11.2, *ibid.*

issue Rules of Procedures to address technical issues of the work of the plenary session and the committees. For example, it should contain provisions on the preparation and publication of the agenda, the procedure of filing motions and applications, and the distribution of work among the committees.

The local level legislation consists of municipal regulations and municipal decisions. A municipal regulation is a normative act that in an abstract and general manner regulates a number of cases, while a municipal decision is a normative act that regulates a concrete individual case. Municipal regulations and municipal decisions are limited to the municipalities' territory specifically determined by the relevant dispositions on municipal boundaries and may only apply outside those boundaries in cases specifically determined by law. The municipal regulation has to correspond with the UNMIK regulations and the Kosovo Assembly laws.

Table 1. Municipal regulations and decisions

Municipal regulations	Municipal decisions
<ul style="list-style-type: none">- Abstract- General- Number of cases- Consultation of committees and the public is mandatory	<ul style="list-style-type: none">- Individual- Concrete- A single case- Consultation of committees and the public is not mandatory

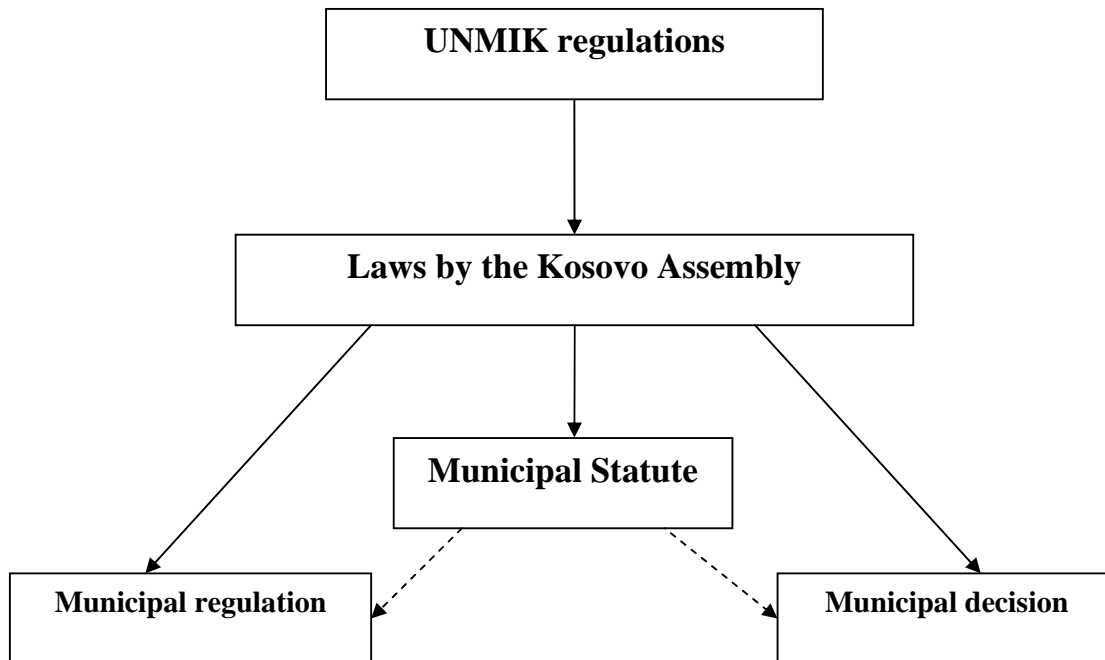
It is essential that municipalities, if in doubt of the meaning or the interpretation of the applicable law, request assistance from the Ministry of Local Government Administration to ensure the correct implementation of the relevant provisions. Municipal bodies may submit to the Ministry of Local Government and Administration a request regarding the interpretation of legislative acts which affect municipalities. This form of co-operation and assistance is part of the Ministry's administrative support of the activities of local authorities which aims "at ensuring compliance with the law and constitutional principles."¹⁴

Changes in the central level law with regard to municipalities also require a close analysis of the Statutes to determine whether amendments are needed to avoid possible contradictions. For example, a future Law on Municipal Finance might call for the municipal assemblies to adjust the Statute accordingly. The Municipal Assembly has to ensure the permanent congruity and applicability of the Statute.¹⁵

¹⁴ Article 8.2 of the Charter; Annex XIV (iii) of Section 1 of UNMIK Regulation No. 2005/15 amending UNMIK Regulation 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo; and UNMIK Regulation 2007/18 amending UNMIK Regulation 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo.

¹⁵ Section 11.1 of UNMIK Regulation No. 2007/30.

Table 2. The hierarchy of the legislation related to the municipal level



Recommendations:

- Municipalities have to ensure the compliance of their Statute with the applicable law.
- Municipalities should obtain advice from the Ministry of Local Government Administration to avoid and/or in case of possible non-compliance of their Statute with the applicable law.
- Municipalities should refer to the applicable law to know the exact area of their legal powers as well as responsibilities and duties.
- Municipalities should avoid reproducing the dispositions of the law in their Statutes in order to reduce the risk of implementing dispositions differing from the legislation and of creating an illegal situation.
- The Mayor should ensure the permanent compliance of the Statute with applicable law.

CHAPTER II. GUIDING PRINCIPLES

2.1 Reflecting the values and characteristics of the community

The Charter sets out the principles which standardize local governance practices throughout the Council of Europe Member States. It leaves considerable room for interpretation. Each Member State is allowed to design its own local governance system to reflect its own administrative traditions.

UNMIK Regulation 2007/30 also leaves room for further interpretation. It sets forth general political arrangements and responsibilities of the municipalities and stipulates main legislative and executive bodies. The regulation does not give detailed instructions. It leaves room for municipalities to design their own organizational and procedural arrangements. For example, UNMIK Regulation 2007/30 allows municipalities to: make arrangements with villages,¹⁶ settlements and urban quarters existing in their territory; make arrangements between themselves; make provision for the public to participate in meetings; make detailed dispositions for the use of languages of communities; give further responsibilities to the Mayor or to the Head of Administration and Personnel: and so forth. These arrangements and provision are to be formalized in the Statute.

While fine tuning such arrangements and provisions the Municipality should take into consideration the characteristics of its communities, culture, economic interests and linguistic and social composition as well as their specific priorities and resources. Changes affecting the population and communities of the municipality require a close look at the Statute to see whether adjustments are needed.

The Statute shall ensure a system of checks and balances between the legislative and executive bodies of the municipality. Therefore, it shall stipulate the way the Municipal Assembly controls the implementation of municipal regulations and provide for the procedures of intervention in case irregularities have been identified. The Mayor is responsible for assuring that the Municipal Statute is up to date and adequately reflecting the characteristics of the community.

Recommendations:

- Municipal Statutes should define the municipal internal administrative structure and the role and duties of the municipal bodies;
- Municipalities should ensure that their Statutes are always updated and reflecting actual structures, procedures and functions of the municipalities;
- Municipalities should take into consideration the characteristics of their communities, cultures, economic interests and linguistic and social compositions as well as their specific priorities and resources.
- Mayors are responsible for assuring that Municipal Statutes are up to date and adequately reflecting the structures and procedures currently in place in the respective municipalities.

2.2 Public participation and consultation

The Committee of Ministers of the Council of Europe has recommended that statutes should “provide for a wide range of participation instruments, combine and adapt them to the circumstances, to promote a culture of democratic participation shared by the communities and the local authorities.”¹⁷

2.2.1 Legal basis of public consultation and participation

In its Recommendation 2001-19 the Committee of Ministers of the Council of Europe notes that “dialogue between citizens and local elected representatives is essential for local democracy, as it strengthens the legitimacy of local democratic institutions and the effectiveness of their action.”¹⁸ It stresses that “participation of citizens is at the very heart of the idea of democracy and that citizens committed to democratic values, mindful of their civic duties and who become involved in political activities are the lifeblood of any democratic system”¹⁹

The Charter recognizes “the right and the ability of local authorities [...] to regulate and manage a substantial share of public affairs [...] in the interest of the local population”²⁰ and states that “this right shall be exercised by councils or assemblies composed of members freely elected”²¹. However, it highlights that all this “shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation.”

UNMIK Regulation No. 2007/30 stipulates that public meetings shall be held periodically, at least twice a year. A public notice shall be given of the date and place of each public meeting at least two weeks in advance. Any person or organisation with an interest in the municipality shall have the right to present a petition to the Municipal Assembly about any matter in relation to the responsibilities and powers of the municipality. Members of the public, including press representatives, shall be admitted to all meetings of the Municipal Assembly and its committees and all meetings of the Board of Directors.²²

According to UNMIK Regulation No. 2007/30 any person may inspect documents held by the municipality in accordance with the applicable law on access to official documents.

¹⁷ Appendix 1, Paragraph 2 and 6, Recommendation 2001/19 of the Committee of Ministers of the Council of Europe.

¹⁸ Paragraph 11, *ibid.*

¹⁹ Preamble of the Charter.

²⁰ Article 3.2 of the Charter.

²¹ Article 3.2 of the Charter.

²² Articles 7.1 and 8.1 of UNMIK Regulation No. 2007/30.

2.2.2 Public hearings, outreach activities, and interest groups

Public consultation is a modern good governance and policy making tool used at all levels of administration, including local government. Public consultation ensures that the residents concerned are given the possibility to express their opinions and that their expectations have been heard and – ideally – taken into consideration. It facilitates the collection of ideas and options and enhances the understanding of the needs of different parts of the population. Public consultation may solve potential problems at an early stage and can contribute to a smooth implementation of municipal legislation. Public participation in the decision-making process improves the residents' interest in municipal activities and promotes municipal programs and activities.

There are different types of public consultation to foster involvement in the decision-making and policy-planning process:

- In a public hearing, the public is asked to express its views on a special subject for which information and documents are available. In a public meeting, information is presented and residents can ask questions or make comments.
- Regular contact with interest groups allows discussions with small circles that have an interest in a specific municipal activity. This provides focused results related to the direct interests of the group but is less inclusive of members of the general community.
- Public meetings, outreach activities and information campaigns on specific matters for the general public or specific groups serve as platforms to obtain information and promote awareness. This can be especially useful as a reaction to residents' complaints about municipal services (such as water delivery, waste management, quality of street pavement). An outreach activity could be an excellent way for the Community Committee and the Mediation Committee to advertise their mandates and to explain the rights and remedies in cases of discrimination.

The municipality should provide sufficient time, preferably eight to twelve weeks, for receiving responses to public consultation. The responses should be acknowledged and analysed and the results made widely available, with an account of the views expressed and reasons for decisions finally taken. Results of open public consultation should be displayed on the municipal website.

Projects and policies are usually subject to financial constraints and, thus, depend heavily on the municipal budgetary capacities and priorities. Hence, in order to provide for an effective participation, the residents should be involved in the budgeting process. Budget outreach activities to several communities and towns and regular public budgetary meetings could be a helpful way to determine the main priorities and concerns of the municipality's population.

The Statute should determine what types of public consultation are available in a municipality, whether they are conducted orally or in writing, the time of and deadlines for those consultations, and the languages used.

2.2.3 Annual public meetings

The municipalities shall hold regular public meetings, at least twice per year²³, which any person or organization may attend to receive information and discuss municipal policies, activities, and upcoming events.

Questions by the public should be answered immediately or in writing within a reasonable time but no later than one month after the meeting. Municipal authorities and representatives of communities should co-operate in drafting the agenda which should be issued two weeks in advance. Public meetings shall be chaired by the Mayor.

The Statute should include provisions on the announcement of the public meeting, the languages, the agenda, the minutes and the time frame within which written answers must be issued to the residents. The Statutes should decide on the date of these meetings and take into consideration a reasonable amount of time for the residents to prepare for the meetings and that the meetings take place on a day which is convenient for all communities in the municipality. Religious holidays and similar periods of special importance to a community should be avoided.

2.2.4 Meetings of the Municipal Assembly and committees

The public, including media representatives, may attend meetings of the Municipal Assembly, its committees, and the meetings of the Board of Directors to be aware of all discussed matters concerning the administration of the municipality.²⁴ The municipality should give notification about the time and place of each meeting and make it easily accessible (e.g. notes in newspapers, on public buildings, and popular places in villages). The public notice should announce the topics that will be discussed during the meeting.

The involvement of the media should be regarded as a means to inform the public about important projects of the municipality and to increase its credibility through more transparency. In addition it is advisable that municipal bodies allow timely access to those documents that are subject of the meeting. This will help interested individuals and media representatives to prepare for it.

The Statute needs to determine a reasonable deadline for and way of notification of the meetings of the Municipal Assembly, its committees, and the Board of Directors. It should have clear provisions on access to relevant documents, on rules with regard to order and decorum during the meetings, and any rules to facilitate public participation.

²³ Section 8 of the UNMIK Regulation No. 2007/30.

²⁴ Section 7.1, *ibid.*

2.2.5 Situations justifying the exclusion of the public from a municipal meeting

Under certain conditions it can be appropriate or even essential to exclude the public from meetings of Municipal Assembly committees or the Board of Directors.²⁵ Such preconditions could be the following:

- The subject of discussion or information may jeopardize the integrity of individuals.
- The subject of discussion or information may jeopardize the security of Kosovo or the municipality (especially with regard to defence and military matters), if it endangers the safety of individuals or may lead to public disorder or violence.
- The subject of discussion or information is related to financial or economic policy of the central authority or has serious adverse effects on its economic interest.
- The subject of discussion or information is related to a foreign government or an international organization and can be detrimental to international relations.
- The subject of discussion or information concerns court proceedings and legal advice.

In all such situations, the public, including the media representatives, can be excluded from the entire meetings or just parts of it. However, this right should not be overused. An exclusion of the public and the media should always be justified and well reasoned. Open access to meetings should be the rule: exclusion should be strictly limited to special cases. The meetings of the Municipal Assembly are always public.

The Statute should contain provisions on the preconditions under which the public can be excluded from meetings of the Municipal Assembly committees and the Board of Directors. It should set forth rules on who shall decide on the exclusion of the public, e.g. the chairperson or the majority of members, and on the manner of such an announcement.

2.2.6 Petitions

Any person or organization with an interest in municipal affairs has the right to present a petition to the Municipal Assembly about any matters related to municipal affairs. A petition is a request or query to the Municipal Assembly to deal with specific issues or adopt certain laws and as such constitutes a basic democratic right.

The Municipal Assembly should acknowledge the importance of the petition and give answers to all questions and demands included in it. A petition could also result in holding a public meeting during which the population discusses the issues of interest together with municipal officials.

The Statute should regulate the procedure of handing in a petition and which municipal office is responsible for receiving the petition. Furthermore, the Statute should determine whether the answers given need to be reasoned and justified as well as the deadline for the response.

²⁵ Section 7.3, *ibid.*

Recommendations:

- The Statute should establish a reasonable deadline for public notification of the holding of official municipal meetings.
- The Statute should stipulate for public notices to be put in easily accessible places, to be advertised in media, and to provide an agenda including all the points to be discussed in the public meeting, in all official languages of the municipality.
- The Statute should empower the Chairperson of all official municipal meetings to ensure the maintenance of order during the public period of questions and comments;
- The public should only be excluded from a municipal meeting when there is a valid situation justifying this exclusion and only for the time necessary to discuss or present this situation.
- Annual public meetings, that shall take place at least twice a year, should be held in places and at times most convenient to the different communities or localities of the municipality.
- The Statute should determine the Chairperson of these annual public meetings and specify that minutes shall be taken to keep record of the propositions and demands made by residents.
- The Statute should specify the deadline in which the Municipal Assembly shall answer the propositions and demands put forward by residents through annual public meetings or petitions.
- The Statute should specify the procedure for the residents to exercise the right to present petitions to the Municipal Assembly.
- The Statute may provide for the establishment of a special commission to analyse a petition presented by an important portion of the population.
- Municipalities should have a participatory budgeting process that includes the participation of the public at the stage of budget development.
- The Statute should define the method of informing the public about the work performed by all the municipal bodies.

CHAPTER III. THE STRUCTURE OF LOCAL GOVERNMENT

3.1 The executive branch

The executive branch of a municipality has two organs: the Mayor and the Board of Directors and their departments. The paragraphs below gives guidance on how the Municipal Statute can further detail their functioning.

3.1.1 The Mayor

The most important change deriving from UNMIK Regulation No. 2007/30 is the introduction of a directly elected Mayor. This change was introduced by UNMIK Regulation 2007/27 “On Municipal Elections in Kosovo” which for the first time created a legal basis for holding direct elections for the Mayor.

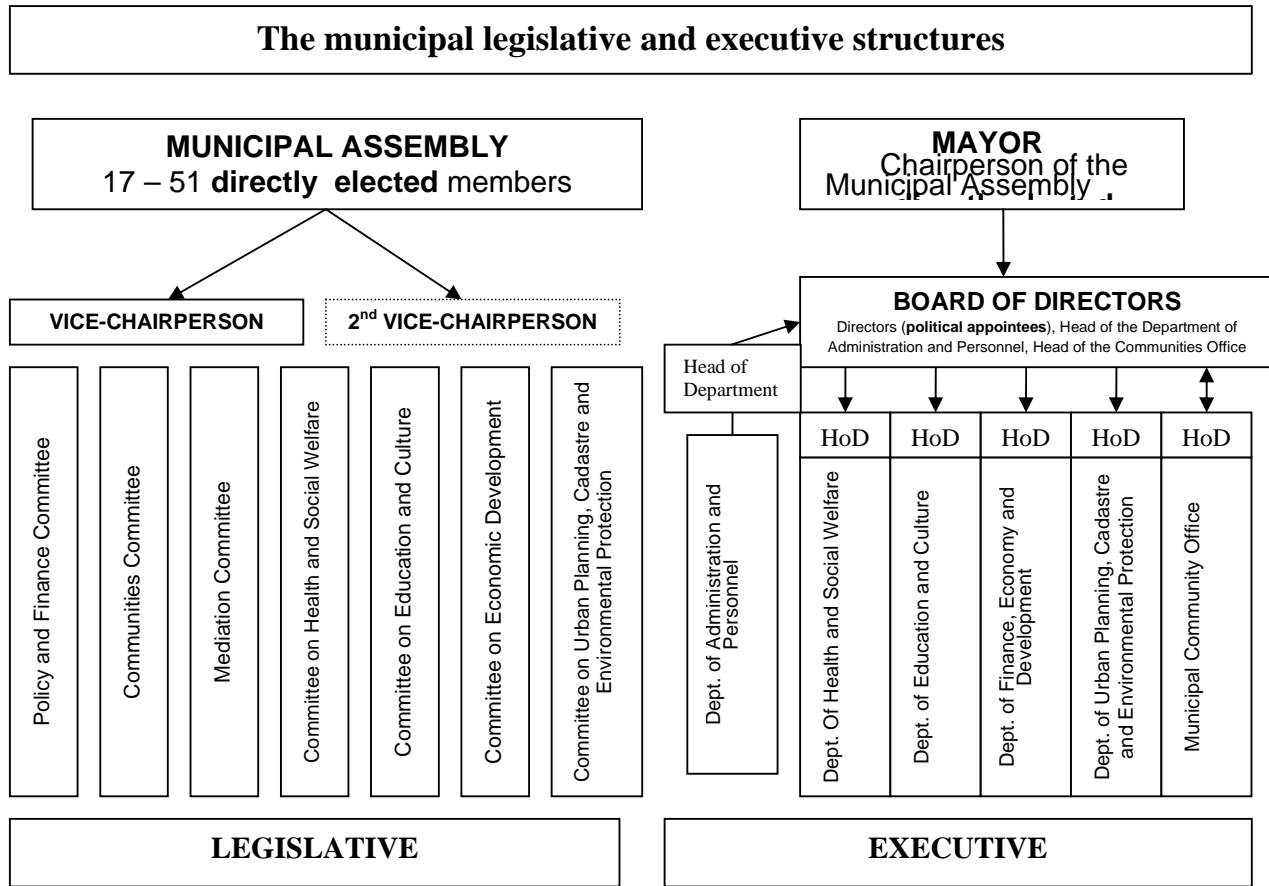
Section 27 of UNMIK Regulation No. 2007/30 gives extensive powers to the institution of the Mayor, including:

- chairing the Municipal Assembly meetings including the right to vote when the number of votes pro and against is the same;
- chairing the meetings of the Board of Directors;
- chairing the meetings of the Policy and Finance Committee and the right to vote when the number of votes pro and against is the same;
- appointing and dismissing the members of the Board of Directors except the Head of Administration and Personnel;
- proposing the annual budget to the Municipal Assembly for its adoption; and,
- reporting to the Municipal Assembly on at least quarterly basis, etc.

The Statute should establish the following rules with regard to the responsibilities of the Mayor:

- the Mayor shall nominate a member of the Board of Directors who shall exercise the responsibilities of the Mayor in his or her absence except those assigned to the Deputy Chairperson of the Municipal Assembly;
- the Mayor shall make sure that the Statute is always accurate and reflects the structures, procedures, and functions of the municipalities and he/she shall alert the Municipal Assembly if he/she deems necessary;
- the Mayor shall establish the criteria and procedures of project priorities for the annual budget; and,
- the Statute should regulate the procedures of the consultation of the Municipal Assembly with regard to the nomination of the members of the Board of Directors.

Table 3. The municipal legislative and executive structures



3.1.2 The Board of Directors and municipal departments

In accordance with Section 29 of UNMIK Regulation No. 2007/30, the Statute shall establish the municipal departments, which shall include the Department of Administration and Personnel, the Department of Health and Social Welfare, the Department of Education and Culture, the Department of Finance, Economy and Development, the Department of Urban Planning, Cadastre and Environmental Protection, the Municipal Community Office, and other departments as deemed necessary and appropriate to carry out functions and responsibilities of the municipality.

The Statute shall define the rights and responsibilities of the directors of departments and the heads of department. Their relationships are also to be defined in order to provide for clear areas of responsibility. The same should be done with regard to the Head of Administration and Personnel who serves as the Secretary to the Municipal Assembly and the Board of Directors and acts as the senior civil servant in the municipality. He/she is recruited in accordance with the applicable law on the Kosovo civil service.²⁶ When defining his/her responsibilities, the Statute shall determine the relationship between him/her and the Mayor as well as his/her role as a link between the Municipal Assembly and the Mayor.

Recommendations:

- The Statute should state the responsibilities of the Mayor in addition to those stipulated in the UNMIK Regulation No. 2007/30.
- The Statute should establish the municipal departments and state their respective roles.
- The Statute should state the respective roles of directors of each department.
- The Head of the Department of Administration and Personnel should have the qualifications prescribed by the Statute and shall should serve as the senior civil servant in the municipality.

²⁶ UNMIK Regulation No. 2001/36 on the Kosovo Civil Service, promulgated on 22 December 2001.

3.2 The Legislative Branch

The legislative branch of a municipality consists of the Municipal Assembly and its committees. The way their functioning can be addressed in the Statutes is described in the paragraphs below.

3.2.1 The Municipal Assembly

The Municipal Assembly is the legislature of the municipality. It is a unicameral body composed of a plenum and committees. Both the plenary session and the committees meet on a regular basis, at least ten times per year, to pass municipal legislation and discuss issues of interest to the municipality.²⁷

In the absence of the Mayor, a Vice-chairperson presides over the sessions of the Municipal Assembly. The Vice-chairperson shall be elected by the majority of the Municipal Assembly members. In municipalities with more than one minority community, the Municipal Assembly should elect a second Vice-chairperson from the community that is not in the majority in the municipality.

Because UNMIK Regulation No. 2007/30 requires the Statute to regulate the implementation of the responsibilities of the municipality, the Statute should first of all define who has the right to initiate legislation besides the executive branch. This right can, for instance, also be given to members of the Municipal Assembly or to a certain composition of members.

Furthermore, the Statute should regulate the right of political entities and communities represented in the Municipal Assembly to add issues of their interest to the agenda, talk in front of the plenum and initiate legislation. This stems from the fact that the Municipal Assembly is also a controlling body, ensuring that the executive organs as well as the civil administration act in accordance with the law. By regulating this, the Statutes ensure that the Municipal Assembly can serve as a platform for the exchange of opinions.

The Statute shall also further detail the system of checks and balances between the legislative and executive bodies of the municipality. It shall stipulate the way the Municipal Assembly controls the implementation of municipal regulations and provide for the procedures of intervention in case irregularities have been identified.

The Municipal Assembly shall issue Rules of Procedures to address technical issues of the work of the plenary session and the committees. For example, it should contain provisions on the preparation and publication of the agenda, the procedure of filing motions and applications and the distribution of work among the committees. The meetings of the Municipal Assembly are called by the Mayor;²⁸ the minutes of the meetings are kept by the Head of the Department of Administration and Personnel²⁹. The Mayor shall provide the members of the Municipal Assembly and the committee members with the agenda of the Municipal Assembly and with the relevant documents prior to each meeting, allowing for adequate time to prepare and suggest changes to the agenda. The meetings are chaired by the Mayor, who serves as a link

²⁷ Section 15 of UNMIK Regulation No. 2007/30.

²⁸ Section 15 of UNMIK Regulation No. 2007/30.

²⁹ Section 16 of UNMIK Regulation No. 2007/30.

between the legislative and the executive branches. As the chairperson of the Municipal Assembly he/she should ensure independence of the Municipal Assembly, the equality of rights of each member and a transparent legislative procedure. However, the Mayor is not an elected member of the Municipal Assembly. Therefore, he/she should, as far as possible, refrain from influencing the decision-making process of the Municipal Assembly.

Members of communities shall have the right to communicate in their own language with all municipal bodies and all civil servants. Meetings of the Municipal Assembly, its committees, and of the Board of Directors as well as all public meetings shall be conducted in both the Albanian and Serbian language. In addition, all official documents of the municipality shall be printed in both languages. The Municipal Assembly shall make detailed provisions for the use of languages in the Statute.³⁰

Recommendation:

- The Statute should define who has the right to initiate legislation besides the executive branch.
- The Statute should regulate the right of political entities and communities represented in the Municipal Assembly to add issues of their interest to the agenda, talk in front of the plenum, and initiate legislation.
- The Statute should further detail the system of checks and balances between the legislative and executive bodies of the municipality.
- The Statute should make a clear provision on the use of languages pursuant to the Section 9.5 of the UNMIK Regulation No. 2007/30, taking into consideration the composition of communities in the municipality.

³⁰ Section 9 of UNMIK Regulation No. 2007/30.

3.2.1.1 Committees of the Municipal Assembly

A committee is similar to a working group that discusses specific questions on proposed normative acts and, thus, prepares legal acts and decisions to be taken by the Municipal Assembly. Therefore, the Municipal Assembly should consider the work of the committees as a fundamental contribution to its decision-making process.³¹

The basic principles for the membership of each committee are regulated by UNMIK Regulation No. 2007/30³². The number of the members to each committee should be set in the Statute. Committees other than the Policy and Finance Committee may also comprise persons who are not members of the Municipal Assembly. They have the same voting and other rights within the committee as those who are members of the Municipal Assembly. However, the majority of each committee should be members of the Municipal Assembly. The members of each committee should have experience in their area of responsibility. The committees can also invite external experts to present their opinions on selected topics. A member of the Municipal Assembly can be part of more than one committee. The detailed regulation of the membership of the committees is to be determined by the Statute.

When appointing the members of a committee, the Municipal Assembly should bear in mind an equitable gender balance. In addition, the membership of each committee shall also reflect the proportion of seats held by political parties in the Municipal Assembly (an exception to this rule applies to the Community Committee and the Mediation Committee). Gender equality should also be taken into account when drafting the Statute.

Each committee shall elect a chairperson in its first meeting. The Statute shall regulate that each chairperson of the committees should have the possibility to meet on a regular basis with the Mayor in the latter's capacity as the chairperson of the Municipal Assembly at least once every two months to address concerns with regard to the committee's area of responsibility. The chairpersons of the Communities Committee and Mediation Committee should also have the right to meet the Mayor at least once per month. The Mayor should co-operate closely with the chairpersons of the committees, particularly with the chairpersons of the Community and Mediation Committees.

To ensure the functioning of each committee, the Municipal Assembly shall provide financial resources commensurate to the tasks and work of each committee. Every year, the budget of each committee shall be reviewed with regard to its scope of activities and, where necessary, changed accordingly. The committees will provide the Municipal Assembly with an annual report on their work and achievements in order to facilitate the assessment of the budget allocated to committees as well as to increase their accountability.

Furthermore, the Statute should require each committee to issue Rules of Procedures. These Rules of Procedures shall regulate the competences of the committee, the time of the meetings, the allocation of financial resources, and the co-operation with other municipal bodies.

³¹ Section 21 of UNMIK Regulation No. 2007/30.

³² Section 21 of UNMIK Regulation No. 2007/30.

The Municipal Assembly should approve an exhaustive catalogue of competences for each committee in order to avoid overlapping of responsibilities and to allow for a reasonable assessment of their budget.

Recommendations:

- The Municipal Statutes should mention the need for gender equality in the organs of the municipality.
- The Municipal Statutes should regulate that each chairperson of the committees has the possibility to meet with the Mayor in his/her capacity as the chairperson of the Municipal Assembly on a regular basis, at least once every two months.
- The Municipal Statutes should regulate that the chairperson of the Communities Committee and the Mediation Committee have the possibility to meet with the Mayor in his/her capacity as the chairperson of the Municipal Assembly on a regular basis, at least once per month.

3.2.1.2 Mandatory Committees

The Statute should follow UNMIK Regulation No. 2007/30 which makes it mandatory for each municipality to establish the following committees:

- Policy and Finance Committee;
- Communities Committee and Mediation Committee;
- Health and Social Welfare Committee;
- Education and Culture Committee;
- Economic Development Committee; and,
- Urban Planning, Cadastre and Environment Committee.

3.2.1.2.1 The Policy and Finance Committee

In accordance with UNMIK Regulation No. 2007/30,³³ the Policy and Finance Committee shall be responsible for proposing the budget as well as formulating and researching the future strategic direction of the municipality. The Mayor shall be the official chairperson of this Committee. Therefore, the Statute should recognize its important role in the municipal decision-making. The Policy and Finance Committee shall, based on the proposal from the Mayor, propose the financial priorities and the annual budget to the Municipal Assembly. It also monitors the annual budget performance. In addition, it advises the Municipal Assembly on its corporate policies and strategies, especially on matters concerning the financial administration and the strategic direction of the municipality.

³³ Section 22 of the UNMIK Regulation No. 2007/30.

This Committee should monitor the work of the Department of Finance, Economy and Development on matters such as the establishment of the municipal budget, the establishment of the annual financial report, the reports of the Auditor General, the allocation of staff for each municipal department, the inter-municipal co-operation, and the management of municipal enterprises.

The Policy and Finance Committee is composed of members of the Municipal Assembly only. As it has a predominant role in the Municipal Assembly decision-making process, its composition shall reflect the composition of the Municipal Assembly. In that sense the committee's membership shall reflect the proportion of seats held by the different political parties in the Municipal Assembly. For example, a party having 60% of the seats in the Municipal Assembly should not hold more than 60% of the Committee's membership. It should be noted that the chairpersons of other committees are entitled to attend the meetings of the Policy and Finance Committee in accordance with UNMIK Regulation No. 2007/30³⁴.

3.2.1.2.2 The Communities Committee and the Mediation Committee

According to UNMIK Regulation No. 2007/30,³⁵ UNMIK Administrative Instruction 2003/002 issued by UNMIK Pillar II (Civil Administration)³⁶ and the Ministry of Local Government Administration Administrative Instruction 2005/001,³⁷ the Communities Committee and the Mediation Committee form a community protection mechanism to provide members of any minority community with the right to raise complaints about discrimination. The grounds of discrimination are e.g. related to language, religion, ethnic origin, association with a community. This mechanism aims to ensure that all the communities and their members have equal protection, opportunities, and access to services provided by the municipality. Besides addressing individual grievances, the Communities Committee reviews municipal legislation with regard to potential discrimination and promotes community interests, rights to ensure participation of all communities, and respect for the rights and interests of the communities.³⁸ The mechanism is mandatory irrespective of the size of the communities within the municipality. In other words, a municipality cannot claim that it is exempt from creating a Communities Committee due to minority communities being only marginally represented.³⁹

In order to make this mechanism work and to avoid overlapping responsibilities, it is of great importance to clarify the different roles of the Communities Committee and the Mediation Committee. According to UNMIK Regulation No. 2007/30,⁴⁰ the Communities Committee should promote the rights and interests of the communities and society where a diversity of cultural, social, and religious traditions is not only tolerated but encouraged. The Mediation Committee shall examine all matters referred to it by the Communities Committee. Accordingly, it shall carry out investigations which are necessary to establish whether the rights of a community or a member of the community have been or would be violated or

³⁴ Section 22, *ibid.*

³⁵ Annex 2.

³⁶ Annex 3.

³⁷ Annex 4.

³⁸ Section 23 of UNMIK Regulation No. 2007/30.

³⁹ Section 21.1 *ibid.*

⁴⁰ Section 23.4 *ibid.*

whether an action which is or would be prejudicial to the interest of the community has been taken or proposed.

The duties and responsibilities of the Communities Committee are defined in UNMIK Administrative Direction No. 2003/002 on Procedural Guidance for the Work of Municipal Communities Committee. However, to emphasize the importance of the work of this Committee as well as to improve the functioning of these committees a detailed list of its duties is presented below:

1. Review municipal regulations and municipal decisions:

- participate in the drafting of municipal acts to ensure compliance with the basic principles of human rights and the rights of communities in particular;
- review existing and draft municipal regulations in the light of a potential discrimination or negative impact on one or more communities;
- review municipal draft regulations with a view to ensuring that community rights and interests are adequately addressed; and,
- prepare and process recommendations/opinions on municipal regulations first to the Policy and Finance Committee and – in case of non-inclusion – to the Municipal Assembly.

2. Promote the rights and interests of all communities:

- monitor the level of minority employment in the municipality and recommend measures for improvement;
- recommend measures to eliminate existing or potential discrimination in the delivery of municipal services;
- review the language policy pursued by the municipality;
- monitor and oversee the fair and correct allocation of Fair-Share-Finance components by reviewing the Fair-Share-Finance Quarterly Report;
- recommend fair-share financed projects that benefit minority communities; and,
- review the monthly written Municipal Community Office Report including information on Fair-Share-Finance expenditures.

2.a Outreach:

- conduct regular field visits and report subsequently to the whole Communities Committee;
- establish links with the local media in order to reach out to all communities and raise awareness of the Communities Committee's mandate and function.

2.b Co-operation with other key-partners:

- invite the Standards Co-ordinator to present the Quarterly Municipal Standards Report;
- request reports from various municipal departments upon requirement;
- co-operate with the Local Public Safety Councils;
- ensure equitable representation of all communities in the Municipal Community Safety Council; and,
- co-operate with the Municipal Return Officer.

3. Resolve Conflicts based on possible violation of rights:

- review all complaints confidentially and assess if the engagement of the Mediation Committee is required; and,

- refer all cases – in which the Communities Committee determines that there has been a violation of rights – to the Mediation Committee.

The composition of the Communities Committee has to be regulated in the Statute according to UNMIK Regulation No. 2007/30⁴¹. The membership of the Communities Committee should reflect the communities in the municipality. Each community shall be offered at least one seat, taking into account that the Community Committee can also persons members who are not member of the Municipal Assembly. In order to fulfil the Committee's responsibility, it is advisable to appoint lawyers and experts with fundamental experience in the area of community protection. Furthermore, the participation of the majority community shall be less than one-half of the Community Committee's membership.⁴² The composition of this committee is an exception to the rule that generally applies to the membership of committees, which shall reflect the proportion of seats held by political parties in the Municipal Assembly. In its first meeting, the Communities Committee shall elect one of its members representing a minority community in the municipality as a Chairperson and any other of its members as Vice-Chairperson.

In order to provide adequate protection for minority communities, a specific proportion of municipal expenditures should be allocated to minority communities in each municipality according to the system of fair share financing. The proportion of the fair share financing for each municipality was first determined by UNMIK Regulation No. 2002/23 on the approval of Kosovo consolidated budget and authorizing expenditures for the period from 1 January to 31 December 2003.⁴³ Section 3 of this Regulation states that “[e]ach Municipality specified in Schedule 3, shall allocate to non-majority communities of that Municipality, from their Own Source Revenues and General, Education and Health Grant received from the Kosovo General Budget, at least the proportion indicated in Schedule 3, which Schedule may be revised periodically to reflect the effects of movements by Internally Displaced Persons or Returnees.” If municipalities do not meet the set of proportions and/or do not comply, sanctions could be imposed. Analogous wording has been included in subsequent regulations approving successive annual budgets.

The Rules of Procedure should specify the steps of the procedure to be used in an investigation of an alleged discrimination and who should carry out such an investigation. Moreover, it should regulate how the Communities Committee should co-operate with non-governmental organisations in their field of responsibility and assign specific financial resources to specific responsibilities.

The Mediation Committee mediates on the matters referred to it by the Communities Committee, when the latter considers that the action taken or to be taken by the municipality has produced a violation of the rights of a community or of one of its member.⁴⁴ It does not have the power to address, on its own initiative, situations not coming from the Communities Committee.⁴⁵ The Mediation Committee is limited to community mediation and is prohibited from undertaking commercial or private mediation. After the end of mediation, successful or not, it shall submit a report to the Municipal Assembly with recommendations on how the matter should be dealt with.

⁴¹ Section 23.2 of UNMIK Regulation No. 2007/30.

⁴² Article 23.2 (c) of UNMIK Regulation No. 2007/30.

⁴³ UNMIK Regulation No. 2002/23 On the Approval of the Kosovo Consolidated Budget and Authorising Expenditures for the Period 1 January to 31 December 2003, promulgated on 31 December 2002.

⁴⁴ Section 23 of UNMIK Regulation No. 2007/30.

⁴⁵ Section 23 of UNMIK Regulation No. 2007/30.

According to UNMIK Regulation No. 2007/30⁴⁶ the composition of the Mediation Committee has to be regulated in the Statute to ensure the independence and the freedom of opinion of the members. The Mediation Committee is equally composed of persons from two different origins, i.e. members from the Municipal Assembly, who are not part of the Communities Committee, and representatives of the communities other than the majority community.

Recommendations:

- The Statutes should regulate the composition of the Community Committee and the Mediation Committee to ensure the independence and the freedom of opinion of the members.
- The Municipal Assembly should ensure the proper establishment and functioning of the Communities Committee and the Mediation Committee.
- A special oversight role of the Communities Committee over the Community Office should be given to make sure the money it receives is spent on community specific tasks or to provide additional budget for training of the members and for office equipment.

3.2.1.2.3 The Committee on Health and Social Welfare

The Committee on Health and Social Welfare should be responsible for areas with regard to primary and, in the framework of inter-municipal co-operation, secondary health care. This also includes the establishment and operation of medical facilities, cemeteries, crematoria and burial services. Furthermore, the Committee is in charge of facilities with respect to drinking water, sewage, water treatment, drainage, and waste collection and disposal; the promotion of social services and housing; and, the establishment and operation of facilities for social welfare including orphanages, homes for the elderly and disabled, shelters for the homeless and childcare facilities. In fact, the Committee advises the Municipal Assembly on issues related to health and social welfare and monitors the work of the Department of the Health and Social Welfare on matters related to health and social policy in the municipality and makes recommendations in accordance with the new legislative framework.

The Statute shall define the composition of the Committee. It should consist of a group of specialists with the task to further develop and comment on legislation initiated by the executive bodies of the municipalities. To this end, the Municipal Assembly may co-opt members who are not members of the Municipal Assembly, taking into account that the majority of their members shall always be members of the Municipal Assembly⁴⁷. This Committee, as well as its membership shall reflect as closely as possible the proportion of seats held by political parties in the Municipal Assembly.⁴⁸ This should be further detailed in the Municipal Statutes.

⁴⁶ Section 23.2 of UNMIK Regulation No. 2007/30.

⁴⁷ Section 21.4 of UNMIK Regulation No. 2007/30.

⁴⁸ Section 21.5, *ibid.*

3.2.1.2.4 The Committee on Education and Culture

The Committee on Education and Culture should be responsible especially for areas with regard to pre-primary, primary, secondary, and nursery education; the establishment and operation of teaching facilities; the employment of teaching staff; the establishment and operation of facilities in the area of sports and culture such as theatres, libraries, municipal cinemas, and sports stadiums; and the organization of cultural and sports events. In fact, this Committee should monitor the work of the Department of Education and Culture on matters related to education and cultural policy in the municipality and make recommendation in accordance with the new legislative framework.

The Statute shall define the composition of the Committee. These committees shall represent a group of specialists with the task to further develop and comment on legislation initiated by the executive bodies of the municipalities. To this end, the Municipal Assembly may co-opt members who are not members of the Municipal Assembly, taking into account that the majority shall always be members of the Municipal Assembly. The membership of this Committee shall reflect as closely as possible the proportion of seats held by political parties in the Municipal Assembly.

3.2.1.2.5 The Committee on Economic Development

The Committee on Economic Development should be responsible especially for areas with regard to the promotion of the economic development of the municipality including the organization of trade fairs and markets; the promotion of the municipality to attract business and tourism, and the co-operation with local or locally represented business.

The Statute shall define the composition of the Committee. It should be comprised of specialists with the task to further develop and comment on legislation initiated by the executive bodies of the municipalities. To this end, the Municipal Assembly may co-opt persons who are not members of the Municipal Assembly, taking into account that the majority shall always be members of the Municipal Assembly.⁴⁹ The membership of this Committee shall reflect as closely as possible the proportion of seats held by political parties in the Municipal Assembly.⁵⁰

3.2.1.2.6 The Committee on Urban Planning, Cadastre and Environmental Protection

Within the framework of the Spatial Plan of Kosovo and the Spatial Plans for Special Areas, the Committee on Urban Planning, Cadastre and Environmental Protection shall be responsible for general and specific spatial plans for urban and rural areas including plans on housing,

public facilities, tourism, environment protection, areas for public use such as parks, green areas and recreational spaces and playgrounds, and public transportation. Moreover, it shall

⁴⁹ Section 21.4 of UNMIK Regulation No. 2007/30.

⁵⁰ Section 21.5 *ibid.*

assist the Municipal Assembly in adopting regulations in the following areas: traffic movements, parking, construction, granting building permits, maintenance standards on municipal roads and walkways, identification of features of natural, historic and environmental interest including their protection, naming of municipal roads, streets and other public places, and enforcement measures against non-compliance. In fact, this Committee could monitor the work of the Department of the Urban Planning, Cadastre and Environmental Protection on matters related to land use and environment policies in the municipality and make recommendation in accordance with the new legislative framework.

The Statute shall define the composition of the Committee. It should be comprised of specialists with the task to further develop and comment on legislation initiated by the executive bodies of the municipalities. To this end, the Municipal Assembly may co-opt persons who are not members of the Municipal Assembly, taking into account that the majority shall always be members of the Municipal Assembly.⁵¹ The membership of this Committee shall reflect as closely as possible the proportion of seats held by political parties in the Municipal Assembly.⁵²

3.2.1.3 Additional committees

UNMIK Regulation No. 2007/30 grants the Municipal Assembly the right to establish further permanent committees and committees with a temporary mandate if considered necessary and appropriate. However, the Municipal Assembly must not delegate competences which are explicitly reserved to the Municipal Assembly. These competences are, for example, the approval of the municipal budget, the fixation of the compensation to be paid to elected members, the annual report, and the adoption, amendment or repeal of municipal regulations.⁵³

The Statutes should determine permanent committees for matters that are foreseen to be of high importance and duration for the municipality and the residents. For example, an additional permanent committee could deliberate on the situation of the youth, on rural development, gender equality, disabled people, etc. The necessity of having additional committees should be determined by whether the persons nominated will be able to produce significant inputs on a given matter for the municipality or the Municipal Assembly. It is not just putting in place committees for the sole sake of having new bodies on the municipal organization chart, but trying more to articulate solutions that will really help the day-to-day municipal administration.

The Municipal Assembly shall make specific Terms of Reference for each committee put in place to specify the mandate of the committee and the objectives it should target.

Generally, a permanent committee is composed of a certain number of members of the Municipal Assembly and people coming from the field of activity being the subject of interest of the committee. The Statute shall regulate the composition of the different permanent committees and establish specific rules required concerning the way each member shall be selected and from where he/she shall come from. For example, a committee on youth activities should be comprised of young representatives, whereas a committee on rural development

⁵¹ Section 21.4 of UNMIK Regulation No. 2007/30.

⁵² Section 21.5 *ibid.*

⁵³ Section 11.3 *ibid.*

should be comprised of people from the sector concerned or who have experience in that matter. As a general rule, the composition should reflect the proportion of seats held by each political party in the Municipal Assembly.

Ad hoc committees are established for a temporary purpose, e.g. for dealing with petitions by a part of the population to have better service in one specific situations (improvement of the water delivery service in some quarters or villages, the lighting of certain streets or squares, etc). The Statute should contain some general rules on the establishment of ad hoc committees, like fixing the maximal proportion of members coming from outside the Municipal Assembly or a rule concerning the proportion of seats held by political parties in the Municipal Assembly.

Recommendations:

- The Statutes should contain articles that detail how mandatory committees get the means to effectively promote their role and procedures.
- Municipalities should establish a temporary working group on the writing of future Municipal Statute, the composition of the committee is recommended to be as follows: members of the Municipal Assembly, the Mayor, the Municipal Legal Officer and members from civil society.
- The Statutes should contain specific Terms of Reference for all municipal committees giving a precise mandate to each of them to avoid the overlapping of activities from one committee to another.
- In addition of the mandatory committees stated by law, municipalities should put in place committees, permanent or temporary, only when they are really needed to help the municipal administration. This should be mentioned in the Statutes.
- The Statute should have general rules on the establishment of ad hoc committees, like fixing the maximal proportion of members coming from outside the Municipal Assembly or a rule concerning the proportion of seats held by political parties in the Municipal Assembly.
- The Statute should regulate the composition of the different permanent committees and establish the specific rules required concerning the way each member shall be selected and from where he/she shall come from.

3.3 Relations between the branches of local government

The Charter, which sets out the European standards upon which Kosovo should model its own local government administration, specifies that the right of local self-governments to regulate and manage a substantial share of public affairs in the interest of the local population “shall be exercised by councils or assemblies composed of members freely elected [...] and which may possess executive organs responsible to them.”⁵⁴ The Charter does not impose a standard method of choosing such executive organs. On the other hand, it recognizes the right of local self-governments to “determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.”⁵⁵ This administrative autonomy allows a municipality to choose the administrative structure which is the most appropriate for its situation.

UNMIK Regulation No. 2007/30 does not clearly regulate relations between the legislative and executive branch. Rather, it defines the responsibilities of the Mayor, with regard to the Municipal Assembly on the one side and his oversight role of the implementation of decisions and regulations on the other side.

The role given to the Mayor is to maintain oversight of the execution of municipal decisions and of the financial administration of the municipality. The Mayor is responsible in this regard for the implementation of decisions and other acts of the Municipal Assembly and for ensuring that all the responsibilities and the duties of the municipality are duly carried out. The Mayor also has the power to represent the municipality and act on behalf of it. In addition, the Mayor is the Chairperson of the Municipal Assembly and presides over meetings of the Policy and Finance Committee.

Undoubtedly the Mayor holds a co-ordination role regarding the Municipal Assembly, which adopts regulations, and a supervisory role over the directors and, thus, the civil service, which has to implement those regulations. Because of this two fold function, it is important to point out possible risks that this political arrangement brings about; such as:

- i. diminishment of the role of the representative council (i.e. the Municipal Assembly);
- ii. polarization of municipal decision-making;
- iii. personalization of power and the creation of “client networks”;
- iv. personalization of the figure of mayor or fragmentation of the system of political parties; and,
- v. reduction of forms of internal oversight of municipal administration.

Another risk is the possibility of ‘co-habitation’ (for example: the French and the United States of America political system at the national level). This is a situation where voters choose the Mayor with a different political affiliation than the majority

⁵⁴ Article 3.2 of the Charter.

⁵⁵ Article 6.1, *ibid.*

coalition in the Municipal Assembly. Policy making in such a situation requires good negotiation skills.

In order to reduce these perils, the Statute should allow for a system of checks and balances between a representative (Municipal Assembly) and an executive (elected Mayor). Therefore, the Municipal Assembly should assess carefully which additional powers they want to give to the Mayor. They should always keep their powers to determine the municipal budget, to fix the tax rates and municipal fees, to take all decisions of general planning or policies having an impact on the development of the municipality, and to choose the projects affecting the well-being and the future of the whole municipality. The Municipal Assembly shall review administrative acts of the municipality. The procedures and rights in this regard should be set forth in the Statute and in conformity with the law.

All municipal bodies, in particular the Communities Committee, should encourage a participatory political culture amongst residents to finally result in an additional layer of control of the executive. The Statute should also have precise provisions determining the exact role the Mayor has to supervise and control the work of the municipal administration.

It is important that the respective roles of the directors and the heads of department and their relationship are clearly defined in the Statute in order to provide for clear areas of responsibility and, thus, accountability. The same should be done with regard to the Head of Administration and Personnel who serves as the Secretary to the Municipal Assembly and the Board of Directors. He/she is the highest senior civil servant and chief of staff in respect of the municipal civil service. Therefore, his/her function can be seen as the organizational link between the executive branch and its administration. The Statute shall make a distinct effort to define the relationship between him/her and the Mayor as well as his/her role as a link between the Municipal Assembly and the Mayor.

Recommendations:

- The Statute should contain precise provisions on the role of the Mayor to ensure his/her supervision and control over the municipal administration.
- The Statute should establish how the Mayor shall communicate with the municipal departments and employees.

CHAPTER IV. MUNICIPAL SUB-LEVELS

4.1 Municipal sub-levels

The Charter, which sets out the European standards upon which Kosovo should model its own local government administration, establishes the principle of subsidiary stating that “public responsibilities shall generally be exercised by those authorities which are closest to the citizen.”⁵⁶ According to the Charter, local authorities have generally the responsibility to provide an administration which is both effective and close to its people.

UNMIK Regulation No. 2007/30 stipulates that each municipality shall make arrangements with villages, settlements, and urban quarters within its territory to ensure the needs of all inhabitants in the municipality are met.⁵⁷ With approval of the Municipal Assembly villages, settlements, and urban quarters can carry out activities that are within the responsibilities and powers of the municipality. In this case these units should receive commensurate resources from the municipality.

In this manner, the municipal services provided will better match the demands of the local population who, in turn, would become more willing to pay for public services. Moreover, the municipal officials would become more accountable to voters for the quality of services they provide.

The Statute and other municipal regulations should stipulate the form of co-operation and define the scope of work and organization of those units.

4.2 De-concentration of municipal authority

Another way for the municipality to reach out and provide services closer to its residents is to de-concentrate services to municipal offices in villages, settlements, and urban quarters, establishing some kind of local one-stop information and/or delivery office. The municipality remains in full control of every area of own competence.

This way, residents – especially those without proper means of transportation – have better access to services like marriage and birth certificates or certain request forms.

The Statute should describe the responsibilities and tasks assigned to these offices in order to avoid overlapping of functions. To perform their duties, these offices should be given appropriate human, financial, and technical means set forth in the Statute.

⁵⁶ Article 4.3 of the Charter.

⁵⁷ Section 5.1 of UNMIK Regulation No. 2007/30.

Recommendation:

- The Statute should contain provisions on the organization, functions and funding of any municipal office located in a sub-municipal entity put in place for delivering services to the residents.
- The Statute should contain provisions on the division of powers and responsibilities between the municipality and the municipal office located in a sub-municipal entity to avoid an overlapping of functions.
- Municipalities should provide appropriate resources (financial, staff and equipments) to municipal offices located in a sub-municipal entity to ensure a good level of services.

CHECK LIST – For the Working Group on Municipal Statutes

- Refer to the law applicable for the area of municipal powers and responsibilities or duties;
- avoid reproducing dispositions of law in the Statute;
- check the legal interpretation of the law at the Legal Department of the Ministry of Local Government Administration;
- ensure the compliance of the Statute to the law and obtain the necessary information from the Ministry of Local Government Administration;
- establish the mandatory committees required by the dispositions on local self-government;
- respect the proportion of seats for political parties in the Municipal Assembly for the Policy and Finance Committee and for all additional committees, unless the Statute states variously;
- have a representative of each minority community on the Community Committee and the Mediation Committee;
- establish rules in the Statute for the appointment of members of the Community Committee and the Mediation Committee coming from minority communities and the Municipal Assembly;
- give real means to mandatory committees to promote their role and procedures to the public;
- clarify in the Statute how additional permanent committees are composed;
- establish specific Terms of Reference for each municipal committee;
- establish a period of questions and comments for residents in all official public meetings;
- determine the Chairperson of the annual public meetings;
- specify that minutes of the annual public meetings shall be taken;
- establish the deadline for the Municipal Assembly to answer the residents' demands put forward in the annual public meetings or petition(s);
- specify the procedure for the presentation of petition(s) by residents;

- adopt precise provisions for the organization, functions and funding of any sub-municipal institution established for delivering services to the residents;
- provide appropriate resources (financial, staff, equipment) to any sub-municipal institution;
- provide clear provision on the role of the Mayor for supervision and control over the municipal administration; and,
- establish the means of communication for the Mayor with the municipal administration.

ANNEXES

Annex 1: The European Charter on Local Self-Government

Annex 2: UNMIK Regulation No. 2007/30

**Annex 3: UNMIK Pillar II (Civil Administration)
Administrative Instruction No. 2003/002 on the
Communities Committees**

**Annex 4: The Ministry of Local Government Administration
Administrative Instruction No. 2005/001 on the Mediation
Committee**