

**Organization for Security and Co-operation in Europe
MISSION IN KOSOVO**

The State of Independent Institutions in Kosovo

July, 2012

TABLE OF CONTENTS

LIST OF ACROYNYS.....3

EXECUTIVE SUMMARY4

1. INTRODUCTION.....6

2. KEY FINDINGS8

3. CONCLUSIONS.....14

4. RECOMMENDATIONS..... 14

**ANNEX 1: INDEX OF INDEPENDENT INSTITUTIONS
REPORTING DIRECTLY TO THE ASSEMBLY OF KOSOVO... 17**

ANNEX 2: LIST OF PERSONS INTERVIEWED.....23

LIST OF ACROYNYMS

ABPE	Advisory Board for Protection of Environment
ACK	Anti-Corruption Agency
Assembly	Assembly of Kosovo
ART	Telecommunications Regulatory Authority
ITARB	The Independent Tax Appeal Review Board
CAA	Civil Aviation Authority
CBK	Central Bank of Kosovo
CCC	Central Census Commission
CEC	Central Election Commission
CPA	Central Procurement Agency
ERO	Energy Regulatory Office
EULEX	European Union Rule of Law Mission in Kosovo
ICMM	Independent Commission for Mines and Minerals
ICO	International Civilian Office
IMC	Independent Media Commission
IOBCSK	Independent Oversight Board for Civil Service of Kosovo
KCC	Kosovo Competition Commission
KCCH	Kosovo Council for Cultural Heritage
KJC	Kosovo Judicial Council
KJI	Kosovo Judicial Institute
KPA	Kosovo Property Agency
KPCC	Kosovo Property Claims Commission
LAC	Legal Aid Commission
MAB	Media Appeals Board
NAPPD	National Agency for Protection of Personal Data
NCS	National Council of Science
OSCE	Organization for Security and Cooperation in Europe
PAK	Privatisation Agency of Kosovo
PPA	Public Procurement Agency
PPRC	Public Procurement Regulatory Commission
PRB	Procurement Review Body
RRA	Railways Regulatory Authority
RTK	Radio Television of Kosovo
SRSB	Special Representative of the Secretary General
KPST	Kosovo Pension Savings Trust
WCK	The Water Council of Kosovo
WWRO	Water and Waste Regulatory Office

EXECUTIVE SUMMARY

Independent institutions are a key component of a functioning democracy. Together with the legislative, the executive and the judiciary, they provide for an elaborate system of checks and balances, enhancing accountability and alleviating undue political influence. Challenges inherent to Kosovo's transitional democracy, however, continue to hinder the development of institutions, ranging from persistent resource shortages to political interference.

The following patterns are highlighted in the report:

- In theory, independent institutions benefit from a secure legal basis for their establishment and continuous operation. Relevant provisions, however, are not always implemented while secondary legislation is frequently missing.
- There is no uniform financing model with some institutions receiving direct funding from the Kosovo budget and others relying on own source revenue through taxation. A number of institutions benefit from both. In addition, some of them also receive financial assistance from international donors. Overall, budgets are described as insufficient leading to the institutions' inability to recruit and retain quality staff while having to operate in substandard working conditions.
- Senior appointments (at board and executive level) are delayed. Vacancies remain open for extended periods severely disrupting the operation of the institutions affected.
- Functional Assembly committees are yet to develop objective criteria to assess the performance of independent institutions through regular reporting. At present, the Assembly has no tracking mechanism to ensure implementation of recommendations by the independent institutions.
- There is insufficient political support for the work of independent institutions resulting in diminished legitimacy and poor responsiveness by the executive.
- The general level of public awareness regarding the work of independent institutions is poor and access to information is limited.

The report also recommends ways in which decision makers can mitigate the risks and address the challenges noted above:

- Gaps in regulatory frameworks should be identified and addressed in coordination by all relevant actors.
- Institutions should improve horizontal co-operation to ensure transfer of knowledge and pooling of available resources when and where feasible.
- Better linkages should be established with the Assembly, the media and civil society.
- The Assembly, in turn, should create a mechanism to track appointments of heads of independent institutions to ensure timely succession planning.
- Information presented in annual reports, in addition to assessing performance of institutions, should also be better utilized for improving the executive bodies they oversee.¹ At the same time, knowledge derived from subject matter expertise of the institutions should serve as inputs to the legislative process.

¹ Common parliamentary practice includes utilizing audit reports of ministries to help evaluate their performance.

- The government should minimize interference with budgets proposed by the independent institutions.

1. INTRODUCTION

Independent institutions are a key component of a functioning democracy. The term ‘independent’ refers to the need for the institutions to be safeguarded from undue influence thus granting them political and operational autonomy. As with the government, however, independent institutions are held accountable to Kosovo’s elected representatives who oversee their work.

There are two types of independent institutions operating in Kosovo: (1) those performing oversight over the government’s compliance with good governance and human rights standards, such as the Ombudsperson Institution (OIK), the Office of the Auditor General (OAG) and the Independent Oversight Board for Civil Service of Kosovo (IOBCSK); and (2) agencies and regulators which perform a regulatory, licensing or quasi-judicial function such as the Independent Media Commission (IMC) and the Energy Regulatory Office (ERO).

According to established European practice, the essential conditions required for independent institutions to operate freely and effectively are:

- 1) **Financial independence**, ensuring that the institutions are provided with sufficient funds to perform their functions with full operational autonomy;
- 2) **Independence of appointment and tenure**, to ensure that appointments are merit-based and transparent, with board members and staff free to work without fear of dismissal for arbitrary or political reasons;
- 3) **Independence from interference in decision-making**, so that the government does not have any influence over decisions taken by the independent institutions and that executive authorities respect and uphold decisions taken by independent institutions.

Currently, there are 30 independent institutions in Kosovo² that report directly to the Assembly of Kosovo while operating at an arms’ length from the Assembly to independently monitor and regulate the work of the executive branch of the government. Most of them are required to make decisions or uphold standards independently from the executive branch of the government, while remaining accountable to the elected representatives. They report directly to the Assembly, serving a variety of functions to include overseeing and advising on good governance and human rights issues, regulating and upholding professional standards or serving as a quasi-judiciary or as a trustee. Every independent institution differs in its level of

² This survey primarily examines independent public bodies whose main role is to oversee and adjudicate on certain aspects of the work of the government. These institutions must be directly accountable to the Assembly of Kosovo, and in most cases the Assembly has the power to appoint or dismiss the head of the institution based on merits, established legal basis, and other objective criteria. Some exceptions are the Central Election Commission (CEC), whose Chair is appointed by the President of Kosovo whilst its members are appointed by the largest parliamentary groups and members holding reserved or guaranteed seats in the Assembly (Article 61, Law No. 03/L-073 on General Elections, 15 June, 2008); the Civil Aviation Authority (CAA) that has its Supervisory Board members appointed by the government (Article 16, Law No. 03/L-051 on Civil Aviation, 4 June 2008)

development with a vast majority still facing critical challenges to their operational integrity.

In light of its long standing commitment to democratic development, and independent agencies in particular, the Organization for Security and Cooperation in Europe (OSCE) Mission in Kosovo has developed and administered a comprehensive survey of Kosovo's independent institutions, aimed at assessing their operating environment, key challenges and prospects for the future. In particular, the survey assesses the institutions' operational and political independence as well as their accountability towards the public by examining patterns in the agencies' institutional design, legal framework, financing, and relationship with other stakeholders.

The findings are based on information collected by using a combination of data collection methodologies. Desk research was performed using key documents from all 30 independent institutions surveyed, including relevant laws, secondary legislation, annual reports and auditor general's findings. Thirty-one senior representatives from a total of 27 independent institutions were interviewed between October and December 2011³. The interviews were conducted based on a semi-structured questionnaire. Two focus groups were held in December 2011, with a total of 19 representatives from 12 different institutions participating in the two events to consolidate and verify the data collected during the interviews. A final roundtable was held on 22 December 2011, in which 30 representatives from 18 institutions participated to discuss preliminary findings.

The aim of the report is to benefit the further development of independent institutions, their understanding of the functioning of Assembly committees that oversee and support their work, and enhance communication with the Assembly Secretariat as it co-ordinates the work of both. The targeted audience also includes government ministries, civil society organizations, and interested international donors.

³ This includes either chair of the board, executive director, or both. In the absence of one or both of the heads, the survey interviewed other key personnel of the organization. In addition, a few independent institutions have opted not to participate in the survey.

2. KEY FINDINGS

2.1 Legal framework

Bodies mandated to regulate the work of the executive must enjoy a high degree of independence while at the same time remaining accountable to the public. The level of institutional independence is traditionally enshrined in the relevant legal framework, with provisions made for adequate funding and staffing, as well as clearly defined criteria for the appointment and removal of senior staff. At the same time, the institution must be mandated to regularly report to, and be scrutinized by, the legislature; it should be transparent in its operation, and subject to judicial review when necessary.⁴

In theory, independent institutions in Kosovo tend to comply with the best international practices regarding the establishment and operation. Their creation has sound legal grounds, while the institutions' individual mandates are further defined by specific laws and secondary legislation.

While the contours of a solid legal framework exist, however, the relative novelty of independent institutions gives rise to a number of operational and legal ambiguities. There is lack of secondary legislation that are essential in clarifying the roles and responsibilities of affected institutions. At present, gaps in the legal framework hamper the work of about one-third of independent institutions. In a number of cases, the legal deficiencies pose a serious challenge to the implementation of the institutions' mandate.

For example, the Law on Ombudsperson⁵ and the Law on Independent Oversight Board for Civil Service⁶ stipulate that the salaries of the Ombudsperson, the five Deputy Ombudspersons, and the board members of the Independent Oversight Board for Civil Service of Kosovo (IOBCSK) are to be paid according to the Law on Salaries of Senior Officials⁷. At the time of the drafting of this report, the Law on Salaries of Senior Officials was yet to be drafted and is not even included in the legislative agenda for 2012. As a result of this legal vacuum, the issue of salaries for the five Deputy Ombudspersons recruited in October 2011 suffered a heated debate. In fact, two of the five were not paid at all for a prolonged period amidst lingering disputes over compensation resulting from noted legal ambiguities. The issue is still pending. The absence of the Law on Salaries for Senior Public Officials has also impacted the members of the IOBCSK as they are not currently paid according to a legal provision and their salaries were not adjusted along with the increases in civil servant salaries. As a result, the salaries of IOBCSK board members fall below some of the civil servants whom they supervise.

For those independent institutions that issue legally binding decisions, there is a blatant absence of an effective enforcement mechanism to ensure execution. The Kosovo Property Agency (KPA) determines disputed ownership of immovable

⁴ United Kingdom House of Commons Public Administration Select Committee, *Ethics and Standards: The Regulation of Conduct in Public Life. Fourth Report of Session 2006-2007*, p. 19-21

⁵ Law No. 03/L-195 on Ombudsperson, 27 August 2010.

⁶ Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo, 16 August, 2010.

⁷ Article 32 of the Law No.03/L-195 on Ombudsperson, 27 August 2010 and Article 21 of the Law No. 03 / L-192 on Independent Oversight Board for Civil Service of Kosovo, , 16 August 2010.

property resulting from the armed conflict in the 1990s. Although its decisions of eviction are legally binding, they are not always respected. In particular, there is a high rate of reoccupation by illegal occupants following an eviction undertaken by the KPA with the support of the Kosovo Police due to inadequate sanctioning measures.⁸ The IOBCSK adjudicates appeals submitted by civil servants in relation to wrongful dismissal and other human resource-related complaints. Employment authorities are obliged by law to execute these decisions within 15 days upon their issuance, yet in 2011, only 77% of these decisions were implemented.⁹

New laws have also changed the operating landscape for some independent institutions. The Law on Public Procurement¹⁰ adopted in 2010 has stipulated that the Public Procurement Agency (PPA) to become an executive agency within the government but in turn allocated more powers to the other two new independent institutions, the Public Procurement Regulation Commission (PPRC) and the Procurement Review Body (PRB). The two new bodies are still in the process of drafting their internal regulations. The Law on the Independent Media Commission¹¹ and the Law on the Radio Television of Kosovo¹² adopted in 2012 directly impact the work of the two institutions. The new legislation changes the way the two institutions appoint their board members, financing of Radio Television Kosovo (RTK), as well as the establishment of a second RTK channel in Serbian language. Due to these changes, there is apprehension on the likelihood of the laws' speedy implementation and the expeditious development of secondary legislation.

2.2. Funding and staffing

The Law on Public Financial Management and Accountability¹³ includes provisions that guarantee the financial independence of the institutions by ensuring each of their budget requests is submitted in its entirety to the Assembly of Kosovo.¹⁴ A number of institutions also enjoy supplementary funding in the form of revenue collections or funds from international donors.

However, in practice, there is no unified model of financing independent institutions in Kosovo. Most of them receive the bulk of their funding through the Kosovo budget, approved each year by the Assembly. A few of them are mandated to collect dedicated revenue from licensing fees or special taxes, while even fewer are allowed to retain all or part of the fees collected as their operating revenue.

Most of the independent institutions participating in the survey noted concerns regarding the adequacy of allocated budgets for the full implementation of their mandates. In particular, the budget approved by the Assembly often falls short of their initial request. In fact, three independent institutions have not been receiving any

⁸ "It has been noted that in many of these cases the same person/family who is evicted from the property immediately re-occupies the property. In many cases the number of re-occupations and evictions has exceeded ten on the same person and property," Kosovo Property Agency 2011 Annual Report, p. 25.

⁹ Independent Oversight Board for Civil Service Annual Report 2011, p. 17.

¹⁰ Law No. 03/L-241 on Public Procurement, 16 November, 2010 which was subsequently replaced by Law No. 04/L-042 on Public Procurement, 19 September, 2011.

¹¹ Law No. 04/L-044 on Independent Media Commission, 5 April, 2012.

¹² Law No. 04/L-046 on Radio Television Kosovo, 27 April, 2012.

¹³ Law No. 03/L-048 on Public Financial Management and Accountability, 3 June, 2008.

¹⁴ Article 64-66, Law No. 03/L-048 on Public Financial Management and Accountability, 3 June, 2008.

funding since their establishment.¹⁵ Consequently, two of them are currently inoperative while the third is functioning at minimum capacity. For the independent institutions with revenue sources other than the Kosovo consolidated budget, many experience difficulties in collecting the designated licensing fee or levies because of weak payment enforcement. In other cases, the small number of operators in a certain area means the fees collected do not result in substantial contribution to the budget. Some organizations fare better on the budget front when legal provisions guarantee their budget share, like the Privatisation Agency of Kosovo (PAK)¹⁶. In addition, some independent institutions receive donor funding to supplement their budgets, while others have international members on their board which seems to strengthen their fund raising efforts.

The lack of funding leads to inadequate working conditions and human resource shortages in independent institutions. It also directly impedes the implementation of an independent institution's programme. For example, the KPA is unable to award funds to satisfy settlements ruled in favour of claimants due to a budget shortfall of over €3 million. The lack of permanent premises for most of the independent institutions sometimes results in a major disruption to their work.

In 2011, the Ombudsperson Institution in Kosovo (OIK) has relocated its office. The search for new premise, the negotiations, and the subsequent move come at great material and staff cost to the institution. Many of the surveyed institutions also find themselves in premises not designed to hold the number of staff envisaged, preventing them from operating at optimum capacity. In addition, several independent institutions are co-located with the ministry or agency they are meant to oversee. This is best illustrated by the case of the Independent Tax Administration Review Board (ITARB) that is located in the Tax Administration premises.

Currently, there are varying practices regulating the salaries of staff in independent institutions. Some of the heads and board members are paid an honorarium according to the number of meetings they attend; others are paid a fixed salary. There are a variety of ways which honorarium and salary scale of heads and board members are calculated. For example, the Anti-Corruption Agency links its Director's salary to that of an Assembly Committee Chair.¹⁷ The remuneration of the Board members and Director of the Independent Commission for Mines and Minerals (ICMM) is determined by the Assembly Committee of Budget and Finance.¹⁸ The OIK and the IOBCSK refer to the Law on Salaries for Senior Officials¹⁹ which has not yet been

¹⁵ The Water Council of Kosovo (WCK), Advisory Board for Protection of Environment (ABPE), and the National Council of Science (NCS) did not receive any funding from the Kosovo consolidated budget since their inception. The laws governing ABPE and the NCS did not specify a funding model for the two institutions. In the case of the WCK, although the Law on Water (Law No. 2004/24 on Water, 1 November, 2007) did explicitly provide for the payment to Council member and support staff (Article 17.8), their budget request was not met and the board has ceased to function thereafter.

¹⁶ According to Article 21 of Law No. 04/L-034 on The Privatization Agency of Kosovo, 21 September, 2011, the Privatization Agency of Kosovo (PAK) could retain 5% of revenue from the sale, transfer, privatization, liquidation or disposition of enterprise or assets to cover its administrative and operating costs.

¹⁷ Article 9, Law No. 03/L-159 on Anti-Corruption Agency, 5 February, 2010.

¹⁸ Article 64, Law No. 03/L-163 on Mines and Minerals, 27 August, 2010.

¹⁹ Article 32, Law No. 03/L-195 on Ombudsperson and Article 21, Law No. 03/L-192 on Independent Oversight Board for Civil Service of Kosovo.

adopted. Some international organizations such as the EU Rule of Law Mission in Kosovo (EULEX) or the International Civilian Organization (ICO) sponsor the salary or honorarium of certain international heads of institutions or board members as in the case of the KPA or the Auditor General.

The majority of professional and administrative staff working in independent institutions are civil servants, and are paid according to the relevant legislation in place. Most of the independent institutions assessed their staffing levels to be inadequate with some also suffering from high turnover. In addition to budget constraints, one of the main reasons for the prevalent staffing deficiencies is the lack of office space. For instance, the survey found that the Kosovo Competition Commission (KCC) employs only one-eighth of the staff foreseen in the staffing table and it hopes to slowly increase the number to one-third. High staff turnover is observed in fields such as procurement, auditing or telecommunication where the private sector is offering more competitive salaries. Furthermore, experts in select fields are extremely scarce such as the protection of cultural heritage and privacy law. In addition, many institutions also expressed a lack of in-house capacity in key fields such as programme planning and budget development.

2.3 Appointments and dismissals

The terms and conditions for the appointment and dismissal of senior staff for all of the surveyed independent institutions are defined by law and are largely based on objective, merit-based criteria. One-third of the laws regulating independent institutions also include incompatibility provisions that define instances in which heads of institutions and/or board members become unsuitable to perform their duties. This includes physical or mental incapacity, criminal conviction, involvement in political activities, or instances where other pecuniary conflicts of interest arise.

The appointment and dismissal procedures for each of the independent institutions slightly differ but the majority include an interaction between the Assembly and the government. Nearly all require final confirmation by the legislature²⁰. Mandates of heads of institutions are generally fixed term with clearly defined conditions for reappointment, a key prerequisite for operational independence²¹.

At the time of conducting the survey, one-fourth of independent institutions have one or more senior positions where the incumbent's mandate has expired.²² Recurring delay in appointing senior officials jeopardizes the effective functioning of independent institutions. In fact, there have been numerous cases when the

²⁰ Some exceptions are the CEC and the Civil Aviation Authority (CAA). In the case of CEC, the Chair is appointed by the President of Kosovo from among the judges of the Supreme Court whilst its members, six of them are appointed by the largest parliamentary groups and four others from parliamentary groups that hold reserved or guaranteed seats in the Assembly (Article 61, Law No. 03/L-073 on General Elections, 15 June, 2008). For CAA, Supervisory Board members are appointed by the government based on proposal of the minister (Article 16, Law No. 03/L-051 on Civil Aviation, 4 June, 2008.).

²¹ However, some exceptions to this term-limit condition are ABPE which membership to the Board is not term-limited. The three international members of the KPA Supervisory Board, its Director and Deputy Director are appointed by the ICO, and these appointments currently have no time limit.

²² This includes IMC, Kosovo Council for Cultural Heritage (KCCH), KCA, KPA, NSC, RTK, and WCK.

appointment procedure took more than one year, which severely hampered the work of these organizations.

For example, the recruitment of the first local Ombudsperson had taken four years, with the process finally concluded in 2009. The subsequent recruitment of the five Deputy Ombudspersons took place between 2010 and 2011 and lasted more than one year. The recruitment of the IMC Council has also encountered serious delays. The mandate of all the board members has expired, with three of them vacant for more than one year. As a result, the IMC Council has been unable to make any decision over the past year due to the lack of quorum as its board membership was decimated by mandate expiry.

The reasons for these delays include the poor advance planning for upcoming vacancies and a lack of suitable candidates once the appointment procedure commences. On a number of occasions, the candidate proposed by the government is rejected by the Assembly committee citing political and technical reasons. For the appointments of board members at the Energy Regulatory Office (ERO) and the Independent Commission for Mines and Minerals (ICMM), the disagreement between the governing parties and the opposition has further delayed the process of appointment.²³

In addition, each of the institutions has its own recruitment procedure, with some more complicated than others. Prior to the adoption of the IMC Law in 2012, the law required the seven members in the IMC Council to be each selected through one of the three different methods involving numerous different stakeholders²⁴. Nonetheless, the trend identified in new legislation seems to indicate a move towards a more uniform approach to recruitment. In regards to dismissal procedures, the legal framework governing two-thirds of independent institutions has explicitly provided for the conditions requiring the dismissal of senior officials. Out of these institutions, most require the Assembly to approve the dismissal; a small number of institutions stipulate other dismissal methods such as through the approval by the competent court²⁵ or the government.²⁶ For the rest of the institutions, the subject matter is not clearly defined in its legal framework.

Furthermore, the governance structure of independent institutions is still struggling to reflect the composition of the broader population in Kosovo. Out of 30 independent institutions in Kosovo, only two of them are headed by women.²⁷ Among all the senior officials appointed by the Assembly, women make up 13% of the total. About one-sixth of the institutions contain provision in its legal framework that clearly

²³ Assembly plenary session record 14 October, 2011 and 15 March, 2012.

²⁴ Article 4, Law No. 02/L-15 on the Independent Media Commission and Broadcasting, 1 May, 2007, specified that two international members of the Council to be selected by the Special Representative of the Secretary General (SRSG), one resident member of the Council to be nominated and appointed by the Assembly, for resident members to be selected by a Civil Society Council composed of media and civil society representatives. The appointment procedure has been simplified under the new Law No. 04/L-044 on the Independent Media Commission, 5 April, 2012, by stipulating that an Assembly ad hoc committee is to be responsible for the entire appointment process.

²⁵ PPRC (Article 93, Law No. 04/L-042 on Public Procurement, 19 September, 2011) and PRB (Article 101, Law No. 04/L-042 on Public Procurement, 19 September, 2011.)

²⁶ CAA (Article 16, Law No. 03/L-051 on Civil Aviation, 4 June, 2008.)

²⁷ KCCH and the CEC.

requires the composition of its senior officials or general staffing to represent the ethnic composition of Kosovo,²⁸ although the actual number of organizations that include members of non-Albanian communities in their board is higher. Nevertheless, the absence of such provision often results in the complete absence of non-Albanian members at the senior level in more than one-third of the institutions.

2.5 Reporting and accountability

The law obliges all independent institutions to report directly to the Assembly. Each year, independent institutions submit an annual report, a public document, to a designated Assembly committee.²⁹ After endorsement by the committee, the annual report is forwarded to the Assembly plenary session for adoption.

Assembly members at times provide comments and recommendations regarding the reports submitted but the independent institutions are rarely held accountable for the implementation of recommendations in the following reporting period. In fact, the recommendations are not systematically registered which makes tracking their implementation difficult or even impossible. On rare occasions the annual reports of independent institutions are rejected by the Assembly, as was the case with the annual reports submitted by the CEC and the KCA in 2011 and PAK in 2012. There is, however, no formal requirement regarding re-submission or follow up on the deficiencies remarked by the Assembly.

As most of the independent institutions deal with a specialized and sometimes very technical subject area, raising public awareness on their work is no easy task. Most of the independent institutions in Kosovo have a website, yet only one-fourth of them have a designated staff member in charge of public or media relations. Many respondents to the survey found the media's reporting on their respective organization to be "skewed and infrequent". The media often report on the most sensational, yet not necessarily the most informative, aspect of their work.

²⁸ OIK, KPA, IMC, IOBCSK, RTK Board, and the Central Bank. In addition, Article 139 of the constitution ensures four CEC members to be appointed by non-Albanian parliamentary groups.

²⁹ These committees are: The Committee of Legislation; Committee for Economic Development, Infrastructure, Trade and Industry; the Committee for Budget and Finance; Committee for Education, Culture, Youth, Sports, Public Administration, Local Government and Media; Committee for Agriculture, Forestry, Environment and Spatial Planning; Committee on Human Rights, Gender Equality, Missing Persons and Petitions

3. CONCLUSIONS

The findings of the survey have highlighted both the strengths and weaknesses of Kosovo's emerging independent institutions. The sound legal basis gives grounds for encouragement along with the robust institutional structure that many of the surveyed institutions possess.

Nonetheless, the legal framework for many independent institutions is still evolving. In fact, one-third of these agencies have pending laws or secondary legislation to complete their legal framework. The resulting legal vacuum frequently hinders their performance. In addition, the adoption of new legislation has often led to fundamental changes to the way these institutions operate. For institutions that are tasked with a quasi-judicial function, there is a lack of effective mechanism to safeguard the ensuing implementation of decisions.

There is no uniform financing model for independent institutions. Some are solely funded by the Kosovo budget, while others are supplemented with dedicated taxes or fees. Adequate financial means are not always available to sustain the organization's overall operation or the implementation of programme. This combines with secure and competitive remuneration missing in the quest to increase staff performance and attract qualified candidates, most independent institutions struggle with a chronic absence of both operational and professional capacities.

The Assembly of Kosovo lacks a proactive approach in its relationship to the independent institutions. Information contained in annual reports submitted by independent institutions and recommendations from the Assembly to these reports have not been systematically utilized as policy inputs. Appointments of senior officers of these institutions by the Assembly are frequently delayed, and their governance structure still struggles to reflect the gender and community representation in the broader society.

Independent institutions largely suffer from having a low public profile. Media interests on the topic are sporadic and at times inaccurate. This is the result of the specialized nature of independent institutions' work and their limited public relations capacity.

4. RECOMMENDATIONS

To independent institutions:

- Increase horizontal communication. As some independent institutions are more developed than others, horizontal knowledge transfer should be facilitated. This is particularly pertinent in areas of operation that small organisations find most challenging such as human resource management and project management.
- Establish a co-ordination mechanism among independent institutions to streamline advocacy and linkages with external stakeholders. This may be implemented in the form of a regular meeting with a rotating annual

chairmanship by different institution or a permanent joint secretariat similar to that of an association of municipalities.

- Arrange for the joint procurement of goods and services. As most of the independent institutions have operational revenues of less than €1 million, joint procurement could improve cost effectiveness by attaining an economy of scale.
- Increase communication and co-operation with the Assembly of Kosovo to lobby for a sustainable financing model across the board.
- Ensure updated information is available on the institutions' website. The media should also be informed of the developments regarding the work of the institutions through regular press releases.
- Utilize the media to publicize the function of the institution, a specific issue or a cause, such as the non-execution of decisions.

To the Assembly of Kosovo

- A permanent focal point or a coordination office for independent institutions should be appointed within the Assembly Secretariat. The role of this office must be defined and sufficient resources must be allocated to ensure its operation.
- A tracking system should be created to notify Assembly committees when the mandate of a board member or head of independent institution is expiring. This would enable the relevant committee to prepare for the recruitment process prior to the expiration of an official's mandate and would avoid delays in the appointment process. The successor tracking mechanism can be managed by the independent institutions' focal point at the Assembly Secretariat.
- Improve communication with independent institutions and carefully consider their needs during the budget process to ensure they have the required resources to carry out their mandate.
- Ensure that inputs from independent institutions in their special area of expertise are included during the different stages of the legislative process.
- Clarify at the earliest possible time any ambiguities in the laws regarding the work of independent institutions.
- Develop objective criteria in assessing the reports of independent institutions. Subsequent recommendations made regarding an institution's report should be registered and revisited in the following year.

To the government

- Fully comply with the Law on Public Financial Management and Accountability³⁰ which allows the proposed budgets and appropriation requests from independent institutions be incorporated without modification into the proposed Kosovo consolidated budget prior to the proposed Appropriations Law is submitted to the Assembly.
- Nominate heads or board members of independent institutions in a timely manner when required by law.

To civil society and media

³⁰ Law no .03/L-048 on Public Financial Management and Accountability, 3 June, 2008.

- Get better acquainted with the mandates of independent institutions in order to properly garner support on issues that promote public interest.
- Report on incidents when decisions of independent institutions are not being executed.

To international community stakeholders

- Continue to facilitate synergies between independent institutions, the Assembly and the government.
- Assist in the organization of training on corporate governance for women and members from communities currently occupying middle management positions and who are interested in becoming senior officials or a board director.
- Initiate early succession planning for sitting international board members/executives to ensure that no lengthy staffing gaps are created.

ANNEX 1: INDEX OF INDEPENDENT INSTITUTIONS REPORTING DIRECTLY TO THE ASSEMBLY OF KOSOVO

Advisory Board for Protection of Environment (ABPE) was established by the Law on Environmental Protection³¹ to advise the Assembly and the government on environmental matters. The seven members of the board are experts appointed by the Assembly on a five year mandate.

Anti-Corruption Agency (ACA) specialized in the implementation of policies for combating and preventing corruption. Its mandate is defined by the Law on Anti-Corruption Agency³² and other laws defining the standard of public life.³³ ACA investigates corruption cases and makes efforts to prevent and combat corruption. ACA is led by a Director of the Agency who reports directly to the Assembly and is elected for a term of five years. Website: www.akk-ks.org.

Civil Aviation Authority of Kosovo (CAA) was established by the Law on Civil Aviation³⁴ as a regulatory agency. It is responsible for ensuring civil aviation safety, the economic regulation of airports, and air navigation services in Kosovo. It issues licenses and air navigation orders in accordance to the law. The Supervisory Board is composed of five members, with two of them having a two-year mandate (including the initial chairperson), the other three have a four year mandate. The Members of the Board are appointed by the government. It reports directly to the Assembly. Website: www.caa-ks.org.

Central Bank of Kosovo (CBK)'s role is defined in Article 140 of the constitution and in the Law on Central Bank.³⁵ It maintains domestic price stability, and supports the general economic policies of the government. It has the power to licence and regulate financial institutions. Governor of the CBK answers directly to the Central Bank Board. Other governing bodies of the CBK include the Executive Board, Audit Committee, two Deputy Governors, and one Chief Internal Auditor. Website: www.bqk-kos.org.

Central Census Commission (CCC) was established by the Law on Population and Housing Census³⁶ as the highest body for supervising the census. Its mandate ended in 31 December 2011.

Central Election Commission (CEC) is provided for by Article 139 of the constitution as a permanent body, which prepares, supervises, directs, and verifies all activities related to the process of elections and referenda and announces their results. It is composed of 11 members. The chair is appointed among Supreme Court judges

³¹ Law No. 03/L-025 on Environmental Protection, 6 April, 2009.

³² Law No. 03/L-159 on Anti-Corruption Agency, 5 February, 2010.

³³ Law No. 04/L-050 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials, 14 September, 2011; Law No. 04/L-051 on Prevention of Conflict of Interest in Discharge of Public Functions, 14 September, 2011; and Law No. 03/L-155 on Amending and Supplementing the Law No. 02/L-133 on Preventing Conflict of Interest in Exercising Public Function, 28 December, 2009.No.

³⁴ Law No. 03/L-051 on Civil Aviation, 4 June, 2008.

³⁵ Law No. 03/L-209 on Central Bank, 16 August, 2010.

³⁶ Law No. 03/L-237 on Population and Housing Census, 3 November, 2010.

by the President of Kosovo. Other six members are appointed by the six largest parliamentary groups. One member shall be appointed by the members of the Assembly holding seats reserved or guaranteed for the Kosovo Serb Community, and three members shall be appointed by the Assembly deputies holding reserved non-majority community seats. Website: www.kqz-ks.org.

Committee on Bar Examination is an independent professional body which organizes examinations for the qualification of judges, prosecutors, jurists and other legal specialists. The Committee has six members with a two-year mandate. It reports directly to the Assembly. Its roles are specified in the Law on Bar Examination.³⁷

Energy Regulatory Office (ERO) was established by the Law on the Energy Regulator³⁸ as Kosovo's independent energy regulator. It is tasked to define and enforce the energy regulatory framework to ensure stable and safe energy supply for consumers. It has the authority to grant and withdraw licenses and imposes fines to violators. It determines electricity tariffs and ensures competition in the energy market. The ERO governing board is headed by a Chairperson and has five members. Each of them is appointed for a staggered term of five years. Website: www.ero-ks.org.

Independent Board for Review of Tax Appeals (ITARB) is established on the basis of the Law on Tax Administration and Procedures.³⁹ It is composed of 16 members and a Chief Member. ITARB is a quasi-judicial body adjudicating tax appeals.

Independent Commission for Mines and Minerals (ICMM) regulates mining activities in Kosovo in accordance with the law and secondary legislation. Its authority is defined by Law on Mines and Minerals⁴⁰. ICMM shall ensure orderly exploration and exploitation of mineral resources in Kosovo; issue, transfer, extend, suspend and revoke licenses and permits; establish and maintain a mining geographical information database. ICMM provides technical assistance to the government on the topics of its expertise. The ICMM has a steering Board of five members and a directorate headed by a Director. Website: www.kosovo-mining.org.

Independent Media Commission (IMC)'s role is defined by Article 141 of the constitution and its operation is further defined in the Law on Independent Media Commission.⁴¹ The Commission is an independent body for regulation, management and oversight of broadcasting frequency in Kosovo. It also issues licenses to broadcasters and to establish and implement broadcasting policies. The Board consists of seven members for a mandate of 2-4 years. The **Media Appeals Board (MAB)** is a mechanism that reconsiders appeals of media licenses. It may support, modify or repeal any decision of the IMC. The Board consists of three members for a period of three years. Website: <http://kpm-ks.org>.

³⁷ Law No. 02/L-40 on Bar Examination, 2 May, 2006.

³⁸ Law No. 03/L-185 on the Energy Regulator, 15 November, 2010.

³⁹ Law No. 03/L-222 on Tax Administration and Procedures, 20 July, 2010.

⁴⁰ Law No. 03/L-163 on Mines and Minerals, 27 August, 2010.

⁴¹ Law No. 04/L-044 on the Independent Media Commission, 5 April, 2012.

Kosovo Competition Commission (KCC) is a quasi-judicial body overseeing the rules of competition by all entities in Kosovo. Established by the Competition Law⁴², its role and responsibilities are defined in the Law on Protection of Competition.⁴³ The KCC has five members and are appointed for a term of five years. Website: <http://ak.rks-gov.net>.

Kosovo Council for Cultural Heritage (KCCH) is established by the Law on Cultural Heritage.⁴⁴ The seven-member board is appointed for a mandate of three years by the Assembly. The role of the Council is to identify and protect cultural and heritage sites in Kosovo.

Kosovo Judicial Council (KJC)'s authority is defined by Article 108 of the constitution and Law on the Kosovo Judicial Council.⁴⁵ It is mandated to ensure Kosovo courts are independent, professional and impartial, meanwhile reflecting the ethnic diversity and gender composition of Kosovo society. It is also responsible for the recruitment of judicial positions, and the transfer and disciplinary procedure against judges. The KJC is composed of 13 members for a term of five years. Website: www.kgjk-ks.org.

Kosovo Judicial Institute (KJI) is responsible for training and continued legal education of judges, prosecutors and other legal professionals in Kosovo. It is mandated to organize and assess the preparatory exam that is used for appointment of judges and prosecutors. The organization of the institute is defined by the Law on Establishing the Kosovo Judicial Institute.⁴⁶ It is headed by a 13-member Managing Board which is responsible for the appointment of the Director and making strategic decision of the organization. The members have a mandate of two years with the possibility of extension for a further two-year period. Website: <http://igjk.rks-gov.net>.

Kosovo Pension Savings Trust (KPST) is established to administer and manage pension contributions from Kosovo residents during their employment and to ensure the prudent investment of this fund. Its authority is defined in the Law on Kosovo Pension Trust.⁴⁷ The Board is composed of eight members (one of which is the representative of the government and is non-voting) for a term of three years. Website: www.trusti.org.

Kosovo Property Agency (KPA)'s main mandate is to resolve, subject to the right of appeal to the Supreme Court of Kosovo, conflict-related ownership claims and right of use claims in respect of private immovable property, including agricultural and commercial property, resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999. The agency operates under Law Amending UNMIK Regulation 2006/50.⁴⁸ The Agency is composed of three main bodies, namely an Executive Secretariat, an autonomous quasi-judicial Property Claims Commission (KPCC) and a Supervisory Board which provides administrative oversight, overall

⁴² Law No. 2004/36 on Competition, 1 July, 2007.

⁴³ Law No. 03/L-229 on Protection of Competition, 25 November, 2010.

⁴⁴ Law No. 02/L-88 on Cultural Heritage, 1 July, 2008.

⁴⁵ Law No. 03/L-223 on the Kosovo Judicial Council, 3 November, 2010.

⁴⁶ Law No. 02/L-25 on Establishing the Kosovo Judicial Institute, 24 April, 2006.

⁴⁷ Law No. 04/L-101 on Pension Funds of Kosovo, 8 May, 2012.

⁴⁸ Law No. 03/L-079 on Amending UNMIK Regulation 2006/50 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property, 15 June, 2008.

direction and policy guidance. The Director of the Executive Secretariat and three members of the Supervisory Board including its Chairperson are currently appointed by the ICO. The Deputy Director of the Executive Secretariat and two members of the Supervisory Board are appointed by the Assembly upon nomination by the Prime Minister. The KPCC is conferred with the jurisdiction to adjudicate claims referred to it by the Executive Secretariat. Two of its three members including its Chairperson are appointed by the ICO, and the third member is nominated by The President of the Supreme Court for appointment by the Assembly. The two local members of the Supervisory Board and all KPCC members are appointed for a one-year renewable term. The other appointees are currently not term-limited. Website: www.kpaonline.org.

Legal Aid Commission (LAC) functions under law on Free Legal Aid.⁴⁹ The LAC is responsible for the provision of free legal assistance to financially disadvantaged persons and to ensure legal aid is accessible to vulnerable groups. The nine members of the Free Legal Aid Council are elected by the Assembly from a candidate pool proposed by government ministries, the Supreme Court, and public invitation for a three year non-renewable mandate. Website: <http://www.knj-rks.org>.

Office of Auditor-General of Kosovo (OAG) is defined in Articles 136 through 138 of the constitution as “the highest institution of economic and financial control.” It is further regulated by Law on the Establishment of the Office of the Auditor General of Kosovo.⁵⁰ It conducts a regularity audit of the Kosovo consolidated budget, its budget organizations, and other entities that receive more than 50% of its budget from the Kosovo budget. Website: <http://oag.rks-gov.net>.

Ombudspersons Institution in Kosovo (OIK)'s authority is stipulated in Articles 132 through 135 of the constitution. Its operation is detailed in the Law on Ombudsperson.⁵¹ Although it has no executive powers, all public institutions in Kosovo are obliged by law to respond to the Ombudspersons' inquiries. Its main duties are to monitor, defend and protect the rights and freedoms of individuals. The Ombudsperson and five Deputy Ombudspersons are appointed by the Assembly. The Ombudsperson has a five year non-renewable mandate while the Deputy Ombudsperson has a three year mandate. Website: www.ombudspersonkosovo.org.

National Agency for Protection of Personal Data (NAPPD) was established by the Law on the Protection of Personal Data⁵² to supervise the implementation of rules in regards to personal data protection. It upholds the fundamental rights of data protection by adjudicating complaints on misuse of personal data and by carrying out inspection and audits on this matter. It also advises and promotes public awareness on data protection. The Agency is managed by a Council consisting of the Chief State Supervisor and four National Supervisors for a mandate of five years. Website: <http://nappd-rks.org>

⁴⁹ Law No. 04/L-017 on Free Legal Aid, 22 February, 2012.

⁵⁰ Law No. 03/L-075 on the Establishment of the Office of the Auditor General of Kosovo and the Audit Office of Kosovo, 15 June, 2008.

⁵¹ Law No. 03/L-195 on Ombudsperson, 27 August, 2010.

⁵² Law No. 03/ L-172 on the Protection of Personal Data, 31 May, 2010.

National Council of Science (NCS) is established by the Law on Scientific Research Activity.⁵³ It is mandated to propose, advise and evaluate research activities and provide opinion in relations to the establishment of scientific research institute. The Council is composed of 15 members. The President of the Kosovo Academy of Science and Art heads the NCS. Other members are appointed by the Assembly for a term of four years.

The Privatisation Agency of Kosovo (PAK)'s responsibilities are defined by Law on the Privatization Agency of Kosovo.⁵⁴ Its main role is to administer the sell, transfer and liquidation of socially-owned enterprises. The powers of the PAK are vested with the Board of eight Directors, each of which has a two year mandate. Five of the Directors are appointed by the Assembly and three international directors are appointed by the International Civilian Representative. Website: www.pak-ks.org

Procurement Review Body (PRB) is comprised of five members for a mandate of five years with the option of mandate renewal. The role of the PRB is defined in the Law on Public Procurement⁵⁵ to review complaints containing allegations of violation of procurement rules stipulated by law. Website: <http://oshp.rks-gov.net>

Public Procurement Regulatory Commission (PPRC) is an independent regulatory agency responsible for overall development of the public procurement system in Kosovo. Its role and responsibility is defined by the Law on Public Procurement⁵⁶, which includes monitoring and supervising the implementation of this law by contracting authorities. The Commission consists of three members and they are appointed for a term of five years. Website: <http://krpp.rks-gov.net>.

Radio Television of Kosovo (RTK) is governed and managed by the Board of Directors and a General Director based on the Law on RTK⁵⁷. The Board is a collegial-steering body composed of 11 members for a mandate of two to four years. They may be reappointed for one additional mandate of three years. The General Director is appointed by the Board. The Board is responsible for the general administration of the RTK and reviews and approves its programs and their standards. Website: www.rtklive.com

Railways Regulatory Authority (RRA) operates under the Law on Kosovo Railways⁵⁸ to regulate and supervise the railway sector in compliance with all existing relevant legislation. The Board of the RRA consists of five members for a mandate of five years. Four of the Board members are appointed by the Assembly, while the Chair of the Board is proposed by the ministry. Website: <http://arh-ks.org>

Telecommunication Regulatory Authority (TRA) is responsible for licensing and supervising the providers of telecommunications services in Kosovo. It sets standards for telecommunication service providers, encourages market competition and ensures

⁵³ Law No. 2004/42 on Scientific Research Activity, 1 December, 2006.

⁵⁴ Law No.04/L-034 on the Privatization Agency of Kosovo, 21 September 2011.

⁵⁵ Law No. 04/L-042 on Public Procurement, 19 September, 2011.

⁵⁶ Law No. 04/L-042 on Public Procurement, 19 September, 2011.

⁵⁷ Law No. 04/L-046 on Radio Television of Kosovo, 27 April, 2012.

⁵⁸ Law No. 04/L-063 on Kosovo Railways, 16 December, 2011.

consumer protection. Its role is defined in the Law on Telecommunication.⁵⁹ The board is composed of five members each with a mandate of five years. Website: www.art-ks.org.

The Water Council of Kosovo (WCK) was established by the Law on Water.⁶⁰ The Council is an advisory body that reviews issues regarding water management. The Council consists of a Chairperson and six members appointed by the Assembly of Kosovo for a period of five years.

Water and Waste Regulatory Office (WWRO) oversees water and solid waste services in Kosovo. It licenses water and waste services providers and sets their tariff. It also safeguards the standard of services delivered to customers. The office operates under the legal framework of Law on Amending UNMIK Regulation 2004/49 on the Activities of Water, Wastewater and Waste Services Providers.⁶¹ It is headed by a Director and a Deputy Director who are appointed by the Assembly for a five-year mandate. Website: www.wwro-ks.org.

⁵⁹ Law No. 2002/7 on Telecommunications, 1 December, 2007.

⁶⁰ Law No. 2004/24 on Water, 1 November, 2007.

⁶¹ Law No. 03/L-086 on Amending UNMIK Regulation 2004/49 on the Activities of Water, Wastewater and Waste Services Providers, 15 June, 2008.

ANNEX 2: LIST OF PERSONS INTERVIEWED

Date	Independent Institution (or other)	Representatives
13/10/2011	Civil Aviation Authority	Dritan Gjonbalaj, Director General
14/10/2011	Civil Aviation Authority Supervisory Board	Kosum Kosumi, Acting Head of the Supervisory Board
19/10/2011	National Council of Science	Dukagjin Pupovci, Deputy Head
20/10/2011	Procurement Review Body	Hysni Hoxha, Head of Procurement Review Body Ardian Behrami, Head of Administration of the PRB
20/10/2011	Advisory Board for the Protection of Environment	Sylejman Berisha, Head of the Board
25/10/2011	Kosovo Council for the Cultural Heritage	Gjejlane Hoxha, Executive Director
25/10/2011	Regulatory Office for Water and Waste	Ramiz Krasniqi, Head of Admin and Finance
26/10/2011	Public Procurement Regulatory Commission	Safet Hoxha, Head of the Commission
27/10/2011	Central Procurement Agency (Formerly Public Procurement Agency)	Mursel Racaj, Acting Director
28/10/2011	Energy Regulatory Office	Përparim Kabashi, Board Member and Ardiana Bokshi, Head of Administration
02/11/2011	Independent Commission on Mines and Minerals	Ahmet Tmava, Head of the Board Sami Preteni, Head of Administration
04/11/2011	KIPRED	Artan Venhari, Acting Director
08/10/2011	Regulatory Office for Water and Waste	Raif Preteni, Manager
08/10/2011	Office of Auditor General	Lage Olofsson, Auditor General
10/11/2011	Kosovo Property Claims Commission	Kathinka Hewitt
14/11/2011	National Agency for Protection of Personal Data	Ruzhdi Jashari, Head Supervisor Mentor Hoxha, Deputy Head Supervisor Aleksandar Spasić, Board Member
16/11/2011	Kosovo Property Agency	Andy Sparks, Head of Supervisory Board Scott Bowen, Executive Director
18/11/2011	Kosovo Competition Commission	Avdyl Krasniqi, Secretary General Bekim Millaku, Procurement Officer Lule Isufi, Interpreter
18/11/2011	Privatisation Agency of Kosovo	Mrika Tahiri, Deputy Managing

		Director
21/11/2011	Independent Media Commissioner	Naile Krasniqi, Chief Executive Officer
21/11/2011	Independent Oversight Board for Civil Service	Mehdi Geci, Chairperson of the Board
24/11/2011	Independent Review Board on Taxes	Skender Avdiu, Chairperson of the Board
24/11/2011	Railways Regulation Authority	Halit Gara, Head of the Board
24/11/2011	The Water Council of Kosovo	Avdullah Nishori, Board Member
24/11/2011	Anti-Corruption Agency	Hasan Preteni, Director
02/12/2011	RTK Board of Directors	Rahman Pacarizi, former Chairperson of the Board
02/12/2011	Telecommunication Regulation Authority	Ekrem Hoxha, Chairperson of the Board
07/12/2011	Central Commission for Census	Agim Zuzaku, Advisor to the Chairperson of the Commission
08/12/2011	Ombudsperson Institution	Isa Hasani, Deputy Ombudsperson
08/12/2011	National Agency for Protection of Personal Data	Ruzhdi Jashari, Head Supervisor Mentor Hoxha, Deputy Head Supervisor
05/12/2011	Public Procurement Regulatory Commission	Pranvera Krasniqi, Personnel Officer
27/12/2011	Board of Directors of RTK	Shukrie Gashi, Member of the Board Lindita Tahiri, Member of the Board