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# DEMOCRACY, HUMAN RIGHTS, AND GOVERNANCE ASSESSMENT FOR KOSOVO

## FINAL REPORT

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# DEMOCRACY, HUMAN RIGHTS AND GOVERNANCE ASSESSMENT FOR KOSOVO

## Final Report

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## **CONTENTS**

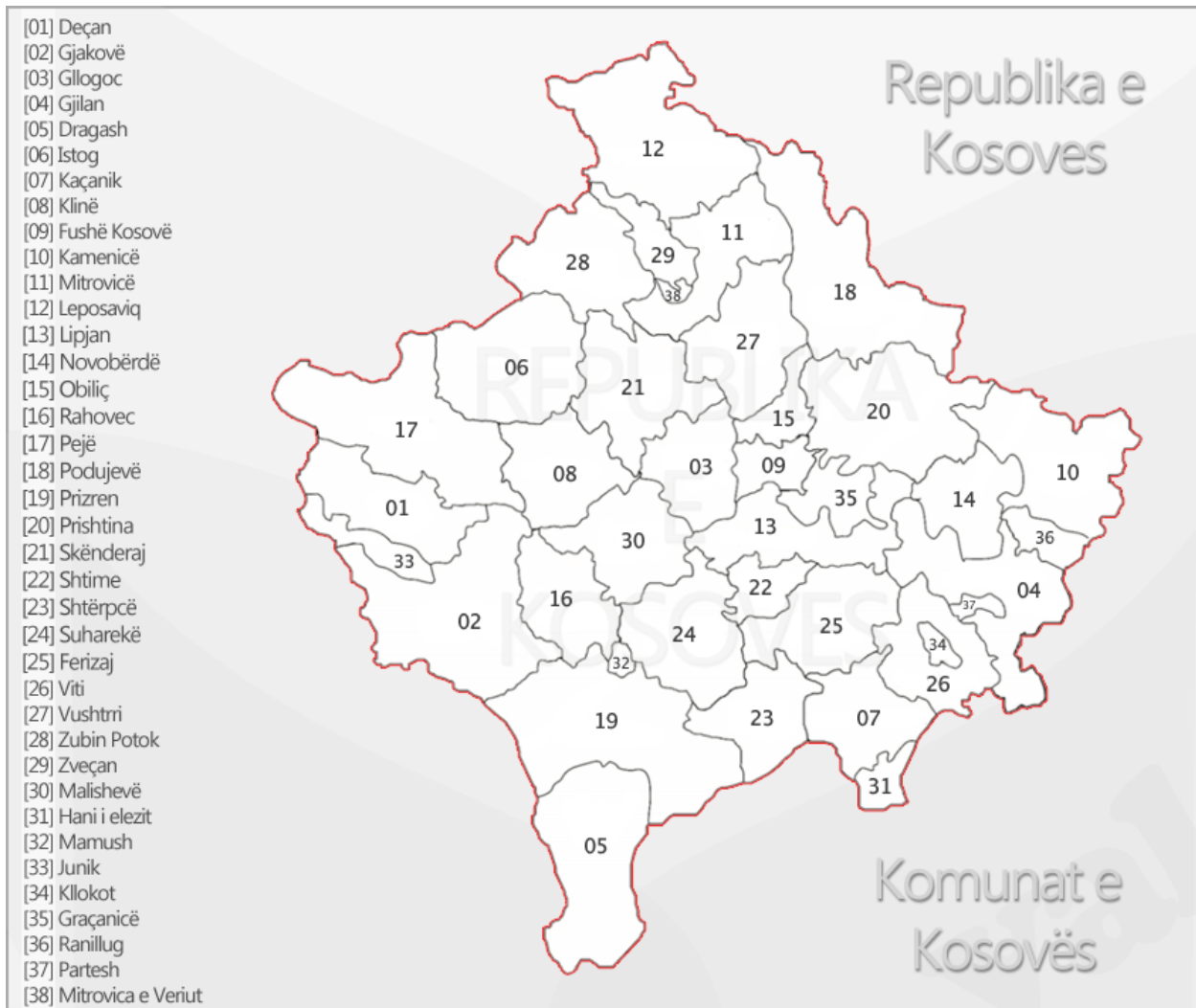
<b>ACRONYMS</b>	<b>iv</b>
<b>MAP OF KOSOVO</b>	<b>vi</b>
<b>EXECUTIVE SUMMARY</b>	<b>I</b>
<b>INTRODUCTION</b>	<b>5</b>
Assessment Purpose	<b>5</b>
Methodology	<b>8</b>
Assessment Team	<b>9</b>
<b>ANALYSIS</b>	<b>11</b>
Steps 1 and 2: The Five DRG Elements and Stakeholder Analysis	<b>11</b>
Step 3: USAID’s Operational/Programmatic Environment	<b>32</b>
<b>RECOMMENDATIONS</b>	<b>37</b>
Step 4: Outlining the Proposed Strategy	<b>37</b>

## ACRONYMS

AAK	Alliance for the Future of Kosovo
ADR	Alternative Dispute Resolution
AJK	Association of Journalists of Kosovo
ATRC	Advocacy Training and Resource Center
BIRN	Balkan Investigative Reporting Network
CEC	Central Elections Commission
CSGD	Center for Social Group Development
CSO	Civil Society Organization
DCHA	Bureau for Democracy, Conflict and Humanitarian Assistance (USAID)
DEMOS	Helvetas Decentralization and Municipal Support
DRG	Democracy, Human Rights and Governance
ERA	European Reform Agenda
EU	European Union
EULEX	European Union Rule of Law Mission
GOK	Government of Kosovo
IKAP	Kosovo Institute for Public Administration
IOBCS	Independent Oversight Board for Civil Service
IFES	International Foundation for Electoral Systems
IMC	Independent Media Commission
IP	Implementing Partner
IR	Intermediate Result
JSSP	Justice System Strengthening Project
KCC	Kosovo Chamber of Commerce
KCSF	Kosovo Civil Society Foundation
KCSS	Kosovar Centre for Security Studies
KFOR	Kosovo Force
KII	Key Informant Interview
KIPA	Kosovo Institute for Public Administration
KJC	Kosovo Judicial Council
KPC	Kosovo Prosecutorial Council
KLA	Kosovo Liberation Army
KSF	Kosovo Security Force
LDK	Lidhja Demokratike e Kosovës (Democratic League of Kosovo)

LEGO	Local Effective Governance (project)
LGBTI	Lesbian, Gay, Bisexual, Transgender, and Intersex
LVV	Vetëvendosje (Self-Determination Movement)
MCC	Millennium Challenge Corporation
MSI	Management Systems International
NAO	National Audit Office
NATO	North Atlantic Treaty Organization
NGO	Nongovernmental Organization
NISMA	Initiative
OECD	Organization for Economic Cooperation and Development
OSCE	Organization for Security and Cooperation in Europe
PAI	Ashkali Party for Integration
PDAK	Ashkali Democratic Party of Kosovo
PDK	Partia Demokratike e Kosovës (Democratic Party of Kosovo)
PLE	Partia Liberale Egjiptiane (Egyptian Liberal Party)
PRB	Procurement Review Body
REAdy	Responsive, Effective, Accountable Governance Project
RFTOP	Request for Task Order Proposals
RTK	Radio Television of Kosovo
SAA	Stabilization and Association Agreement
SAF	Strategic Assessment Framework
ShIK	Informative Service of Kosovo
SIDA	International Development Cooperation Agency
TEAM	Transparent, Effective, and Accountable Municipalities (project)
U.S.	United States of America
UNDP	United Nations Development Program
UN	United Nations
UNMIK	United Nations Mission to Kosovo
USAID	United States Agency for International Development
USG	U.S. Government

## MAP OF KOSOVO



## EXECUTIVE SUMMARY

The United States Agency for International Development (USAID) in Kosovo requested a democracy, human rights and governance (DRG) assessment to provide the Mission with a set of findings, conclusions and recommendations to inform the upcoming Country Development Cooperation Strategy (CDCS) process for 2019–2024. This DRG Assessment was based on USAID’s DRG Strategic Assessment Framework (SAF) and identifies key DRG opportunities and challenges in Kosovo. The report also provides a political economy analysis of reform supporters and opponents (both actors and institutions) within the DRG sector, and offers strategic recommendations that account for Mission priorities, available resources, and the initiatives of other donors and stakeholders.

Substantial and meaningful achievements in Kosovo deserve to be lauded as the country celebrates its 10th year of independence. The Kosovo Constitution is forward-looking and progressive, backed up by separate branches of government, ministries, independent agencies, local governments and a deep legal and regulatory corpus to support official processes. Kosovo has held multiple elections that were widely assessed to be peaceful, competitive, and fair outside of Kosovo Serb-majority municipalities. It also has a vibrant media sector and a sizeable and an active civil society with organizations staffed by professionals. Kosovo’s non-majority communities, including the Kosovo Serbs, have been represented in governing coalitions and at the local government level.

The recent Political Economy Analysis report<sup>1</sup> argues that while Kosovo has made real progress in deepening its democratic development, it faces two difficult transitions: growing public pressure for substantive political reform stemming from dissatisfaction with limited economic opportunities, and international pressure on political elites for better governance practices amid a decline in foreign assistance and attention. The main findings in this DRG Assessment are similar: informal networks of power sap legitimacy from formal political processes and institutions, and the population needs benefits, services and jobs. One thread connects these challenges: elite impunity. Kosovo’s political elites run the informal networks that deform political and economic development, and they face few if any consequences for inaction on critical domestic and international issues. In addition, persistent ethnic divisions contribute significant complexity to Kosovo’s continued development.

There are signs that this *de jure/de facto* gap is beginning to erode the social contract between the political system and citizens. This report argues that the gap is more accurately seen as two gaps, an *accountability* gap and a *governance* gap. Together, these two gaps weaken inclusion in and consensus on the modern democratic state of Kosovo. The accountability gap is most readily seen in the DRG elements of Political Accountability, Rule of Law and Human Rights, and Competition for Power. The governance gap can be seen in Government Responsiveness and Effectiveness and in the Competition of Ideas. Inclusion and Consensus have their own particular dynamics, but the accountability and governance gaps have powerful effects on both elements.

**Political Accountability.** Kosovo has a substantial political accountability deficit. Mismanagement, poor performance, and corruption are not sanctioned, despite comprehensive legislation and information made public by the media, civil society, political parties, and public integrity institutions. The independence of public integrity institutions has been diminished in order to shield political elites. The main challenges to political accountability at the national level are a justice system that is unable to investigate and successfully prosecute political elites; weak oversight of party financing and procurement practices that enables political elites to amass wealth; and a legislature that is poorly equipped to oversee the government and which trades political favors at the expense of public integrity. At the local government level, the mayor’s role in municipal government is powerful and the current system of municipal governance does not provide much in terms of checks and balances on mayoral power.

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<sup>1</sup> *Kosovo Political Economy Analysis: Final Report*, 26 December 2017, [https://pdf.usaid.gov/pdf\\_docs/PA00N87P.pdf](https://pdf.usaid.gov/pdf_docs/PA00N87P.pdf)



**Rule of Law, Human Rights.** The adoption of numerous laws in Kosovo on the functioning of the judiciary and promotion of human rights have marked important steps towards establishing a legal system in compliance with international standards. Human rights are promoted by civil society organizations and national agencies such as the Ombudsperson and the Agency for Gender Equality. However, delays in court proceedings discourage injured parties from seeking redress. Enforcing the rule of law has been Kosovo's greatest challenge, particularly in prosecuting and adjudicating cases involving high-level officials. The Kosovo Judicial Council and Kosovo Prosecutorial Council are interested in safeguarding judicial independence, but their independence is obstructed by political interference. The courts are becoming more efficient in resolving administrative and civil cases; however, they face a large number of unresolved cases due to a lack of sufficient legal professionals, challenges in case management and tracking, delays in correspondence with parties, and other administrative and technical barriers.

The recent integration of prosecution and courts in Mitrovica marks an important step toward establishing the rule of law in northern municipalities. However, following recent turmoil in the northern municipalities, consideration should be given to ensuring security of prosecutors and judges involved in the Kosovo legal system. Kosovo Serb lawyers, prosecutors and judges are familiar with the Serbian legal system, but their familiarity with Kosovo laws and judicial proceedings is less clear. Inconsistencies between Albanian and Serbian versions of laws and the variable quality of translations of case files pose barriers to effective resolution of cases.

**Competition for Power.** Political parties actively compete in elections that are generally considered free and fair, but these parties do not necessarily perform well as organizations *per se* or in constructive governance — one partial exception is Vetëvendosje, which has strong organizational capacity, but has not had national-level governance experience. Party leaders maintain their positions through informal networks, patronage, and wealth. The Central Election Commission (CEC) is composed of representatives of political parties appointed by parliamentary groups represented in the Assembly of Kosovo, and is chaired by a judge of the Supreme Court appointed by the President. The CEC has been praised in the latest observer reports for organizing largely free and fair elections, however it has also been criticized for lack of compliance with political finance regulations. The legislation on political party finance requires parties to submit to the CEC annual finance reports, campaign finance reports, and candidate finance reports, which the CEC is required to publish online. These reports were not audited for a number of years by the Assembly's Committee on Oversight of Public Finance, which the CEC used to justify not publishing the reports. In addition, political parties have a disincentive to support more transparency in a context of problematic political accountability.

**Competition of Ideas.** The competition of ideas in Kosovo happens mostly through electoral campaigns and limited civil society engagement in policy processes. The electoral campaign period is dynamic, and citizens and civil society are effectively engaged during this period in challenging ideas among political parties and candidates. However, once the elections are over, opportunities for direct citizen engagement with elected officials drop significantly. The competition of ideas that occurs in Kosovo's policy processes seems more about agenda setting and limited solution alternatives, and less about policy design, implementation, feedback, and revision. Policy spaces in Kosovo at the local and national levels are very small because officials want to only consult with those they trust. Still, CSOs do engage in partnership activities with local and national-level governments on an ad hoc basis, but citizen input opportunities are limited. Citizens are left with social media platforms and protest voting; the latter has become increasingly difficult for Kosovo Serbs due to Sprska Lista's near-monopoly in politics. The voices of women, youth, persons with disabilities, minorities, and the lesbian, gay, bisexual, transgender, and intersex (LGBTI) community are even more marginalized in policy discussions.

**Government Responsiveness and Effectiveness.** Transition states struggle to be both responsive to and effective for their citizens. Kosovo's efforts are hobbled by capacity deficits, dependence, and competing informal networks. Government coalitions have tended to be unstable: none of the coalitions have lasted a full term. Kosovo has also faced significant post-election deadlocks due to the lack of



consensus among parliamentary parties on urgent political problems. Coordination between ministries is weak, and the Assembly has inadequate capacity to oversee the government. Kosovo still has problems with provision of basic public services, most of which are primarily the responsibility of local governments. The identification and aggregation of citizen interests via CSOs is limited, and government engagement with CSOs on policy issues is also limited.

**Consensus.** Kosovo faces severe challenges to consensus on national identity and fundamental rules of the game. In addition to the long historical legacy of ethnic divisions and lack of self-rule, the country suffers from poor implementation and enforcement of democratic norms, policies, and laws. Despite the political inclusion of Kosovo Serbs in both national and local governance institutions, the two main ethnic communities essentially live in parallel worlds, particularly the northern municipality Kosovo Serbs. However, a growing Kosovar national identity, stimulated by the country's independence, suggests that historic ethnic identities may be losing strength.

**Inclusion.** Kosovo's consensus problems extend to the question of who is part of political, social and economic life; the same pattern of poor implementation with the overlay of ethnic tension is clear. Constitutional and legal requirements dictate representation of non-majority communities in public institutions. However, this representation has not resulted in inclusion of these minority communities in local or national matters. Women and youth, persons with disabilities, and LGBTI people, who make up a large part of society, remain detached from politics. While a 30 percent gender quota system exists for local and national legislatures, women remain largely underrepresented in key political positions; gender discrimination in economic and social life is also quite common. Political parties remain divided along ethnic lines, and over the main issues concerning Kosovo society. The most active CSOs are based mainly, but not exclusively, in Pristina.

This DRG Assessment identifies challenges to accountability and governance that affect inclusion in and consensus on the modern democratic state of Kosovo. Foremost is weak political accountability, which has an effect on all of the other DRG elements, as well as problematic enforcement of the rule of law and protection of human rights, and a dysfunctional competition for power. The accountability gap can be seen in myriad national-level institutions, municipalities, and even political parties and CSOs. The public perception of elite impunity stems in large part from this gap, and is arguably driving citizen attitudes and behavior in directions that are less supportive of the current institutional framework of the modern state of Kosovo. At the same time, a distinct but related governance gap — poor government performance, lack of responsiveness and inclusion, and opaque policymaking processes — occurs at all levels and directly affects the lives of citizens in negative ways that reinforce perceptions of elite disconnect.

## MOVING FORWARD

A large number of international actors have been engaged in a wide variety of development assistance areas. The U.S. has been the largest bilateral donor, particularly in support of government and civil society. USAID's 2014–2019 CDCS identifies rule of law and governance as key areas for strengthening Kosovo's democratic development, and the agency is working at both the "supply" level (national and local government) and the "demand" level (civil society, non-majority communities). Significant progress has been made over the last ten years, and most donors are shifting to new phases of technical assistance in their development areas.

A scan of intervention areas shows that multiple donors are working with key judicial sector actors, northern municipalities, and public integrity actors like key Assembly committees and the Anti-Corruption Agency. That same review, however, shows that municipal assemblies (as accountability actors), local CSOs (as policy entrepreneurs), and local courts (as the main interaction point for citizens) receive inadequate attention from donors. Even the Assembly, which has benefitted from a

number of donor programs to strengthen specific committees, build policy research capacity, and orient new Deputies, is in need of specific attention to the development of the institution as an institution.

In this report, the assessment team offers three meta-recommendations for the Mission to consider as it develops its new strategy for the CDCS. First, USAID should plan ahead for shifts in donor dominance. Kosovo's progress toward eventual European Union (EU) accession will bring more funding from the EU during a period when U.S. Government (USG) funding for technical assistance will be decreasing. USAID's strategy should account for potential complementarity or continuity.

Second, USAID should recognize that the EU and the USG have different approaches to democratic development. U.S. assistance programs focus more on the state-society relationship compared to the EU or European donor agencies. The EU and its member states tend to focus on building formal state institutions and processes as a means for the state to meet the needs of citizens. The USG approach, however, tends to focus on the state-society relationship as manifested in formal and informal state institutions and processes, as a means for ensuring citizen input on decisions that affect their lives. In practice, this means that the USG is often the main or dominant voice in support of civil society development for policy advocacy, spaces for citizen input, vigorous independent journalism and transparent and competitive political parties. This is USAID's comparative advantage and can be seen in almost all of the Mission's portfolio. The assessment team's analysis shows that the problematic elements in Kosovo are political accountability, government responsiveness and effectiveness, and rule of law; in each case, the missing aspect in the institutions and processes is the state-society relationship.

Third, USAID should assume that recent political turbulence will have lasting effects. The political crises that have occurred over the last two to three years are likely to have effects over the entire period of the next CDCS. The Kosovo party system is in a period of potentially far-reaching transition, even though specific political maneuverings have more immediate political aims.

As USAID begins its strategic planning process, it should consider how to help Kosovo as it struggles with the interplay of accountability and governance gaps. Both gaps are manifested in multiple ways across the national and municipal levels of government and involve societal actors. The USG and other international community actors can play roles in closing both gaps:

1. **Strengthen accountability institutions and processes to channel elite behavior in system-supportive directions.** Illustrative activities include technical support to strengthen the Assembly of Kosovo as an institution, support the work of public integrity institutions, and improve the accountability of municipal officials.
2. **Boost the policymaking and internal governance capacities of the judicial sector.** Illustrative activities include continued technical assistance to improve the functioning of courts throughout Kosovo, and to address judicial sector policy and performance challenges that limit independence.
3. **Improve the performance and reliability of municipal governments in tandem with more effective coordination across ministries.** Illustrative activities include technical assistance to strengthen public administration capacity, improve the budget process, and improve social service delivery through outsourcing to better-performing and cost-effective CSOs.
4. **Engage citizens, CSOs, and the media in policymaking at all levels.** Illustrative activities include technical assistance to CSOs on providing social services for municipal governments, continued technical assistance for national-level policy advocacy, continued political party development, training on societal accountability strategies, and promoting civil society sector growth.

## INTRODUCTION

### ASSESSMENT PURPOSE

USAID/Kosovo requested a democracy, human rights and governance (DRG) assessment to provide the Mission with a set of findings, conclusions and recommendations to inform the upcoming Country Development Cooperation Strategy (CDCS) process for 2019-2024. This DRG Assessment is based on USAID's DRG Strategic Assessment Framework (SAF). It identifies key DRG opportunities and challenges in Kosovo, provides a political economy analysis of reform supporters and opponents (both actors and institutions) within the DRG sector, and offers strategic recommendations that account for priorities, resources, and initiatives of other donors and stakeholders.

The assignment involved two interconnected tasks. First, the assessment portion of the task is intended to define the core DRG problem(s) in the country, identify the interests and resources of key actors and institutions that could promote or inhibit progress, and consider the U.S. Government's (USG's) operational and programmatic environment in Kosovo. This portion also examines positive trends in opening policy space in Kosovo to foster democratic development. The research and analysis includes coverage of issues related to political structures, such as ethnic relations; informal networks that influence policy processes at all levels; national-subnational relations; societal engagement in political processes; and the role of public integrity agencies. Second, the strategy development segment is intended to result in clear and actionable strategic and programmatic recommendations to address the core DRG problem(s) identified in the assessment portion.

### ASSESSMENT CONTEXT

As Kosovo celebrates its tenth year of independence, there are substantial and meaningful achievements to be lauded. The modern state of Kosovo emerged from the aegis of the United Nations Mission to Kosovo (UNMIK) and a period of supervised independence. It has since moved to consolidate democratic institutions, processes and attitudes.

The Kosovo Constitution is forward-looking and progressive, full of explicit guarantees of democratic freedoms and equality for all. Backing up these guarantees are separation of powers between three branches of the state; government/executive, judiciary and legislative, or in other words: ministries, independent agencies, local governments, and a deep legal and regulatory corpus to support official processes.

Kosovo has held multiple elections dating back to the UNMIK period, including the 2017 national and local elections that were widely assessed to be peaceful, competitive and fair. The political party system has had a core set of parties that contest for power, accompanied by a host of smaller parties. There is a vibrant media sector that boasts both traditional and new media in multiple languages. A sizeable and active civil society sector is staffed by professionals who have benefitted from donor training programs. Kosovo's non-majority communities, including the Kosovo Serbs, have been represented in governing coalitions and in local governance.

The recent Political Economy Analysis report argues that while Kosovo has made real progress in deepening its democratic development, it faces two difficult transitions: growing public pressure for substantive political reform stemming from dissatisfaction with limited economic opportunities, and international pressure on political elites for better governance practices amid a decline in foreign assistance and attention.

**Consensus.** Kosovo faces severe challenges to achieving consensus on national identity and fundamental rules of the game. In addition to the long historical legacy of ethnic divisions and lack of self-rule, the country suffers from poor implementation and enforcement of democratic norms, policies and laws.

Despite the political inclusion of Kosovo Serbs in both national and local governance institutions, ethnic divisions continue to be significant. Cooperation at the formal political level exists, but the two main ethnic communities essentially live in parallel worlds, particularly the northern municipality Kosovo Serbs. However, a growing Kosovar national identity, stimulated by the country's independence, suggests that historic ethnic identities may be losing strength. At the same time, international actors and the broader international context have had a mixed effect on Kosovo's transition to an established democracy.

**Inclusion.** Kosovo's consensus problems extend to the question of who is part of the political, social and economic life; the same pattern of poor implementation with an overlay of national identity challenges exist. Constitutional and legal requirements dictate representation of non-majority communities in public institutions. However, representation in institutions has not transferred into inclusion of these communities in local or national matters. Women and youth, who make up a large part of society, remain detached from politics. While a 30 percent gender quota system exists for local and national legislatures, women remain largely underrepresented in key political positions.

Political parties remain divided along ethnic lines, even though, constitutionally, Kosovo is a multi-ethnic society. Political parties are essentially a formal expression of informal networks of power, useful for acquiring authority and then dispensing patronage. Eighteen years of foreign assistance have produced a capable core group of civil society organizations (CSOs), based mainly in Pristina and dependent on donor funding. CSO policy work tends to be reactive and based on donor priorities. Due to patronage networks and opaque decision-making processes, public input remains generally low at the local level and even more so nationally.

**Competition and Political Accountability.** Political parties have tended to be personalistic rather than programmatic, drawing support from informal networks. This is exacerbated by Kosovo's single district proportional representation. Other negative aspects of the electoral process are the abuse of state resources and non-transparent political party financing. Consequently, no genuine mechanism oversees expenditures, which enables clientelism.

Accountability can often be difficult in parliamentary systems, as the executive and legislative branches are fused by definition. In Kosovo, the legislature selects the president, although initiatives have sought to make it a directly elected position. Still to be addressed more thoroughly is the accountability of the judicial branch and the independence of public integrity agencies. The Assembly of Kosovo has remained weak in overseeing the work and performance of the government. Problems of political accountability in Kosovo are tied to broader problems of law enforcement. Little has been done to prosecute and adjudicate corruption-related crimes despite publicly available information about corruption by senior government officials, years of judicial sector capacity building, and the existence of public integrity institutions.

The Kosovo Constitution guarantees freedom of speech and pluralism of the media. The slow pace of trials and the potential of politicized justice provide little protection to journalists. The distorted growth of the CSO sector and closed policymaking processes limit the uptake of citizens' interests and the competition of ideas.

**Rule of Law, Human Rights.** Respect for the rule of law is enshrined as a fundamental value in the constitutional and legal order of Kosovo. Despite the well-established legal framework, enforcing the rule of law has been Kosovo's greatest challenge. The law does not apply equally to all citizens; in

particular those at the highest political and economic levels are treated differently. The judicial system faces significant technical and administrative difficulties as it has been consistently underfunded and lacks the staff capacities and resources to resolve cases in an effective and timely manner.

Citizens generally enjoy human rights, though human rights violations have occurred frequently. Non-majority communities can and do turn to the local representatives of the Ombudsperson for redress of human rights violations; Kosovo Serbs, especially in the northern municipalities, have less access to the Kosovo judicial system, however. Judicial authorities have not been effective in adjudicating some cases of violence and assault against women, as well as against LGBTI people. Women often experience great difficulty exercising their property ownership and inheritance rights, and are underrepresented in public positions and employment generally. People with disabilities experience difficulty accessing essential services, such as those related to work, health and education.

**Government Responsiveness and Effectiveness.** Transition states struggle to be both responsive to and effective for their citizens. Kosovo's attempts to be more responsive and effective are hobbled by capacity deficits, dependence and competing informal networks. Government coalitions have tended to be unstable; none of the coalitions have lasted a full term. Kosovo has also faced significant post-election deadlocks due to the lack of consensus among parliamentary parties on urgent political problems.

The Assembly of Kosovo does not have capacity to exercise legal and technical at the level of the Government of Kosovo to amend legislation or draft new legislative bills. It is even weaker in overseeing the government's legislative implementation and the activities of independent agencies. The coordination of government ministries remains weak, further reducing the government's effectiveness in tackling overarching issues.

Kosovo still has problems with provision of basic public services, most of which are primarily the responsibility of local governments but municipal institutions remain unable to provide satisfactory service delivery. Employment in civil service and appointment to government agencies occur mainly on the basis of political patronage and clientelistic ties rather than professional qualifications. Public procurement remains weak and is prone to corruption.

## ASSESSMENT APPROACH

This assessment is based on USAID's DRG SAF (revised in October 2014), along with the accompanying Guidance to Assessment Teams. The seven assessment questions detailed in the Request for Task Order Proposal (RFTOP) will be answered in the normal course of applying the SAF:

1. What are the key problems and opportunities in each of the five elements of the USAID DRG Framework—consensus; inclusion; competition and political accountability; rule of law and human rights; and government responsiveness and effectiveness? How are these problems interconnected?
2. In particular, what are the key problems and opportunities in the following areas specifically:
  - a. Rule of law
  - b. Parliament and political parties, including political party financing
  - c. Civil society
  - d. Media
  - e. Human rights institutions
3. Given the SAF, what are the root causes of the problems?

4. Given the problems identified, what and how are the key actors and institutions (including formal and informal norms, relationships and rules of the game) influencing those problems, or providing solutions/opportunities? What are the key opponents/proponents of reform?
5. Which of the problems are the most amenable to change in the next five years and why? Of those areas with the greatest opportunities, where could USG assistance be most effective?
6. What is USAID/Kosovo's comparative advantage in supporting the DRG sector, considering USG priorities and resources, and other stakeholders working in this sector?
7. Considering the areas in which USAID/Kosovo works currently, what DRG-related areas have the potential to move past USAID assistance within the next five years (if any), and what would be an exit strategy in those areas?

Questions 1-4 are answered through a combination of the analysis in Steps 1 and 2 and Annex B. Questions 5-7 are answered in the analyses found in Step 3 and Step 4.

The team began from the perspective that the fundamental DRG issue in Kosovo is the commonly found gap between words and deeds, i.e., between the formal democratic processes and institutions on one hand and informal non-democratic practices on the other. This gap is manifested in all actors and institutions at all levels in Kosovo. The central premise of the team's approach to this exercise was that adherence to the broader context of the "rules of the game" are critical for improvement in every DRG element. Note that the team disaggregated the DRG element of "Competition and Political Accountability" into three separate discussions: Political Accountability, Competition for Power, and Competition of Ideas.

## METHODOLOGY

The data analysis was based on the SAF and entailed four steps:

**Step 1:** The team identified the key DRG problem(s) by analyzing the country context, state institutions and policy directions of the country. The analysis addressed five elements of the political system in whole or in part: inclusion; administrative effectiveness and accountability; consensus; rule of law; and competition and political accountability. This analysis resulted in a concise yet nuanced statement of the central problem(s) impacting democratic governance in Kosovo. The team also prioritized the identified problems to guide resource allocation or, when the primary problem could not be productively addressed, to clarify second-best options.

**Step 2:** The assessment team examined the role of key actors together with the institutions that structure their incentives, focusing on actors that are most relevant to the DRG problem(s) detailed in Step 1. The team identified proponents and opponents of specific reforms, along with the resources they can mobilize, then used this political economy analysis of the stakeholders (and the recent Political Economy Analysis report) to evaluate the feasibility of promoting selected aspects of democratic governance. Step 2 concluded with the identification of opportunities, or lack thereof, for supporting actors and institutions to address the key DRG problem(s).

**Step 3:** The assessment team reviewed U.S. foreign policy and development interests and priorities in Kosovo, as well as relevant USAID assistance programs and programming gaps, resources and comparative strengths and weaknesses, with a focus on the current operating environment. The review considered, in particular, how USG programming addresses the current DRG context, especially in ethnic relations; informal networks and national-subnational relations; societal engagement; and the role of public integrity agencies. The team also took into account practical constraints on the recipient side.



This information served as a filter to remove strategic or programmatic options that fall outside the focus or capabilities of USAID/Kosovo, and highlighted those that are a good fit for the Mission.

**Step 4:** On the basis of the analysis in steps 1-3, the team developed recommendations for potential strategy and programming development. The recommendations include a hierarchy of DRG objectives, possible approaches and illustrative activities, along with a development hypothesis and set of assumptions that explain how the recommended course addresses the identified governance problems.

The DRG SAF is a structured inquiry designed to provide both latitude and limits to assessment exercises. The four steps in the SAF are not intended to be sequential or linear; rather, the first three steps are primarily analytical filters. Step 1, identifying the key DRG problems, began before and continued into fieldwork, guiding the depth and focus of the team's data collection that led to the Step 2 analysis of stakeholders. Steps 1 and 2 tend to be iterative, producing ever-deeper knowledge of problems and the political economy of reform. Put through the filter of USAID's operational and programmatic environment in Step 3, the analyses from Steps 1 and 2 generated preferential strategies and programming considerations. Based on this analysis, the team produced a set of actionable strategic and programmatic recommendations in Step 4 to inform the Mission's programmatic strategies.

As noted previously, the analysis that follows does not cover the entire process of iterations. The team applied the four basic steps of the SAF, but adapted them to focus more on the stakeholder analysis in the second step after discussions with USAID staff. The resulting analytical narrative of this report is intended to focus the reader's attention on support for or opposition to potential opportunities for reform, rather than providing a lot of dry, repetitive text; the details of the panoply of actors and institutions are provided in Annex B for reference.

The assessment team collected data primarily through a review of relevant literature and USG and implementing partner (IP) documents, and key informant interviews. The team identified key topics for particular attention in the desk review: informal networks and integrity processes; municipal assemblies as political actors; potential challenges to parties and the party system; and subsets of the civil society sector. We then developed semi-structured interview protocols tailored for the full range of DRG topics and types of key informants. The team conducted 67 interviews involving 85 key informants (28 female, 57 male) in Pristina, Prizren, Gjakova, Viti, Gracanica, Gjilan, Kamenica, South Mitrovica, North Mitrovica and Zvecan, in addition to meetings with USAID/Kosovo staff.

## **ASSESSMENT TEAM**

**Dr. Andrew Green, team lead,** had responsibility for adapting the DRG Strategic Assessment Framework to the Kosovo context in collaboration with team members and Management Systems International (MSI) technical experts; guiding the implementation of the assessment; providing senior expertise for the team's analysis of data; and drafting and finalizing the assessment report. Dr. Green is a deeply experienced DRG professional with extensive involvement in USAID strategic assessment and learning processes. He has particular expertise in civil society, election administration, political party, parliamentary and rule of law issues. Dr. Green has been a DRG assessment team lead in Vietnam, Bangladesh (for Social Impact), Georgia and Namibia, and has taught the DRG Strategic Assessment Framework to DRG officers and Georgetown University master of democracy and governance students. He has developed subsectoral assessment tools and led or overseen dozens of evaluations around the world.

The assessment team included three more team members selected to provide a range of DRG subsector expertise. All three had responsibility for collaborating with the team lead and MSI technical experts to adapt the DRG Strategic Assessment Framework to the Kosovo context, implement the



assessment under guidance of the team lead, actively participate in data analysis, and contribute to drafting and finalizing the assessment report.

**Jetmir Bakija, team member,** is an expert in governance issues at all levels. He has worked on donor-funded projects in Kosovo, Nepal and Afghanistan that supported citizen inclusion in local government, national government and parliaments, often incorporating social media and e-government solutions. Mr. Bakija also has extensive experience with political parties and election administration systems.

**Dardan Berisha, team member,** is a legal systems expert with extensive experience in rule of law and democratization projects. He has worked for a variety of Kosovo and international organizations, including the International Foundation for Electoral Systems (IFES), United Nations Development Programme (UNDP), and EU-funded projects on issues of transitional justice, human rights, constitutional and electoral reform, youth engagement, and EU integration.

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## ANALYSIS

Severe internal problems hamper democratic development in the young state of Kosovo. Informal networks of power sap legitimacy from formal political processes and institutions, and the population needs benefits, services and jobs. One thread connects all three of these challenges: elite impunity. Kosovo's political elites run the informal networks that deform political and economic development, and face few, if any, consequences for inaction on critical domestic and international issues. In addition, persistent ethnic divisions contribute significant complexity to Kosovo's continued development.

A gap exists between what political elites should do (*de jure*) and what they actually do (*de facto*), as seen in patronage, politicized public administration, corruption, and the lack of high-level prosecutions. There are signs that this *de jure/de facto* gap is beginning to erode the social contract between the political system and citizens. This analysis argues that the gap is more accurately seen as two gaps, an *accountability* gap and a *governance* gap. Together, these two gaps weaken inclusion and consensus in the modern democratic state in Kosovo.

### STEPS 1 AND 2: THE FIVE DRG ELEMENTS AND STAKEHOLDER ANALYSIS

The accountability gap is most readily seen in the DRG elements of Political Accountability, Rule of Law and Human Rights and Competition for Power. The governance gap can be seen in Government Responsiveness and Effectiveness and Competition of Ideas. Inclusion and Consensus have their own particularly dynamics, but the accountability and governance gaps have powerful effects on both elements.

### POLITICAL ACCOUNTABILITY

Kosovo has seen considerable progress in building institutions in the past decade of independence and, prior to that, during almost a decade of administration by the United Nations Mission to Kosovo (UNMIK). The Assembly of Kosovo and the executive branch, with support from the international community, drafted and ratified sound and modern legislation regulating various spheres of life since the new constitution in 2008. The Assembly has come to be one of the most transparent institutions over the years, where draft legislation under review is made public at an early stage. Government documents and reports are openly discussed and televised and electronic voting is regularly practiced.<sup>2</sup> The media and civil society, which are so important to democracy and ensuring good governance, are quite vibrant in political affairs, and the society at large is politically informed. Kosovo carried out a considerably large decentralization process to strengthen its local governments and to hand more self-government to its Kosovo Serb community. The consolidated institutions and their ever-increasing transparency need to be utilized to generate more political accountability.

There has been a positive shift in voters' attitudes as they are increasingly choosing parties and candidates on the basis of performance and formal political platform at the expense of patronage and personal ties. Frequent changes in leadership at the municipal level, and the outcome of the 2017 general elections, indicate that voters are becoming more assertive and are demanding political accountability and government performance. Building on this momentum by supporting the rise of new and accountable leaders will improve political accountability and government performance in the future.

Our assessment of the political process highlights the fact that although oversight institutions of a modern democracy exist and the media and civil society are moderately free, Kosovo still faces a

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<sup>2</sup> Refer to Annex B: Detailed Discussion of Actors/Institutions for more on the Assembly of Kosovo, its progress over the years and its shortcomings.

considerable deficit in political accountability. To a large extent, mismanagement, poor performance and corruption are not sanctioned, even though comprehensive legislation exists and information is made public by the media, civil society, political parties and integrity institutions. The independence of public institutions is still weak due to politicization of appointments of heads of institutions by the Kosovar Assembly. To some extent, the independence of several institutions has diminished over the last few years. Local journalists assert that the independence of public and state institutions is more threatened now than when Kosovo was under international administration. For example, public television<sup>3</sup> and police units<sup>4</sup> were explicitly established to follow international best practices, but are now seen as government tools. Heads of independent and integrity institutions and their board members who go through the vetting and voting process in the Assembly must show their loyalty to the parties in power before they can obtain the job. This has affected the independence of such institutions.

The main challenges in political accountability at the national level are: (1) a justice system that is still unable to extend to political elites, primarily due to political interference,<sup>5</sup> but also due to inadequate protection of prosecutors and a poor witness protection system; (2) weak oversight of party financing and procurement practices that enables political parties and elites to amass wealth; and (3) a legislature that is poorly equipped to oversee the executive branch and has been unable to resist non-political appointments of heads of public institutions and/or ensure their independence.

Prosecutions have not occurred in many cases where there have been accusations of high-level officials with suspicious declared assets, ties to privatization deals, contract kickbacks for campaign support, and corruption in building permits, as well as interceptions of phone conversations revealing political interference in the appointment of board members of agencies and of prosecutors. Even in a few cases where officials have been prosecuted for corruption, war crimes, or other crimes, the charges have been dropped. There is general agreement even within the political parties that party finance regulations are not respected, and that there is no oversight of these finances. The Central Election Commission (CEC), tasked with oversight of political party finance and other party regulatory issues, is comprised of representatives of political parties who are not able to put the broader interest of political party integrity before the interests of their own party. This has presented an obstacle to transparency and accountability of political financing. The Assembly of Kosovo, while the most transparent institution, still lacks human and analytical capacities, and the budget,<sup>6</sup> to perform its oversight duties well. It is often seen as a rubber stamp for government decisions and legislation, and as weak in its oversight of implementation and in keeping government in check.

The mayor's role in municipal government has become too powerful, with checks and balances weakened. However, political responsibility and responsiveness have been strengthened by directly

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<sup>3</sup> In 2015, twelve Radio Television of Kosovo (RTK) editors publicly protested against two newly appointed editors-in-chief who exercised pressure and censorship. The Independent Union of RTK supported the protesting editors, after which RTK fired the president and vice-president of the Union. Later they were reinstated. A report by the organization Çohu elaborates on the declining independence of RTK and confirms the statements of the interviewees of our assessment (see <https://goo.gl/kICkUd>).

<sup>4</sup> Surveys by the Kosovar Centre for Security Studies (KCSS) on police integrity (2016) found that close to half of respondents believe that the Kosovo Police serve either the interests of the government, political parties, Kosovo Police management or clan interests, before they serve citizen's interests (see <https://goo.gl/QPz6CF>).

<sup>5</sup> The low rates of prosecution of high-level cases in 2017 are laid out in a report from the Kosovo Law Institute titled: "Fight, Prosecution or Amnesty in the Name of the Fight Against Corruption (see <https://goo.gl/DGYW4o>).

<sup>6</sup> The budget of the Assembly of Kosovo has hardly increased over the years, it remains less than the budgets for the Office of the Government and for public television. Members of Parliament do not have any staff or offices, which presents a challenge for their work; parliamentary committees have one administrative and one legal staff, whereas parliamentary groups have administrative staff.

electing mayors. Nearly all municipal financial and administrative resources are located in the mayor's office. Municipal assemblies are too large to be effective, and comprise poorly incentivized representatives with no administrative resources who depend on the mayor's office for information. Current legislation makes it difficult for a Municipal Assembly to challenge the mayor's budget; in the event the budget is refused, the Municipal Assembly faces dissolution and the mayor bears no consequences.<sup>7</sup>

There is strong and healthy oversight of local government from the central level through the Ministry of Local Government Administration. Local government regulations and decisions are reviewed by this ministry to ensure they are within the legal bounds of local government legislation. Over the years, this ministry has stimulated political accountability by monitoring the performance of local governments and incentivizing well performing municipal governments with grants.

Moreover, while local governments have strengthened their negotiating position with the central government through the Association of Kosovo Municipalities, municipal officials at times feel bypassed by central government legislation and decisions that affect them. Municipal governments still have some way to go before they are accountable for the decisions that affect their budgets and service delivery; the Association of Kosovo Municipalities is a good institution to strengthen to achieve this goal.

To improve the accountability gap, there is a clear need to shield prosecutors, investigators, and the courts from political interference; bolster prosecutorial capacities; streamline management; regulate party finances; strengthen the Assembly's oversight role; and better link the Assembly with integrity institutions. The Assembly of Kosovo has developed parliamentary practices through its committees and, if properly equipped and appropriately linked with integrity institutions and think tanks, it can deliver more political and financial accountability. Legislation review has become less urgent, and therefore the oversight role of the Assembly, through its committees, needs to be stepped up (after the Assembly fulfills its basic constitutional obligations). This is already starting to take place as committees have been proactively calling ministers, heads of agencies and other actors in the dialogue to report on their performance, and the Assembly has begun to use more of its power to call interpellation of prime ministers. The creation of the Committee on Public Accounts, and donor investment in strengthening it, has transformed the committee into a potentially important institution for financial accountability. However, it needs to be better linked with the Auditor General and better equipped to utilize the latter's audit findings. Another important integrity institution that has developed over the years is the Anti-Corruption Agency, which is tasked with identifying and flagging potential conflicts of interest, collecting declarations of assets by public officials, and assessing potential cases of corruption. The Assembly and prosecutors should be more attentive to the work of this institution in cultivating political accountability among political elites. Additionally, public integrity institutions such as the Auditor General and Anti-Corruption Agency need more powers to sanction and investigate mismanagement and corruption as prosecution is over-dependent on a police force widely seen as tied to certain political elites.

While parliamentary systems do feature close connections between the executive and legislative branches, the connections in Kosovo run through the top leadership of ruling parties, not the relevant institutions. The current distribution of political power within and between parties must change before the Assembly can change; this could occur through party system volatility (e.g., from party splits) or through Specialist Chamber indictments. Local governance needs to be reformed to ensure that mayors are politically accountable for municipal budgets. The role of civil society in building public pressure for

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<sup>7</sup> This is a flaw resulting from the reforms of local elections in 2007 in which mayors were no longer to be drawn from the municipal assembly but elected directly. Before 2007, if a budget did not pass by a certain date set by the Ministry of Finance, the municipal assembly — including the mayor — could be dissolved.

accountability should be strengthened with more coordinated and long-term campaigns that are better linked to media and investigative journalism. The international donor community has leverage to condition its aid and to use diplomatic means with the political elites in government to demand actions to improve the accountability gap.

Strong local support to improve accountability can be found among certain political parties or pockets within parties, namely, individuals that represent “emerging leaders” in the Democratic League of Kosovo (LDK), small parties, and the moderate political factions within Vetëvendosje. The larger public is frustrated and eager to change the current culture of governance; they are willing to vote for change if a party or coalition successfully presents a viable alternative. As a party, Vetëvendosje is a proponent of accountability among the elite, a strong Assembly as the authentic voice of citizens, independence of prosecutors, and strong integrity institutions; it has benefited electorally in the past because of this, but has little to show in terms of action other than controversial obstruction tactics in the plenary hall of the Assembly. But its use of non-democratic means to achieve these goals risks legitimizing the elite they seek to hold accountable. The faction of Vetëvendosje that broke away in March 2018 could have been a more suitable partner to work with on improving accountability; its departure to form a new party eliminates that possibility for the time being. New political parties also strongly support improvements in financial accountability of political parties. The head of a new (but small) political party said that financing of parties is a big issue, and no one obeys the regulations because there are great limits and no oversight. Meanwhile, “emerging leaders” in LDK, which has been gaining momentum as of the last election, stand the best chance of growing stronger electorally.

The political forces mentioned above — the “emerging leaders” of the Democratic League of Kosovo (LDK), small parties, and the moderate political factions within Vetëvendosje — are also great proponents of judicial independence, internal party democracy, powerful public integrity institutions, and a strong Assembly of Kosovo. The Assembly could be an ally for improving political accountability, despite its current weakness vis-à-vis the executive branch, but not all Assembly deputies share the same outlook of the political future. Some deputies from both the ruling coalition and opposition parties interpret the results of the last two elections as voter exasperation with elite impunity, and view the Assembly as an essential part of a modern democratic state to check the executive branch. The generational split within parties over access to party leadership positions and influence over strategic direction is roughly mirrored in the Assembly in terms of its institutional role. The opposition chair of the Committee on Budget Finance acknowledged inadequate action on public integrity institutions’ reports and requests, and recognizes that this inaction fuels citizen dissatisfaction. To the extent that political accountability becomes a top public issue mobilizing citizens and generating media coverage, deputies who have neutral or unformed positions on the Assembly’s role vis-à-vis other branches could be persuaded to support political accountability — for at least politically instrumental reasons.

Private media and civil society can be good partners in these efforts as they expose and disseminate information to build public pressure, but they are not financially able to carry out focused, longer-term campaigns. Civil society work on good governance is almost entirely based on donor funding and has little institutional support. This has turned many good and capable organizations into project-based entities in order to survive, while the competition for funding based on strict donor guidelines has presented a barrier to coordinated efforts for long-term campaigns focused on accountability. Many CSOs in Pristina have been built from the top down and lack constituencies, although coordination with CSOs outside Pristina has the potential to rally the wider public in demanding political accountability. There have been cases of organic ad-hoc networks of CSOs rallying for a common purpose, usually in reaction to a negative policy or to denounce human rights violations and the bad behavior of politicians. Donors could stimulate this through their funding. The media does support civil society efforts through

coverage and providing space to demand accountability in political debates. There is an opportunity for intensive collaboration between the two to build public pressure for political accountability.<sup>8</sup>

In the past, the Constitutional Court has reinstated some political accountability. It has driven two presidents from office for constitutional breaches and issued constitutional decisions that have contradicted political elites in government. This body, if it maintains its independence and develops its professional capacities, can be utilized for greater political accountability at the highest levels on constitutional grounds. However, the Constitutional Court has not been used much to litigate cases for greater political accountability. Since the court depends on external submission or referral of cases and cannot proactively begin proceedings on a case, other actors must challenge political elites to use the Constitutional Court as an institution for enhancing political accountability. Thus, there is an opportunity to stimulate litigation in this institution for greater political accountability.

The international community has a good reputation and has leverage with political elites in Kosovo.<sup>9</sup> The EU and some of its member states have played key roles in strengthening political processes and state institutions, including public integrity institutions. Sweden, for example, helped establish the Office of the Auditor General and, until recently, the position of Auditor General was filled by a Swedish Auditor. For the EU states, a stable Kosovo with an elaborated set of modern democratic institutions is a prerequisite for EU accession, and they will use the funding and diplomatic leverage to push for improvements. Hopes that the EU could be effective in pushing for needed reforms, however, have been tainted by the disappointing European Union Rule of Law Mission (EULEX) experience,<sup>10</sup> and Kosovo politicians and citizens alike recognize that the start of the EU accession process is still a long way off. The U.S. is able to rely on a large reservoir of goodwill among the people of Kosovo for support of technical assistance and diplomatic pronouncements, but the U.S. is often more focused than the EU on the state-society relationship. This is a subtle but important distinction that pushes U.S. diplomatic and development actions in different directions compared to most European donors.

Some support for improving political accountability in Kosovo (by ensuring the independence of prosecutors, stronger integrity institutions and public pressure for change through media and civil society) can be found in groups within the justice and public administration sectors, and in public integrity institutions. Most judges and prosecutors say they want to do their job and work hard to bring justice, even in high-level corruption cases. However, their efforts get blocked at the higher level and they do not have the necessary protection and administrative support to pursue these cases. Prosecutors are the most in need of support, in the form of resources and staff and encouragement from management, in the form of protection from political retaliation, to prosecute cases that hold political elites accountable before the law. In addition, because prosecution depends so heavily on police investigation, integrity institutions, such as the Anti-Corruption Agency, would be much more effective if they had more political independence, and greater powers and resources to investigate cases of corruption and conflict of interest.

The institutions involved in public administration, though partly politicized, have professional and independent staff who are frustrated that their work is undermined by patronage and lack of political

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<sup>8</sup> Our assessment found that this is already happening in some cases but more structured, long-term collaboration could be stimulated.

<sup>9</sup> The exception is Vetëvendosje, whose members see the international community as supporting the political elite for the sake of stability and reject the international community's guardianship of Kosovo's controversial constitutional provisions and the insistence on the dialogue with Serbia.

<sup>10</sup> A public perception poll by UNDP shows an increase in the proportion of citizens who think that there is prevalent corruption within EULEX; the rate jumped from 22.9% to 38.3% at one point. UNDP Public Pulse XIII, available at <https://goo.gl/yzBX3W>.



accountability. Pockets of individuals within public administration institutions, including some permanent secretaries and mid-level civil servants, say their institutions are portrayed negatively because political elites who lead state institutions and instill patronage are perceived poorly.

The Auditor General, who consistently finds mismanagement and irregularities in public finances, is interested in gaining more powers so the office can sanction parties and government agencies, actions which are often neglected.<sup>11</sup> In 2016, the Auditor General made 241 auditing recommendations for government ministries; 25 percent of which were not implemented, and 31 percent only partly implemented. Similarly, of the 606 auditing recommendations made to municipal institutions, 40 percent were not implemented, while 36 percent were only partly implemented. The Anti-Corruption Agency, which gathers public officials' declarations of assets and decides on potential conflict of interest cases, would be much more effective if it had more investigative powers and greater cooperation with the Kosovo prosecutor's management team. The Procurement Review Body is key to ensuring justice and preventing corruption in tenders, but political interference presents a problem.

Certain institutions and actors strongly oppose change in the dynamics of the current system of checks and balances. Kosovo's governments have tended to be a conglomerate of political parties' leaders, and they select people for important offices in a coalition based on opaque favor-trading at the individual level. Past governments have been run by political elites whose close party associates have benefited from corruption in procurement and privatization, and through patronage. Party leaders constantly seek more control and do not have an interest in being accountable to the justice system, the Assembly of Kosovo, and public integrity institutions that might have more power to audit and investigate them and their party finances. Deputies with closer ties to elites benefit from the lack of clear and predictable political accountability, and will act to prevent improvements. Party leaders in government manage to avoid accountability, both politically and before the law, by maintaining direct relationships with key individuals whom they can rely on to hinder investigation, prosecution, and the strengthening of oversight institutions in an implicit pact of mutually-assured protection. In terms of ensuring internal democracy, transparent party financing and mechanisms for accountability, the political parties are genuinely resistant to even being legislated in these areas.

Non-state actors in organized crime, particularly in four Kosovo Serb-majority northern municipalities, have an existential interest in maintaining the current poor environment for political accountability, if not actively seeking to undermine it further. Serbia has a strong, and for some of its political leaders existential, interest in weak political accountability; its support for parallel structures and implantation of a monopolistic political party are the most prominent manifestations of this. Kosovo should expect the Serbian government to cooperate as little as possible, even as Serbia relies on Russia to help it gain EU concessions on its stated goal of accession.

Public media and certain political parties, as well as independent institutions and heads of public corporations, have expressed some resistance to closing the accountability gap. Since 2010, public media have depended almost entirely on government funding (85 percent is from the government), and political influence on public media by parties in government has increased greatly over the past eight years. Many media analysts say public media has become a state television network serving as a propaganda tool.<sup>12</sup>

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<sup>11</sup> Democracy Plus (Nov 2017). Violations and Non-Implementation of the Law on Public Procurement in Kosovo. <https://goo.gl/Povmjz>.

<sup>12</sup> Before 2010 the public broadcaster RTK was financed through a broadcasting fee tied to energy bills. The 2011 Law on Radio Television of Kosovo was amended to provide government funding for the first three years. However, no alternative was



Public corporations and many independent agencies are located within government ministries or in the Office of the Prime Minister, giving the executive branch great influence over their management; in some cases, this includes appointment of board members. The leaders of these entities, therefore, benefit from weak accountability mechanisms.

Increasing the accountability of political elites and the executive branch in the next decade is the best opportunity to significantly improve the independence of rule-of-law institutions. Rule of law in the country would greatly benefit from management with more independence to prosecute cases of high-level corruption and mismanagement. Much needed actions for government effectiveness include deeper public administration reform, more open procurement and better budget planning. Our assessment found that there would also be a greater competition of ideas and more policy-based discussions nationally if political elites were more accountable for party financing, campaign spending and using state resources for campaigns. Campaigns would be less about influencing voters through spending and benefits for supporting a party, and more about policy ideas. Closing the accountability gap would increase the public's trust in political elites and state institutions, and keep at bay fringe political forces that threaten consensus and inclusion.<sup>13</sup>

## RULE OF LAW, HUMAN RIGHTS

Solid progress has been made in adopting the legal and institutional framework for the functioning of the rule of law in Kosovo. The adoption of laws on the functioning of the judiciary<sup>14</sup> and promotion of human rights,<sup>15</sup> as well as improved infrastructure and financial independence of judicial institutions mark important steps in ensuring compliance with international rule of law and human rights standards. Impunity of elites is the greatest challenge to the rule of law. Prosecutors' lack of willingness to deal with high-profile cases, investigation delays and application of statute of limitations in favor of political elites indicate that the law does not apply equally to all citizens. For administrative and civil cases, the judiciary faces management and technical barriers resulting in a large number of unresolved cases. Challenges include poor case management and tracking; an insufficient number of legal professionals; lack of quality in prosecution and legal reasoning; lack of practice-based training; and absence of disciplinary and performance measures that could be applied to prosecutors and judges.

The Kosovo Judicial Council (KJC) and Kosovo Prosecutorial Council (KPC) are generally interested in safeguarding judicial independence. However, their independence is obstructed by political interference. The 2016 constitutional amendments requiring that the majority of KJC members be elected by members of the judiciary, and the 2015 amendments to the Law on the Kosovo Prosecutorial Council requiring that prosecutors appoint 10 of the 13 members, provide opportunities for these institutions to strengthen the judiciary and wrest control away from political elites. The new composition of these institutions is expected to enhance the independence and functioning of the judiciary, as the majority of members of KPC and KJC are elected by their own peers at the expense of political representatives at the Assembly of Kosovo.

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proposed beyond the three years and RTK continues to be funded almost entirely by the government seven years after this legislation.

<sup>13</sup> Refer to the section on Consensus for an assessment of the forces that have the potential to threaten consensus.

<sup>14</sup> The Assembly of Kosovo has adopted the Law on Courts (2010, amended in 2015), the Law on the Kosovo Judicial Council (2010, amended in 2016), the Law on the Kosovo Prosecutorial Council (2010, amended in 2015), the Law on the State Prosecutor (2010, amended in 2015), the Law on Witness Protection (2011) and the Criminal Code (2012).

<sup>15</sup> The Assembly of Kosovo has adopted the Law on Protection of Minority Communities (2008), the Law on the Ombudsperson (2015, repealing 2010), the Law on Protection from Discrimination (2015) and the Law on Gender Equality (2015).

The courts generally support improving the efficiency of the judiciary and the courts are becoming slightly more efficient in resolving administrative and civil cases. The KJC has noted that, over the last two years, the Basic Courts have become much more efficient, resolving more cases than they received during this period. However, the courts face a large number of unresolved cases from previous years and some serious technical and administrative barriers. The court administration does not employ sufficient staff or legal clerks to assist judges in resolving cases in a timely manner, though an increase in the judiciary's budget is beginning to address this. The systems in place for tracking and managing cases are weak, and there are doubts about the use of the overdue electronic case management system. Concerns linger about the competence of prospective lawyers, prosecutors and judges due to the poor quality of Kosovo's public and private faculties of law, and the lack of practical and specialized training by the Justice Academy. Other challenges include unreliable and inefficient postal systems that delay legal correspondence among courts and the parties involved in the case. In addition, poor legal reasoning, and undefined standards of evidence lead to a high proportion of cases sent for retrial by the Court of Appeals.

Kosovo has adopted the Law on Arbitration and Law on Mediation, both of which provide a solid basis for alternative dispute resolution to help address the large backlog of cases. According to the European Commission's Kosovo Report (2016), public awareness and familiarity with alternative dispute resolution (ADR) tools remain low, while the number of cases are continuously increasing. Between 2012 and July 2015, 2,598 cases were dealt with through mediation. Two key reasons for increasing the use of ADR are to encourage disputants to transfer petty cases from the courts, and to incentivize individuals and businesses to foresee provisions for use of ADR in future contracts. Quick and efficient justice may be used to incentivize parties to use ADR.

At the regional level, local prosecutors face similar technical and administrative challenges to those faced by courts. Basic prosecutors are well-resourced in terms of financial and human capacities, but concerns exist regarding the professional competence of prosecutors and their staff in applying the law, drafting legal reasoning and statements, and conducting training of prosecutors and legal staff. Performance evaluations of, and disciplinary measures against, prosecutors are not meaningful. The 2016 annual report of the KPC indicated that upon review of disciplinary cases by the Disciplinary Commission, only one prosecutor was discharged through a Disciplinary Commission review and only a few others were given reduced salaries. Given the state of the rule of law in Kosovo it may be argued that stronger disciplinary measures should be taken by KJC, too. The 2016 annual report of the KJC indicates that the Disciplinary Committee during the reporting year decided on fourteen cases referred to it by the disciplinary office, of which only one case was decided for temporary suspension and two cases were recommended to KJC for dismissal from office.

The recent integration of prosecution and the court in Mitrovica marks an important step toward establishing the rule of law in northern municipalities. The parallel structures and organized criminal groups in the northern parts of Kosovo are strongly opposed to integration. Serbia has little interest in cooperating to promote the integration of these institutions in the Kosovo system, as Serbia would lose a valuable lever for exercising regional power. Serbia has continuously supported parallel structures, groups that build barricades on roads, and campaigns that reject Kosovo authority. Kosovo Serb lawyers, prosecutors and judges are familiar with the Serbian legal system, but their familiarity with Kosovo laws and judicial proceedings is weaker. Inconsistencies between the Albanian and Serbian versions of laws, and poor translations of case files, pose barriers to effective resolution of cases.

The lack of prosecution of political elites indicates that the KPC and State Prosecutor are the key points of political control over the judiciary. The interdependence of rule-of-law authorities functions as a scapegoat for lack of performance. The resolution of a serious crime depends on the Kosovo Police to investigate and collect evidence, on the State Prosecutor to bring indictments in court, and on the

courts to issue a judgment about the case. The various forms of misconduct include police not conducting the investigation; the prosecutor not issuing warrants; a lack of meaningful sanctions against perpetrators; undue delays due to appeals mechanisms; and a lack of execution of penal sanctions. Failure of any of these institutions to perform its part of the mandate compromises the entire law enforcement process and opens the door for political interference at any stage of the process. According to key informant interviews, the Kosovo Police are likely to oppose measures against political elites who exercise control and authority over them.

Concerns exist that the Ministry of Justice has been another mechanism to exert political control over the judiciary. Up to the point when amendments to the composition of the KPC were adopted, the Ministry of Justice was part of the structure and influential in the KPC. Additionally, there were reports of imprisoned persons close to the government being released from prison occasionally. Current amendments drafted by the Ministry of Justice regarding the Law on the Courts, the Law on the Kosovo Judicial Council and the Law on the Kosovo Prosecutorial Council did not take into consideration the recommendations provided by the Kosovo Judicial Council. The Ministry of Justice is also mandated to represent the state in court on cases of complaints against public institutions. Questions have been raised regarding the competence of the Ministry of Justice lawyers who represent public institutions in court proceedings. Complaints were made that these lawyers do not have the necessary knowledge of laws and lawyering skills to defend the state. As Kosovo moves toward potential membership in the Council of Europe and its citizens having access to international justice, it is critical to develop the capacities of institutions to implement the law and protect human rights, and to build the capacities of Ministry of Justice lawyers to defend the state. Otherwise, state authorities will end up paying high compensation to injured parties, as has been the experience of other countries in the region.

The international community has a deep and longstanding interest in the rule of law and human rights. EULEX, which succeeded UNMIK, has been the primary means for strengthening the judicial sector in Kosovo, in addition to large technical assistance projects supported by a number of bilateral donors. Uncertainties surround the future of EULEX, whose mandate is set to expire in June 2018. EULEX's initial mandate was to prosecute and adjudicate cases pertaining to war crimes, high-level corruption and organized crime, and establish the rule of law in the northern municipalities of Kosovo. In a decade of operation in Kosovo, EULEX has produced few results due to high staff turnover, lack of cohesion among member states on its mission and mandate, and political interference in its work. Some of its judges became entangled in corruption scandals, shaking public confidence in its mission. The view among the Kosovo rule-of-law authorities is that there is no value in further extending the mandate of EULEX; however, the looming expiration of the EULEX mandate raises serious questions about the capacity of the Kosovo judicial sector to absorb the high-level cases under EULEX investigation. The Organization for Security and Cooperation in Europe (OSCE) works closely with the KPC, the Kosovo Police, and community safety councils in the northern municipalities.

The EU would appear to be in a strong position to push for continued improvements in the rule of law and human rights, but the poor performance of EULEX and the distant timeframe for EU accession processes limit their influence. The U.S. has been deeply involved in strengthening various aspects of the judicial sector for many years — first through support for rebuilding the courts, the basic legal corpus and minimal judicial processes, followed by an expansion and deepening of professional capacity, policymaking processes, a comprehensive legal corpus and judicial sector institutions. The OSCE has been involved in monitoring court trials and proceedings, and advising on greater compliance with international rule-of-law standards.

The Constitutional Court has been a success story, and its judgments have been critical to maintaining constitutional order in Kosovo. From June 2018 onwards, the Court is expected to be composed only of local judges. A Constitutional Court judgment found that President Fatmir Sejdiu had violated the

constitution (2010); another found a violation by the Assembly of Kosovo in the vote for the election of President Behgjet Pacolli (2011); and still others have issued judgements interpreting the constitution on matters pertaining to the election of the Prime Minister and to the Association of Serb-majority Municipalities. These judgments indicate the strength and willingness of the Constitutional Court to establish the rule of law on constitutional grounds.

The Constitutional Court has also been successful in addressing cases pertaining to violations of human rights, though its decisions are lacking enforcement in some instances. In a precedent case, the Court found that the municipal court of Pristina denied the right to life when it refused to issue a protection order to a victim of domestic violence who was later beaten to death. According to a report by the Group for Legal and Political Studies, in numerous other occasions the Constitutional Court has been able to use its jurisdiction within a broad remit, and in doing so has employed as thoroughly as possible the European Court for Human Rights' legal doctrines and standards. Measures need to be taken against public authorities who do not enforce the decisions and jurisprudence of the Constitutional Court. In a number of cases pertaining the property rights, the court found violations of the right and yet the institutions did not enforce the court's decision. The court uses two means to address these situations: it can make a decision based on lack of compliance, thus naming and shaming the institution concerned; and it can refer cases to the State Prosecutor for further investigation.

In 2015, the Assembly of Kosovo adopted constitutional amendments and legislation to establish the Kosovo Specialist Chambers and Specialist Prosecutor's Office, which are expected to prosecute and adjudicate war crimes and other crimes based on allegations raised in a 2011 Council of Europe report. During 2015, a lack of consensus divided the governing coalition and some opposition parties over the adoption of the Specialist Chambers. In late 2017, members of parliament of the current governing coalition attempted to repeal the Specialist Chambers Law, a move that the international community heavily opposed. Anticipated indictments by the Specialist Prosecutor's Office could have significant political repercussions, weaken ties within the current governing coalition, and initiate changes in the political party landscape.

A key related issue is human rights. While these rights are enshrined in Kosovo's constitutional and legal systems, injured parties are reluctant to seek redress due to lengthy judicial proceedings and inefficiencies in the judicial system. Systemic violations of human rights do not occur, but occasional violations result mainly from a lack of law enforcement. People with disabilities have difficulties accessing essential services, such as employment, health and education, not because there are no legal provisions guaranteeing access to such services, but due to a lack of enforcement of the law. According to the European Commission's country report on Kosovo (2016), threats and attacks against journalists have increased, significantly undermining freedom of expression. In the northern municipalities of Kosovo, freedom of movement is limited, as evidenced by the exposure to danger when driving in these areas with Kosovo license plates and by barricades on the roads. Freedom of speech for those who endorse Kosovo authorities is constrained due to threats and intimidation by criminal groups. The judicial authorities have not been effective in adjudicating numerous cases of violence and assault against women, as well as against members of LGBTI communities. Women are rarely able to exercise their property rights, and only 16% of real estate is registered to women.<sup>16</sup> Women are also underrepresented in public positions and have lower rates of employment generally.

The Ombudsperson is a supporting partner in promoting respect for human rights by investigating alleged violations, addressing complaints of the injured, and recommending policy changes to promote and safeguard human rights. The Ombudsperson does not have law enforcement powers, and the institutions against whom opinions are issued take into consideration only about a third of the

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<sup>16</sup> Balkan Investigative Reporting Network (2016), Kosovo Women's Right to Inherit Property.

Ombudsperson's recommendations. The Agency for Gender Equality, housed in the Office of the Prime Minister, supports gender equality in Kosovo, and could be a supporting partner for the Mission to further advance gender equality by increasing women's representation in the civil service, and increasing women's ownership of inherited property.

Public integrity institutions are generally supportive of the rule of law, but lack enforcement powers. The National Audit Office contributes to greater transparency in the management of public funds, but only about a quarter of its recommendations are endorsed by the institutions that are audited. The Anti-Corruption Agency contributes to greater transparency in asset declarations by high-level public officials, but does not have authority to verify bank records and lacks capacity to conduct in-depth investigations. The general public welcomed a recent opinion issued by the Anti-Corruption Agency that overruled the Prime Minister's decision to increase the salary of high-level officials, including the Prime Minister himself. Questions exist about the integrity of the Procurement Review Body given widespread abuse in procurement processes. The municipal authorities, the Anti-Corruption Agency, the National Audit Office and other public integrity institutions consistently file complaints with the State Prosecutor alleging violations by high-level political elites, but the caseload is clogged at the prosecution level.

At the central level, a vibrant civil society is supportive of reforms and demands greater performance by the judiciary and respect for the human rights of their constituents. Examples include monitoring of court trials by the Kosovo Law Institute, HandiKOS collaborating with other groups to press for better accessibility, multiple CSOs advocating for legally-guaranteed gender equality, and the CSO AKTIV engaging officials on behalf of minority communities. The involvement of these organizations contributes to better enforcement of the law and respect for human rights.

The lack of enforcement of laws affects all important democratic processes. Elite impunity obstructs political accountability, as well as government effectiveness and responsiveness. If the provisions of laws were adequately enforced, the government's performance in delivering essential services such as public safety, basic infrastructure, social services, health and education would be strengthened. High levels of corruption and the lack of adequate prosecution of corruption-related cases obstruct central and local governments' efforts to respond to citizens' needs. The lack of efficiency in the courts discourages the injured from seeking redress, and this negatively affects the inclusion of vulnerable groups and people whose rights are violated. Due to the lack of prosecution and investigation, threats and intimidation are prevalent in the northern municipalities of Kosovo, which negatively affects the inclusion of minorities in Kosovo public life.

## COMPETITION FOR POWER

The right to elect and be elected is enshrined in the constitution and the law. Kosovo has overcome the challenges of electoral fraud reported in the 2009 local and 2010 general elections, holding multiple free, fair and competitive elections since. Observer reports have largely praised the conduct of elections, and it has been noted that over the years the Central Election Commission and the Election Complaints and Appeals Panel have established credibility in applying election standards and imposing sanctions for lack of compliance. At the same time, significant challenges remain, particularly in addressing threats and intimidation reported among Kosovo Serb candidates, fixing inaccuracies in the voter list and address system, and overcoming barriers to out-of-country voting.

Over the years the open list proportional system has produced numerous positive effects by incentivizing the rise of new candidates with new ideas, creating direct links between voters and candidates for better accountability, and incentivizing political parties to recruit and promote new candidates prior to the next election. The open list election system has been an important mechanism to hold elected officials to account by voting in performing candidates and voting out corrupt ones.



Competition for power occurs among all parties, including those in coalitions, but this is less the case among entities within government institutions. During the pre-electoral process, political entities consistently compete to gain power and better position their party politically. The development of programmatic parties has been quite slow, however. The main political parties in government over the last two decades — the Democratic Party of Kosovo (PDK), the Alliance for the Future of Kosovo (AAK), and LDK — gained power with basically indistinguishable platforms that did not reflect citizens' real priorities. The largest party in the last parliamentary elections, Vetëvendosje, does have a clear ideological position and policy preferences, but it is also well-known for inflammatory rhetoric about reunification with Albania, rejection of the border demarcation with Montenegro, and denunciations of the Specialist Chambers. Vetëvendosje has not been discredited for misuse of power, and maintains a strong reputation for promoting citizens' interests over those of elites.

PDK, AAK and LDK have performed well in electoral campaigns, offering populist messages and echoing international community priorities. Moreover, competition for power occurs between elites and informal groups. Some private actors are former KLA commanders who are now wealthy business people, and criminal groups in the northern part of Kosovo control economic activities. The leading parties, however, do not perform well in governance, as noted above. All three parties have accused the others of misusing power, though they often work in coalition with one another. No meaningful result in terms of the rule of law and developing a strong modern state has emerged while PDK, LDK and AAK have ruled the country. Power concentrated among former commanders is used to influence economic policy and rule of law; for example, the push to abolish the Law for Special Courts is critical to them.

The leading parties have also not performed well as organizations. They have the trappings of an internal organization, including women and youth forums, but little beyond that. No party leader has been voted down within their party; instead, dissidents break away to form a new party, as recently occurred with members of Vetëvendosje. Political branches throughout the country receive little to no information from the center, training or professional development, or funding for local candidates. Vetëvendosje is a prominent exception, as it provides training to all candidates, holds regular meetings and conference calls with branches, and helps with candidate funding. Smaller and newly-established political entities like Alternativa that have not been in power are well-positioned to challenge traditional powers. They can engage the public to participate in governments at both the local and national levels.

The competition for political power is manifested mainly among elites, as Kosovo is more prone to political elitism than pluralism. Recently, such competition took place within Vetëvendosje, resulting in the defection of a large number of Deputies and Pristina municipality officials; those remaining support the charismatic party leader as the best path to challenging corrupt elites, while those leaving viewed the leader as an immovable obstacle to new people and ideas. A similar dynamic took place in LDK after the passing of the “father of Kosovo,” Ibrahim Rugova. More conflict and competition for power is expected within other political parties such as LDK, AAK and PDK. Although perceived as traumatizing and a depressing political development by the parties' electorate, this party system turbulence could provide opportunities for parties to democratize and embrace the competition of ideas.

Strong support for more competition for power can be seen among citizens. Kosovo society aims to build a democratic and modern state, and proper engagement with the public, involving the support of the media and the international community could be critical to putting the competition for power back on track. The rise of new parties and defections from existing parties have been and will continue to be driving forces for this.

More tepid support also exists. Although not much distinguishes the PDK and AAK in terms of their poor performance in running the government effectively and transparently, LDK's younger generation of politicians could be a driving force to support action at the national level, although not at the local level

where no significant changes toward a new set of politicians were made. LDK's reputation is still damaged since it was the ruling party for many years and was not known for governing in an accountable and transparent way.

PDK and AAK would be strongly opposed to any opening up or increase in the competition for power. Both parties can use formal and informal political influence with the public broadcaster, the Radio Television of Kosovo, to push desired messaging, in collaboration with controlled social media platforms and prominent political analysts. Srpska Lista, a satellite political party controlled by Serbia, would oppose any action that promotes the competition for power in Kosovo Serb-majority municipalities.

## GOVERNMENT RESPONSIVENESS AND EFFECTIVENESS

In its first decade of institution building, Kosovo has seen a great focus on government effectiveness, but government responsiveness has to a large degree lagged behind. With donor assistance, government institutions have increased their effectiveness over the years in important tasks such as collecting more tax and reducing the informal economy, decentralizing the provision of certain services to local governments, improving infrastructure and expanding basic education and health care. Kosovo is climbing in the World Bank's ease of doing business rankings due to notable reforms in business registration and tax administration.

Citizens are becoming more demanding of government performance, and this shift in voters' mindset has produced political campaigns that are more responsive to addressing the needs of citizens. This is best manifested by local election campaigns in which candidates focus on local governance issues related to civil administration, pre-school and basic education, family health, and waste collection. Frequent changes in leadership at the local level, particularly the changes in leadership in Pristina and Prizren, indicate that no leader is immune to the consequences of underperformance.

However, Kosovo faces many challenges that present barriers to the delivery of quality and efficient services and to undertaking reforms that would place it more solidly on the road to EU accession. Some of the bigger challenges to improving government effectiveness are tied to patronage in public administration,<sup>17</sup> poor management systems, corruption and inflexible budgets, and constraints on some local government functions,<sup>18</sup> all of which hamper government agencies from effectively delivering services in certain areas. Horizontal coordination to implement national strategies and cross-government programs remains a major bottleneck. Integration of parallel structures in four northern municipalities of Kosovo is an additional challenge as education and health services in those areas are still not provided by the Kosovo government. Government responsiveness remains weak because consultation mechanisms are weak or ineffective at both the central and local levels of government.<sup>19</sup> In

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<sup>17</sup> Besides party influence in recruitment, in 2016 the Auditor General found that 203 people were employed in 10 ministries with contracts for special services without having gone through recruitment procedures, and more than 460 were employed in local governments, with many of them noting that employees remain on the payroll even after the allowed period of six months. [http://www.zka-rks.org/en/publication\\_type/government/](http://www.zka-rks.org/en/publication_type/government/)

<sup>18</sup> Mayors that our team talked to complained about the many challenges related to waste management and maintaining green areas resulting from constraints with municipal public corporations and inflexibility to create their own corporations or change their structure. Managing their rivers was also presented as a challenge since this is competence that is reserved for central government even though citizens expect clean rivers from municipalities and the central government has for the most part failed to provide this.

<sup>19</sup> In the last two years, the government has shown a willingness to move in the right direction toward a more inclusive policy-making process by creating *e-konsultimi* platforms; however, the platforms remain poorly promoted and little used (although to a large extent they are updated regularly).



addition, local governments have been slow to move to e-governance tools to improve efficiency and responsiveness, partly because of resistance within the public bureaucracy.

Overall, space for citizen or civil society input on urgent public policy issues is limited, which also raises significant issues for the competition of ideas. Executive branches of the central government and local governments have been closed to consultation with the public, or the consultations have been superficial and/or conducted with a closed group of people and organizations that the governments trust. As discussed more in the Competition of Ideas section below, in countries all over the world, CSOs are key players in policymaking processes, especially for provision of social services. CSOs often have more updated knowledge, better understanding of the needs of citizens, and can implement faster and cheaper than the public sector; moreover, at the local level they are much more engaged with citizens than national-level CSOs. At the central level, *e-kunsultimi* has been a positive development toward greater citizen and/or civil society input, but the ministries have not worked much to promote it or employ it as an integral tool in their policymaking (yet). At the local government level, there have been good initiatives by mayors to include the public, as has been the case in Pristina, but in most municipalities public consultation remains non-existent in a structured sense or is a superficial act to fulfill a legal obligation.

While there has been progress in streamlining civil service positions and administrative procedures, the government has not advanced reforms to deliver an efficient and professional civil service. This would mean more merit-based recruitment, switching positions and performance-based promotions. However, the parties in power have not shown an appetite for this despite encouraging promises during elections.<sup>20</sup> The civil service lacks fairness in recruitment, proper and continuous training, and administrative accountability. Political interference hurts merit-based recruitment at all levels of the civil service, while implementation of disciplinary measures and performance evaluations remain weak. The Kosovo Institute for Public Administration (KIPA) is poorly equipped, and lacks needs-based training modules and administrative capacity development plans. Corruption has undermined the quality of services and budgets, and the rate of corruption remains high in public procurement.<sup>21</sup> Mismanagement and corruption in procurement have negatively affected government performance in delivering essential services such as basic infrastructure, health care and agriculture subsidies.

Budget planning remains a challenge for some ministries, as well as for certain local governments; inflexible planning methods constitute the main bottleneck. This has resulted in poor spending and slow service delivery. The rigid categorical budget planning process has not helped the planning process. Municipalities are operating with inefficient administrations where most of the budget goes for wages and salaries,<sup>22</sup> and mismanagement in their financial management and procurement practices are evident.<sup>23</sup>

Horizontal coordination within the national government remains a weak link, partly because of the lack of administration capacities but also due to the fractured political environment where coalitions are based on mutually-assured protection from accountability rather than principles and party platforms, and ministers answer more to their party leaders than to the leader of the government. Ministers also have

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<sup>20</sup> See the *Civil Service in Actors and Institutions Synthesis* for a more detailed explanation.

<sup>21</sup> Corruption in public procurement is estimated to reduce GDP by 7-20 percent. Riinvest Institute. *What Is the Value of Public Procurement for Kosovo's Economy?* <http://www.riinvestinstitute.org/En/riinvest-story/243/what-is-the-value-of-public-procurement-for-kosovo-s-economy/>

<sup>22</sup> Close to 55% of the budgets of municipal institutions is allocated to wages and salaries, and in some municipalities the rate is as high as 80%.

<sup>23</sup> Democracy Plus. *(In)Justice in Procurement*. April 2017.

political room to be unreliable or even underperforming partners in government because their accountability is to the head of their party and not to the head of their government. This is particularly problematic in the case of Srpska Lista, which is said to take direction from the Government of Serbia. Governments with a one-vote majority and junior partners assuming the head of the government have exacerbated the lack of horizontal accountability.

The disregard for political consensus on key issues — such as the dialogue with Serbia (where opposition parties often feel left in the dark), the demarcation with Montenegro, and the transformation of the Kosovo Security Forces to the Kosovo Armed Forces — has compromised the effectiveness of national-level decision-making processes. This lack of political consensus, divisions among the major Kosovo Albanian parties, and the current razor-thin government majority have also given Srpska Lista more political leverage to deliver on issues the Government of Serbia advocates for, which can complicate Kosovo's sovereignty and functionality.

There are opportunities to reduce this governance gap in the next five to 10 years, such as by incentivizing merit-based recruitment in the civil service, enforcing performance evaluations and disciplinary measures, better training of the civil service on the needs related to EU accession, and employing more e-governance tools to deliver services more effectively and efficiently. Successful adoption of e-procurement by the civil service and procurement reforms to guard against political interference, as well as delivering quality services, are keys to improving government effectiveness. To enhance the planning and management of budgets, Kosovo needs to implement more programmatic budgeting processing, which will include setting aside dated and simplistic elements that have persisted since UNMIK. Moreover, horizontal coordination is the key to being better prepared to embark on the reforms and programs that come with EU accession.

The general public is frustrated with public administration recruitment procedures in Kosovo; members of the public, along with civil society organizations, can be strong supporters of implementing merit-based recruitment.<sup>24</sup> This support even occurs among senior civil servants who are frustrated with political interference but find themselves compelled to follow orders. They face great pressure from top politicians even though they would like to secure a strong civil service and protect their institution.

Small parties also support merit-based recruitment, as this would eliminate the patronage advantage held by the larger and more established parties. They are also hurt electorally when politically employed civil servants turn into sympathizers and campaigners for the party that hired them. The donor community is a strong supporter of this public administration improvement, particularly the EU, which wants to help Kosovo develop a public administration capable of EU integration, and the British Embassy, which has begun a program to monitor and advise on recruitment of top-level civil servant positions in a few central government institutions. The British Embassy seeks to advise the government on recruitment to ensure protection against patronage, nepotism and clientelism; these good efforts have shown some results as the recruitment committees have felt pressure to strictly follow the vacancy requirements and scoring guidelines, and to fairly assess the candidates under this monitoring effort. However, real resistance to changing behaviors in high-level civil service post recruitment remains.

Many actors and institutions support the development of needs-based trainings for civil servants and utilization of e-governance and management systems tools. However, this is more of a capacity issue as

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<sup>24</sup> Surveys by UNDP Kosovo regularly show that around 80% of citizens believe that family connections, bribes, party alliances and other non-merit-based factors are most helpful in gaining employment in the public sector, and only a small minority believe that education and training help in employment. UNDP Kosovo. Public Pulse XIII. [http://www.ks.undp.org/content/kosovo/en/home/library/democratic\\_governance/public-pulse-xiii.html](http://www.ks.undp.org/content/kosovo/en/home/library/democratic_governance/public-pulse-xiii.html)

Kosovo has made little headway due to a weak KIPA.<sup>25</sup> E-procurement is an exception. Although civil servants, party elites and big businesses that have benefited from corruption may present strong resistance, there is also strong support for preventing corruption within the business community,<sup>26</sup> which is hurt by businesses with political connections. There is also support from “emerging leader” party officials who generally want change in the governance practices that have limited Kosovo’s development and progress toward EU integration.

Reforming the budget process to allow more flexibility in planning and execution has strong support among line ministries and local governments. In many of the assessment team’s interviews, the Ministry of Finance’s current budget template was described as an obstacle to planning and execution. Interviewees in municipalities, though, also pointed to the fact that a majority of their budgets are allocated to civil service salaries and centrally procured commodities like fuel for communal heating. Horizontal coordination has strong support in the Assembly of Kosovo and among civil society groups because a main bottleneck to the implementation of Assembly-approved strategies and legislation is poor horizontal coordination across government ministries.

Some support for merit-based recruitment can be found in the Independent Oversight Board for Civil Service (IOBCS); in addition to reviewing complaints from civil servants and applicants, it is tasked with monitoring the recruitment process of high-level civil servants. Some support also may be found in the Assembly of Kosovo, which advocates for a civil service that is able to professionally and efficiently carry out programs that it approves. The IOBCS also reports to the Assembly of Kosovo, and thus has an institutional interest in ensuring a professional and fair public administration. There is also some support in the Assembly for reviewing budget templates and moving toward more programmatic budgeting; this would give the Assembly more opportunities to review government programs rather than just budget items. KIPA,<sup>27</sup> the body responsible for training public servants, might support needs-based training if they are given more resources and professional guidance (that can be found within Kosovo and in partnerships with local institutes and consulting firms).

Instilling merit-based recruitment would most likely be strongly opposed by political elites who thrive on patronage in civil service, though their opposition may be indirect. Parties weaken government effectiveness and administrative accountability, influencing recruitment in the civil service and in various boards of independent agencies and public corporations. Political elites in past governments have even raised civil servant wages before elections to a point that the average public servant wage surpassed that of the private sector.<sup>28</sup> One perspective on patronage is that large political parties serve as clients offering services to their members, and positions in the public sector constitute one service that party members rely on. In fact, some parties privately advocate turning the highest civil servant positions into political appointments — namely the general secretaries’ positions.

The Ministry of Finance is resistant to reforming the budget planning process so that it is more programmatic-based and sophisticated for municipal governments and line ministries. While the ministry controls the budget planning process well, it resists flexibility. Efforts to ensure transparency in procurement, employ e-procurement and toughen corruption prevention measures face strong

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<sup>25</sup> Refer to the Civil Service section in Annex B: Detailed Discussion of Actors/Institutions for a more detailed explanation.

<sup>26</sup> Democracy Plus, a local CSO that monitors the Public Review Body, details the large number of complaints by private business related to public tenders. <http://dplus-ks.org/wp-content/uploads/2017/05/OSHP-Final-Democracy-Plus-Final-ENG-VI-I.pdf>

<sup>27</sup> KIPA is tasked with identifying training needs of civil servants. <https://goo.gl/Aybtgg>

<sup>28</sup> The public sector’s average wage is above that of the private sector. This is due to constant public sector wage increases, usually before an election, by government parties in order to garner political support from members of the large civil service.

opposition from certain individuals that have the backing of political elites. The prolongation of e-procurement implementation and the constant political interference and even occasional threats that the Procurement Review Body (PRB) receives are a testament to this.<sup>29</sup>

Some opposition to modernizing public administration through electronic tools may come from pockets of lower- and mid-level civil servants who are not comfortable with computer software and who are skeptical about its viability. Some opposition to reviewing the budget planning process and moving toward more programmatic budgeting may come from the government's top leaders, as it would be a large reform that may rely too much on advice from the Ministry of Finance.

Improving government effectiveness and responsiveness in the next decade will positively affect political accountability. Installing mechanisms to prevent patronage, corruption and poor planning would reduce the room for political elites to avoid and neglect accountability to the public and other government institutions. Civil society in Kosovo shows that it can be a good partner in stimulating government effectiveness and it has the potential to partner with the government in service delivery, but governments at the central and local government have scarcely utilized these partnerships. Civil society initiatives have developed over the last couple of years that have employed information technology tools to facilitate interaction between citizens and government and to assist public service delivery. Greater government responsiveness would improve inclusion, particularly of more marginalized groups that are left out of the country's policy-making process. It would also contribute to the competition of ideas, as more interaction between governments, the public and civil society groups brings more exchange of ideas and generation of new ideas. In addition, government effectiveness in fighting corruption and mismanagement is closely tied to improving the rule of law in the country.

## COMPETITION OF IDEAS

The competition of ideas can take place in many different venues in Kosovo, as in other countries, ranging from policy advocacy by CSOs to electoral campaigns to efforts of the media. The competition of ideas in Kosovo happens mostly through electoral campaigns and limited civil society engagement in policy processes, as Kosovo's media sector, while vibrant, is widely viewed as highly partisan.

The electoral campaign period is dynamic, and citizens and civil society are effectively engaged during this period in the competition of ideas among political parties and candidates. TV debates, presentations of political party platforms, discussions in social media, focus groups, roundtables and surveys take place all over Kosovo, though with limited direct participation from citizens, except in events like mass rallies. Hosts of election activities generally focus on organizing events that are technically managed properly and raise issues of general interest to the public. Political entities attend almost all events organized by civil society groups and the media, gatherings organized by their own parties, and other events with limited citizen presence. However, once the elections are over, opportunities for direct citizen engagement with elected officials becomes limited to sporadic events and a few mobilization actions.

Ideas and expertise can enter policymaking at any point in the cycle, ideally throughout. However, the competition of ideas that occurs in Kosovo seems more about agenda setting and limited solution alternatives, and less about policy design, implementation, feedback, and revision. A modern state with capacity to interact with societal actors will pick up on emerging problems, potential solutions, and viable partners. Policy, of course, is not just about high profile national issues, but it in fact relates to the multitude of everyday issues that affect citizens at the local level. Civil society plays an important role at the local level to provide expertise, bring problems to the attention of local officials, and even

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<sup>29</sup> Democracy Plus writes about the threats to the head of PRB. <http://www.dplus-ks.org/lajmet/2017/kercenimi-ndaj-blerim-dines-demokraciplus-reagimi/>

implement solutions (often for less money)<sup>30</sup> In general, the openness of organizations to external input must be deliberately facilitated by process design and carefully maintained by internal and external actors in order to avoid the closing of space by organization leaders to avoid uncomfortable questions or challenges to “expert” authority. As noted previously, policy spaces in Kosovo at the local and national levels are very small because officials want to keep the counsel of only those they trust. The practice of embedded patronage politics and corruption in the political arena results in poor accountability of political leaders to society.

Civil society does engage in partnership activities with local and national-level governments on an ad hoc basis, mainly on policy change activities, while citizens are largely excluded from the process. CSOs can occasionally work with municipal officials, usually to provide social services (e.g., Gjakova municipality working with HandiKOS on accessibility or Pristina working with Down’s Syndrome Kosova) that the municipality itself could never provide. This is a positive sign because civil society sectors around the world are dominated by CSOs that provide services (through state procurement or fees) that are better, more innovative, and less expensive than public sector methods.<sup>31</sup> More generally, though, there remain two arenas for citizens to participate in the competition of ideas: via social media platforms, where citizen frustration and dissatisfaction with Kosovo’s overall progress (or regress) are widely expressed, and voting for populist parties like Vetëvendosje.

Civil society bears partial responsibility for the limited arena for citizen participation in the competition of ideas. Project-based CSOs that are funded by the international community need to learn how to facilitate meaningful engagement with citizens, not pro forma, and to provide adequate space for exchange of information and ideas on public issues.<sup>32</sup> Moreover, civil society needs to involve all parts of society in the competition of ideas; in other words, all who are affected by a decision should have the right to participate in making it. Ideas provided by citizen groups outside civil society organizational boundaries will provide more comprehensive information on all aspects of policy analysis processes. Political parties are also responsible for facilitating meaningful citizen participation in the decision-making process. The independent media in Kosovo is better positioned and has tools to make this breakthrough a reality. It is a fact, however, that the media and political parties bear the same level of responsibility.

From the local government point of view, a new positive development is expected to take place in the municipalities of Prizren and Kamenica, where mayors are actively engaged in involving all sectors of

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<sup>30</sup> USAID’s view of civil society and its role in democratic development has been primarily based on the 1996 USAID CDIE study, *Constituencies for Reform: Strategic Approaches for Donor Supported Civic Advocacy Groups*, which identified ‘civic advocacy organizations’ as the primary agent for citizen-based reform. The study, however, spurred attention to national-level issues over local issues (even when the latter were national in scope), and was built on a very limited view of the policymaking process. A more holistic view based on academic literature on policy processes from the last 50 years would reach slightly different conclusions and strategies.

<sup>31</sup> The Johns Hopkins Center for Civil Society Studies has been a leader in collecting economic and labor data on non-profit organizations around the world. Several key insights emerge from waves of data collected from dozens of countries, including post-communist and other transition countries: first, on average service delivery (social services, health, education, housing) dominate over expressive (arts and culture, sports and recreation, interest representation, policy advocacy); second, the main revenue source is either state procurement for goods and services or fee-based services; and third, the rise of modern welfare states has been enabled in part by non-profit institutions working in partnership with state authorities to provide social services. See, for example, Findings #4 and #12 from the data excerpted from *The State of Global Civil Society and Volunteering: Latest findings from the implementation of the UN Nonprofit Handbook (2013)*, [http://ccss.jhu.edu/wp-content/uploads/downloads/2013/04/JHU\\_Global-Civil-Society-Volunteering\\_FINAL\\_3.2013.pdf](http://ccss.jhu.edu/wp-content/uploads/downloads/2013/04/JHU_Global-Civil-Society-Volunteering_FINAL_3.2013.pdf); and Tables 4 and 5 from *Comparative Data Tables (2004)*, [http://ccss.jhu.edu/wp-content/uploads/downloads/2013/02/Comparative-data-Tables\\_2004\\_FORMATTED\\_2.2013.pdf](http://ccss.jhu.edu/wp-content/uploads/downloads/2013/02/Comparative-data-Tables_2004_FORMATTED_2.2013.pdf)

<sup>32</sup> There is also an argument to be made that the lack of employment opportunities in Kosovo and the availability of donor funding incentivizes professionals to form CSOs. To the extent that CSOs are driven more by donor funds than by any stated organizational mission to help citizens, the role of CSOs in contributing new or challenging ideas will be diminished.

society to contribute with ideas and to participate in decision-making that leads to improved governance and transparency. The Kamenica mayor has already appointed women in half of the directorates, which may elevate the consideration of ideas from women and youth. The mayor of Prizren is meeting with local CSOs to discuss their policy concerns and ideas; this resulted in, for example, the mayor's cancellation of a contract to build a cable car system up to the Kalaja Fortress in Prizren.

Less support for increased competition of ideas is evident among organizationally weak CSOs at the local level that have been in operation for 10 to 15 years or more, and among marginalized civil society organization such as women's non-governmental organizations (NGOs) at the local level, the LGBTI community and disability groups. This includes quasi-independent CSOs that are interested in supporting actions promoting more competition of ideas but which have limited resources. These organizations lack financial and human resources, and the causes that they advocate for often lack sufficient support from the general public.

Traditional party structures at both the local and central levels, politically biased media, and old civil society "established" leaders will oppose attempts to provide an arena for a meaningful competition of ideas, as they fear losing control and their current influence in society.

Donor-funded media and CSOs, unestablished political parties, and young politicians are among those who support actions to enhance the competition of ideas.

## CONSENSUS

Kosovo has faced significant challenges to reaching a consensus on its national identity and the fundamental rules of the game. In addition to the long historical legacy of ethnic divisions that is arguably losing its strength to motivate people on all sides, the country has increasingly suffered from poor implementation and enforcement of democratic norms, policies, and laws. It is somewhat ironic that the ethnic divisions that fueled violence under the Milosevic regime and led to the establishment of an independent Kosovo show very real signs of amelioration, while the impressive progress on the institutions and processes of a modern democratic state are increasingly viewed with disdain by citizens as tools for elite impunity. Both dynamics could move in a more positive direction if accountability and governance gaps are addressed.

There is a patchwork of evidence that a Kosovar national identity arising from the country's independence has been growing — as seen in past surveys on identity, negative public reactions to other countries' actions toward Kosovo, and wider acceptance and use of Kosovo symbols. This suggests that historic ethnic identities may be losing strength as drivers of political behavior. All ethnicities participate in the Government of Kosovo through ministers and deputy ministers, as the constitution requires. Even Srpska Lista has participated in the last two governments.

The Government of Kosovo's interest has been to quickly resolve some of its existential sovereignty issues while building internal and external consensus on statehood. Despite the political inclusion of Kosovo Serbs in both national and local governance institutions, significant ethnic divisions remain. At the municipal level, wide consensus never existed in the Serb community to work under the Kosovo system. This was hindered by the alternative offered by the Republic of Serbia through its parallel municipal structures in majority-Serb communities in Kosovo, which provided services, mostly in the education and health sectors, and employed considerable administrative staff for these services in Kosovo. The separate education systems and lack of multilingual instruction in either system will likely prove an impediment for years to come. However, improvements in the governance gap could coax more cooperation in the Kosovo Serb-majority municipalities. The 2013 agreement on normalization of



relations between Kosovo and Serbia<sup>33</sup> laid the foundation for the dissolution of parallel structures in the northern municipalities of Kosovo and election of municipal representatives in accordance with Kosovo laws. The recent integration of prosecution and the court in Mitrovica provide an opportunity for strengthening rule of law in northern municipalities.

Further integration will be met by strong opposition from the parallel structures and organized criminal groups in northern Kosovo. Whether or not the courts will be capable of applying Kosovo laws will be an important factor affecting the inclusion of the rule of law within the Kosovo system. The Government of Serbia plays a large role in political life in the Kosovo Serb-majority municipalities, and the alleged backing for, or at least tacit approval of, threats and intimidation against those who cooperate with Kosovo authorities is not supportive. The 2013 agreement on the principles of the Association of Serb-Majority Municipalities provoked a political crisis among Albanian-majority parties. Although political parties generally embrace the Kosovo system and constitution, supporters of Vetëvendosje and Srpska Lista challenge the consensus; the former questions the multi-ethnic vision of the Kosovo state, while the latter does not fully accept Kosovo institutions and national symbols.

The fundamental rules of the game in Kosovo are also experiencing challenges stemming from both an accountability gap and a governance gap that prevent the resolution of major political issues that affect identity and democratic development. Vetëvendosje vehemently opposes implementation of even a revised agreement on the Association of Serb-Majority Municipalities, and as the most popular political party, it can mobilize tens of thousands of citizens throughout Albanian-majority areas of Kosovo. The party is joined in its opposition to the Specialist Chambers by other established parties. The Montenegro border demarcation, which was agreed to in 2015 and is tied to EU visa-free travel, brought down one government and was only successfully resolved after contentious voting in the Assembly. Continuing Brussels-led negotiations over Serbian-dominant areas and/or the transformation of the Kosovo Security forces also threaten to trigger strife between the personality-driven Albanian-majority parties.

## INCLUSION

Institutions in Kosovo have shown a reasonable commitment to inclusion of all segments of the population in democratic processes. Noticeable societal advancements have occurred in the integration of non-majority communities in political life, the promotion of gender equality, and the participation of youth and people with disabilities in public life.

Constitutional and legal requirements affect the representation of non-majority communities in public institutions. The 20 reserved seats in the Assembly of Kosovo enabled non-majority communities' parties to represent their interests in the legislature, and they have become consistently involved in government coalitions and in key decision-making processes. Municipal borders and local governance are largely split along ethnic lines, allowing non-majority communities to elect mayors and municipal assemblies and organize their political and social life. The legal requirement for municipalities to appoint deputy mayors from non-majority communities serves to integrate those communities better, as do the cases of municipal director appointments from non-majority communities as part of power-sharing government coalitions. There are doubts as to whether political representation itself has resulted in improved standards of living for non-majority communities; most non-majority communities live in poor economic conditions in towns and enclaves with limited access to health care, education, employment

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<sup>33</sup> Government of Kosovo, Office of the Prime Minister. The First Agreement of Principles which Regulates Normalization of Relations (April 19, 2013). [http://www.kryeministriks.net/repository/docs/FIRST\\_AGREEMENT\\_OF\\_PRINCIPLES\\_GOVERNING\\_THE\\_NORMALIZATION\\_OF\\_RELATIONS\\_APRIL\\_19\\_2013\\_BRUSSELS\\_sq.pdf](http://www.kryeministriks.net/repository/docs/FIRST_AGREEMENT_OF_PRINCIPLES_GOVERNING_THE_NORMALIZATION_OF_RELATIONS_APRIL_19_2013_BRUSSELS_sq.pdf).



and other public services. The parallel education and health institutions supported by the Government of Serbia for the Kosovo Serbs is a significant exception.

The 2013 agreement on normalizing relations between Kosovo and Serbia laid the foundation for the dissolution of parallel structures in the northern municipalities of Kosovo and the election of municipal representatives in accordance with Kosovo's laws. Local government elections held thereafter indicated progress toward the inclusion of four northern municipalities into Kosovo's governance system, but acceptance of Kosovo authorities is opposed by Kosovo Serb leaders. The dissolution of parallel structures is hindered by a lack of employment opportunities and the Kosovo local government authorities' lack of capacity to absorb the staff currently employed in the parallel structures.

The agreement on the principles of the Association of Serb-Majority Municipalities was met with heavy protests by opposition parties in Kosovo. Upon the Kosovo president's referral of the agreement to the Constitutional Court, the court found that many provisions of the agreement regarding the structure and functioning of the Association of Serb-Majority Municipalities were not entirely constitutional.

There are significant cultural shifts taking place towards inclusion of women in public life in Kosovo. A report by the National Democratic Institute indicates that increasingly more women have been elected on merit, without needing the quota. In previous legislatures the Women's Caucus within the Assembly of Kosovo, which was composed of women from all political parties, had some notable impacts by raising women's concerns in legislative agendas and voicing their views when women were not nominated for public positions by the Assembly. However, women are continuously underrepresented in the executive branch and women generally do not enjoy their legal property rights. Only two of 24 ministers in the current government are women, about the same as the previous government. In the past, only one mayor was a woman, and currently none of the 38 municipal mayors are female. Consistently less than 10 percent of appointments for municipal directors have been women; currently three deputy mayors are women. Women are rarely able to exercise their ownership and inheritance rights to property due to lack of enforcement of the law and cultural barriers, and women are generally underrepresented in employment and in the private sector as a result of men not relinquishing power.

HandiKOS and social service providers for people with disabilities at the municipal level are supportive of including vulnerable groups in public life. There is a need to strengthen cooperation among disabled persons' organizations to advocate for better policy development and implementation. While the government and the Assembly of Kosovo have been supportive by adopting legislation related to people with disabilities, significant improvements are needed in enforcing the legal provisions and improving access to public services for this group. In some places, municipal authorities support service providers with financial grants and in-kind contributions.

The Center for Social Group Development (CSGD) and a few other organizations promote LGBTI rights through policy advocacy, awareness raising and empowerment of LGBTI communities. Members of the LGBTI community are prone to personal attacks, discrimination at the workplace and sexual violence. LGBTI representatives say Kosovo Police have been supportive of their rights, but the judiciary's lack of efficiency combined with traditional prejudice against LGBTI people obstructs their access to legal remedies.

Another challenge to inclusion of non-majority communities is the single-district proportional representation system. Combined with guaranteed seats in the national parliament, it reduces any incentive for Deputies to connect with voters. Political parties are not inclusive, which affects the inclusiveness of governance and policies. Policy ideas and decision-making in political parties tend to be exclusive to party leadership and the processes are leader-centric. A small group of party leaders make all of the country's policies, and their respective Deputies rubber-stamp these decisions. All parties have

youth and women's forums, the heads of which are represented in the party chairmanship, but their policy ideas are hardly reflected. Parties remain largely unaccountable to citizens, and even to their own party branches. Outside election cycles, parties rarely engage with their members and public, their websites are predominantly inactive or out of date, and their finances are mostly hidden from the public. Vetëvendosje is a notable exception. As with youth, Kosovo Serb and other non-majority communities remain largely disengaged from political matters at the local and national levels.

Some positive signs point to central and municipal executive branches working with civil society to employ online platforms for public inclusion and citizen reporting of complaints, but this is in the early stages of development. Legislation is in place to create state-sponsored organizations for youth and it requires local and national institutions to consult with representatives of these structures on various matters, but engagement remains low, partly due to a lack of sustained interest in and politicization of such organizations.

Eighteen years of foreign assistance have produced a capable core group of CSOs that serve as think-tanks and policy advocates, based mainly in Pristina and dependent on donor funding; this is not an unusual situation in transitioning states. These CSOs are somewhat transparent and accountable, but also face the challenge of providing professional growth opportunities to younger staff because many members of the older generation remain in their positions. The main source of funding for civil society activities comes from USAID, the EU, Denmark, and Sweden. The membership-based CiviKos Platform was established before independence as a means to promote cooperation between civil society and the government. USAID has partnered with the Advocacy Training and Resource Center (ATRC) to offer grants to CSOs serving marginalized communities, while the EU, Denmark, and Sweden have pooled their funds through the Kosovo Civil Society Foundation (KCSF), which runs various grant schemes for CSOs around Kosovo to support policy advocacy, service delivery, and cultural activities. CSOs exist throughout Kosovo supporting service delivery, sports, culture and arts, etc., but to a large extent they are volunteer-run or have a single paid director; sports clubs are an exception, and they receive significant funding through public grant schemes.

CSOs often advocate on behalf of citizens without consulting or involving them in advocacy processes. For meaningful and sustainable results, CSOs must be citizen-oriented, not just donor-oriented. CSOs must engage the public extensively and systematically, in every aspect and all stages of advocacy processes, and educate the public so that they can advocate on behalf of themselves. Exclusion of the public from participation in civil society contributes to a lack of accountability in government performance.

### **STEP 3: USAID'S OPERATIONAL/PROGRAMMATIC ENVIRONMENT**

#### **USG AND USAID PRIORITIES, INTERESTS AND RESOURCES**

U.S. engagement in Kosovo dates back to the establishment of a U.S. Information Office in 1996, but of course it continued through the 1990s via the OSCE verification mission and North Atlantic Treaty Organization (NATO) intervention. The USAID/Kosovo Mission opened in 1999. Between 1999 and 2008, the U.S. Office Pristina operated as the diplomatic mission of the United States in Kosovo. In 2008, the U.S. officially established the U.S. Embassy to Kosovo and it also marked a shift by the international community toward winding down "supervised independence" while deepening development assistance. As Kosovo has progressed in political and economic development, USAID's programming has evolved to address key challenges. As the above analysis notes, many of the same challenges of political accountability, rule of law and responsive and effective governance remain; the problems of inclusion and consensus would improve, but not disappear, if those challenges were met.

USAID's 2014–2019 CDCS identifies rule of law and governance as key areas for strengthening Kosovo's democratic development, working at both the supply level (national and local government) and demand level (civil society, non-majority communities). The strategy targets four intermediate results (IRs):

1. More Efficient, Transparent, Independent and Accountable Justice Sector. This IR addresses issues in the administration and management of judicial institutions, training for justice-sector professionals and implementation of laws.
2. Strengthened Effectiveness and Accountability of Assemblies, Administrations, and Election Processes. This IR addresses issues in the responsiveness and capacity of municipal government, and the capacity of the Central Elections Commission (CEC).
3. Improved Integration of Ethnic Minorities. This IR addresses the issue of supply and demand for democratic governance for non-majority communities.
4. Civil Society Strengthened to Increasingly Engage Constructively with Government. This IR addresses the capacity of civil society to engage in advocacy and oversight, to reach out to communities and to build support for reform.

The change in the U.S. administration in early 2017 has not yet resulted in a significant shift in USAID's strategy for Kosovo. The Trump Administration's fiscal year 2019 budget request to Congress outlines priorities for foreign assistance to "protect America's security at home and abroad," "renew America's competitive advantage for sustained economic growth and job creation," "promote American leadership through balanced engagement" and "ensure effectiveness and accountability to the American taxpayer." Within this framework, USAID's work in Kosovo is likely to be viewed as critical, even in a context of reductions to foreign assistance accounts. The request states that the goals of foreign assistance in Kosovo are to:

*"...promote full implementation of international agreements to normalize Kosovo-Serbia relations and advance Kosovo's Euro-Atlantic integration, securing peace and stability to the region and bolstering resilience to external pressure. Programs will strengthen rule of law and reduce barriers to economic growth and private-sector activity; increase energy security; counter corruption; and improve the transparency and accountability of government institutions."*  
(Congressional Budget Justification Fiscal Year 2019, p.94)

DRG is a priority sector in Kosovo, and the relevance of USAID/Kosovo's strategy and programs to the Trump Administration's foreign assistance priorities is clear:

- Countering violent extremism, civil society, rule of law and other governance programming reduce the likelihood of extremist violence.
- Political accountability, governance and community integration programming reduce Kosovo's vulnerability to Russian influence, as manifested through actions by the Government of Serbia.
- Strengthened rule of law, public accountability systems and property rights help to create a level playing field for U.S. firms, sanction unfair business practices and support contracts enforcement.
- Coordination with other international actors minimizes redundancy and waste, and sets expectations at appropriate levels.
- Engagement with local partners maximizes the impact of U.S. taxpayer dollars.

As Kosovo has developed the institutions and processes of a modern democratic state, donor development program goals have shifted from recovery to foundational to deepening, affecting broad strategic goals as well as specific technical interventions. USAID/Kosovo has experienced this shift, too, and its programming will likely shift further in the upcoming strategic planning period. As Figure 1 below shows, the Mission's portfolio has been shifting from a dominant focus on rule of law and human rights to one targeting specific accountability and governance areas.

## THE ENVIRONMENT FOR DRG PROGRAMMING

The 10th anniversary of Kosovo's independence is an appropriate moment to pause and reflect on what bilateral and multilateral donors are currently supporting. As with the pre-independence years and the first years of independence, the donor field is quite crowded.

Major achievements have resulted from past years of extensive programming and technical assistance, and in many cases the direct engagement of international experts has given way to use of Kosovo officials and experts. One major exception is EULEX, which still holds sensitive cases in its portfolio and provides security forces in the northern municipalities. EULEX's mandate expires in June 2018; as of mid-April, no decision has been made on its future. It is not clear that the Kosovo judicial system is prepared to absorb an unknown number of high-level corruption and organized crime cases, from both administrative and political perspectives. It is, however, clear, that EULEX's security forces in the northern municipalities have no realistic ready replacement.

As Table 1 below shows, a large number of international actors have been engaged in a wide variety of development assistance areas.<sup>34</sup> The U.S. has been the largest bilateral donor, particularly in the area of government and civil society (the 2015 figures in Table 1 from the Organization for Economic Cooperation and Development's Donor Assistance Committee [OECD/DAC] pre-date the current Millennium Challenge Corporation [MCC] compact). EU funding, of course, has been many times greater, including support for EULEX. The recent Western Balkans strategy released by the EU marks its continuing engagement with Kosovo, but also its impatience with the ability of political leaders to make progress on key issues like the 2015 demarcation agreement. Kosovo is unambiguously far from beginning the EU accession process. The EU's reputation is tarnished by the perceived failure of EULEX to carry out high-level prosecutions for corruption or organized crime.

Among the largest bilateral donors, while there is something of a division of labor, important DRG areas are nevertheless left out of assistance programs:

- U.S. Department of State – The State Department provides significant funding for International Narcotics Control and Law Enforcement activities in collaboration with EULEX, OSCE, and Kosovo partners in need of equipment and training.
- Sweden – In addition to work with the Office of the Auditor General, the Swedish International Development Cooperation Agency (SIDA) has contributed funding to KCSF for civil society development, helped to integrate gender considerations into public administration reform, worked with ministries and municipalities in northern Kosovo to improve their policy development, and supported improvement in relations between ethnic communities.
- Norway – The Norwegian government provides significant funding for EULEX and for a case management system for the courts.

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<sup>34</sup> These are the most recent figures available from the Creditor Reporting System maintained by the Organization for Economic Cooperation and Development's (OECD's) Development Assistance Commission.

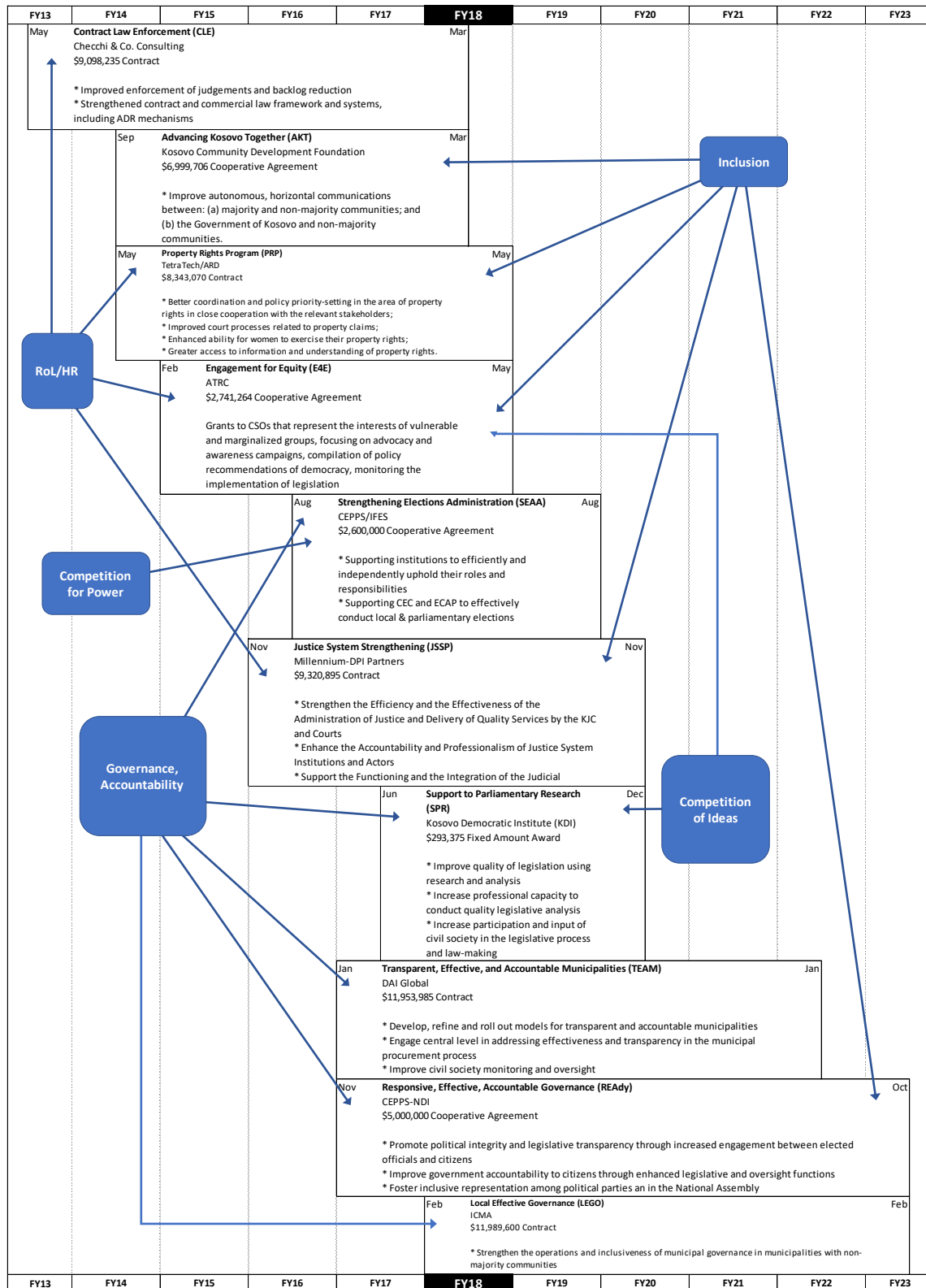
- Germany – The Germans provide technical assistance to the Ministry of Finance, Tax Administration and Central Bank for improving public finances, assistance to key Assembly of Kosovo committees, institutional assistance on strategic planning and coordination, and support for implementation of the Stabilization and Association Agreement, waste management by municipalities, and police reform and education.
- Denmark – The Danes support the Anti-Corruption Agency and provide pooled funding for KCSF.
- Switzerland – The Swiss government provides technical assistance for municipalities through the Helvetas Decentralization and Municipal Support (DEMOS) project, which engages in a diverse assortment of small infrastructure projects and technical assistance initiatives with various municipalities.

The United Nations Development Program (UNDP) is also active in Kosovo, providing support to the Anti-Corruption Agency, the Ministry of Justice, the Kosovo Justice Academy and the northern municipalities, as well as supporting transitional justice issues.

A scan of intervention areas shows that multiple donors are working with key judicial sector actors, northern municipalities, and public integrity actors institutions/groups including key Assembly committees and the Anti-Corruption Agency. That same review, however, shows that certain actors receive inadequate attention: municipal assemblies as accountability actors, local CSOs as policy entrepreneurs, and local courts as the main judicial interaction point for citizens. Even the Assembly, which has benefitted from a number of donor programs to strengthen specific committees, build policy research capacity, and orient new deputies, is in need of specific support for development as an institution.

As mentioned previously, U.S. assistance programs focus more on the state-society relationship than EU or European donor agencies. This is USAID's comparative advantage, and can be seen in almost all of the Mission's portfolio. The analysis from Steps 1 and 2 showed that the problematic elements in Kosovo are Political Accountability, Government Responsiveness and Effectiveness, and Rule of Law/HR; in each element, the missing aspect in the institutions or formal processes is the state-society relationship.

**FIGURE I – USAID/KOSOVO’S PORTFOLIO AS OF FISCAL YEAR 2018**





**TABLE I – DONOR ASSISTANCE TO KOSOVO BY SECTOR: OECD/DAC FIGURES FOR 2015<sup>35</sup>**

	Government/ Civil Society	Conflict/Peace/ Security	Health	Education	All Other	Donor Total
<b>USA</b>	29,066,432	3,341,232		5,377,831	12,008,299	49,793,794
State	17,778,927	40,000			400,000	18,218,927
USAID	11,238,505	3,301,232		4,344,638	11,216,832	30,101,207
All Other	49,000			1,033,193	391,467	1,473,660
<b>Norway</b>	16,387,535	193,197		999,078	838,362	18,418,172
<b>Sweden</b>	13,450,019	3,493,502	9,976,099	202,875	12,384,877	39,507,372
<b>Germany</b>	6,380,849	1,564,565	196,818	6,507,894	8,438,372	23,088,494
<b>Denmark</b>	4,750,268				1,899,426	6,649,694
<b>UK</b>	1,199,153	769,339		412,429	5,037,430	7,418,351
<b>Slovenia</b>	326,356	681,940		6,343	188,575	1,203,214
<b>Slovakia</b>	173,040	298,390	4,440	29,960	3,330	509,160
<b>Japan</b>	171,760	12,071	965,909	124,581	2,709,722	3,984,041
<b>Switzerland</b>	155,877		6,952,094		1,053,299	8,161,270
<b>Finland</b>	108,230	290,114			277,474	675,818
<b>France</b>	70,993	1,019,572		370,110	466,999	1,927,674
<b>Czechia</b>	48,411	868,107	490,120	159,878	95,017	1,661,533
<b>Austria</b>	11,093	446,370	37,113	4,953,552	1,046,606	6,494,733
<b>Portugal</b>	4,814	172,191			9,706	186,711
<b>Hungary</b>	1,492			4,262	21,164	26,918
<b>Luxembourg</b>			2,248,998	1,021,227	1,113,381	4,383,606
<b>Poland</b>		833,521		11,936		854,456
<b>Italy</b>			107,143	191,781	124,917	423,841
<b>Australia</b>					4,959	4,959
<b>Belgium</b>				2,014	1,387	3,401
<b>Canada</b>					65,266	65,266
<b>Ireland</b>		61,194				61,194
	<b>72,306,321</b>	<b>14,045,304</b>	<b>20,978,735</b>	<b>20,375,751</b>	<b>47,788,567</b>	<b>175,494,678</b>

## RECOMMENDATIONS

### STEP 4: OUTLINING THE PROPOSED STRATEGY

#### SUMMARY ANALYSIS AND THEORY OF CHANGE

The analysis from Steps 1 and 2 identified challenges to accountability and governance that affect inclusion in and consensus on the modern democratic state of Kosovo. Foremost is weak political accountability, which has an effect on all of the other DRG elements, as well as problematic enforcement of the rule of law and protection of human rights, and a dysfunctional competition for power. The accountability gap can be seen in myriad national-level institutions, municipalities, and even in political parties and CSOs. The public perception of elite impunity stems in large part from this gap, and is arguably driving citizen attitudes and behavior in directions that are less supportive of a multi-ethnic and open polity in Kosovo. At the same time, a distinct but related governance gap directly affects the lives of citizens in negative ways and

<sup>35</sup> OECD/DAC data is reported by members with a two-year lag, and is based on obligation and/or disbursement activity for the given year. As such, it is difficult to track multi-year projects without multiple years of data, consistent information in key fields, and unofficial updates. The Ministry of European Integration's Department of Development Assistance does produce project-level reports, but the latest available data is for 2015. See [http://www.mei-ks.net/repository/docs/20170926133405\\_dons.pdf](http://www.mei-ks.net/repository/docs/20170926133405_dons.pdf), [http://www.mei-ks.net/repository/docs/20170926133330\\_donor.pdf](http://www.mei-ks.net/repository/docs/20170926133330_donor.pdf)

reinforces perceptions of elite disconnect. Poor government performance, lack of responsiveness and inclusion, and opaque policymaking processes occur at all levels.

Based on the Step 3 filter of USG and USAID priorities, interests and resources, the team crafted the problem statement below on the DRG challenges facing Kosovo:

*There is minimally effective **political accountability** due to active political control of integrity institutions and weak and under-resourced oversight institutions. Despite significant foundational achievements, **rule of law** authorities have not been effective in prosecuting high-level corruption, guaranteeing rule of law in the north, and administering quality and timely justice. With the exception of non-majority parties where **competition** has greatly diminished, majority parties fiercely compete in largely free and fair elections for power, but actively collaborate in power. The policymaking process at all levels shows a lack of competition of ideas and many of the key reforms are driven by the international community instead of citizens, civil society, and media. Gaps in the coordination of all government levels, patronage-based recruitment, lack of professional administration and poor allocation of resources diminishes **government's effectiveness and responsiveness**. Despite considerable progress in integration of non-majority communities into the Kosovo political system, Kosovo still faces **consensus** challenges to common civic identity and undivided loyalty. This has been paralleled by growing dissatisfaction of the majority community with the Kosovo system due to gaps between the de jure and de facto rules of the game. **Inclusion** in the policymaking process remains formal and not inclusive. The patriarchal society presents barriers to the inclusion of women, people with disabilities, and the LGBTI community in all aspects of rights.*

The team formulated a purpose statement to guide USAID's objectives for future DRG programming:

*To develop a modern democratic state that serves the needs of all citizens, Kosovo will need to (a) strengthen accountability institutions and processes to channel elite behavior in system-supportive directions; (b) boost the policymaking and internal governance capacities of the judicial sector; (c) improve the performance and reliability of municipal government in tandem with more effective coordination across ministries; and (d) engage citizens, CSOs and media in pursuing accountability and good governance at all levels.*

These drivers of change are built on three key assumptions. First, it is assumed that Kosovo political elites will continue meeting the stated expectations of the international community, particularly of the EU and the U.S. The international community's expectations tend to come in the form of action plans and regular discussions, but at times have been in the form of quite forceful and explicit statements. Second, it is assumed that the EU will continue to play a positive role in the Western Balkans, including engaging with Kosovo on a path toward eventual accession and pressing Serbia to maintain European standards as it works toward accession. Finally, it is assumed that citizens will continue to express dissatisfaction through voting and other public mobilization events.

The four programming areas also align with the Administration's foreign policy priorities. Closing accountability gaps by strengthening national and local institutions, increasing the independence of the judicial sector, and mobilizing civil society would boost public support for the political system, provide a more conducive environment for economic activity, and strengthen the resilience of Kosovo in the face of actions by Russia and Serbia. Closing governance gaps through the improved performance of municipalities, strengthened coordination between and within levels of government, and higher quality legislation and legal implementation would increase public satisfaction with the political system, deepen integration of non-majority communities, and increase confidence on the predictability of administrative and judicial processes.

The assessment team offers three meta-recommendations to consider as the Mission develops its new strategy for the CDCS, two of which bear directly on coordination with other international actors to minimize redundancy, waste, and unclear expectations:

- **Plan ahead for shifts in donor dominance.** Kosovo's progress toward eventual EU accession will bring more funding from the EU during a period when USG funding for technical assistance will be decreasing. USAID's strategy should account for potential complementarity or continuity. An example would be working to increase authority and capacity of public integrity institutions, in order to meet criteria in multiple accession chapters. Another example would be strengthening the planning function of municipal governments, which is a key element in the typical EU-supported reform plan for local governments.
- **Recognize that the EU and the USG have different approaches to democratic development.** The EU and its member states tend to focus on building formal state institutions and processes as a means for the state to meet the needs of citizens. The USG approach, however, tends to focus on the state-society relationship, as manifested in formal and informal state institutions and processes, as a means for ensuring citizen input on decisions that affect their lives. This means, in practice, that the USG is often the main or dominant voice in support of civil society development for policy advocacy, citizen input spaces, vigorous independent journalism, and transparent and competitive political parties. Once USG funding significantly drops, it is quite unlikely there will be other donors to replace this funding or that have the same priorities for these groups. For example, the pattern for civil society funding in other post-communist states has been that the USG helps to create a set of entrepreneurial CSOs that can pursue policy advocacy at the national level, while EU funding is targeted more at service-providing CSOs in policy areas that help states reduce their budgetary burdens. The end results are a decimated set of entrepreneurial CSOs in the capital and a relatively well-funded but instrumental set of service providers outside the capital, which reverses gains in the competition of ideas for better policymaking.
- **Assume that recent political turbulence may have lasting effects.** The Kosovo party system is in a period of potentially far-reaching transition, although specific political maneuverings have more immediate political ends. How parties and the party system change could have a critical influence on the success of USAID technical assistance programs. Today's breakaway faction could join with other forces to become a majority party that would be able to exercise more decisive authority, or the changes could simply lead to further fragmentation in the party system and result in more corruption, worse governance, and weaker consensus. Anticipated leadership battles could lead to new energy and direction from a different set of party leaders, who could provide the international community with more receptive counterparts for reform opportunities, lead to new set of corrupt elites, or end in further party system fragmentation as defeated challengers decamp for new parties.

## STRATEGIC AND ILLUSTRATIVE PROGRAM RECOMMENDATIONS

Kosovo struggles with the interplay of accountability and governance gaps. Both gaps are manifested in multiple ways across the national and municipal levels of government and involve societal actors. The USG and other international community actors can play roles in closing both gaps. The assessment team was asked to consider prioritization and, if possible, sequencing of recommendations. Prioritization should be given to programming areas that reduce accountability and/or governance gaps, particularly as laid out in the purpose statement and the recommendations below. Sequencing is difficult to outline due to USAID's existing portfolio and unknown procurement plans.

**1. Strengthen accountability institutions and processes to channel elite behavior in system-supportive directions.**

Illustrative activities include:

- Technical support to strengthen the Assembly of Kosovo as an institution. Support should build on explicit international community consensus for a rigorous strategic planning process that produces an action plan for realization of a budget increase, professionalization of the cadre, production of policy analysis for Deputies, and deeper engagement in committee and plenary oversight of not just the Government of Kosovo, but also of the judiciary and public integrity institutions that oversee the government. USAID's current Responsive, Effective, Accountable Governance (REAdy) and Support to Parliamentary Research activities could play a valuable role.
- Technical support to strengthen the work of public integrity institutions. Support would address issues of legislation, capacity, and enforcement. Public integrity institutions generally do not have authorities for meaningful investigation and litigation, specified requirements for reporting to the Assembly, or substantive independence due to political appointment processes. The Assembly's capacity to engage in better oversight through engagement with public integrity institutions could be addressed through this type of technical support. Support for better enforcement could be implemented via specialized training on such topics as financial forensics, political finance regulations, and procurement processes.
- Technical support to strengthen the accountability of municipal officials. Assistance would take place at both the national and municipal levels. Increasing the accountability of mayors to municipal assemblies would require the active involvement of the Ministry for Local Government Administration to remedy the current legal asymmetry that only subjects municipal assemblies to new elections, not mayors. Support for municipal assembly members would go beyond the new member training currently provided to add in-depth issues, such as the legal requirements for reporting and access to information on municipal executive performance, legal remedies for obtaining information, municipal budget development, contract performance inspection, etc. USAID's current Transparent, Effective, and Accountable Municipalities (TEAM) project focuses primarily on e-procurement and procurement oversight, and could play a valuable role in working with municipal assembly members and other municipal officials on inspection of procurement implementation.

**2. Boost the policymaking and internal governance capacities of the judicial sector.**

Illustrative activities include:

- International community pressure for progress on investigating and prosecuting high-level cases.
- Continued technical assistance to improve the functioning of courts throughout Kosovo. USAID, through its current Justice System Strengthening Project (JSSP), activity and other donors have been working with the Basic Courts to improve transparency, increase efficiency through automation, provide training for judges, and strengthen internal management. One additional need is augmented budgets for the translation of materials into other national languages. Overall, this work is key for moving Kosovo courts to a standard of reliable, predictable functioning. JSSP has also worked to integrate courts in northern municipalities. The JSSP mid-term evaluation, currently underway, should provide insights on specific assistance topics and priorities.
- Technical support to address judicial sector policy and performance challenges that limit independence. First, support would focus in part on remedying existing deficiencies in appointments to the KJC and KPC, as well as training for prosecutors and police on the extent

and limits of their independence; the latter may need to be provided through the US Embassy by the Department of State's Bureau of International Narcotics and Law Enforcement. Second, additional support would target enforcement of performance evaluations and disciplinary measures for judges, prosecutors, and court staff. Third, USAID should coordinate with other international community actors on needed assistance to expand the Kosovo Justice Academy curriculum to provide more training topics for prosecutors and court staff, revise the existing pedagogy to focus on practical application of legal concepts and courtroom management techniques, and develop more specialized topics for advanced judges. Fourth, support should be coordinated with other donors to generate a common alternative dispute resolution approach, revise training and certification processes, and launch a public awareness campaign.

**3. *Improve the performance and reliability of municipal government in tandem with more effective coordination across ministries.***

Illustrative activities include:

- Technical assistance for strengthening public administration capacity. Activities should include expanding the use of e-government and e-procurement, strengthening the capacity of municipal staff through needs-based training, and potentially rationalizing the size of municipal staffing. USAID's current TEAM activity addresses e-procurement at the municipal level. However, the assistance should also work with ministries to tackle remedies for inappropriate procurement award criteria and improved dissemination of information, templates, and common technical specifications. This technical assistance would need to work in tandem with USAID's new Local Effective Governance (LEGO) activity working in non-majority municipalities.
- Technical assistance to improve the budget process. Support would take place at the national and municipal levels to rationalize and revise the current budget process. Technical assistance would be provided to the Ministry of Finance, Ministry of Local Government Administration, and the Association of Kosovo Municipalities to revise the current budget process and tools. This effort would be followed by extensive training for mayors, municipal directors, and municipal assembly members. This technical assistance would need to work in tandem with USAID's LEGO activity.
- Technical assistance to promote outsourcing of social services to CSOs. Support would include training for municipal officials on the nature and benefits of outsourcing social services, guidance on procurement processes, and training on the types of social services that are commonly outsourced (pre-schools, neighborhood health clinics, services for the disabled, environmental cleanup, women's shelters, etc.).

**4. *Engage citizens, CSOs, and the media in pursuing accountability and good governance at all levels.***

Illustrative activities include:

- Technical assistance to CSOs on providing social services for municipal governments. Support would include training to CSOs (formal or informal) at the local level on the public policy cycle, procurement processes, and inspections, with a special focus on persons with disabilities and other marginalized communities. Assistance would also include the sponsorship of policy-oriented associations or forums of service-providing CSOs.
- Continued technical assistance for national-level policy advocacy. Support is still needed because the civil society sector has not moved beyond donor dependence to more fully embrace service delivery, fee-for-service activities, corporate social responsibility, or volunteer mobilization campaigns.

- Continue to offer technical assistance for political party development. Although the main political parties have not embraced the organizational development lessons offered through REAdy enough to implement them, potential changes in party leadership may provide an opportunity for forward-thinking parties to transform into effective organizations, including in elections and governance.
- Technical assistance for training on societal accountability strategies. Support would be used to train journalists on complex topics like procurement, government budgets, corruption, and organized crime, based on models in use elsewhere in the Balkans by CSOs. Technical assistance would also be provided to CSOs, journalists, and public integrity institutions on litigation as a tool for enhanced political accountability and rule of law.
- Technical assistance to promote civil society sector growth. Support would go to coordinated efforts by CSO apex organizations to develop strategies and draft legislation for citizen engagement, public awareness campaigns, corporate social responsibility, and funding diversification. Models of legislation, campaigns, and strategies could be adapted from elsewhere in the Balkans by experienced implementers.



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