

Framework and Provisions for the Minority Communities

Case of Kosovo

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1. BACKGROUND

“Ringed by high mountains, crossed by a series of rulers over the centuries, the country boasts Ottoman mosques, Tito-esque administration buildings, Serbian Orthodox churches, monasteries, vineyards and extravagant KLA war memorials.¹” These are the words taken from the recent guide on Kosovo. It is therefore, not surprising when mentioning that Kosovo is populated by Albanians, Serbs, Roma, Ashkali, Egyptians, Turks, Bosniaks, Gorani, Croats and Montenegrins.

On February 17, 2008, Kosovo declared its independence from Serbia, becoming the seventh state to emerge from the break-up of the former Yugoslavia. A small country of over two million people, Kosovo has assumed responsibilities and executive powers after being administered for almost nine years by United Nations’ Mission in Kosovo. The core responsibilities lie on Kosovo’s executive, judiciary and legislative part to educate, effectively protect and promote the rights and interest of its communities.

Albanians represent the majority with an overwhelming percentage² of total population, while Serbs are considered the largest minority community in Kosovo. However, legislation in place in Kosovo does not distinguish between “majority” and “minority” groups, but refers to them as “communities.” Article 57.1 of the Constitution of Kosovo describes communities as “inhabitants belonging to the same national or ethnic, linguistic or religious groups traditionally present on the territory of the Republic of Kosovo”³ including the Albanian community. Yet, in daily usage, the term community refers to ethnic minorities. The recently adopted Law on the Protection and Promotion of the Rights of Communities and their Members in Republic of Kosovo⁴ in its article 1.4 describes communities as “national, ethnic, cultural, linguistic or religious groups traditionally present in the Republic of Kosovo that are not in the majority”.

Determining the Kosovo status was a long process of negotiations (Vienna talks facilitated by President Ahtisaari and his team). The aim of the negotiations was to settle the final political status of Kosovo while taking into account settlement of minority rights, mainly Serbs. This meant full transfer of decision making powers at local level (decentralisation, religious rights and other important to Serb community). A document known as an ‘Ahtisaari plan’ was a result of these negotiations – the plan which has become a sort of a *bible* for the declaration of independence, adoption of constitution and as a legal binding document which would serve as a road map for Kosovo Government to ensure a full respect for these minority rights. Kosovo Institutions showed full commitment in translating *Ahtisaari Plan* into an action plan which meant starting to adopt legislation to support the plan.

¹ Gail Warrander and Verena Knaus, *Kosovo* (Bradt Guides, 2007).

² Since no census has taken place between 1981 and present with participation of all communities, data on different communities vary with Albanian community representing around 90% of total Kosovo’s population and remaining 10% divided between different communities.

³ <http://www.gazetazyrtare.com/>

⁴ http://www.assembly-kosova.org/common/docs/ligjet/2008_03-L047_en.pdf ; Law is approved by Assembly, date 13. 03. 2008 and promulgated by the Decree of the President of the Republic of Kosovo No. DL-013-2008, date 15.06.2008.

However, in practical terms, implementation of this legislation is facing a lot of challenges. The local Kosovo Serbs, lead and driven by official Belgrade, are trying to do their best into creating different obstacles on the implementation part of this plan on the ground despite the fact that the provisions of the plan give full benefits to the Kosovo Serb community. The greatest challenge in this respect remains the non-cooperation from the Serb community in the implementation part of *Ahtisaari Plan* along with the establishment of their parallel structures of governance and a fear that was accumulated over the years that a Serb participation in the Kosovo democratic affairs would automatically lead to a legitimisation of independence of Kosovo and therefore risk the possibility of being considered as 'traitors' from their Belgrade leaders.

Although the Government of Kosovo declaratively stood firm on the commitment to Ahtisaari Plan, in practice has failed to practically establish the new municipalities foreseen by the Law on Local Self Government. Moreover the Kosovo Government has not been able to install their authority in the Northern Kosovo and other Serb areas. It should be stressed that the International Community (UNMIK, EULEX, ICO and Quint countries) have not shown any particular will or commitment to do so and therefore assist the Government in making this possible – all this in the name of the stability!

1.1. Introduction

The recent developments, namely what is being referred to as “*the six points plan*” (see UN/SC report from the 26 Nov.08 (<http://www.un.org/Depts/dhl/resguide/scact2008.htm>) has created a more complex environment in Kosovo when it comes to Kosovo functioning as sovereign and independent state where a single legislative framework functions. The six point plan has created a lot of uncertainty on how will Kosovo be able to function as one with all the international bodies not being able to portray a clear picture on their future functions in Kosovo. Here we are particularly refereeing to a very unclear roles and responsibilities of UNMIK vs EULEX on one side and ICO vs Government on the other. The current set up raises many questions on the Government accountability and the ability to perform its obligations foreseen by the Kosovo Constitution.

This paper aims to describe the existing legal framework which has been adopted to support minority representation at local level. Due to specifics of this process, the paper also looks at the Central mechanisms used to support such a process. To describe the process fully this paper gives some background to the United Nations Mission in Kosovo regulations which served as a basis in further developing the full legal framework in the post-war Kosovo (after June 1999) to further see other aspects of the legislation after the declaration of independence in February 2008. Furthermore this paper offers a short view of the decentralisation process in Kosovo its stance and the challenges ahead.

Annexes to this paper also give the political will of the Kosovo Prime Minister and other decisions related to the establishment of Institutions which support the advancement of Community Affairs.

2. REPRESENTATION OF MINORITIES IN THE INSTITUTIONS OF LOCAL GOVERNMENT

The legal framework for the protection of minority communities that has developed over the last eight years is quite a complex one. One could easily say that comparing it with the legal framework of other European countries the development in Kosovo could be easily placed in the advanced level.

To be able to introduce and set up such a legal framework in a society which has just come out from an extremely difficult period of war, was a huge challenge. The majority Albanian population and its leaders showed great willingness, commitment and will to make this happen and the credit should be notable.

In order to adequately describe the current set-up of municipal/local institutions in which representation of ethnic communities is foreseen, it is necessary to start from 1999 and arrival of UN Mission in Kosovo Administration (UNMIK).

2.1. UNMIK regulation 2000/45 on Self-Government of Municipalities in Kosovo

The UNMIK regulation 2000/45 on Self-Government of Municipalities in Kosovo⁵, section 23, foresaw that Municipality shall establish and maintain the Communities Committees and Mediation Committees as standing offices – as well as Community Offices.

The Community Committee “shall promote the rights and interests of the communities living within the municipality and further promote a society where a diversity of cultural, social and religious traditions is not only tolerated but also encouraged”. The Community Committees “shall also act if it considers that action has been taken, or is proposed to be taken, by or on behalf of the Municipal Assembly, which has violated or may violate the rights of a community or a member of a community or which is or may be prejudicial to the interests of a community, it shall refer the matter immediately to the Mediation Committee”.

The Mediation Committee is charged to examine all matters referred to it by the Community Committee. It “shall carry out such investigations as are necessary to establish whether the rights of a community or a member of a community have been or would be violated or whether action which is or would be prejudicial to the interests of a community has been taken or proposed. It shall seek to resolve the matter by mediation. The Mediation Committee shall within 28 days submit a report on each matter to the Municipal Assembly, with recommendations as to how it considers the matter should be dealt with”.

While the rights and obligations of these two standing committees are quite extensive, the reality on the ground showed that much of the violations have not been properly examined. Several reasons could be attached to it, ranging from:

⁵ http://www.unmikonline.org/regulations/unmikgazette/02english/E2000regs/RE2000_45.htm

- a) lack of understanding on the side of the committees' members on what constitutes a violation;
- b) irregular meetings of the committees; to
- c) the disinterest of municipalities to genuinely react to the recommendations from the respective committees.

In addition, the set-up of the community committees and mediation committees have been continuously hampered by the lack of adequate candidates from the minority communities. After June 1999, Kosovo experienced brain-drain, in particular with regards to members of minority communities and this resulted in staffing the committees with unqualified personnel.

Furthermore, UNMIK regulation 2000/45 foresaw creation of the Community Office. A Community Office was established in those municipalities where a minority forms a substantial part of the community. Community Offices were temporary and shall exist as long as the Central Authority considers them necessary to comply with United Nations Security Council resolution 1244. The Community Office was also responsible for enhancing the protection of community rights and ensuring equal access for communities to public services at the municipal level. Since considerable number of minority communities lives in the rural area, the Municipality was responsible to establish Sub-offices that will be part of the structure of the Community Office and will assist communities in free access to public services.

Unlike Community and Mediation Committees, Community Offices have always been seen as first point of contact for minority communities in accessing municipal services. In addition, due to lack of awareness on communities' side, complaints on the conduct of the municipality were addressed to community office instead of respective committees. Furthermore, UNMIK regulation foresaw in its section 25.2 that Municipalities where one or more minority communities live, an additional Deputy President shall be appointed by the Municipal Assembly from these communities.

2.2. Legislative framework after Declaration of Independence

Declaration of Independence created different political environment and circumstances in Kosovo. *Ahtisaari Plan* served as the basis of the establishment of the new state institutions and political reforms along with the legislative reform in line with the long term political aspirations and strategies of the new Kosovo state towards Euro Atlantic institutions namely EU and NATO. This meant a huge and a fast track legislative adjustments and reforms on different laws and regulations. After the declaration of independence on February 17, 2008, 41 different laws (deriving from the *Ahtisaari Plan*) have been promulgated, which in effect had annulled certain UNMIK regulations, including the above-said UNMIK regulation. It should be stressed that Laws adopted in the Kosovo Assembly after the independence were in line with the International Community requirements and therefore meant not only the replacement of the UNMIK regulations but advancement of the position of minorities in Kosovo society.

2.2.1. The Constitution of Kosovo

The Constitution of Kosovo, article 62 foresees a range of possibilities for community representation:

1. In municipalities where at least ten per cent (10%) of residents belong to Communities not in the majority in those municipalities, a post of Vice President of the Municipal Assembly for Communities shall be reserved for a representative of these communities.
2. The position of Vice President shall be held by the non-majority candidate who received the most votes on the open list of candidates for election to the Municipal Assembly.
3. The Vice President for Communities shall promote inter-Community dialogue and serve as a formal focal point for addressing non-majority Communities' concerns and interests in meetings of the Assembly and its work. The Vice President shall also be responsible for reviewing claims by Communities or their members should the acts or decisions of the Municipal Assembly be considered to violate their constitutionally guaranteed rights. The Vice President shall refer such matters to the Municipal Assembly for its reconsideration of the act or decision.
4. In the event the Municipal Assembly chooses not to reconsider its act or decision, or the Vice President deems the result, upon reconsideration, still to present a violation of a constitutionally guaranteed right, the Vice President may submit the matter directly to the Constitutional Court, which may decide whether or not to accept the matter for review.
5. In these municipalities, representation for non-majority Communities in the Republic of Kosovo in the municipal executive body is guaranteed.

Evidence shows that in some municipalities like Dragash, Fusha Kosova or Obiliç the Vice-Presidents are functional. However, it is only few months after the adoption of the Constitution (specifically the Law on Local Self Government) and more time is needed to make any substantial evaluation on how the process is being implemented.

Kosovo Albanian delegation and President Ahtisaari's team put a lot of effort and stress into the Decentralisation during the political status' talks in Vienna. The agreement, which was perceived as a big compromise, incorporated in itself a high degree of devolution of powers not only in service offering but also in establishment of five new Municipalities with a majority Serb population (Gracanica, Partesh, Ranilluge, Mitrovica North, Klllokot) and extension of the existing Novoberde municipality in areas of Serb majority population. Decentralisation and the local government reform incorporate three basic Laws among which also the Law on Local Self Government.

2.2.2 Law on Local Self Government

Specifically, the Law on Local Self-government⁶ foresees these arrangements:

2.2.3. *Communities Committee - article 53*

53.1. The membership of the Communities Committee shall include the members of the Municipal Assembly and community representatives. Any community living in the municipality shall be represented by at least one representative in the Communities Committee. The representatives of communities shall comprise the majority of the Communities Committee.

53.2. The Communities Committee shall be responsible to review compliance of the municipal authorities with the applicable law and review all municipal policies, practices and activities related with the aim to ensure that rights and interests of the Communities are fully respected and shall recommend to the Municipal Assembly measures it considers appropriate to ensure the implementation of provisions related to the need of communities to promote, express, preserve and develop their ethnic, cultural, religious and linguistic identities, as well as to ensure adequate protection of the rights of communities within the municipality.

2.2.4. *Deputy Chairperson for Communities - article 54*

54.1. In municipalities where at least ten per cent (10%) of the citizens belong to Communities not in the majority in those municipalities, a post of the Chairperson of the Municipal Assembly for Communities shall be reserved for a representative of these communities.

54.2. The post of the Deputy Chairperson of the Municipal Assembly for Communities shall be held by the non-majority community's candidate who received the most votes on the open list of candidates for election to the Municipal Assembly.

2.2.5. Duties of the Deputy Chairperson of a Municipality for Communities - Article 55

55.1. The Deputy Chairperson of a Municipality for Communities shall promote inter- community dialogue and serve as formal focal point for addressing non-majority communities' concerns and interests in meetings of the Assembly and its work.

⁶ http://www.assembly-kosova.org/common/docs/ligjet/2008_03-L040_en.pdf; Law is approved by Assembly, date 20. 02. 2008 and promulgated by the Decree of the President of the Republic of Kosovo No. DL-008-2008, date 15.06.2008.

55.2. The Deputy Chairperson of a Municipality for Communities shall be responsible for reviewing claims by communities or their members that the acts or decisions of the municipal assembly violate their constitutionally guaranteed rights.

55.3. The Deputy Chairperson of a Municipality for Communities shall refer such matters to the Municipal Assembly for its reconsideration of the act or decision.

55.4. In the event the Municipal Assembly chooses not to reconsider its act or decision, or the Deputy Chairperson of a Municipality for Communities deems that even upon reconsideration the act or decision presents a violation of a constitutionally guaranteed right, the Deputy Chairperson of a Municipality for Communities may submit the matter directly to the Constitutional Court, which may decide whether to accept the matter for review.

If we compare the provisions related to communities foreseen in the UNMIK regulation on municipalities and those in the Republic of Kosovo Law on Local Self-Government it can be concluded that mediation committee is no longer part of the municipal institution as standing committee. Article 55.2 of the Law on Local Self-Government has vested those powers to the Deputy Chairperson of a Municipality for Communities which were previously held by the mediation committee. However, the existence of the Community Office is not foreseen by the new Law which might pose a shortcoming in the future on the promotion and preservation of community rights at the local level.

If the Kosovo Institutions are able to put the implementation of this Legal Framework related to the Local Government into practice than without any doubt Kosovo could be used as a best practice example not only in the region but wider. These asymmetric competencies, such as higher education and secondary health, are part of devolution of enhanced municipal competencies which, to my knowledge, can not be found elsewhere. This makes Kosovo a unique case.

2.3. Views on Decentralisation Process in Kosovo

Decentralisation process in Kosovo is a very sensitive and hot political issue especially between Albanian and Serb communities. Not that much because of the process itself, it seems, but for the possible repercussions that this process may (or may not) bare. Albanians on one hand seem to consider the decentralisation process as a necessity for their reforms and establishments of their governance institutions and more on this because of EU integrations rather than for anything else. However, they seem (Kosovo government and other civil society institutions) to support this process if it is based purely on the decentralisation of the power and giving more power to municipalities, as long as they are set according to the European Charter of Local Self Government adopted in 1985 from the Council of Europe, and seem to reject any other possible formula that would set this process via a different path and in a way excludes this way (and this seems to gain more credibility and validity as it is one of the main criteria of local governance reform towards the EU integration). While on the other side Serb community (openly controlled and influenced from Serbian Government in Belgrade) rejects any form of

decentralisation as long as this decentralisation does not offer them totally free hands in the governance of the municipalities and kind of a blank check policy over many political issues (including the non-recognition of the institutions of Kosovo in some ways).

Automatically, these opposite positions create a very complex situation of tit for tat policies of buying time from all sides; 1) from Serb community because of their situation of living in enclaves and organising their parallel governmental structures; 2) from Kosovo government because of the lack of political (and other) recourses of putting the Northern part under control and 3) from International Community presence and missions for not being able to find a formula that would fit both these two extreme positions of these two communities having in mind the constitution of the republic and other legislative reforms that Kosovo institutions have already undertaken and that offers a great deal of rights to minority communities.

The in-place legislation being adopted according to the *Ahtisaari Plan* from Kosovo institutions foresees a great deal of rights for minorities and establishes the path to full decentralisation of power. Yet other part of the *Ahtisaari Plan* is that it has been strongly rejected from the government in Belgrade for other political bids (such as independence) and not for Serb rights *per se* leaving some parts of it (such as decentralisation process) in a political limbo due to the possibility of different interpretations of different points according to different political sides and moods and momentums.

Being in this position the decentralisation process seems to be a process that would be left there to be used for hard and hot political times to come as a compromise card. Although Kosovo institutions still does not seem to have reached the level to behave as a sovereign state having the created confusions between International Communities' missions and their mandates. They still seem to behave in the way they did during UNMIK's reign in the sense of waiting those offices come up with first drafts of different legislation pieces or even policy papers.

One thing seems to be sure is that the decentralisation process is in the interest of Kosovo as a new state in Europe. Minorities rights are the fundamentals that Kosovo government has in disposition to prove itself that it wants to build a multiethnic and a democratic state. Although these measures seem to be very hard to be achieved not because of the lack of the will from the government or Albanian side (as it is often referred to in many writings) but from the government in Belgrade that very often pushes the local Serb community to the edges to oppose this or that initiative that comes from Prishtina be that 'a dream come true' for the Serb community still it is in the interest of official Prishtina to push this process forward not only with Kosovo actors (including the international presence in Kosovo) but with other actors in the diplomatic level of bilateral or multilateral talks with states that have already recognised the independence of Kosovo and especially with those that still have and are refraining from recognising the independence.

3. CENTRAL LEVEL REPRESENTATION

In order to better understand the representation of the communities in Kosovo, it is important to also refer to the central level representation and describe all institutions established for the protection and promotion of community rights. It also describes the relations between central and local levels.

3.1. Assembly of Kosovo

Unlike the local Assemblies representation, the Assembly of Kosovo (AoK), through Article 64 (2) of the Constitution foresees that out of the 120 seats, a minimum of 20 are guaranteed for representatives of minority communities. Ten (10) of these seats are reserved for the Serb community. This number can be easily increased should Serb community participate in political life and affairs of Kosovo and in open elections. The same system applies to the other minority communities. Other minority Communities receive the total number of seats won through the open elections but are in any case guaranteed a certain minimum number. In practical terms this means: three seats for the Bosniak community, two for the Turkish community and one each for the Gorani, Roma, Ashkali and Egyptian communities'. One additional seat is awarded either to the Roma, Ashkali or Egyptian community, depending on which community has won the highest overall vote.

Furthermore, the Constitution guarantees, that one of the Assembly Deputy Presidents must be elected from members holding a guaranteed seat. This means: one for the Serb community and one from the members of other minority communities. For the parliamentary committees, the Constitution foresees that "at least one vice chair of each parliamentary committee shall be from the deputies of a Community different from the Community of the chair."⁷

Special voting procedures are foreseen for changes to the Constitution and for legislation of vital interest for communities. Constitutional amendments require a two thirds majority of all deputies of the Assembly and a two thirds majority of all deputies holding reserved seats for minority communities.⁸ Art. 81 lists a series of laws that can be adopted, amended or repealed only by a double majority of present deputies and of the present deputies holding reserved seats for minority communities. Among these acts are: laws implementing the rights of communities and their members, laws on the use of language, on the protection of cultural heritage and on education. None of these laws may be submitted to a referendum. ⁹.

⁷ Art. 77 (3) of the Constitution.

⁸ Art. 144 (2) of the Constitution.

⁹ For a detailed description of the procedure that needs to be gone through in case any member of the parliament claims that any other law or certain provisions of a law violate vital interests of the community to which s/he belongs is given in the Rules of Procedure of the Assembly of Kosovo of 20 May 2005 as amended on 1 June 2006, Rule 40. See also para. 64 of UNMIK's Report to the Human Rights Commission, 13 March 2006, CCPR/C/UNK/1.

Evidence shows that these obligations are being implemented and elected Kosovo Serb representatives are taking part in this process (those parties who took part in the last Kosovo elections).

Apart from the above mentioned provisions there are other mechanisms at a central level which support representation of minorities in the Government Institutions.

3.2. Community Consultative Council

After the declaration of independence, Chapter III of the new *Constitution of Kosovo*¹⁰ almost word for word includes provisions of *Annex II of the Comprehensive proposal for the Kosovo Status Settlement*, prepared by Special Envoy of the Secretary-General on Kosovo's future status, Martti Ahtisaari.¹¹ The Chapter foresees creation of Community Consultative Council (CCC) that will function under the auspices of the Office of the President.

The Community Consultative Council has been established by a Presidential decree signed on September 15, 2008¹² pursuant to Article 60.1 of Constitution of the Republic of Kosovo, as well as Article 12.1 of the Law on Promotion and Protection of the Rights of Communities and their Members in the Republic of Kosovo.

The Council is a body composed of representatives of communities and government with the aim of furthering communities' and their members' access to and participation in the political, economic and social life in Kosovo. It provides a mechanism for regular exchange between the communities and the Government of Kosovo. It gives the communities the opportunity to comment, at an early stage on legislative or policy initiatives that may be prepared by the Government, to suggest such initiatives and to seek to have their views incorporated in projects and programs specifically affecting communities.

3.2.1. Functions of the Communities Consultative Council:

- a. To assist in the organization and the articulation of the views of communities and their members in relation to legislation, public policy and programs of special relevance to them;
- b. To provide a forum for coordination and consultation amongst communities and to ensure effective functioning of the community representative organizations according to a code of conduct to be adopted by the Community Consultative Council;
- c. To provide a mechanism for regular exchange between communities and state institutions;

¹⁰ Constitution of the Republic of Kosovo, entered into force on 15 June 2008.

¹¹ UN Security Council, *Comprehensive Proposal for the Kosovo Status Settlement*, S/2007/168/Add.1, available at http://www.unosek.org/docref/Comprehensive_proposal-english.pdf.

¹² Enclosed as Annex I, the Presidential Decree on the establishment of Community Consultative Council.

- d. To afford the communities the opportunity to participate at an early stage in legislative or policy initiatives that may be prepared by the Government or the Assembly, to suggest such initiatives and to have their views incorporated in the relevant projects and programs, including the annual strategy and report under Article 13 of the Law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo and other relevant laws;
- e. To fulfil requests for other mandatory consultations with regard to certain legal acts, as foreseen in the Constitution and the law;
- f. To enable communities to participate in the needs assessments, design, monitoring and evaluation of programs that are aimed at their members or are of special relevance to them;
- g. To make recommendations during the decision-making process concerning the apportionment of funds, both international and allocated from the budget of the Republic of Kosovo, for projects aimed at communities or their specific interests;
- h. To contribute to the reporting of the government of Kosovo to international human rights mechanisms; and
- i. To raise awareness of community concerns and contribute to harmonious relations between all communities within the Republic of Kosovo;

3.2.2. Membership in CCC:

1. Members representing communities shall be appointed in the following way:
 - a. The Serb community shall have five (5) representatives, up to two (2) of whom may be members of the Assembly of Kosovo.
 - b. The Roma, Egyptian and Ashkali communities shall have two (2) representatives respectively, up to one (1) of each of whom may be a member of the Assembly of Kosovo.
 - c. The Bosniak and Turk communities shall have three (3) representatives respectively, up to one (1) of each of whom may be a member of the Assembly of Kosovo.
 - d. The Gorani community shall have two (2) members, up to one (1) of whom may be a member of the Assembly of Kosovo.

- e. Representatives of other communities may seek representation on the Council by one (1) member. The President shall decide to offer representation in accordance with the Constitution of Kosovo and the Law on Communities.

3.3 Committee on Rights and Interest of Communities (CRIC)

The first overlap with the functions and mandate of the CCC could be seen with the competencies of the Committee on Rights and Interests of Communities (CRIC)¹³. This is one of the two permanent committees within the Assembly of Kosovo:

- a) composed of one third (1/3) of members who represent the group of deputies of the Assembly holding seats reserved or guaranteed for the Serbian Community, one third (1/3) of members who represent the group of deputies of the Assembly holding seats reserved or guaranteed for other communities that are not in the majority and one third (1/3) of members from the majority community represented in the Assembly;
- b) that can review any proposed law at the request of any member of the Presidency of the Assembly;
- c) that ensures that community rights and interests are adequately addressed by submitting recommendations to another relevant committee or the Assembly;
- d) that may propose, on its own initiative, laws and other measures within the responsibilities of the Assembly¹⁴.

The CRIC's function as outlined in the Constitution, Art. 78(4) overlaps with the functions of CCC as specified above, under point *d*. Having in mind that the membership of the CCC might be similar to the one of CRIC¹⁵, it is confusing how the CRIC will fulfil this function and why the CCC has been vested such powers, when the CRIC is designed to function under the auspices of the President with a consultative, rather than a legislative role.

4. GOVERNMENT OFFICE OF COMMUNITY AFFAIRS

On July 15, 2008, the Prime Minister of Kosovo, Mr. Hashim Thaci, has signed an executive decision establishing the Office of Community Affairs (OCA) within the Office of the Prime Minister (OPM). Though not foreseen either in Ahtisaari's plan or in the Constitution of Kosovo, OCA has been established to:

¹³ Art. 78 of the Constitution

¹⁴ Art. 78(4) of the Constitution

¹⁵ This can be the case with smaller communities represented in the CRIC as Assembly of Kosovo members. On the other hand, CCC provides that respective community may also be represented by the member of Assembly of Kosovo.

- remedy the serious lack of coordination in the government's approach to the protection of communities, provide advice and offer solutions;
- ensure that all branches and levels of the Government are operational, sensitive, and responsive to community issues; and,
- assess the overall government response to community issues more effectively.

Since the establishment of the PISG, each Ministry, government agency and institution have followed their own disparate strategies towards communities. Often, this created confusion, and left gaps in the delivery of services to communities.

The OCA is mandated to coordinate government and donor efforts in their work with communities to ensure a more aligned and strategic approach that addresses priorities and fills gaps¹⁶. Along with key partners including the Ministry of Communities and Returns, the Ministry for Local Governance Administration, the Community Consultative Council and others, the OCA will monitor legislation and policies relevant for communities and advocate for government adherence to key issues such as fair share financing, equal employment opportunities, property issues, etc.

The office will have a total of 16 staff members and will be lead by the Serb community member. He/she will have two deputies, one from the Albanian community and one from the non-Serb minority community.

The above overview illustrates an attempt to establish effective representation for and participation of minority communities in central institutions. It remains to be seen how the co-ordination and co-operation of different institutions will take place, if at all. Different institutions have in their mandate the same or similar functions which, on one hand might be seen as check-and-balance, while, on the other hand, can create further confusion and lack of adequate and appropriate support for the communities in Kosovo. In addition, given the decentralized Governmental competencies in health, education and language (implemented by the local level administration), it is obvious that very little attention and accent has been put vis-à-vis central-local level efforts in protecting and promoting community rights.

¹⁶ Enclosed as Annex II, the briefing paper for OCA and organizational structure.

It also remains to be seen whether Kosovo will fulfil its obligations, as presented by the Prime Minister:

Prime Minister Hashim Thaçi, in his Declaration of Independence Speech on February 17, 2008 said:

“Much has already been done to assure members of communities our pledge to diversity. On this historic day I wish to reaffirm our political will to create the necessary conditions to respect and to protect diversity improving community relations in Kosovo. This will be reflected in our Constitutional and legal framework, following by a cross policy strategy at all levels of the state.

We will reflect this commitment on three key elements. First, there is the firm and irrevocable anchoring of the equal rights of all members of communities in Kosovo in our legal framework. Second, there is the establishment of permanent mechanisms to ensure that the communities can and will play a full and active role in the developing future of our country. And thirdly, there is our responsibility to take immediate and effective actions to ensure that our undertakings flowing from this policy will actually result in positive changes for all who live in Kosovo, including in particular members of communities.

Our Constitution outlines that Kosovo is a state of all its citizens. There is no room for intimidation, discrimination or unequal treatment of anyone, and any discriminatory practices will be stamped out by our state institutions. Instead, there is a positive recognition of the benefits that diversity brings to all of us.”

5. CONCLUSIONS

- When we analyse the current legally binding documents adopted by the Kosovo Government and their provisions related to the functioning of the state and minority political participation and representation in the newly born state of Kosovo, we easily conclude that this is one of the most advanced legislation (blueprints) in the region and wider. But, when we assess the practical evidence, measurement and implementation on the ground, we acknowledge that there are huge challenges in making this legislation a reality, and therefore, we conclude that vulnerable communities (Serb Community) are the ones that suffer most from the lack of implementation.
- The lack of implementation on the ground is closely linked with aggressive campaign done by the official Belgrade to oppose the *Ahtisaari plan*, and therefore, preventing any tangible results on the ground, sometimes even against the will of the local Kosovo Serbs. This obstruction is not only a mere obstruction, this goes further with a creation of the parallel institutional structures in the Kosovo Serb areas that are illegal and indeed conflicting with the Kosovo Constitution and the International Communities principles and guidelines for Kosovo.
- It is the view of the International Community that by taking rapid response measures against these parallel structures they will jeopardise a lot that was achieved during the years, and will therefore be a destabilising measure that will be damaging the 'stability'. However, I think that this is a premature view – this issue needs to be taken very seriously and be addressed as soon as possible. Both the International Community and the Kosovo Government need to act and find a solution for as the current situation could backfire and become a '*hot potato*'
- Kosovo Government needs to understand that they need to function as a sovereign state (as per Constitution). I have a feeling they are still acting as if Kosovo is under a UN Administration and are therefore sitting passively. Implementation of a Constitution is an obligation. It should contribute to functional state and moreover as an empowering process for the Kosovo Serb community. Unclear international policy recommendations such as the "six points plan", are not promoting greater coexistence between communities as these measures are contributing to a lot of uncertainty on how Kosovo will be able to function and who is really in charge in this country.

**ANNEX I - The Presidential Decree on the establishment of Community
Consultative Council.**



REPUBLIKA E KOSOVËS – ZYRA E PRESIDENTIT
REPUBLIC OF KOSOVO – OFFICE OF THE PRESIDENT
REPUBLIKA KOSOVO – URED PREDSEDNIKA

**DECREE
ON THE ESTABLISHMENT OF THE COMMUNITIES CONSULTATIVE
COUNCIL**

According to Article 84, paragraph 4-four of Constitution of the Republic of Kosovo, and pursuant to Article 60.1, of Constitution of the Republic of Kosovo, as well as Article 12.1 of the Law on Promotion and Protection of the Rights of Communities and their Members in the Republic of Kosovo, I hereby:

Decree

The establishment of the Communities Consultative Council in the Republic of Kosovo, as well as approval of the statute of the Communities Consultative Council in the Republic of Kosovo. The Communities Consultative Council will function within the Office of the President, as it is foreseen in the Constitution of the Republic of Kosovo and the provisions provided in the Law on Promotion and Protection of the Rights of Minorities and their Members in the Republic of Kosovo.

The Statute of the Communities Consultative Council is part of this Decree.

This Decree enters into force on the day of its signing.

Decree Nr: CCC-001-2008

Prishtina, 15 September 2008

Dr. Fatmir Sejdiu
President of the Republic of Kosovo

The Copy is delivered to:

1. Administration of the Office of the President of Republic of Kosovo,
2. a/a

ANNEX II, The briefing paper for OCA and organizational structure



**Republika e Kosovës
Republika Kosova-Republic of Kosovo
Qeveria –Vlada-Government**

Zyra e Kryeministrit/Ured Premiera/Office of Prime Minister

**Zyra per Çështje të Komuniteteve/Kancelarija za Pitanja Zajednica
Office for Community Affairs**

**PRIME MINISTER'S OFFICE FOR
COMMUNITY AFFAIRS**

BRIEFING DOCUMENT

August 2008

Prime Minister's Office for Community Affairs

BACKGROUND INFORMATION

The new Office for Community Affairs was introduced by the Prime Minister in his speech to the Security Council in January 2008 which indicated that he would establish a coordinating body for community issues. In February 2008 the Prime Minister again repeated the claim that an office dedicated to community affairs would be established within his Office.

An entity within the Prime Minister's Office that addressed community issues was originally mandated within Regulation No. 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo, which authorizes an Advisory Office on Communities within the Prime Minister's Office. The mandate of this Office was one of monitoring, reviewing and informing as well as proposing policy guidelines for the rights and interests of communities. This office did function within the PMO but was moved into the Ministry of Communities and Returns upon its creation. Within the MCR, the Office of Community Affairs served as a coordinating body that promoted an integrated and comprehensive approach for the protection of non-majority communities.¹⁷ However, since moving to the MCR the visibility and involvement of this Office has diminished.

The idea for a coordinating office for communities' related issues reemerged in 2006 and was included as a proposal for a coordination unit within the PMO in the early drafts of the Kosovo Framework Document on the Protection of the Rights of Communities. This document provided the position of the Kosovo Delegation on community issues in the status negotiation process.¹⁸ The unit was envisioned to coordinate activities relevant to communities across all appropriate government actors, evaluate the effectiveness of measures undertaken by individual agencies and encourage the receipt of international assistance in relation to community programming. The concept for this coordinating unit however was not included in the final version of the Framework Document that was submitted to Maarti Ahtisaari.

Given the rising tensions that surrounded the declaration of independence and the lack of concrete action being taken by existing bodies to address relevant and important communities' related issues, in early in 2008 the Prime Minister took the initiative to become more directly involved with the declaration of the Office for Community Affairs.

The Current Situation and Rationale

The Kosovo Constitution incorporates many of the provisions of Maarti Ahtisaari's package. It provides guarantees for the protection of fundamental rights and freedoms for all citizens of Kosovo. It also provides additional rights and protections for communities and their members, and envisages a multi-level and interlocking system of protections for communities and their members.

The approach to community issues so far has been *ad hoc* and fragmented, the protection of community rights is considered to be dispersed across the general issues of human rights, returns and decentralization.

¹⁷ Minority Issues Mainstreaming: A Practical Guide for European Agency for Reconstruction Programmes, ECMI, 2006

¹⁸ From ECMI document on the background of the Office for Community Affairs

Since the establishment of PISG, each Ministry, government agency and institution have followed their own disparate strategies towards communities. Often, this creates confusion, and leaves gaps in the delivery of services to communities.

The rationale of having the PMOCA is to remedy the serious lack of coordination in the government's approach to the protection of communities, provide advice and offer solutions. In the area of the protection of community rights, it is imperative that institutional structures function in a coordinated manner. Establishing the Office for Community Affairs in the PMO to coordinate and monitor government actions for communities regarding implementation of relevant legislation and community targeted policies additionally adds value to the internationally monitored processes related to Kosovo communities' integration. PMOCA aims to ensure that all branches and levels of the Government are operational, sensitive, and responsive to community issues. Thus, the PMOCA will be able to assess the overall government response to community issues more effectively.

The Way Forward

The Executive Decision for creation of the PMOCA was issued by the Prime Minister on 15 July 2008 after having approved the PMOCA Terms of Reference. It is envisioned that the Office for Community Affairs will begin to function within the Prime Minister's Office by summer 2008. The driving force behind this Office is to develop a responsive channel of communication between the central government and communities.

The OCA is mandated to coordinate government and donor efforts in their work with communities to ensure a more aligned and strategic approach that addresses priorities and fills gaps. Along with key partners including the Ministry of Communities and Returns, the Ministry for Local Governance Administration, the Community Consultative Council and others, the PMOCA will monitor communities' related legislation and policies and advocate for government adherence to key issues of importance i.e. fair share financing, equal employment opportunities, property issues, etc.

The monitoring efforts and communities' related priority needs mapping exercises undertaken by the PMOCA will result in recommendations for amending legislation or policies as appropriate. These results will also be fed into the coordination efforts to ensure that appropriate efforts are being taken by the government and donors to address priority communities' needs. Thus, as part of this, the PMOCA will use its allocated funds as incentives to ensure that pressing issues are addressed through cooperative funding efforts or, if needed, in some cases through direct funding.

Prime Minister's Office for Community Affairs

TERMS OF REFERENCE

Advise the Prime Minister on communities' related issues including:

- Inform and advise the PM in a timely manner on all community related issues
- Alert the PM about significant community issues of local, national, regional and international interest
- Call to the attention of the PM issues requiring his personal intervention

Coordinate on communities' related issues including:

- Coordination of governmental bodies, independent agencies and institutions / ministry level and municipal level
- Coordination of donors and international organizations to ensure that communities issues are being effectively addressed throughout Kosovo; eliminate duplication of efforts; and ensure effective use and equity of and fund distribution
- Monitor these bodies to ensure that they are effectively carrying out their defined work in determined locations at a high level

Pursue Policy on communities' related issues including:

- Contribute to, analyze and provide advice regarding governmental policy affecting communities' rights and interests
- Develop and monitor the implementation of government strategies related to communities
- Act as a clearing house for wide-spread distribution of community related policy and laws and raising awareness of all community members in understanding their rights
- Monitor implementation of communities laws and policy and their impact at the community level
- Advocate for and promote government adherence to relevant communities related laws and policies
- Recommend changes and/or adjustments to communities related laws and policies if they are not effectively addressing communities issues

Address Practical Needs of communities through:

- Use available funds strategically to positively impact and create change in people's lives with particular emphasis on the most vulnerable
- Advocate for and facilitate resolution of high profile communities' related cases

The OCA will:

- Develop effective communication channels with communities;
- Consult communities and civil society through regular field visits and meetings and maintain meaningful partnerships through trust, understanding, shared knowledge and effective community consultation and mobilization to foster prosperity in the different communities of Kosovo;
- Promote equal treatment of all communities and mobilize an approach of affirmative action within policy initiatives;
- Maintain good relations and coordinate with all stakeholders, in particular the MCR, the MLGA, the CCC, CRICR, AOGG, and the Ombudsperson Office;
- Share and exchange information with all relevant stakeholders on a regular basis;

- Work in partnership with a wide range of entities to pursue its goals;
- Lead by example;
- Function through the guiding principles of consultation, initiative, openness, transparency, accountability, outreach, creativity, and boldness in policy making.

Prime Minister's Office for Community Affairs (PMOCA)

APPROACH

Advise the Prime Minister:

- Inform and advise the PM in a timely manner on all community related issues
- Alert the PM about significant community issues of local, national, regional and international interest
- Call to the attention of the PM issues requiring his personal intervention

Coordinate on communities' related issues:

Current situation: There is currently limited coordination in the government's approach to the protection, integration and participation of communities. No central body coordinating policies on communities' rights and interests exists, meaning that approaches have been ad hoc and fragmented and communities related issues tend to be incorporated into the larger human rights agenda. Additionally, there has been lack of cooperation among institutions as each pursues their own independent goals.

Furthermore, no central level coordination of donors and international organizations working on communities' related issues exists. While there are a number of different coordination efforts that take place sectorally and regionally, there is no central body working to tie these efforts together in order to increase the effectiveness and impact, and reduce the duplication, of communities' related assistance.

Finally, no central effective monitoring mechanism for communities' related issues currently exists to ensure that these issues are being successfully addressed.

- **Coordination of governmental bodies, independent agencies and institutions on the Ministry level and municipal level**

Approach:

- Holding a regular (once every 4 months) inter-Ministerial Committee for Communities¹⁹ meeting to ensure high level commitment to communities issues and develop effective cooperation
- In cooperation with the MLGA hold regular meetings on the municipal level to ensure communities related laws and policies are understood and implemented
- Bringing together relevant Ministries, municipal representatives and agencies to respond quickly to urgent communities issues
- Working systematically with Ministries, municipalities and agencies to resolve specific communities related policy issues that emerge through monitoring

¹⁹ The Inter-Ministerial Committee for Communities is a new structure envisioned by the PMOCA to be chaired by the Prime Minister and bring together Ministers on a regular basis around the communities' agenda

- Compiling information and reports from all Ministries and agencies and carrying out a regular mapping exercise of their work in relation to communities
- Ensuring that Ministries are consistently well informed about communities' related issues
- **Coordination of donors and international organizations to ensure that communities issues are being effectively addressed throughout Kosovo; eliminate duplication of efforts; and ensure effective use and equity of fund distribution**

Approach:

- Holding coordination meetings (possibly held regionally with donors/international organizations to ensure needs in these regions are being effectively met)
- Ensuring a structured exchange of communities' related information and reports between the PMOCA, the donor community and international organizations
- Bringing donors together with other relevant stakeholders around specific urgent issues
- Developing a donor database which tracks donor activity and priority funding²⁰
- Conducting regular mapping of donor/international organizations activity in relation to articulated community needs and priorities
- In cooperation with the MLGA, the MCR and others, conducting regular mapping of municipal and community needs
- Producing a annual analysis of donor effectiveness at successfully addressing community needs
- Providing regular information on communities' related issues
- Maintaining a dynamic website containing relevant information for and about communities²¹
- **Monitor these bodies to ensure that they are effectively carrying out their defined work in determined locations at a high level**

Approach:

- Through various identified channels, including community umbrella organizations developed by the CCC, regularly obtaining feedback from communities on the effectiveness of policy implementation and programming in addressing their needs
- Conducting a quarterly analysis of Ministries and donor / international agency reports to assess success of programming efforts at meeting community needs and understanding existing barriers that possibly exist
- Holding regular community meetings (organized and ad hoc) to obtain direct local level information

Pursue Policy on communities' related issues:

Current Situation: Communities' related legislation based on European standards and best practices exists however implementation of these laws and policies has not effectively occurred as of yet.

Additionally, persons belonging to communities have very limited awareness of these laws and how they can be applied.

²⁰ this database should be inclusive of Government funding on community issues as well

²¹ This should be a multifaceted site and needs to incorporate relevant information for communities

There is no coherent and unified approach for legislation, strategy and policies related to communities' issues. As a result, fragmented actions are being taken.

Currently, the Ministry of Communities and Returns is the responsible body for developing policies and promoting the implementation of community related legislation. However, in reality to date this Ministry has mainly focused on returns.

- **Contribute to, analyze and provide advice regarding governmental policy affecting communities' rights and interests**

Approach:

- Contribute to policy formation, in cooperation with the MCR and other relevant stakeholders, to develop communities' related policy as needed
- Regularly analyzing existing and proposed legislation and policies effectiveness in addressing communities' rights, priorities and needs
- In cooperation with the CCC and the MCR bringing relevant issues and concerns to the attention of the Inter-Ministerial Committee for Communities and the Committee on the Rights and Interests of Communities and Returns (CRICR) in the Assembly

- **Develop and monitor implementation of government strategies related to communities**

Approach:

- In cooperation with all relevant stakeholders, creating a Kosovo strategy for promotion and protection of the Rights of Communities which incorporate all relevant community related issues²² (according to Art. 13 of the Law on the Promotion and Protection of the Rights of Communities and their Members in Kosovo)
- In cooperation with CCC and other relevant stakeholders, developing an annual action plan and targets to implement the strategy
- Developing a ministerial level communities working group (Deputy Minister level)²³, in cooperation with communities, to work jointly on monitoring the implementation of the strategy
- Reporting annually to the CCC, the Assembly and all other interested parties on the implementation of the strategy including an evaluation of the success of laws and policy initiatives related to communities
- Monitoring the implementation on all government approved community related strategies

- **Act as a clearing house for wide-spread distribution of communities' related policy and laws and raising awareness of all community members in understanding their rights**

Approach:

- Compiling, publishing and disseminating user-friendly versions of communities related policies and legislation

²² Issues may currently include: Fair share financing, equal employment opportunities across governmental institutions, property issues, missing persons, safe transportation for all communities, creating conditions for sustainable return, and others.

²³ The Ministerial Working Group is a new structure envisioned by the PMOCA which will be chaired by the Senior Advisor to the PMOCA and comprised of Deputy Ministers. This working group will monitor the implementation of the Strategy for Communities.

- In cooperation with the MCR, MLGA and the CCC, carrying out multi-dimensional information campaigns explaining policy and legislation to government institutions and citizens (in majority and minority communities)²⁴
 - Holding regular meetings at the local level to assist community members in understanding how legislation relates to them and how they are able to claim their rights guaranteed by this legislation.
 - Working closely with the AOGG and the Human Rights Units in the Ministries to ensure that Ministries obtain and effectively apply relevant policies
- **Monitor implementation of communities' laws and policy and their impact at the community level**

Approach:

- In cooperation with CCC and the Ministries ensuring that laws and policies are implemented on the central level
 - Working in cooperation with the MLGA to ensure municipal engagement and understanding of and implementation of communities' related legislation and policy.
 - Holding regular community meetings (organized and ad hoc) to obtain direct local level information
 - Assessing information obtained through diverse mechanisms (i.e. ICO field presence, OSCE community teams, etc)
 - Work closely with the Ombudsperson Office to track repeated community related violations
 - Conducting a regular assessment of effectiveness of implementation of relevant laws and policies on central and municipal level
- **Advocate for government adherence to relevant communities' related laws and policies**
- Approach:***
- Working in close cooperation with the CCC and relevant Ministries to ensure that government actions are taken in compliance with communities related laws and policies
 - In cooperation with the MCR and CCC, systematically highlighting communities related issues of relevance to appropriate governmental structures
- **Recommend changes and/or adjustments to communities' related laws and policies if they are not effectively addressing community issues**

Approach:

- Based on annual evaluation, develop recommendations and initiatives to present to the CCC, Inter-Ministerial Committee for Communities and Ministerial Working Group to assist in improving implementation of relevant laws and policies
- Recommend amendments to relevant Ministries to bring legislation into line with European standards and the actual needs of communities

Address Practical Communities' Needs:

²⁴ This can include creative approaches such as nationwide high profile contests and TV shows to try to engage people in the issues

Current Situation: Significant funds exist to address communities' related issues however there is not a coordinated strategic approach for allocation of these funds to systematically address issues. Additionally, in the past a considerable portion of these funds have tended to be returns focused.

On a municipal level, funding initiatives do not always address the full communities' diverse and various needs.

- **Use available funds strategically to positively impact and create change in people's lives with particular emphasis on the most vulnerable**

Approach:

- Developing a multi-tiered funding approach to allow for flexibility in addressing community needs; to either directly address an identified communities issue or work in cooperation with other donors to highlight and resolve identified needs.

- **Advocate for and facilitate resolution of high profile communities related cases**

Approach:

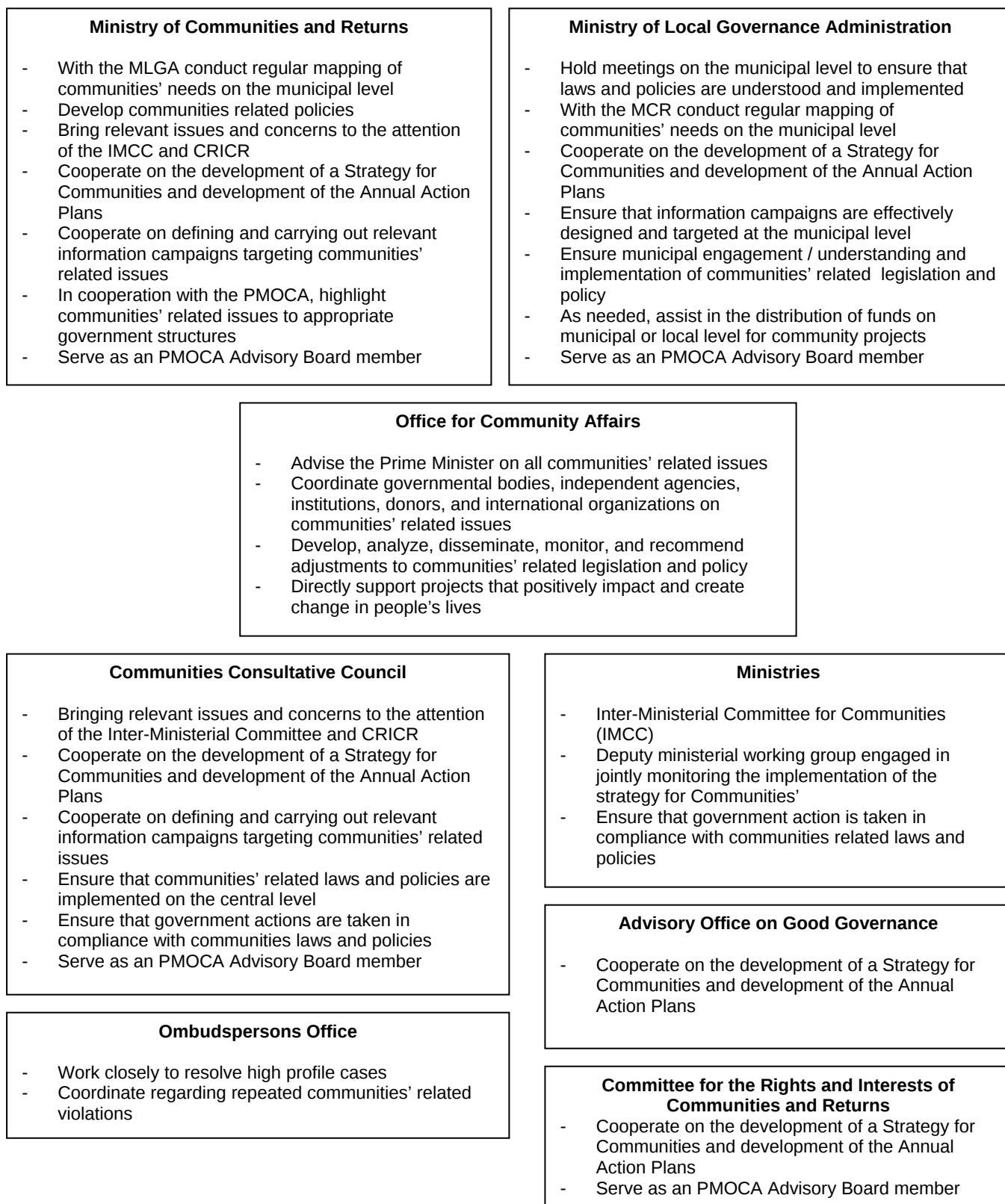
- Ensure that appropriate organizations are involved in resolving high profile cases
- Liaise closely with the Ombudsperson and relevant government structures to ensure that cases are being addressed effectively

The OCA will:

- Develop effective communication channels with communities;
- Consult communities and civil society through regular field visits and meetings and maintain meaningful partnerships through trust, understanding, shared knowledge and effective community consultation and mobilization to foster prosperity in the different communities of Kosovo;
- Promote equal treatment of all communities and mobilize an approach of affirmative action within policy initiatives;
- Maintain good relations and coordinate with all stakeholders, in particular the MCR, the MLGA, the CCC, CRICR, AOGG, and the Ombudsperson Office;
- Share and exchange information with all relevant stakeholders on a regular basis;
- Work in partnership with a wide range of entities to pursue its goals;
- Lead by example;
- Function through the guiding principles of consultation, initiative, openness, transparency, accountability, outreach, creativity, and boldness in policy making.

Prime Minister's Office for Community Affairs

Proposed Cooperation / Coordination with other Relevant Government Bodies



5 May 2009