

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

**Implementation Measures for Legislation Impacting
Human Rights in Kosovo**

September, 2012

TABLE OF CONTENTS

LIST OF ABBREVIATIONS.....	3
EXECUTIVE SUMMARY.....	4
1. INTRODUCTION.....	5
2. DEFINITION OF TERMS	6
2.1 Subsidiary legislation	6
2.2 Programmes, Strategies, Action Plans.....	7
2.3 New Executive Bodies.....	8
3. DRAFTING, SUPERVISION AND PUBLICATION OF SUB-LEGAL ACTS .	8
3.1 Drafting of Sub-legal Acts – Procedural and Substantive Requirements	8
3.2 Filing and Registration of Sub-legal Acts.....	10
3.3 Supervision of Implementation	10
3.4 Publication of Sub-legal Acts in Kosovo.....	11
4. IMPLEMENTATION OF LEGISLATION IMPACTING HUMAN RIGHTS IN KOSOVO	12
4.1 Gender Equality.....	12
4.2 Anti-Discrimination.....	14
4.3 Promotion and Protection of Communities’ Rights	16
4.4 Access to Travel Documents	19
4.5 Access to Personal Documents (Identity Cards).....	20
4.6 Use of Languages	22
4.7 Protection against Domestic Violence.....	24
5. CONCLUSIONS	25
6. RECOMMENDATIONS.....	27
6.1 Implementation of Laws	27
6.2 Drafting, Supervision and Publication of Sub-legal Acts	27
6.3 Implementation of Legislation Impacting Human Rights in Kosovo	28

LIST OF ABBREVIATIONS

AGE	Agency for Gender Equality
AI	Administrative Instruction
AOGG	Advisory Office on Good Governance, Human Rights, Equal Opportunity and Gender Issues
CCC	Communities Consultative Council
HCNM	OSCE High Commissioner on National Minorities
HRU	Human Rights Unit(s)
MEST	Ministry of Education, Science and Technology
MIA	Ministry of Internal Affairs
MLSW	Ministry of Labour and Social Welfare
MLGA	Ministry of Local Government Administration
MoH	Ministry of Health
MoJ	Ministry of Justice
MPA	Ministry of Public Administration
OLSS	Office of Legal Support Service
OPM	Office of the Prime Minister
OSCE	Organization for Security and Co-operation in Europe Mission in Kosovo
UNMIK	United Nations Interim Administration Mission in Kosovo

EXECUTIVE SUMMARY

Kosovo has faced significant challenges during its post-conflict transition, including with regard to the creation of democratic institutions and the establishment of a multiethnic society governed by the rule of law. To date, Kosovo institutions have made substantial progress in creating the necessary legal framework for the achievement of this goal through the adoption of numerous regulations and laws.

The Organization for Security and Co-operation in Europe Mission in Kosovo (OSCE) monitors the process of implementation of legislation affecting human and communities' rights in Kosovo. The extent to which core legislation for the protection of human and communities rights is being implemented is key to ensuring the protection of a wide range of human rights and civil liberties. This includes areas such as gender equality, anti-discrimination, the rights of communities and their members, access to travel documents, identity cards, language rights and protection against domestic violence, all of which were assessed by the OSCE in 2011. Full protection in these areas can be ensured only if the respective legal framework is implemented through subsidiary legislation, strategies and programmes and through the establishment of specific bodies as foreseen by law.

In implementing the legal framework relevant to these issues, Kosovo institutions have issued a considerable number of sub-legal acts, programmes and strategies, established institutions and conducted awareness campaigns. For instance, commendable efforts have been made by the legal office of the Office of the Prime Minister to create an official index of all sub-legal acts and to centrally manage the publication of sub-legal acts issued by the individual ministries and by the government.

However, the OSCE is concerned that implementation is not carried out similarly in all areas. For example, the Law on Anti-Discrimination and the Law on Protection against Domestic Violence have been only partially implemented and very few measures have been taken to implement laws regulating language rights and the rights of communities. Here, more serious commitment and attention by Kosovo institutions is required to address these matters.

In order to fully implement these laws, the Kosovo government must take specific and concrete measures as provided for by the legal framework. This should include the establishment of a Centre for Equal Treatment, implementation of a strategy for the protection of rights of all communities, development of a strategy for the protection of cultural and religious heritage sites, and supporting the Language Commission in implementing its mandate. Further, individual ministries are called upon to address specific issues regarding the implementation of legislation regulating protection against domestic violence, the use of languages in education and access to identity/travel documents. In addition, a systematic and independent review process to revise sub-legal acts, especially regarding compliance with primary legislation, should be put in place within executive structures. Lastly, Kosovo institutions should regularly register and publish subsidiary legislation in a centralized manner.

1. INTRODUCTION

Legislative activity in Kosovo in recent years has resulted in the adoption of numerous laws – pieces of primary legislation – by the Assembly, which regulate a wide range of benefits, entitlements, safeguards and social relationships, all of which impact upon the protection of human rights in Kosovo. Since February 2008, the Assembly has adopted more than 260 laws. However, the concept of the rule of law is characterized not only by the adoption of necessary primary legislation, but also by the proper implementation of the provisions of a wider legal framework composed of subsidiary legislation.

The OSCE is mandated with the promotion of human rights, and focuses on the protection of communities' rights, non-discrimination, participation in public life, access to services and language preservation amongst others. The present report assesses the extent to which core legislation protecting those basic human rights are properly implemented by Kosovo institutions.¹ In this context and for the purposes of this report, implementation is understood to comprise the drafting of subsidiary legislation, establishment of specific bodies under the primary legislation, efforts to raise awareness among the population about the content of new regulations, and the drafting of programmes and strategies as foreseen by the primary legislation. Moreover, this report elaborates on the process of drafting, filing, review and publication of subsidiary legislation. The application of the law in specific cases is not covered by the scope of the report, nor does the report assess the implementation of the legal framework by municipal institutions.

The findings presented in this report are the result of an OSCE assessment which took the form of a two-stage approach: an initial research phase, followed by a range of interviews conducted with officers of various central-level institutions. Implementation of the laws considered in this report have been analysed from the date of entry into force of each law up through December 2011.²

The initial research phase comprised a legal assessment involving analysis and research which identified central-level programmes and subsidiary legislation needed to give effect to each law considered by this report; actors responsible for adoption of these programmes and subsidiary legislation; and instances in which organizational units should be established to ensure fully-functioning institutions. Follow-up as part of the OSCE's regular review of laws regulating core human rights areas was used to identify the laws covered by this report. The second phase of the assessment consisted mainly of interviews with various actors responsible for drafting subsidiary legislation. Between June and September 2011, the OSCE conducted a series of interviews, based on an informal set of questions. Interviews covered various related areas of interest such as staffing, co-ordination of drafting of subsidiary legislation,

¹ This report is the fourth in a series of reports by the OSCE on the implementation of Assembly laws; see OSCE report *Implementation of Kosovo Assembly Laws by the Executive Branch of the Provisional Institutions of Self-Government* (January 2005) <http://www.osce.org/kosovo/39991>; OSCE report *Implementation of Kosovo Assembly Laws II* (December 2005) <http://www.osce.org/kosovo/17563>; OSCE report *Implementation of Kosovo Assembly Laws Report III* (January 2007) <http://www.osce.org/kosovo/23823> (all websites accessed 6 June 2012).

² Each law considered in this report has its own particular date of entry into force, dating from the Law on Gender Equality in Kosovo which entered into force in June 2004, to amendments to the Law on Travel Documents which entered into force in December 2010.

filing systems, publication and oversight. The data collected and the existing legislation were quantitatively and qualitatively analysed.

Following an introduction, section two of the report provides a general overview of the terminology used in relation to implementation of laws, including a short introduction to subsidiary legislation, programmes and strategies; establishment of implementing executive bodies; and awareness campaigns. Section three outlines the legal framework as regards the drafting, filing, review and publication of subsidiary legislation, and assesses the practices of Kosovo institutions in complying with relevant standards in this regard. Section four contains an overview of the implementation of selected Assembly laws with an impact on human and communities' rights. Discussion of each law is accompanied by a presentation of the respective obligations imposed on central-level institutions by the law and includes an assessment of the implementation of these obligations. Finally, sections five and six present conclusions and recommendations addressed to the Kosovo government and individual ministries in order to improve the quality and the level of implementation of the selected laws.

2. DEFINITION OF TERMS

The concepts of rule of law and good governance are characterized not only by the adoption of the necessary legal framework but also by the proper implementation of its provisions. In this context, implementation is understood as the adoption and the setting up by the executive branch of the legal and institutional framework necessary for the execution and enforcement of each law. It comprises, *inter alia*, drafting of subsidiary legislation related to each law as well as the establishment of strategies, programmes and specific executive bodies foreseen by the law. Finally, public awareness of the new regulatory and institutional framework is deemed essential for its effective implementation.

2.1 Subsidiary legislation

The amount of legislation that is adopted by parliaments in Europe has grown substantially in response to new technical, social and political developments. Members of legislative assemblies have neither the time nor the expertise themselves to consider detailed legislative rules on the administration of various technical matters and have thus delegated legislative authority on such matters to ministers. However, the principle of division of powers requires that the assembly explicitly authorize ministers or other respective actors to create subsidiary legislation under a law passed by that assembly.

In practice, a law usually distinctly reflects the political decisions taken during its adoption, and sketches the general structure and principles of the regulated area. At the very least, it should provide the broad scope and principle of the law. The finer details of its operation however are often set out in various instruments of a rather technical nature, which have a secondary rank to the law adopted, which is sometimes referred to as the parent law. Through this subsidiary legislation, the law becomes a workable and applicable instrument.

The terms “subsidiary legislation”, “subordinate legislation”, “delegated legislation”, “sub-normative acts”, “sub-legal acts” or “secondary legislation” are used interchangeably in many laws, legal textbooks and commentaries. For the purpose of this report, the terms “subsidiary legislation” and “sub-legal act” will be used. For official acts which establish a legal norm or rule, the term “legal act” will be used. The term “legal framework” generally refers to all existing legal acts as a whole, whereas “primary legislation” refers to all laws or a set of laws regulating one specific area.

Subsidiary legislation takes effect and has authority as if it were part of the parent law, i.e., it enjoys statutory force. It is the means by which experts in the subject covered by the law can give effect to the authoritative set of measures to enable practical application of the law. A legislative assembly cannot foresee every eventuality and does not have the specific expertise that can be provided by ministries and other executive bodies. Provided that the authority conferred by the law is sufficient and legitimate, subsidiary legislation can deal with practical implementation problems, technical details or the necessity for updated information as and when they arise, by addressing them in hierarchically defined categories. Generally speaking, it is possible to issue subsidiary legislation more quickly than to adopt primary legislation, as the scope and principle of the law has already been agreed. Subsidiary legislation itself may be withdrawn or amended if it proves impracticable or circumstances change.³

In Kosovo, the deadline for implementation is foreseen by each respective law. The deadlines for implementation of the laws analysed in this report have expired.

2.2 Programmes, Strategies, Action Plans

For the purpose of this report, a programme shall be defined as a course of action which includes a mandate and resources conferred by a public institution to achieve long-term outcomes. A programme shall provide an effective, efficient and accountable management structure for necessary public services. Similarly, an action plan and a strategy imply a sequence of activities or steps that must be performed for a mid-term goal to be achieved. It usually entails an allocation of resources, a corresponding timeframe and specifies both the tasks required and the responsible institution. Seemingly, Kosovo institutions use the terms programmes, action plans and strategies interchangeably. Similar to subsidiary legislation, programmes, action plans and strategies implement the legal framework. However, they have political rather than legal effect.

In Kosovo, there is no legal act in force which contains a definition of programmes, strategies and action plans to be issued by the government. However, a clear typology including the respective definitions is important in order to avoid confusion amongst public servants implementing laws regarding the differences between programmes, strategies and action plans.

³ For more information about the drafting and adoption of subsidiary legislation generally, see Section 3.1, *infra*.

2.3 New Executive Bodies

In some instances, a law foresees the establishment of executive bodies. The law will define their competencies and allocate them tasks which cannot be executed by ordinary administrative institutions due to their technicality or specificity. If they were not set up, primary legislation would remain at least partially unenforced. The establishment of these institutions would be, as such, a full component of the institutional framework necessary to enforce the law and for the purposes of this report is considered part of implementation.

The laws covered by this report foresee the establishment of the following bodies: the Language Commission⁴; the Communities Consultative Council (CCC)⁵; the Offices for Gender Equality⁶; the Inter-Ministerial Council for Gender Equality⁷ and the Centre for Equal Treatment⁸.

3. DRAFTING, SUPERVISION AND PUBLICATION OF SUB-LEGAL ACTS

3.1 Drafting of Sub-legal Acts – Procedural and Substantive Requirements

3.1.1 The legal framework for drafting subsidiary legislation

Prior to September 2011, most of the formal and substantial requirements for drafting primary and subsidiary legislation were contained in the 2007 Rules of Procedure of the Kosovo government⁹ and the related Administrative Instruction (AI) on the Composition of Draft Laws and Sub-legislative Acts¹⁰. These two texts were adopted in order to address some of the shortcomings of the older legal framework.¹¹ On 7 September 2011, new Rules of Procedure were adopted.¹² These new rules and procedures apply to the drafting of both laws and sub-legal acts. In addition, it is provided that ministries need to follow a consultation procedure before issuing

⁴ Article 32, Law No. 02/L-37 on the Use of Languages as promulgated by UNMIK Regulation No. 2006/51, 20 October 2006.

⁵ Article 12, Law No. 03/L-047 on the Protection and Promotion of the Rights of Communities and their Members in Kosovo, 4 June 2008.

⁶ Article 4(12) and 4(15), Law No. 2004/02 on Gender Equality in Kosovo as promulgated by UNMIK Regulation No. 2004/18, 7 June 2004.

⁷ Article 4(9), Law on Gender Equality in Kosovo, *ibid*.

⁸ Article 9(5), Law No. 2004/3 on Anti-Discrimination as promulgated by the UNMIK Regulation No. 2004/32, 20 August 2004.

⁹ Regulation No. 01/2007 on the Work of the Government, 24 January 2007. These rules of procedure were still in force at the time of the implementation of the laws covered by this report.

¹⁰ AI No. 14/2008 on the Composition of Draft Laws and Sub-legislative Acts, 30 July 2008. According to Articles 79 and 80 of Regulation No. 09/2011 on Rules and Procedure of the Government of the Republic of Kosovo, this AI is still in force.

¹¹ For more information on the former legal framework, see Government Regulation No. 01/2005 on the Work of the Government, and Government AI No. 02/2006 on Procedures for Drafting, Reviewing and Approving Draft Acts. Both of these acts were repealed in January 2007 by Government Regulation No. 01/2007 of 24 January 2007, which described institutional procedures to be followed during the drafting process at the governmental level and established general drafting principles, whereas AI No. 14/2008 (still in force) describes in detail the technical requirements for the drafting of legal and sub-legal acts.

¹² Regulation No. 09/2011 on Rules and Procedure of the Government of Kosovo, 7 September 2011.

subsidiary legislation.¹³ Furthermore, the role of the legal department of the ministries vis-à-vis the Office of Legal Support Service within the Office of the Prime Minister (OLSS) is clearly defined.¹⁴

3.1.2 *The practice of the institutions*

In most ministries, legal departments in co-operation with other programmatic departments are in charge of drafting subsidiary legislation.¹⁵ However, in some instances, there has been no such co-operation between the legal and the programmatic departments.¹⁶ This not only constitutes a breach of the 2007 Rules of Procedure¹⁷, but also means that the regulated subject lacks the valuable expertise of various programmatic departments experienced in the matters concerned.

All ministries interviewed claimed to be well aware of AI No. 14/2008 on legislative drafting and consider it a useful tool to improve the formal consistency of subsidiary legislation. However, some minor inconsistencies such as numbering of articles, contradictory provisions within individual sub-legal acts and disparities in terminology used remain problematic.¹⁸ Moreover, some institutions reportedly do not comply with the AI while drafting sub-legal acts.¹⁹ To the knowledge of the OSCE, there are no unified practices regarding systematic assignments of drafters of subsidiary legislation²⁰. The expertise of each legal officer, his/her prior drafting assignments – including primary legislation – or other personal experience and knowledge of the legal officers are not taken into account.²¹ Even though many ministries face difficulties due to high staff turnover in their legal departments²², efforts to comply with the relevant provisions and best practice in this regard would improve the consistency between the two categories of legal acts and would increase legal certainty in avoiding misinterpretation of the law.

¹³ Ibid, Article 38(6) in conjunction with Article 7 of the Regulation on Rules and Procedures.

¹⁴ Ibid; for the role of the legal department see Article 41; for the role of the OLSS see Article 7(1)(5) and 38(7).

¹⁵ For instance, this is the practice of MEST, the MLSW, the MOJ and the MPA.

¹⁶ For instance, this is the practice of the MIA and the MLGA.

¹⁷ Article 26, Government Regulation on the Work of the Government, note 9, *supra*. The 2011 Rules of Procedure are silent about the establishment of working groups within the ministries: according to a representative of the OPM, special drafting manuals/guidelines will provide guidance on this point. These manuals however will not have a legal value equivalent to that of the former Rules of Procedure.

¹⁸ See for instance, MLGA AI 2011/1 on Amending and Supplementing AI 2008/2 on the Establishment of Human Rights Units in the Municipalities; MIA AI 17/2008 on the Determination of the Form and Manner of Manufacturing of Identity Cards; MLGA AI 2011/02 on Determination of Procedures for Implementation of the Law on Use of Languages regarding formal mistakes, length of the articles, unnecessary definitions.

¹⁹ Representative of the Language Commission, personal interview, 16 June 2011.

²⁰ Representatives of ministries including: the MoJ, personal interview, 15 June 2011; the MPA, personal interview, 23 June 2011; the MEST, personal interview, 20 June 2011; the MLGA, personal interview, 1 July 2011; the MIA, personal interview, 27 June 2011.

²¹ While some ministries like the MPA and the MoJ follow this practice, others do not.

²² According to representatives of the Language Commission, note 20, *supra*, and the MoJ, note 20, *supra*.

3.2 Filing and Registration of Sub-legal Acts

All relevant ministries claim to have established an internal registration system of their own subsidiary legislation.²³ Usually, one legal officer or assistant of the respective legal department is assigned to keep and maintain a list with all primary and subsidiary legislation issued by that ministry. In addition, OPM established an inter-ministerial working group²⁴ which has compiled an official index of all subsidiary legislation issued by the government and the ministries. The Register of Sub-legal Acts in Force was created by government Decision No. 08/35 of 1 September 2011. The register has been published on OPM's web page, and has been regularly updated by the OLSS to date.²⁵ The register indexes subsidiary legislation adopted by the government and ministries, and provides direct links to the majority of the sub-legal acts included.

3.3 Supervision of Implementation

Regular review of subsidiary legislation ensures that the will of the legislative body is properly implemented. Such review includes assessment of whether the appropriate institution has issued the sub-legal act, if the sub-legal act regulates only areas within the mandate stipulated by law, if the different language versions of a sub-legal act are in compliance and if superseded sub-legal acts have been abrogated and withdrawn from public view. The two latter forms of scrutiny typically take place after the adoption of a sub-legal act.

3.3.1 Review before the adoption of subsidiary legislation

Review of subsidiary legislation is a useful tool to consolidate the legal framework and to increase the level of legal certainty.

As a general rule, substantial review of subsidiary legislation in Kosovo is done by the legal departments of the ministries. In some ministries, the legal department itself is in charge of checking the compliance of a draft sub-legal act with the primary legislation and with other sub-legal acts issued by the same ministry.²⁶ However, there is no requirement for this legal compliance control to be performed by persons other than those who are also in charge of the drafting of the sub-legal act. This practice raises questions regarding potential conflicts of interest, insufficient transparency, and above all, lack of independent review and the benefits of combining additional legal expertise in the review. For sub-legal acts issued by the government, OLSS is in charge of performing the review.²⁷ In some institutions, subsidiary legislation drafted

²³ Information provided by the representatives of the legal departments of the MIA, note 20, *supra*; the MLGA, note 20 *supra*; the MoJ, note 20 *supra*; and the MPA, note 20 *supra*.

²⁴ This working group was established on 27 May 2011; it was composed of the representatives of each Kosovo ministry and chaired by a representative of the OLSS. The working group drafted Decision No.08/35 of 1 September 2011, approved by the government.

²⁵ The Registry of Sub-legal Acts in Force is available at: <http://www.kryeministri-ks.net/?page=2,177> (accessed on 6 June 2012).

²⁶ According to personal interviews with representatives of the MIA, note 20, *supra*, the MLGA, note 20, *supra*, and the MLSW, 9 June 2011, this kind of review is not the practice of all Kosovo ministries.

²⁷ Article 31, 2007 Rules of Procedure of government, note 9, *supra*, and Article 42(2), 2011 Rules and Procedure of government, note 12, *supra*.

is additionally reviewed by the cabinet of the concerned minister.²⁸ However, it is not clear what areas or provisions are included in the review process. Under the provisions of the 2011 Rules of Procedure, ministries are obliged to consult OLSS to ensure the quality of the draft proposal and its compliance with legislative drafting standards.²⁹

3.3.2 Review after the subsidiary legislation has been issued

According to ministry representatives interviewed by the OSCE, in the majority of ministries review of subsidiary legislation after its adoption mostly falls under the responsibility of each ministry's legal department. Sometimes, other departments affected by the relevant legislation are consulted.³⁰ This review in this case focuses on the compliance of the sub-legal act with the law.

However, again, there is no systematic review process in place.³¹ Ministries report to OPM and the Assembly regarding the implementation of legislation only if specifically requested.

3.4 Publication of Sub-legal Acts in Kosovo

The accessibility of legal acts is one of the preconditions for the establishment of the rule of law. Legislative authorities should provide information about their legal acts to all those concerned, as only sufficiently accessible legislation enables individuals to foresee the consequences which a given act may entail. Ignorance of the law is not a defence for not following the law, and the law is binding to everyone including those who are not familiar with it. Complementary to this notion that no one can be considered ignorant of the content of the law, is the obligation of legislative authorities to provide information about their normative acts to all those concerned. As a general principle of good governance, institutions should not demand compliance with a law which has not been made public, as this would violate a basic sense of justice. In this sense, providing information about legal acts to all those concerned will increase compliance with legislation in force. Moreover, a lack of public knowledge of the legal framework may become an obstacle to avail of the benefits offered by legislation. This is particularly important in relation to mechanisms and institutions which can be addressed when individuals believe their rights have been violated.

²⁸ Personal interviews with representatives of the Language Commission, note 19 *supra*, the MEST, note 20, *supra*, the MPA, note 20, *supra*, the MoJ, note 20, *supra*, and the AOGG, personal interview, 23 June 2011. According to representatives of the MPA and the MEST, some sub-legal acts have been returned to the legal department for re-drafting or clarification following this additional review.

²⁹ Article 38(6) in conjunction with Article 7(1)(5), 2011 Rules and Procedure of government, note 12, *supra*.

³⁰ Personal interviews with representatives of: the MEST, note 20, *supra*, the MIA, note 20, *supra*, the MLGA, note 20, *supra*, the MLSW, note 26, *supra*, the MoJ, note 20, *supra*, the MPA, note 20, *supra*, the AOGG, note 28, *supra*, the CCC, 19 July 2011, and the Language Commission, note 19, *supra*.

³¹ E.g., in the case of the Law on the Civil Service, the Department of Civil Service (MPA) is the competent body for monitoring implementation, while at a higher level, the Independent Oversight Board is responsible for ensuring the respect of rules and principles governing the civil service; other institutions like the CCC do not conduct any supervision of the implementation of legislation.

In order to increase legal awareness of the public, a number of laws provide for mandatory awareness-raising campaigns to be carried out by the relevant institutions in the course of implementation. Certain laws included in the present report provide for awareness-raising campaigns of this kind, including the Law on Anti-discrimination³² and the Law on the Use of Languages³³.

The recently-established Register of Sub-legal Acts in Force³⁴ remedies a long-existing vacuum regarding publication of subsidiary legislation in Kosovo. Ministries are obliged to publish sub-legal acts on their respective web page and to send all subsidiary legislation in hard and electronic copy to the OLSS. The OLSS is responsible for updating the register on a monthly basis.³⁵

Ministries and other executive bodies interviewed claim to regularly publish their sub-legal acts on their respective web pages. However, OSCE research indicates that as of the time of writing no ministry had in fact published its own index of sub-legal acts on its webpage.³⁶ Some ministries distribute sub-legal acts via e-mail to relevant institutions and stakeholders concerned.³⁷ Other institutions, such as the Language Commission or the CCC, claim that distribution of their AIs takes place via certain ministries as they do not have their own webpages.³⁸ With the adoption of the Register of Sub-legal Acts in Force, the publication of sub-legal acts shall be systematized and substantially improved. However, random checks carried out by the OSCE revealed that ministries still lack official indexes of published subsidiary legislation. Distribution of sub-legal acts in hard copies is an exception, as these compilations are seldom printed because of a lack of financial means.³⁹

4. IMPLEMENTATION OF LEGISLATION IMPACTING HUMAN RIGHTS IN KOSOVO

This Section presents a review of the findings of the OSCE assessment carried out for this report, which examined the implementation of seven selected Assembly laws with a specific link to the protection, promotion and enjoyment of human rights and community rights in Kosovo.

4.1 Gender Equality

Efforts have been made since 2004 to ensure that the Kosovo legal framework promotes and establishes gender equality in providing equal opportunities for the participation of men and women in political, economical, cultural and social life in

³² Article 13(2), Law on Anti-Discrimination, *ibid*.

³³ Article 36, Law on the Use of Languages, note 4, *supra*.

³⁴ Government Decision No. 08/35 of 1 September 2011, note 24, *supra*.

³⁵ Please see Point 5 of Decision No. 08/35, *ibid*.

³⁶ Information as of 28 March 2012, based on review of ministries' web pages.

³⁷ The MLGA and the MLSW distribute their sub-legal acts via e-mail to respective municipalities and municipal centres for social welfare.

³⁸ Personal interviews with representatives of the Language Commission, note 19 *supra*, and the CCC, note 30, *supra*.

³⁹ Since 2005 and within the areas of the Mission's mandate, the OSCE supports Kosovo institutions in printing compilations of subsidiary legislation for further distribution to relevant stakeholders at the central and local level.

Kosovo. Specifically, the Law on Gender Equality⁴⁰ aims to create conditions and opportunities for gender equality through policies and programmes that support the overall equal development and participation of both men and women. It foresees measures for the promotion of equal rights, and specifies the responsible institutions and their relevant competencies for the achievement of these aims. Furthermore, the Law on Gender Equality provided for the establishment of the Office for Gender Equality, the Inter-Ministerial Council for Gender Equality and the appointment of the Officers of Gender Affairs at both the central and municipal levels.

In the course of the implementation of the Law on Gender Equality, the Kosovo government drafted the Kosovo Programme for Gender Equality 2008–2013⁴¹ which was approved by the government in March 2008, and by the Assembly in June 2010. The Kosovo Programme for Gender Equality aims to analyse the existing situation and to identify necessary actions and responsible actors in six specific fields of economic and social life in Kosovo.⁴² Furthermore, the government established the Office for Gender Equality.⁴³ This Office was later reformed and renamed the Agency for Gender Equality (AGE). AGE is an independent organ which operates within the Office of the Prime Minister (OPM), on the basis of a 2007 OPM Regulation.⁴⁴ AGE is in charge, *inter alia*, of monitoring implementation of the Law on Gender Equality, drafting gender equality policies and making proposals to central-level institutions to ensure equal participation of men and women. It regularly organizes awareness-raising campaigns on gender equality issues and reports its findings every year to the Kosovo government and, upon request, to the Assembly.

In addition, OPM established the Inter-Ministerial Council for Gender Equality in 2006.⁴⁵ This Council, chaired by the Chief Executive of AGE, comprises Officers for Gender Equality who represent all ministries.⁴⁶ The Council meets on a monthly basis.⁴⁷ It participated in the drafting of the Kosovo Programme for Gender Equality, monitors its implementation and makes recommendations on draft laws affecting gender equality.⁴⁸

Furthermore, Officers for Gender Equality are also members of the Human Rights Units (HRUs). HRUs exist within each ministry. They are principally responsible for

⁴⁰ Law on Gender Equality in Kosovo, note 6, *supra*.

⁴¹ Article 4(4), Law on Gender Equality, *ibid*. The Inter-Ministerial Working Group tasked with drafting the Programme was established by the Prime Ministerial decision No. 034/2006, 5 April 2006.

⁴² The six fields identified were economy, the labour market and social care, decision-making processes, health care, education, and participation and representation in culture and media. See Kosovo Programme for Gender Equality 2008–2013.

⁴³ The Office for Gender Equality was established on 1 February 2005 by government decision No. 5/131, based on Regulation No. 02/2005 on the Establishment and Internal Organisation of the Office for Gender Equality, and in conformity with Article 4(4) of the Law on Gender Equality.

⁴⁴ OPM Regulation issued on 5 July 2007. This regulation has no number and is not accessible online. The functions and responsibilities of AGE are regulated in addition by UNMIK Direction No. 2007/3, 23 April 2007.

⁴⁵ The Inter-Ministerial Council for Gender Equality was established pursuant to governmental Decision No. 04/189 and governmental Regulation No. 01/2006.

⁴⁶ The positions of Officers for Gender Equality were created under Article 3(5), OPM AI No. 4/2007.

⁴⁷ AGE Chief Executive, personal interview, 8 June 2011.

⁴⁸ Article 4, Regulation No. 1/2006 on the Establishment, Competencies and Assignments of the Inter-Ministerial Council for Gender Equality.

drafting and implementing policies and activities for the promotion and protection of human rights, including monitoring proper implementation of laws.⁴⁹ Officers for Gender Equality were initially incorporated within the HRUs at each Kosovo ministry.⁵⁰ Through this membership, the Law on Gender Equality has been implemented through a series of sub-legal acts which regulate the establishment and work of the HRUs. For instance, in 2005 OPM introduced terms of reference for the ministerial HRUs⁵¹, which specified the work of the Officers for Gender Equality in the units.

Similarly, in 2005 the Ministry of Local Government Administration (MLGA) established the positions of Officers for Gender Equality at the municipal level.⁵² In 2011 this arrangement was succeeded by new subsidiary legislation which specifies a new structure and new competencies for HRUs at the municipal level.⁵³ As part of this restructuring, the municipal-level Officers for Gender Equality were incorporated into the structure of the municipal-level HRUs.⁵⁴

Additionally, the Ministry of Public Administration (MPA) contributed to the implementation of the Law on Gender Equality by introducing measures aimed to increase gender equality in the public administration for the year 2007.⁵⁵ Provisional affirmative measures foreseen by this instruction were limited to 2007, and after their expiration were not followed up with introduction of similar provisions for later years.⁵⁶

Overall, it can be assessed that the central level has so far established the necessary legal framework for the implementation of the Law on Gender Equality.

4.2 Anti-Discrimination

With the aim of preventing and combating all forms of discrimination in the public and private sectors, and promoting effective equality of treatment among persons in Kosovo, the Law on Anti-Discrimination was introduced in 2004.⁵⁷ The Law applies to natural and legal persons in relation to any violation of granted rights by action or inaction in the field of employment, vocational training, organizational membership, education, forms of social and humanitarian assistance, personal security, access to

⁴⁹ HRUs, both at the ministerial and municipal levels, comprise between three and seven officers who work on issues of gender equality, communities' rights, disabled persons, children's rights, equal opportunities, anti-discrimination and anti-trafficking. See Article 4 of OPM AI No. 2005/08 and Article 3(4) of MLGA AI No. 2011/04.

⁵⁰ See Article 3(5), OPM AI No. 4/2007, note 46, *supra*.

⁵¹ OPM AI No. 8/2005 on the Terms of Reference for the Human Rights Units in the Ministries, later supplemented by Office of the Prime Minister AI No. 4/2007.

⁵² Ministry of Local Government Administration AI No. 2005/8.

⁵³ Article 13, AI No. 2011/04 on Amending and Supplementing Administrative Instruction No. 2011/01 on the Establishment of the Human Rights Units in the Municipalities, 29 September 2011.

⁵⁴ See Article 4(1), MLGA AI No. 2011/04, *ibid*.

⁵⁵ MPA AI No. 2007/03 introduced affirmative action to encourage female application in recruitment procedures for the civil service.

⁵⁶ However, in 2010 the Ministry of Public Administration adopted Regulation 02/2010 on Recruitment Procedures in Civil Service. Although not specifically addressing the obligations set out in the Law on Gender Equality, the Regulation encourages gender-balanced recruitment throughout public administration in Kosovo.

⁵⁷ Law on Anti-Discrimination, note 8, *supra*.

services, housing, participation in public affairs, and others. The Kosovo government is mandated to issue subsidiary legislation and to conduct public awareness-raising campaigns on discrimination issues. According to the Law, administrative bodies and courts shall decide on cases of alleged discrimination. The Law provided for the establishment of a Centre for Equal Treatment to ensure equal treatment and administer payments collected as pecuniary sanctions.⁵⁸ The Law also authorized the Ombudsperson Institution in Kosovo to receive and investigate complaints concerning alleged violations of rights based on discrimination.⁵⁹

In the process of implementing the Law, OPM issued AI No. 2006/04 on the Implementation of the Anti-Discrimination Law. The AI aims to set practical rules; establish structural and physical facilities necessary for the enforcement of the Law and to promote equal treatment. The AI foresaw two bodies for the promotion of equal treatment: the Advisory Office on Good Governance, Human Rights, Equal Opportunity and Gender Issues (AOGG)⁶⁰, and the HRUs in the Kosovo ministries.⁶¹ As explained in Section 3.1, the establishment, structure and competencies of the HRUs in the ministries are regulated by sub-legal acts of the OPM.⁶² While the MLGA has established HRUs in the municipalities and regulated their structure and competencies⁶³, the Centre for Equal Treatment has yet to be established, eight years after it was provided for by the Law⁶⁴.

In October 2005, the Kosovo government approved the Comprehensive Action Plan for the Implementation of the Anti-Discrimination Law 2005–2007. In December 2008, the government adopted the Strategy and Action Plan on Human Rights in Kosovo 2009–2011, which envisages drafting a new action plan for the implementation of the Law on Anti-Discrimination. According to the AOGG, efforts for the renewal of the 2005–2007 Action Plan are ongoing.⁶⁵ However, it should be noted that there has been no action plan in force for five years, a significant obstacle to the implementation of the Law on Anti-Discrimination.

In addition, the implementation of the Law has been hampered due to the ambiguity of some of its provisions. Namely, Chapter II on complaint procedures and sanctions

⁵⁸ Article 9(5), *ibid.*

⁵⁹ Article 10, *ibid.*

⁶⁰ The AOGG operates within the Prime Minister's Office, since March 2002. Mandate and responsibilities of this Office are defined by UNMIK Regulation No. 2001/19 on the Executive Branch of the Provisional Institutions of Self Government in Kosovo, dated 13 September 2001, and UNMIK Regulation No. 2005/15, on amending UNMIK Regulation No. 2001/18 on the Provisional Institutions of Self Government in Kosovo, 16 March 2005.

⁶¹ Article 3, OPM AI No. 2006/04 on the Implementation of the Anti-Discrimination Law.

⁶² OPM AI No. 08/2005 on Terms of Reference for Human Rights Units and OPM AI No. 04/2007 on Human Rights Units in the Kosovo government. Both AIs are issued to implement a number of laws, including, *inter alia*, the Law on Anti-Discrimination.

⁶³ The MLGA established the HRUs in the municipalities with AI No. 2007/08, later repealed by AI No. 2008/02. In addition, on 29 September 2011 the MLGA issued AI No. 2011/04 on Amending and Supplementing Administrative Instruction No. 2011/01 on the Establishment of the Human Rights Units in the Municipalities. As the legal basis all AIs cite, *inter alia*, the Law on Anti-Discrimination.

⁶⁴ The Division for Equal Opportunities within the AOGG has been exercising the functions intended by the legislation to be exercised by the yet-to-be-established Centre for Equal Treatment since 2005.

⁶⁵ AOGG Director, personal interview, 23 June 2011.

only foresees that “an administrative body which has determined that a violation of this Law has occurred may impose sanctions”. However, the Law is silent on the procedures under which a complaint is to be filed and processed, by which administrative body it should be filed, and in which timeframe. Nor does the Law delegate competence to an executive body to further regulate these important procedural details. In this regard, the Law itself does not foresee proper implementation. As a result, only a very small number of complaints regarding discrimination have been logged with executive bodies and the OSCE is unaware of any cases which have been resolved.

Additionally, as stated above, the Centre for Equal Treatment has never been established. As according to the Law it is the body which should have been responsible for administering compensation, the development of the compensation scheme envisaged with the Law on Anti-Discrimination has been compromised.

With the aim of increasing public awareness of the Law on Anti-Discrimination, OPM through the AOGG organized several workshops and public information campaigns on discrimination issues, in co-operation with relevant stakeholders such as the OSCE, the Ombudsperson Institution in Kosovo and civil society. In addition, according to the AOGG, in recent years several brochures⁶⁶ and leaflets including explanations about the Law and the competent institutions for receiving complaints have been issued and distributed to relevant institutions.

Overall, it can be assessed that the government has, so far, only partially implemented the Law on Anti-Discrimination.

4.3 Promotion and Protection of Communities’ Rights

Law No. 03/L-047 on the Protection and Promotion of the Rights of Communities and their Members in Kosovo⁶⁷ (the Law on Communities) is one of the core pieces of legislation to protect the rights of all communities in Kosovo. The Law on Communities defines Kosovo communities and their special rights with regard to their identity, use of languages, media, culture, religion, education, health, economic and social opportunities, and their political representation. Moreover, it stipulates the measures which Kosovo institutions shall take to ensure full and effective equality of the communities and their members.

Implementation measures foreseen by the Law on Communities include the establishment of the Community Consultative Council (CCC). This also comprised the adoption of the statute of the CCC⁶⁸, the issuance of a code of conduct for community representative organizations⁶⁹; and the publication of an annual comprehensive strategy for the promotion and protection of the rights of all

⁶⁶ For example, see OSCE brochure, *Implementing the Anti-Discrimination Law: A Challenge for Kosovo* (June 2007). <http://www.osce.org/kosovo/25854> (accessed 6 June 2012).

⁶⁷ Law on the Protection and Promotion of the Rights of Communities and their Members in Kosovo, note 5, *supra*.

⁶⁸ Ibid, Article 12(1) and 12(2).

⁶⁹ Article 5(3), *ibid*, provides that Kosovo communities shall have the right to establish community representative organizations which may act as umbrella organizations in relation to their respective community and seek representation on the Community Consultative Council.

communities and their members along with an annual presentation to the Assembly of a comprehensive report on the implementation of the strategy⁷⁰.

In addition, particular measures are envisaged in several specific areas. For instance, the Law on Communities foresees the issuance of a strategy for the effective protection of sites and monuments of communities' cultural and religious heritage⁷¹; the establishment of monitoring procedures pertaining to access and delivery of healthcare services for communities' members⁷²; and public employment programmes and other initiatives aimed at overcoming direct and indirect discrimination against members of communities, in particular Kosovo Roma, Kosovo Ashkali and Kosovo Egyptian communities⁷³. Furthermore, the Law on Communities envisages that the government establish reasonable thresholds for the establishment of specific school classes operating in community languages to ensure that all community members can access education in their own language.⁷⁴ In municipalities where this threshold is not met, the government should offer alternatives to facilitate education in a community's own language, and should also provide higher education and professional training programmes in all community languages⁷⁵, in addition to other measures specified⁷⁶.

To implement the Law on Communities, the CCC was established and its statute was adopted in 2008 by presidential decree.⁷⁷ However, four years after the Law entered into force, the government has neither published an annual comprehensive strategy for the promotion and protection of the rights of all communities and their members, nor has it presented an annual comprehensive report to the Assembly. A code of conduct for community representative organizations has not been issued.

At the date of writing, the strategy for the effective protection of cultural and religious heritage of all communities had not yet been developed. However, in 2008, the Assembly approved Laws on Special Protective Zones⁷⁸ and Cultural Heritage⁷⁹, which overlap with some of the protections envisaged in the Law on Communities.⁸⁰

⁷⁰ Ibid, Article 13(1).

⁷¹ Ibid, Article 5(11).

⁷² Ibid, Article 10(6).

⁷³ Ibid, Article 9(2).

⁷⁴ Ibid, Article 8(1).

⁷⁵ Ibid, Article 8(2) and 8(3).

⁷⁶ Ibid, Article 8(7), 8(10), 8(11) and 8(12). The government is required to establish integrated curricula in community languages that are not an official language; to generate, in co-operation with communities, educational modules and a Kosovo educational curriculum covering their own culture, history and traditions to foster tolerance among all communities; to provide learning opportunities of an official language of each pupil's choice which is not the language of instruction in respective primary and secondary schools; and to establish special measures to ensure the admission of candidates from communities' schools to higher and university education institutions.

⁷⁷ Decree of the President No. CCC-001-2008 on the Establishment of the Consultative Council, 15 September 2008.

⁷⁸ Law No. 03/L-039 on Special Protective Zones, 4 June 2008. The Law stipulates the protection of religious, historical and cultural sites of special significance for the Kosovo Serb community, as well as other communities in Kosovo.

⁷⁹ Law No. 02/L-88 on Cultural Heritage, 1 July 2008. The Law regulates the architectural, archaeological, movable and spiritual heritage of people of Kosovo.

⁸⁰ For example, Article 12(3) of the Law on Cultural Heritage foresees issuance of sub-legal acts to protect cultural heritage. However, the Law on Communities is broad and does not specify if the government should issue primary or subsidiary legislation "to *preserve the cultural and religious heritage of all communities and to ensure the effective protection of sites and monuments of cultural*

In April 2012, the Assembly of Kosovo adopted the Laws on Velika Hoča/Hoçë e Madhe⁸¹ and on the Historic Centre of Prizren.⁸² These laws regulate in detail the protection of two sites of historic importance, thus implementing respective provisions of the Law on Special Protective Zones⁸³. The 2012 Action Plan of the government also foresees the drafting of a strategy on cultural heritage.⁸⁴ „

Measures foreseen with regard to education have been implemented by sub-legal acts and a number of laws governing education.⁸⁵ In this regard, the Ministry of Education, Science and Technology (MEST) issued AI No. 18/2009 on the Report Student - Teacher and Report Student - Non-teaching Personnel and the Number of Students per Class.⁸⁶ For example, the MEST further issued the AI No. 37/2009 on the Independent Commission for Review of Teaching Materials in Serbian Language and the AI No. 07/2010 on Implementation of the Reviewed Work Programme for the Subject: Roma Language with Historic and Cultural Elements.⁸⁷ In addition, the MEST issued the Kosovo Education Strategic Plan 2011–2016 which foresees measures to be taken to increase the participation of communities in the education system at all levels including establishing of integrated curricula.⁸⁸ Finally, the government issued the Strategy on Integration of Kosovo Roma, Ashkali and Egyptian Communities 2009–2015.

No specific programmes or initiatives were adopted to tackle direct or indirect discrimination with regard to employment of vulnerable communities, especially Kosovo Roma, Kosovo Ashkali and Kosovo Egyptian communities. However, non-discrimination clauses have been included in employment legislation, and there are reserved quotas for employment of community members in public institutions⁸⁹. On

and religious significance to communities" (emphasis added) as foreseen by Article 5(10) of the Law on Communities.

⁸¹ See the Law No. 04/L-62 on on Velika Hoča/Hoçë e Madhe of 18 July 2012.

⁸² See the Law No. 04/L-066 on Historical Centre of Prizren of 18 July 2012.

⁸³ See Article 8(2) and 9(2) of the Law No. 03/L-039 on Special Protective Zones, 4 June 2008.

⁸⁴ See annual governmental plan of strategic documents for 2012, available at OPM webpage: http://www.kryeministri-ks.net/repository/docs/Plani_i_dokumenteve_Strategjike_2012.pdf (accessed 20 April 2012)

⁸⁵ Law No. 03/L-68 on Education in the Municipalities of Kosovo, 15 June 2008; Law No. 04/L-032 on Pre-university Education in Kosovo, 16 September 2011; and Law No. 04/L-037 on Higher Education in Kosovo, 9 September 2011.

⁸⁶ However, this AI does not refer to the Law on Rights of Communities as its legal basis or to any other Law. Furthermore, the issue of threshold for communities is also regulated by the Law on Pre-university Education in Kosovo, *ibid*, Article 13 and 14.

⁸⁷ However, although the curriculum covering Romani language and Roma culture and history for grades 2–9 in primary schools has been adopted by the MEST, it still lacks textbooks and trained teachers; on 29 August 2011, MEST approved the new Kosovo curriculum framework for pre-university education. The decision, together with the complete framework document, can be found (Albanian only) at <http://kkap.k.arms.com/Portals/0/Korniza%20e%20Kurrikulës.pdf> (accessed 6 June 2012).

⁸⁸ The existing Kosovo curriculum and textbooks still insufficiently reflect the specific historic, cultural and other attributes of all communities. With the adoption of the “Framework Curricula”, new approaches in education which will pay greater attention to intercultural understanding are expected to be introduced. In addition, the OSCE High Commissioner on National Minorities is currently implementing a project to draft a civic and inter-cultural education textbook in compliance with the Kosovo curriculum framework.

⁸⁹ For example, at least 10 per cent of civil servants at the central level must be members of non-Albanian communities. At the municipal level, quotas must be based on the percentage of

the other hand, no specific measures have been taken with regard to access to and delivery of healthcare services for members of communities in Kosovo. Besides, various AIs implementing the Law on Communities do not refer to the Law itself as providing their legal basis.⁹⁰

In sum, it can be assessed that only limited progress has been achieved in implementing the Law on Communities.

4.4 Access to Travel Documents

The ability of all individuals to obtain and carry travel documents has a profound impact upon the enjoyment of rights related to the freedom of movement, including the right to return, the right to travel freely (for instance, to enter and leave Kosovo) and the freedom to choose a place of residence.⁹¹ Bearing in mind the significance of these issues for all Kosovo residents and communities, the Law on Travel Documents⁹² aims to regulate the existing types of travel documents in Kosovo⁹³, their content and classification, and procedures for the issuance of travel documents as well as their conditions of validity. In addition, the Law prescribes administrative sanctions for violation of its provisions. The supervision of implementation of the Law is mostly entrusted to the Ministry of Internal Affairs (MIA).⁹⁴

The Law on Travel Documents envisages that the MIA shall regulate through subsidiary legislation the following: the format of travel documents; forms for application for travel documents; forms for travel permits for children under 14 years old and permits for the legal representatives of children under 14 years old⁹⁵; forms for the notification of lost travel documents; the methodology for keeping evidence of travel documents; the procedures and manner of production, issuance and distribution of travel documents; the price of travel documents and the procedure for distribution, keeping, use, return and destruction of data for travel documents.⁹⁶ The deadline for implementation of the Law on Travel Documents was prescribed as three months after it entered into force.⁹⁷

In the process of implementation of the Law on Travel Documents, the MIA has issued a series of AIs which regulate the form and content of applications for

communities in the specific municipality. See Article 11(3) of Law No. 03/L-149 on the Civil Service of Kosovo, 25 June 2010.

⁹⁰ This includes AI No. 37/2009 and AI No. 18/2009, both issued by MEST. These administrative instructions mainly refer to the Rules of the Procedure of the government or the Law on Education in Municipalities. However, both AIs in fact implement Article 8 of the Law on Communities.

⁹¹ For instance, see Article 13, Universal Declaration of Human Rights; Article 12, International Covenant on Civil and Political Rights, UN General Assembly resolution 2200A (XXI), 16 December 1966; General Comment No. 27, UN Human Rights Council, CCPR/C/21/Rev.1/Add.9, 2 November 1999.

⁹² Law No. 03/L-037 on Travel Documents, 19 June 2008, as amended by the Law No 03/L-217 on Amending and Supplementing the Law on Travel Documents, 11 December 2010.

⁹³ Travel documents are defined as including passports, travel cards, travel documents for return; group travel documents, travel documents issued based on international agreements and seaman books, amongst others. See Article 7, Law No. 03/L-037 on Travel Documents, *ibid*.

⁹⁴ Article 33(1), Law No. 03/L-037 on Travel Documents, *ibid*.

⁹⁵ Children under the age of 14 can travel abroad accompanied by parents, legal guardians or any other person “with their permission”; see Article 9, *ibid*.

⁹⁶ Article 36, *ibid*.

⁹⁷ The amending Law on Travel Documents entered into force on 11 December 2010.

passports; procedures for production and distribution of passports; keeping evidence for passports; travel documents for return; procedures for issuance of passports; accelerated procedure for obtaining passports; issuance of group travel documents.⁹⁸ The MIA also issued a Decision setting the price of biometric passports.⁹⁹

The majority of the measures necessary for the implementation of the Law on Travel Documents have been adopted, although some AIs were issued with some delay.¹⁰⁰ As foreseen by the Law on Travel Documents, the responsible ministry has been duly consulted during the drafting procedure for relevant sub-legal acts. However, several areas of implementation have not taken place or have been problematic. For instance, the issuing of travel permits for children under 14 years of age and the relevant forms for these permits have not yet been regulated by the MIA. Moreover, the MIA has not issued subsidiary legislation in order to regulate a form for notification of lost/damaged travel documents to the police. It is particularly worth noting that AI No. 25/2008 on the Form, Content and Manner of Application and Issuance of Group Travel Document provides for more restrictive conditions on the issuing of travel documents than the Law on Travel Documents itself does. With regard to the price of the travel documents, the MIA Decision does not determine the prices for the travel documents for return and group travel documents.¹⁰¹ The fee for the travel documents for return, however, was not determined by the competent ministry.¹⁰²

Despite these inconsistencies and delays, overall it can be assessed that the MIA is progressing towards full implementation of the Law on Travel Documents.

4.5 Access to Personal Documents (Identity Cards)

Access to identity cards and other personal documents has a significant impact on respect for private life, issues related to non-discrimination, and the protection of communities' rights in Kosovo. With this in mind, the Law on Identity Cards¹⁰³ aims

⁹⁸ AI No. 21/2011 on Determination of the Form and Content of the Application forms for Passports (which repeals AI No. 5/2008 on the Determination of the Form and Content for the Application for Passports); AI No. 18/2011 on the Determination of Forms, Contents, Personalization and Transport of Passports (which repeals AI No. 7/2008 on the Determination of Procedures and Methods of Production, Distribution, Return and Destruction of Passports); AI No. 17/2011 for Determining Management of Evidence for Identity Cards/Travel Documents (which repeals AI No. 9/2008 on the Determination of Keeping of Evidences for Passports); AI No. 14/2008 on the Form, Content and Manner of Issuance of Travel Documents for Return; AI No. 22/2011 for Equipment with ID Card, Passport and Driving Licence in Accelerated Procedure (which repeals AI No. 21/2008 for Equipment with Passport and Driving Licence in Accelerative Procedure); AI No. 16/2011 on Application Procedures for issuing the Passport (which repeals AI No. 24/2008 on Application Procedures for Passport/ Lost/Damaged Passport, Change of Data and Data Renovation on Passport); AI No. 25/2008 on Form, Content and Manner of Application and Issuance of Group Travel Document.

⁹⁹ MIA Decision No. 281/2011 of 3 October 2011.

¹⁰⁰ For example AI No. 21/2008 for Equipment with Passport and Driving Licence in Accelerated Procedure, 21 October 2010; AI No. 24/2008 on Application Procedures for Passport/ Lost/Damaged Passport, Change of Data and Data Renovation on Passport, 27 November 2008; AI No. 25/2008 on Form Content and Manner of Application and Issuance of Group Travel Document, 3 December 2008.

¹⁰¹ Decision No. 281/2011, note 99, *supra*.

¹⁰² The fee was determined through AI No. 02/2011 on amending AI No. 05/2010 on Consular Fees, although the Law on Travel Documents gives this competence to the MIA.

¹⁰³ Law No. 33/L-099 on Identity Cards, 1 November 2008.

to regulate the form and content of identity cards in Kosovo, the competencies and the procedures for issuing identity cards, their validity and the manner of keeping evidence for the production of identity cards. Finally, the Law prescribes administrative sanctions for violations of its provisions.

The MIA is designated as the competent body to issue the implementing subsidiary legislation.¹⁰⁴ The Law on Identity Cards envisages the issuance of subsidiary legislation to regulate the following areas: the format of identity cards; the manner of keeping, using, returning and destroying the data necessary for the production of the identity cards; forms for application for the identity cards and for reporting lost or damaged identity cards; the manner of keeping records of persons who have been prohibited from leaving Kosovo and who cannot use their identity card for this purpose; and the manner of keeping records of requested and issued identity cards.

In order to implement the Law on Identity Cards, the MIA has issued a number of AIs which regulate application forms for identity cards; manufacturing of identity cards; keeping of evidence for identity cards; procedures for application, change of data and renewal of identity cards; and accelerated procedure for issuance of identity cards.¹⁰⁵

Overall, the MIA has fulfilled many of its implementing obligations as foreseen by the Law on Identity Cards. However, many of the initial AIs, which are now repealed, were issued before the Law itself entered into force.¹⁰⁶ The Law mandates the MIA to issue sub-legal acts, but it is important to note that it also provides limitations on which implementing sub-legal acts may be issued and which institutions may issue them. An institution which is authorized to issue subsidiary legislation can regulate specific issues only when authorized by the primary legislation in force. Otherwise, the legality of such sub-legal acts is disputable.

The form of notification of lost/damaged identity cards to the police has not yet been regulated by the MIA. In addition, the procedure for storing evidence as regulated in AI No. 17/2011 does not provide sufficient and accurate information about the management of evidence. Moreover, while the Law on Identity Cards sets forth a

¹⁰⁴ Article 7, Law on Identity Cards, *ibid*.

¹⁰⁵ AI No. 23/2011 on Determination of the Form and Content of the Application Forms for Identity Cards (which repeals AI No. 16/2008 on the Determination of the Form and Content of the Application Forms for Identity Cards); AI No. 19/2011 on Determination of the Form and Manner of Manufacturing of Identity Cards (which repeals AI No. 17/2008 on Determination of the Form and Manner of Manufacturing the Identity Cards); AI No. 17/2011 for Determining Management of Evidence for Identity Cards/Travel Documents (which repeals AI No. 18/2008 on Keeping of Evidence for Identity Cards); AI No. 20/2011 on Procedures of Application for the Identity Card (which repeals AI No. 19/2008 on Procedures for Application for the Identity Card); Lost/Damaged Identity Card, Change of Data and Renewal of Data in the Identity Card; and AI No. 22/2011 for Equipment with ID Card, Passport and Driving Licence in Accelerated Procedure (which repeals AI No. 09/2009 on Equipping with the Identity Cards through the Accelerated Procedure).

¹⁰⁶ AI No. 16/2008 on Determination of the Form and Content of the Application Forms for Identity Cards; AI No. 17/2008 on Determination of the Form and Manner of Manufacturing of Identity Cards; AI No. 18/2008 on the Determination of Keeping of Evidence for Identity Cards; AI No. 19/2008 on Procedures for Application for the Identity Card, Lost/Damaged Identity Card, Change of Data and Renewal of Data in the Identity Card.

time-limit for storing the evidence¹⁰⁷, AI No. 17/2011 does not foresee any such time-limit.¹⁰⁸

Although the final assessment is that the MIA has fulfilled the majority of its obligations regarding the implementation of the Law on Identity Cards, some issues remained unaddressed.

4.6 Use of Languages

Full implementation of the language rights of all communities throughout Kosovo is a prerequisite to their equal access to services and effective participation in public life. The Law on the Use of Languages¹⁰⁹ regulates the use of official languages and languages of communities whose mother tongue is not an official language. These language rights apply to many institutions and areas of competency, including central-level institutions, municipal institutions, public enterprises, judicial proceedings, the education sector and the media. The Law on the Use of Languages also regulates the use of scripts regarding personal names, the use of languages in establishing cultural associations and business enterprises, and the use of languages in private enterprises and institutions.

Implementation measures foreseen by the Law on the Use of Languages include the issuance of subsidiary legislation, the establishment of the Language Commission and the establishment of public awareness programmes.

The Law on the Use of Languages foresees that the MLGA issue AIs defining procedures to guarantee that members of communities may exercise their right to use community languages in municipal institutions.¹¹⁰ Furthermore, the Kosovo government shall adopt measures to promote the equal status of official languages and to ensure the protection, preservation and promotion of languages of communities whose mother tongue is not an official language.¹¹¹ The Law on the Use of Languages also envisages that the government shall conduct programmes to raise public awareness of its provisions and the rights it protects.¹¹² Finally, it provides for the establishment of the Language Commission which also shall be the institution responsible for supervision of the implementation of the Law.¹¹³

Regarding language rights in school education, MEST is required to define the rights of communities whose mother tongue is not an official language to receive education in their mother tongue in public schools.¹¹⁴ MEST is also obliged to define details of education for persons whose chosen official language is not used by any of the

¹⁰⁷ Data from evidence are to be governed by the MIA for “five (5) years after the cease of validity of Identity Card”; Article 18(3) of the Law on Identity Cards, note 103, *supra*. Article 18(4) of the Law provides that data regarding the prohibition of certain individuals from using their identity card to leave Kosovo should be destroyed after five years by the competent body, or when the reason for the particular individual’s prohibition expires.

¹⁰⁸ Neither did AI No. 18/2008, in force until November 2011, address issues of management of evidence and time-limits for storing of evidence.

¹⁰⁹ Law on the Use of Languages, note 4, *supra*.

¹¹⁰ *Ibid.*, Article 10.

¹¹¹ *Ibid.*, Article 31.

¹¹² *Ibid.*, Article 36(2).

¹¹³ *Ibid.*, Article 32.

¹¹⁴ *Ibid.*, Article 20(2).

schools in the municipality as the language of education.¹¹⁵ In addition, MEST must create procedures to declare which official language pupils wish to study as a second language¹¹⁶, and in which language their school records should be kept and school certificates issued¹¹⁷. MEST should establish a procedure for the registration of private educational institutions which provide instruction in a language of their choice.¹¹⁸

The MLGA set up the procedures for implementation of Law on Use of Languages by regulating the use of languages in municipalities.¹¹⁹ However, it failed to regulate the procedure for registration of private educational institutions. The MPA determined administrative sanctions for the violation of the Law on Use of Languages.¹²⁰ Furthermore, the government established the Language Commission in 2007 and set out its composition and competencies in a new AI¹²¹, while the mandate of the commission's members is determined by a decision of the government¹²².

Although the Language Commission has itself conducted some limited Kosovo-wide outreach activities¹²³, no public awareness programme has been drafted by the government to date. Of serious concern are findings that, in its current state, the Language Commission is unable to preserve, promote, and protect the official languages and their equal status in Kosovo in the manner foreseen by the Law. More than four years after its establishment, the general public is not aware of the Language Commission. Much of this can be attributed to the fact that the Commission lacks a budget, resources, and office space, and is not permanently staffed to carry out its duties as prescribed.

In addressing these shortcomings, the government adopted Regulation 07/2012 on the Office of the Language Commissioner, which entered into force on 4 April 2012. The Regulation establishes the Office of the Language Commissioner, which shall become operational through the establishment of a Language Policy Board, selection and appointment of the Language Commissioner, recruitment of staff for the Office, the

¹¹⁵ Ibid., Article 19(4).

¹¹⁶ Ibid., Article 21(1) and 21(2); the OSCE High Commissioner for National Minorities (HCNM) is implementing a project to support MEST in developing the language textbook "Albanian as a second language" for 3rd grade pupils. 1,000 copies of the textbook have been published and distributed to MEST. HCNM is planning to raise the issue of development of the Serbian-language textbook with MEST this year.

¹¹⁷ Ibid., Article 24(1) and 24(2).

¹¹⁸ Ibid., Article 22(2).

¹¹⁹ AI No. 2007/06 on the Determination of Procedures for Implementation of the Law on the Use of Languages. In April 2011, this AI was superseded by AI No. 2011/2 (with the same title).

¹²⁰ AI No. 2007/01 on Determining Administrative Sanctions for the Violation of the Law on Use of Languages.

¹²¹ AI No. 2007/03 on Composition and Competences of the Language Commission, 27 February 2007.

¹²² Decision No. 05/99 of 17 December 2009 of the Kosovo government.

¹²³ In 2010, as part of an OSCE project, the Language Commission carried out outreach activities across Kosovo. Five roundtables were organized in the Prishtinë/Priština, Gjiilan/Gnjilane, Pejë/Peć, Mitrovicë/Mitrovica and Prizren regions. The roundtables aimed to inform the public about the role and function of the Language Commission and about their language rights. During these events, promotional material was distributed in five languages (Albanian, Serbian, Turkish, Bosnian and English). In 2012, the OSCE will support the newly-appointed Language Commissioner and his/her staff in conducting outreach activities throughout Kosovo.

procurement of office space and resources, and the establishment of the Language Policy Network.

In 2007 MEST issued AI No. 10/2007 on Schooling in Elective Official Language. To implement one's right to choose a preferred official language of education¹²⁴, this AI regulates the procedure for teaching in municipalities where a person's chosen official language is not used by any school as a language of education, as well as the procedure for making a declaration of the official language for keeping students' educational records.¹²⁵ However, MEST has yet to issue any subsidiary legislation to implement provisions regarding education for persons from communities whose mother tongue is not an official language¹²⁶, or the procedure by which persons can declare which official language they wish to study as a second language.¹²⁷ Regarding the procedure for registration of private educational institutions, MEST considers that implementation of the matter falls under the responsibility of the MLGA.¹²⁸ On balance, the OSCE considers that this is an appropriate assessment, since municipalities generally have full and exclusive powers for, *inter alia*, registration and licensing of educational institutions.¹²⁹

Overall, it can be assessed that the Law on Use of Languages has been only partially implemented.¹³⁰

4.7 Protection against Domestic Violence

In August 2011 the Assembly adopted the Law on Protection against Domestic Violence¹³¹ in order to provide legal measures to prevent domestic violence and to protect victims of domestic violence, focusing particularly on vulnerable groups such as children, the elderly and disabled people. The Law foresees categories of protection measures, procedures for the issuance of protection measures, and stipulates special responsibilities of the court and the police in their implementation.

The Law foresees that the Ministry of Labour and Social Welfare (MLSW), in co-operation with the Ministry of Health (MoH), should draft sub-legal acts addressing the psychosocial treatment of perpetrators of domestic violence, while the MoH should draft sub-legal acts on the treatment of alcohol and drug addicts who are

¹²⁴ Article 19(2), Law on the Use of Languages, note 4, *supra*.

¹²⁵ AI 10/2007 only vaguely provides that a declaration should be in written form, with no further guidance as to the form it should take.

¹²⁶ Article 20, Law on the Use of Languages, note 4, *supra*.

¹²⁷ Article 21(2), *ibid*. According to the MEST, this and Article 20 have not been implemented because of practical enforcement difficulties; MEST Legal Department representative, personal interview, 20 June 2011.

¹²⁸ Article 22(2), *ibid*. MEST Legal Department representative, personal interview, 20 June 2011.

¹²⁹ Article 4(1), Law No. 03/L-068 on Education in Municipalities, 15 June 2008. Registration and licensing of private providers for higher education is regulated by AI 14/2003 of 17 July 2003 and AI 14/2004 of 16 February 2004, issued by MEST to implement the Law on Higher Education, note 85, *supra*.

¹³⁰ For more information see OSCE Report *Multilingual Legislation in Kosovo and its Challenges* (February 2012), pp. 26–28; <http://www.osce.org/kosovo/87704> (accessed 6 June 2012).

¹³¹ Law No. 03/L-182 on Protection against Domestic Violence, 10 August 2011. Article 28 provides that the Kosovo government should, within six months of the Law entering into force, issue sub-legal acts for its implementation.

domestic violence perpetrators.¹³² Several ministries – the MLSW, MoH, MIA, Ministry of Justice (MoJ), Ministry of Culture, Youth and Sports and MEST – should jointly draft a programme focusing on the needs of and support for victims of domestic violence.¹³³

Unfortunately, to date none of the envisaged subsidiary legislation has been issued. At the end of May 2011, the MLSW submitted a draft AI on the determination of the place and manner of psychosocial treatment to the government. However, at the time of writing this had not been approved.¹³⁴ In June 2011, the MoH established an internal working group for drafting an AI on mandatory medical treatment for alcohol and psychotropic substance dependency of domestic violence perpetrators. This group is in the final stage of the drafting process, and envisages finalizing the AI by mid-2012.¹³⁵

Progress with regard to the drafting of a Kosovo programme to support victims of domestic violence has been more successful. With the overall consent of all ministries concerned, the responsibility to draft the programme was delegated to AGE.¹³⁶ AGE has, in consultation with the relevant ministries, developed the programme. On 25 August 2011, the Kosovo government approved the Kosovo Programme against Domestic Violence and Action Plan 2011–2014.¹³⁷ The Programme aims to establish mechanisms for the prevention, protection, treatment, rehabilitation and integration of victims of violence, and to raise awareness in order to address the lack of understanding among the general public regarding this sensitive form of crime. The Programme and Action Plan list strategic and specific objectives in the areas of prevention of domestic violence and protection of victims, as well as rehabilitation and integration of victims and perpetrators. It also formulates policies, programmes and actions related to legislation, institutions, funds and human resources. AGE is responsible for monitoring and evaluation of the Programme, with the envisaged submission of periodic reports to government.

Overall, although the approval of the Kosovo Programme against Domestic Violence and Action Plan is a major step forward towards implementation of the Law on Protection from Domestic Violence, which should be supported, the provisions of the Law remain only partially implemented. Adopting and issuing all required sub-legal acts should be a priority in this regard.

5. CONCLUSIONS

In general, extensive efforts have been made by the Kosovo institutions to implement the laws covered by this report. This has mainly been achieved by issuing a considerable number of sub-legal acts, programmes and strategies, by establishing executive bodies foreseen by the laws and by conducting Kosovo-wide awareness

¹³² Ibid., Articles 4(3) and 9(2).

¹³³ Ibid., Article 27.

¹³⁴ The MLSW was not informed about the reasons for this delay; representative of the Legal Department of the MLSW, personal interview, 9 June 2011.

¹³⁵ Co-ordinator of the Human Rights Unit of the MoH, personal interview, 22 November 2011.

¹³⁶ Note 133, *supra*. Director of the Legal Department of the MLSW, personal interview, 9 June 2011 and Chief Executive of AGE, personal interview, 8 June 2011.

¹³⁷ Kosovo Programme against Domestic Violence and Action Plan 2011–2014, 25 August 2011.

campaigns. In this regard, the OSCE specifically welcomes the adoption of the Kosovo Programme against Domestic Violence and Action Plan 2011–2014, as well as the awareness-raising campaigns organized by AGE and the AOGG, as important steps towards implementation of the Law against Domestic Violence.

However, some implementing institutions did not respect the limitations provided by law, for example, by the Law on Identity Cards and the Law on Travel Documents. There were cases when subsidiary legislation was issued before the law entered into force; or some issues which require regulation by primary legislation remained unaddressed by necessary subsidiary legislation. Moreover, some strategies and programmes are still waiting for approval, such as the comprehensive strategy for the promotion and protection of the rights of all communities and their members, and a strategy for the effective protection of cultural and religious heritage sites and monuments. Also, the Centre for Equal Treatment has not been established, and a public awareness programme on the Law on Use of Languages has never been established. In addition, current practice where there is no independent review of sub-legal acts within individual ministries has an impact on the quality of sub-legal acts.

In conclusion, it can be assessed that the implementation of the laws covered by this report has not been fully realized. More implementing measures need to be undertaken, especially as regards the issuance of AIs implementing the Law on the Use of Languages, the Law on the Protection against Domestic Violence and the Law on the Protection and Promotion of the Rights of Communities and their Members. Kosovo institutions may benefit from further international support in implementing effective human rights protection mechanisms in accordance with international standards and European best practice.

Regarding drafting of subsidiary legislation, there are no unified practices regarding systematic assignments of drafters, and the experiences and prior assignments of drafters are not sufficiently considered in assigning drafting tasks. Moreover, there is no common practice regarding review of subsidiary legislation before and after its adoption. Addressing these shortcomings would help increase legal certainty, improve consistency and compliance between primary and secondary legislation, and avoid conflicts of interest.

The OSCE particularly commends efforts undertaken by OLSS regarding the creation of an official index of all sub-legal acts, and towards the achievement of a uniform manner of publishing subsidiary legislation. These efforts have substantially facilitated direct access to legislation, thus increasing legal certainty. In order to fully streamline the registration and publication of sub-legal acts in Kosovo and to allow for a systematic and independent review process of subsidiary legislation – before and after its adoption – strong and methodical co-ordination between OLSS and legal departments of the ministries needs to be continued.

6. RECOMMENDATIONS

6.1 Implementation of Laws

- In general, the government must take serious steps to oversee the implementation of laws in a comprehensive and systematic manner. As a starting point, it is recommended to appoint an individual or create a unit with sole responsibility for co-ordination of the implementation of laws. This focal point could form a formalized administrative link to the Assembly secretariat.
- Each ministry should conduct systematic monitoring of implementation of the respective legislation. The supervision of implementation of legislation should be carried out by a body other than the drafters of such legislation, in order to guarantee a system of independent monitoring.

6.2 Drafting, Supervision and Publication of Sub-legal Acts

- Each ministry, when preparing draft laws, should be precise when authorizing the preparation of subsidiary legislation. Whenever a draft law envisages that specific issues be regulated by implementing acts, the proposed law must also contain a clear authorization for the drafting and issuance of such acts and a clear indication of the basic starting points.
- Each ministry, when drafting subsidiary legislation, should increase co-operation between its legal and the programmatic departments to ensure a range of expertise for each sub-legal act.
- Each ministry should establish a unified practice of systematic assignments of drafters of subsidiary legislation, taking into account experiences and prior assignments of drafters.
- Each ministry, in co-operation with OPM, should establish a common practice of review of subsidiary legislation before and after its adoption. In particular, there should be a systematic review process in place to assess compliance of subsidiary legislation with primary legislation.
- Each ministry should regularly publish their subsidiary legislation together with an index on their respective web pages.
- Each ministry should inform the Office of the Prime Minister (OPM) about issued subsidiary legislation in a timely manner so that they may be included in the Register of Sub-legal Acts in Force.
- OPM should continue to regularly update the Register of Sub-legal Acts in Force and continue efforts to centralize publication of subsidiary legislation of all Kosovo ministries and the government.

6.3 Implementation of Legislation Impacting Human Rights in Kosovo

Anti-Discrimination:

- The government should approve an Action Plan for the implementation of the Law on Anti-Discrimination 2012–2015 as a priority issue.
- The government must establish the Centre for Equal Treatment with a clear mandate, as prescribed by the Law on Anti-Discrimination.

Promotion and Protection of Communities' Rights:

- The government should regularly compile and publish a comprehensive strategy for the promotion and protection of the rights of all communities and their members, and should report annually to the Assembly on the implementation of this strategy.
- The government should develop a strategy for the effective protection of cultural and religious heritage sites and monuments.
- The government should develop specific public employment programmes and initiatives, targeting persons belonging to all Kosovo communities, in particular the Kosovo Roma, Kosovo Ashkali and Kosovo Egyptian communities.
- The government should ensure that the specific measures pertaining to education of communities are adopted and implemented.

Access to Travel Documents:

- The Ministry of Internal Affairs should issue subsidiary legislation to determine the form for notification of lost/damaged travel documents to the police.
- The Ministry of Internal Affairs should issue subsidiary legislation to determine the prices for the travel documents for return and group travel documents.
- The Ministry of Internal Affairs should issue subsidiary legislation to regulate issuing of travel permits for children under 14 years of age.

Access to Personal Documents (Identity Cards):

- The Ministry of Internal Affairs should issue subsidiary legislation to determine the form for notification of lost/damaged identity cards to the police.

Use of Languages:

- The government should provide support to the Office of the Language Commissioner including through hiring dedicated staff, appointment of a Language Commissioner and the formation of the Language Policy Board and Language Policy Network; the government should continue to support the overall reform of the Office of the Language Commission.
- The Ministry of Education, Science and Technology must issue subsidiary legislation to implement the right for communities whose mother tongue is not an official language to receive instruction in their mother tongue in public school education, and shall determine the procedure by which persons can declare which official language they wish to study as a second language.
- The Ministry of Education, Science and Technology should establish a procedure for registration of private pre-primary, primary and secondary educational institutions with education in a language of their choice.

Protection against Domestic Violence:

- The government should approve subsidiary legislation on the determination of place and manner of psychosocial treatment of perpetrators of domestic violence.
- The Ministry of Health must issue a sub-legal act on mandatory medical treatment from alcohol and psychotropic substance dependency.