



# PROGRES ON ASSET DECLARATION AND PUBLIC PROCUREMENT POLICIES

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# **PROGRESS ON LOCAL GOVERNMENT, PUBLIC PROCUREMENT, ASSEMBLY OF KOSOVO, AND ELECTORAL REFORM**

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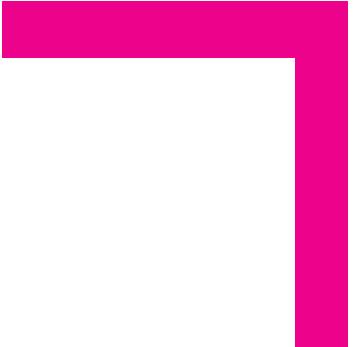
# Foreword

The Kosovo Foundation for Open Society has supported Kosovo's European integration process since 2006, when it founded the European Integration and Good Governance program. Since then, the Foundation has constantly supported the non-governmental organizations' engagement in the process with their analysis, monitoring of policy developments, public discussions, and advocacy processes. The support has resulted in numerous analyses through the years and acquisition of essential knowledge and expertise over the processes by Kosovo's civil society organizations. Hence, in joint effort with a number of organizations already active in certain segments of integration process, the Foundation initiated the project "Civil Society for the Progress Report 2014" through which it offered the organizations an opportunity to channel their contribution to the upcoming Progress Report and the current Stabilization and Association Process Dialogue through focused and well-informed analysis, built on their multi-year experience and engagement.

Each analysis produced within the project addresses a specific segment of the current dialogue between Kosovo and the European Union, informing about the current situation, from the civil society's point of view, followed by the recommendations on the needed improved performance.

We hope that this exercise has produced will be of value not only to Kosovo's civil society organizations for further amplification of their voice within the integration process, but also to the European Union and the Government of Republic of Kosovo towards building of a standing cooperation with this segment of the state-building process. Ultimately, we hope that as a result of all the stakeholders' engagement, Kosovo's European integration process will accelerate, overcoming all the political barriers that stand on our way to this destination.

**Iliriana Kacaniku**  
European Integration and  
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## **Problems and the Way Forward of the Asset Declarations System: A Tool to Combat Corruption**

# Background

Developing an anti-corruption framework is a crucial yet a difficult task in any country, with Kosovo being no exception. Asset declaration is a key element of any anti-corruption framework. The assets of public officials, particularly public officials in developing countries, are often excessive in relation to their income which in turn raises an ethical question- where did they get the money? One important tool for identifying the legality of the assets of public officials is asset declarations (AD), also referred to as financial disclosures, which are a foundational element of well-established anti-corruption programmes. Asset declarations refer to "a person's balance sheet that covers assets, from all homes, valuables and financial portfolios, to liabilities, such as debts and mortgages, and all sources of income from directorships and investments to consulting contracts."<sup>1</sup> The disclosure of all assets provides a complete picture of a public official's financial situation. This information contributes to the detection of the theft of public assets, and, thus, inhibits corruption. In general, AD systems, as part of an overall anti-corruption strategy, contribute to the protection of the public interest by ensuring that resources are used in the pursuit of social and economic development goals. Apart from combating corruption, AD systems prompt accountability amongst public officials.<sup>2</sup> In addition, AD systems have the potential to boost public confidence in the integrity of the government because they ensure that public officials are subject to public scrutiny.<sup>3</sup>

Systems of asset declarations began to evolve in the early 1950s in response to growing government and corruption scandals in the United States.<sup>4</sup> Various factors initially prevented the introduction of AD systems; however, after Watergate and other scandals taking place, AD systems were institutionalized in the US.<sup>5</sup> In the 1980s, AD systems spread throughout Western Europe excluding the eastern and the central part of

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1 Transparency International Zimbabwe. Asset Declaration as a way of Curbing Corruption. Available at <http://www.transparency.org.zw/index.php/ct-menu-item-23/ct-menu-item-25/156-asset-declaration-as-a-way-of-curbing-corruption>

2 OECD (2011). Asset Declaration for Public Officials: A Tool to Prevent Corruption. OECD Publishing.

3 World Bank (2012). Public Office, Private Interests: Accountability through Income and Asset Disclosure. World Bank, Washington D.C Publishing.

4 OECD (2011). Asset Declaration for Public Officials: A Tool to Prevent Corruption. OECD Publishing.

5 Burdescu, R. and Reid, G. and Gilman, S. and Trapnell, S. (2009) Income and Asset Declarations: Tools and Trade-Offs. World Bank and Stolen Asset Recovery(STAR) Initiative Publishing.

it. Later on along with the global anti-corruption program and EU enlargement, AD systems were adopted by most Central and Eastern European countries.<sup>6</sup> Finally, in 2003, financial disclosure amongst public officials become an international standard and was embedded in article 8 of the United Nations Convention against Corruption. Article 8 (paragraph 5) requires all state parties “to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, *inter alia*, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict may result with respect to their functions as public officials.”<sup>7</sup> Similar requirements can be found in the African Union Convention on Preventing and Combating Corruption (2003) and in the Inter-American Convention against Corruption (1996).<sup>8</sup> There is no clear European Union (EU) directive regulating the field of asset disclosures; however, candidate countries are continually monitored with regard to their achievements/ failures in the anti-corruption framework. As such, asset declarations have become a *de facto* standard for the EU toward candidate countries.<sup>9</sup> Additionally, there are international agreements that recognize financial disclosure as a tool for detecting and preventing corruption, while international organizations like the OECD and the World Bank have identified policy principles to guide the design, reform, and implementation of AD systems. These policy principles should be taken into account depending on the context of the national policies. This means that these principles may be adjusted to the socio-economic and political environment of a particular country.

In transitioning democracies, there is a prevalent belief that financial disclosure systems are becoming powerful tools in the fight against corruption;<sup>10</sup> however, AD systems in developing countries face various implementation challenges<sup>11</sup> due to weak

6 OECD (2011). Asset Declaration for Public Officials: A Tool to Prevent Corruption. OECD Publishing.

7 United Nations Convention against Corruption (2004). United Nations, Office on Drugs and Crime, New York. Available at [https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf)

8 Inter-American Convention against Corruption (1996). African Union Convention on Preventing and Combating Corruption, Article 7, paragraph 1 and 2 (2003). Available at <http://www.oas.org/juridico/english/treaties/b-58.html>

9 Regional Anti-Corruption Initiative (2012) Rules and Experiences on Integrity Issues. Regional Anti-Corruption Initiative Publishing.

10 Burdescu, R. and Reid, G. and Trapnell, S. and Barnes, D. (2010). Income and Asset Disclosure Systems: Establishing Good Governance through Accountability. World Bank Publishing.

11 World Bank (2012). Public Office, Private Interests: Accountability through Income and Asset

law enforcement, improper functioning of the tax system, and a lack of democratic structures.<sup>12</sup> A similar situation is found in Kosovo, where the system faces numerous policy problems. It is important to note that this issue is of particularly high importance for Kosovo, due to the heavy accumulation of unexplained wealth amongst public officials in just a few years' time,<sup>13</sup> and the common perception spread amongst Kosovar citizens that public officials represent the richest social strata. Although, not all public officials got wealthy in an illicit manner and some are not that wealthy at all, there is commonly accepted belief that public officials, particularly those who have been directly elected, have become affluent after entering politics. It is alarming that people have begun to view entering politics as a "common" way of getting wealthy in an unlawful manner and within a short period of time. Among others, these represent the main issues for addressing this topic in this policy paper.

It is important to note that the financial disclosure system in Kosovo is relatively new<sup>14</sup> and was initially devised in 2000 under the regulations of the Mission to the United Nations Administration in Kosovo (UNMIK) which required all member candidates of the Assembly to submit a declaration of assets.<sup>15</sup> In 2010 requirements obliging officials to declare assets were embedded in the legislation of the Republic of Kosovo. Now, after several amendments, the AD system functions according to the latest version of the Law No.04/L-228 on Declaration of Property by Public Officials.<sup>16</sup> In 2013, 3869 senior public officials were obliged to declare their wealth. Out of 3869, 99.25% or 3840 have declared their wealth, which represents the largest response so far toward this legal obligation.<sup>17</sup>

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Disclosure. International Bank for Reconstruction and Development/World Bank Publishing.

12 OECD (2011). Asset Declaration for Public Officials: A Tool to Prevent Corruption. OECD Publishing.

13 Lëvizja FOL (2011). Enforcement of Legal Provisions on Declaration of Assets of Directly-Elected Central-Level Senior Officials. Lëvizja FOL Publishing.

14 European Union (2013). Assessment Report on Compliance with International Standards in the Anti-Corruption Area. Project against Economic Crime in Kosovo and EU Publishing

15 Hoppe, T. (2013). Comparative Study: Income and Asset Declarations in Practice. Regional School of Public Administration Publishing.

16 See Law No.04/L-228 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials.

17 Anti-Corruption Agency (2013). Annual Report January-December 2013. Available at <http://www.akk-ks.org/repository/docs/Raportiversionianglisht.pdf>

While progress has been made in regard to AD legislation, implementation of the AD system remains problematic. The 2013 European Progress Report has acknowledged that Kosovo has not yet provided concrete evidence of results in fighting corruption or in implementing the legislative and policy frameworks.<sup>18</sup> The report has also noted that continued efforts are necessary to increase the accountability of high-ranking officials and politicians. Corruption remains widespread, and Kosovo ranks 111<sup>th</sup> in Transparency International's 2013 Corruption Perception Index.<sup>19</sup> Furthermore, the Office of the Auditor General in Kosovo, notes that asset declarations remain a challenge toward fighting corruptive practices<sup>20</sup>. Overall, the system of asset declaration has not yielded tangible results in reducing corruption, likely due to many implementation gaps which need to be seriously addressed by the relevant institutions. This policy report identifies many challenges for the AD system, including inconsistent vocabulary used to fill in the forms, the baseless determination of property values without taking into consideration their market value, lack of a clear verification process or guidelines that assess the accuracy of declarations, lack of an unbiased procedure to decide which declarations to evaluate and lack of legislation and guidelines that identify a course of action for handling public officials with excessive wealth that cannot be properly accounted for. If the unclear and ambiguous process of wealth declarations is not properly addressed, financial corruption will continue to negatively impact Kosovo institutions, the anti-corruption framework, and Kosovo's EU integration efforts.

This policy report therefore analyzes the Law on Asset Declarations and malpractices relating to asset declarations in practice, providing an independent look at the current AD system. The first section discusses international policy practices relating to the asset declarations of public officials and provides SWOT analysis for each international policy principle in the context of Kosovo. Second, this report analyzes irregularities and inconsistencies in disclosure filing practices in Kosovo. The last section presents policy recommendations, in line with international and EU norms that will help Kosovo overcome existing problems of corruption within the AD system, will help stakeholders properly use the AD system as a tool to detect and prevent corruption, and will serve to increase the accountability and integrity of public officials.

18 European Commission (2013). Kosovo\* 2013 Progress Report. Available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/brochures/kosovo\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/kosovo_2013.pdf)

19 Transparency International (2013) Corruption Perception Index. Available at <http://www.transparency.org/cpi2013/results>

20 Office of the Auditor General (2012). Annual Report. Available at [http://oag-rks.org/repository/docs/RVA\\_2012\\_Shqip\\_923921.pdf](http://oag-rks.org/repository/docs/RVA_2012_Shqip_923921.pdf)

# A Check-up of the Asset Declaration Forms Used in Kosovo

The Law on Asset Declarations entered into force in April 2014. Since then, there has been progress in terms of the high rate of compliance with the legal requirements for submitting declarations. However, several problems remain. There is still no specific verification process that must be followed by the Agency, and there is no mechanism to ensure that the selection practices for declaration verification are not biased. Therefore, we have randomly selected twenty asset declarations from a number of institutions, including the parliament, the government, and the judiciary, for analysis. Upon observing and analyzing these declarations, we identify several irregularities and challenges including inconsistent and unclear vocabulary, lack of full reporting on annual income and real property values, lack of mechanisms for investigating huge wealth discrepancies, and lack of international cooperation, among others. The following sections will discuss each problem observed.

*(Non)Standardization of Asset Declarations*-Consistency is an important element of every well-designed system including AD systems. In the case of AD forms, we evaluate consistency with regard to the terms and manners used to fill in all sections within the two forms\*. The form consists of several sections including movable assets, immovable assets, stock owned in companies, possession of securities, debt owed to others, cash held in banks, and annual income. Upon analyzing the selected declarations, we have observed that there are major inconsistencies with the terms used to fill in the sections on immovable and movable assets. This inconsistent vocabulary contributes to ambiguity. For instance, if two public officials possess “land”, the word “land” may be written under different names making the forms difficult to compare and evaluate. Or, if public officials’ possess cars, some write only the type of car, some write only the term “car”, some add the production year, and some include all of this information. These inconsistencies are due to legislation that does not provide a list of clearly defined types of assets and or a list of specific information that should be required in financial disclosure forms. In essence, the forms are not standardized. The table below shows a few randomly selected examples of terms used to describe movable and immovable assets. The declarations which include these terms were found on the webpage of Kosovo’s Anti-Corruption Agency.

No	Name of Public Official	Terms used to describe Immovable Assets	Terms used to describe Movable Assets
1	Adem Grabovci <sup>21</sup>	Banesë;Truall; PronëFamiljare ; PronFamiljare ;Tokë ; Pronë	BMW; Golf VI
2	Ali Sadriu <sup>22</sup>	Truall ; Shtepi;Mal ; Livadh;Kopsht	Veturë; Orenditshtepiake
3	Burim Qori <sup>23</sup>	Shtëpi; Dyqane; Tokëpune; Tokë(Mal)	Mercedes ML 400 CDI; Golf 4; Audi A8
4	Blerta Deliu Kodra <sup>24</sup>	Patundshmeri*	Veturë
5	Lutfi Haziri <sup>25</sup>	Tokë;Shtëpi;Banesë;Truallpërbanim	Veturë BMW; VeturëHundayi
6	Mahir Yagcilar <sup>26</sup>	Banes; Shtëpi me Lokal;Troll ;Truall; Banese (parapagimsipaskontrates)	Automjet Renault Modus
7	Fadil smaili <sup>27</sup>	Tokë; Banesë; Tokë-pjese sip. e tere 2162 m2; ParceleBujqesore	Xhip Nissan; Stoliariidheargjenti
8	Xhavit Haliti <sup>28</sup>	TokëBujqësore; Shtëpifamiljare; Banesë	AutomjetXhip Land Rover; Stoliari
9	Adem Shabani <sup>29</sup>	Prone private fleteposetimim nr. 13-04. 15.85 aridhe ate 1/4 ; Prone private fleteposetimi nr. 92-01. 31.08 ari 1/4; Shtëpindertese me ngaster; Shtëpindertesebanimi me ngaster	Kombpasagjer
10	Afijete Sada-Gllogjan <sup>30</sup>	Shtepi obor-0-00-88,0-03-10	Para tegatshme
11	Adem Ademaj <sup>31</sup>	Shtëpidhtruall; Tokëbujqesore	-
12	Aferdita Mulhaxha <sup>32</sup>	ShtëpiPrivate; LokalAfarist	Veturë
13	Afrim Shala <sup>33</sup>	Arë-Parcellë; Parcellë e PerbashkëtFamiljare; Shtëpi e PërbashkëtFamiljare; Arë e PërbashkëtFamiljare; Male Familjare	-
14	Aziz Shaqiri <sup>34</sup>	Shtëpi me oborr	Automobil
15	Azra Cakolli <sup>35</sup>	Banesë; 1/3 e shtëpisësëprindërve- Shtepi	Automjet Audi; Veturë Seat Inca; Veturë Opel Vectra
16	Beqir Kalludra <sup>36</sup>	E paluajtshme troll e toke bujquesore; Shtëpi me 12 aritruall	-
17	Eset Murati <sup>37</sup>	Shtëpi; Tokëbujqësore 1/3 ;Tokë 1/3	-
18	Bahri Hyseni <sup>38</sup>	Shtëpi me lokal; Shtëpi 170-200; Shtëpi e nderuar e pa mobiluar 180-200 ;Toke	Vetur Audi 4
19	Laura Pula <sup>39</sup>	Banesë; Shtëpi me oborr; Parcel kadastrale (ville ne ndertim)	Veturë
20	Sefer Morina <sup>40</sup>	Tokë Pune; ShtëpiBanimi; Oborr;Mal (Pyllë)	Vetura; Motikultivator; Vetura

Source: Author's compilation based on the Anti-Corruption Agency's 2013 Asset Declarations Forms

In the immovable assets section, it is difficult to understand the difference between the terms “truall”, “prone”, “livadh”, “kopsht”, “patundshmeri”, “parcelebujqesore”, “toke bujquesore”, “truall per banim”, “trolle”, “toke (mal).” The Albanian word “patundshmeri”, in English, means “immovable assets.” As shown in table 1, Ms. Blerta Deliu Kodra used only this term to describe her assets that fall under the category of “immovable assets”, leaving room for misinterpretation as immovable assets can refer to land, flats, or houses, among others things. Thus, we are not sure as to what assets the MP has referred. Another example of an irregularity would be Ms. Sada-Gllogjani’s description of her “immovable assets” - “Shtepi obor-0-00-88,0-03-10.” These numbers are completely unclear, and she has not provided any explanation. A similar phenomenon is found on the declaration form of Mr. Adem Shabani who has submitted numbers without clarification. Furthermore, under the category of movable assets, public officials use different terms to describe their vehicles including “automobile”, “ture”, “auto”, and “makine”. In some cases, as is the case with Mr. Ali Sadriu, officials only write “car” without giving additional details about the type of car or year of production. On the other hand, Mr. Mahir Yagcilar and a few others provide the type of their car. Overall, many orthographic mistakes are found throughout declarations which reflects a low level of education among individuals in high-ranking positions.

In the category of “annual income”, the majority of the AD forms report personal income

- 21 Anti-Corruption Agency (2013). Asset Declaration Form, Ali Sadriu, Parliament. Available at [http://akk-ks.org/2013/Kuvendi/Ali\\_Sadriu.pdf](http://akk-ks.org/2013/Kuvendi/Ali_Sadriu.pdf)
- 22 Anti-Corruption Agency (2013). Asset Declaration Form, Burim Qori, Government, Ministry of External Affairs. Available at [http://akk-ks.org/2013/qeveria/Ministria\\_e\\_Puneve\\_te\\_Jashtme/Burim\\_Qorri.pdf](http://akk-ks.org/2013/qeveria/Ministria_e_Puneve_te_Jashtme/Burim_Qorri.pdf)
- 23 Anti-Corruption Agency (2013). Asset Declaration Form, Blerta Deliu Kodra, Parliament. Available at [http://akk-ks.org/2013/Kuvendi/Blerta\\_Deliu-Kodra.pdf](http://akk-ks.org/2013/Kuvendi/Blerta_Deliu-Kodra.pdf)
- 24 Anti-Corruption Agency (2013). Asset Declaration Form, Lutfi Haziri, Parliament. Available at [http://akk-ks.org/2013/Kuvendi/Lutfi\\_Haziri.pdf](http://akk-ks.org/2013/Kuvendi/Lutfi_Haziri.pdf)
- 25 Anti-Corruption Agency (2013). Asset Declaration Form, Mahir Yagcilar, Government, Ministry of Public Administration. Available at [http://akk-ks.org/2013/qeveria/Ministria\\_e\\_Administrates\\_Publike/Mahir\\_Yagcilar.pdf](http://akk-ks.org/2013/qeveria/Ministria_e_Administrates_Publike/Mahir_Yagcilar.pdf)
- 26 Anti-Corruption Agency (2013). Asset Declaration Form, Fadil Ismaili, Government. Available at [http://akk-ks.org/2013/qeveria/Ministria\\_per\\_Zhvillim\\_Ekonomic/Fadil\\_Ismaili.pdf](http://akk-ks.org/2013/qeveria/Ministria_per_Zhvillim_Ekonomic/Fadil_Ismaili.pdf)
- 27 Anti-Corruption Agency (2013). Asset Declaration Form, Xhavit Haliti, Parliament. Available at [http://akk-ks.org/2013/Kuvendi/Xhavit\\_Haliti.pdf](http://akk-ks.org/2013/Kuvendi/Xhavit_Haliti.pdf)
- 28 Anti-Corruption Agency (2013). Asset Declaration Form, Adem Shabani, Kosovo Judiciary Council. Available at [http://akk-ks.org/2013/Gjykatat/Adem\\_Shabani.pdf](http://akk-ks.org/2013/Gjykatat/Adem_Shabani.pdf)
- 29 Anti-Corruption Agency (2013). Asset Declaration Form, Afijete Sada-Gllogjani, Kosovo Judiciary Council. Available at [http://akk-ks.org/2013/Gjykatat/Afijete\\_Sada-Gllogjani.pdf](http://akk-ks.org/2013/Gjykatat/Afijete_Sada-Gllogjani.pdf)
- 30 Anti-Corruption Agency (2013). Asset Declaration Form, Adem Ademaj, Kosovo Judiciary Council. Available at [http://akk-ks.org/2013/Gjykatat/Adem\\_Ademaj.pdf](http://akk-ks.org/2013/Gjykatat/Adem_Ademaj.pdf)
- 31 Anti-Corruption Agency (2013). Asset Declaration Form, Aferdita Mulhaxha, Kosovo Judiciary Council. Available at [http://akk-ks.org/2013/Gjykatat/Aferdita\\_Mulhaxha.pdf](http://akk-ks.org/2013/Gjykatat/Aferdita_Mulhaxha.pdf)
- 32 Anti-Corruption Agency (2013). Asset Declaration Form, Afrim Shala, Kosovo Judiciary Council. Available at [http://akk-ks.org/2013/Gjykatat/Afrim\\_Shala.pdf](http://akk-ks.org/2013/Gjykatat/Afrim_Shala.pdf)
- 33 Anti-Corruption Agency (2013). Asset Declaration Form, Aziz Shaqiri, Kosovo Judiciary Council. Available at [http://akk-ks.org/2013/Gjykatat/Aziz\\_Shaqiri.pdf](http://akk-ks.org/2013/Gjykatat/Aziz_Shaqiri.pdf)
- 34 Anti-Corruption Agency (2013). Asset Declaration Form, Aziz Shaqiri, Kosovo Judiciary Council. Available at [http://akk-ks.org/2013/Gjykatat/Aziz\\_Shaqiri.pdf](http://akk-ks.org/2013/Gjykatat/Aziz_Shaqiri.pdf)
- 35 Anti-Corruption Agency (2013). Asset Declaration Form, Azra Cakolli, Kosovo Judiciary Council. Available at [http://akk-ks.org/2013/Gjykatat/Azra\\_Cakolli.pdf](http://akk-ks.org/2013/Gjykatat/Azra_Cakolli.pdf)
- 36 Anti-Corruption Agency (2013). Asset Declaration Form, Beqir Kalludra, Kosovo Judiciary Council. Available at [http://akk-ks.org/2013/Gjykatat/Beqir\\_Kalludra.pdf](http://akk-ks.org/2013/Gjykatat/Beqir_Kalludra.pdf)
- 37 Anti-Corruption Agency (2013). Asset Declaration Form, Eset Murati, Kosovo Judiciary Council. Available at [http://akk-ks.org/2013/Gjykatat/Eset\\_Murati.pdf](http://akk-ks.org/2013/Gjykatat/Eset_Murati.pdf)
- 38 Anti-Corruption Agency (2013). Asset Declaration Form, Bahri Hyseni, State Prosecutor. Available at [http://akk-ks.org/2013/Institucionet\\_e\\_Pavarura/Prokuroria\\_e\\_Shtetit/Bahri\\_Hyseni.pdf](http://akk-ks.org/2013/Institucionet_e_Pavarura/Prokuroria_e_Shtetit/Bahri_Hyseni.pdf)
- 39 Anti-Corruption Agency (2013). Asset Declaration Form, Laura Pula, State Prosecutor. Available at [http://akk-ks.org/2013/Institucionet\\_e\\_Pavarura/Prokuroria\\_e\\_Shtetit/Laura\\_Pula.pdf](http://akk-ks.org/2013/Institucionet_e_Pavarura/Prokuroria_e_Shtetit/Laura_Pula.pdf)
- 40 Anti-Corruption Agency (2013). Asset Declaration Form, Sefer Morina, State Prosecutor. Available at [http://akk-ks.org/2013/Institucionet\\_e\\_Pavarura/Prokuroria\\_e\\_Shtetit/Sefer\\_Morina.pdf](http://akk-ks.org/2013/Institucionet_e_Pavarura/Prokuroria_e_Shtetit/Sefer_Morina.pdf)

\* The two forms are the same for all public officials. One is filled out in two cases: when taking over a public function and upon request of the agency. The second is filled out (when there is any wealth change) during regular annual declaration and declaration after completing or after being dismissed from a public function.

\* Patundshmeri MP Blerta Deliu Kodra, has filled seven boxes in the category of immovable assets, with the term “patundshmeri”, which in English means immovable assets

but do not report the annual income of family members in accordance with the Law on Asset Declarations.<sup>41</sup> This type of reporting could be used to hide their wealth under the names of their family members. In addition, the majority of officials do not declare their per-diems which can be comparable to annual incomes. It is also unclear if the annual income declared is gross or net income, as some declare it as gross and some others as net. Moreover, it is important to note that many public officials have loans, even those that have huge amounts of money in bank accounts. Another problematic area is the origin of wealth section, which in many cases is left blank or is only marked as inherited without further explanation; it is crucial to verify the origin of wealth for this reason. Clearly these irregularities and inconsistencies make it difficult to verify the data in the asset declaration forms. With low levels of readability and consistency, the asset declarations can hardly serve their purpose.

*Determining the value of property in monetary figures-* Another major policy problem related to the AD forms is the declaration of assets in the form of “goodwill.” Current practices show that public officials tend to determinethe value of their wealth and assets based on their own beliefs and rather than on current market value; therefore, the accuracy of the wealth declared is called into question. The current form leaves room for manipulation and artificial increase in the price of the property. As such, public officials can use certain transactions to hide other financial expenditures under this roof. There is no mechanism that the Agency can use to ensure that reported property prices are based on the market price or on the accrual price of the property when it was purchased. The law is vague in the sense that it does not contain any provision that specifies measures that can be taken to cross-check reported property values.

*The huge wealth discrepancy within few years (rapid wealth accumulation)-* Regarding huge wealth differences evidenced based on declared data within few years<sup>42</sup>; the legislation does not identify any mechanisms that the Agency could use to verify the origin of a public official’s wealth or the accuracy of a public official’s declaration of wealth. The law only states that “if a full control reveals...,” suggesting that some sort of control is conducted. However, the law is vague in this regard and does not clarify what

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41 See Law No.04/L-228 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials, article 5, paragraph 2.

42 Qosaj-Mustafa, A. (2013). The Impunity in Kosovo: Inexplicable Wealth. KIPRED Publishing. Two enormous differences reported in wealth declarations are XhavitHaliti, 428 % increase in wealth from 2010-2011 and LutfiHaziri, 258% increase in wealth from 2010-2011.

is meant by a full control. The law requires the Agency to manage the verification of data and does not include any “alert” provision that would help the Agency handle situations where there are major discrepancies between perceived and reported wealth. The law does not clearly require the agency to evaluate incompatibilities between perceived and declared wealth or cases of rapid wealth accumulation.

*International Cooperation-* Formal international cooperation between agencies in different countries is very important for the purpose of exchanging and verifying the declared data of public officials. Bilateral and multilateral agreements on the exchange of data are considered less time-consuming than other forms of information exchange such as “mutual legal assistance,” which would be the responsibility of the Ministry of Justice or equivalent body.<sup>43</sup> Kosovo, so far, has only a memorandum of cooperation for the exchange of data with Albania and is developing a memorandum with Montenegro. The agency also uses the Financial Intelligence Unit (FIU) international network to attain data from abroad in a less formal way.<sup>44</sup> Although, as shown, formal international cooperation is an important element for the verification of the data, Kosovo has not tackled this issue, and there is no information available on the Agency webpage with regard to international cooperation for the purpose of data exchange.

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<sup>43</sup> Hoppe, T. (2013). Comparative Study: Income and Asset Declarations in Practice. Regional School of Public Administration Publishing.

<sup>44</sup> Hoppe, T. (2013). Comparative Study: Income and Asset Declarations in Practice. Regional School of Public Administration Publishing.



# Contextualizing International Policy Principles for Asset Declarations

Asset declarations by public officials have received increased attention in anti-corruption literature by international, regional, and local organizations including the OECD, the World Bank, the Regional Anti-Corruption Initiative (RAI) and the like.<sup>45</sup> While scholars and organizations have identified several core elements that should be at the center of any AD system, each AD system must be tailored to the specific country that it serves and must engage local and national stakeholders to support reforms and ensure sustainability, since there is no “one size fits all” system.<sup>46</sup> Assessing the national context is a prerequisite for establishing an effective system, and several institutional, cultural and political elements should be taken into account such as a country’s property databases, automobile registries, judicial practices and strength of the courts, the tax system, and the banking system. For instance, financial disclosure systems in developed countries, such as Nordic countries which enjoy very low levels of perceived corruption, high accountability of public officials, and integrity of public administration, differ compared to AD systems in fledgling democracies that have low levels of accountability and transparency and high levels of perceived corruption.<sup>47</sup> A country should take into account its previous experiences with AD systems, its legal history, the integrity of its public officials, and current problems when deciding which legislative framework to put in place. AD systems must address yet may vary in regards to the following elements: the institutions chosen to monitor wealth declarations, the legal framework chosen, whether one regulation applies to all officials, which officials are required to declare their assets, the assets that must be declared, how and which asset declarations should be collected and verified, the sanctions that are needed to

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45 Hoppe, T. (2013). Comparative Study: Income and Asset Declarations in Practice. Regional School of Public Administration Publishing.

46 OECD (2011). Asset Declaration for Public Officials: A Tool to Prevent Corruption. OECD Publishing.

World Bank (2012). Public Office, Private Interests: Accountability through Income and Asset Disclosure. World Bank, Washington D.C Publishing.

Transparency International (2013). Holding Politicians to Account: Asset Declarations. Available at [http://www.transparency.org/news/feature/holding\\_politicians\\_to\\_account\\_asset\\_declarations](http://www.transparency.org/news/feature/holding_politicians_to_account_asset_declarations)

Burdescu, R. and Reid, G. and Gilman, S. and Trapnell, S. (2009). Income and Asset Declarations: Tools and Trade-Offs. Stolen Asset Recovery Initiative and World Bank Publishing.

47 OECD (2011). Asset Declaration for Public Officials: A Tool to Prevent Corruption. OECD Publishing.

enforce asset declaration regimes, and whether asset information should be open to the wider public. While each of these elements may vary from state to state, all states must take each of these elements into account in order to ensure a comprehensive AD system. In the sections below, we identify the core elements of AD systems and analyze the strengths and weaknesses of in the context of Kosovo.

*Which institutions should be responsible?* Having an independent institution or body for handling asset declarations is crucial for the successful and effective implementation of an AD system. Different states use different institutions to oversee asset declarations by public officials. The institutions that have been used include election bodies, tax authorities, anti-corruption agencies, and parliamentary bodies.<sup>48</sup> In countries like Kosovo where AD systems are relatively new, an empowered autonomous body and a specialized body are advantageous compared to other systems that employ self-monitoring.<sup>49</sup> Self-monitoring is used in countries which have well-established AD systems and a long history of democratic practices. On the other hand, developing countries that choose to use autonomous and specialized bodies should ensure that these bodies are capable of collecting and reviewing asset declarations and should have the necessary money and human resources and facilities to do so.<sup>50</sup> Regardless of the institutional set-up that is chosen, it is important that the institutional responsibilities are clearly stated in the legislation. Kosovo's legislation establishes the Anti-Corruption Agency, henceforth referred to as the Agency in Kosovo, as the independent body responsible for monitoring, reviewing and administering the financial disclosure of public officials.<sup>51</sup> As literature and international practice acknowledges the advantages of having an independent institution responsible for monitoring AD in developing countries like Kosovo, it is evident that Kosovo complies with this international policy practice by establishing the Anti-Corruption Agency as the body tasked with handling AD. However, full independence of the Agency is crucial for the successful implementation of the AD system. Due to lack of oversight mechanisms, the level of independence of the Agency cannot be assessed at this time and should be evaluated in future studies.

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48 Burdescu, R. and Reid, G. and Gilman, S. and Trapnell, S. (2009). Income and Asset Declarations: Tools and Trade-Offs. Stolen Asset Recovery Initiative and World Bank Publishing.

49 OECD (2011). Asset Declaration for Public Officials: A Tool to Prevent Corruption. OECD Publishing.

50 Transparency International (2013). Holding Politicians to Account: Asset Declarations. Available at [http://www.transparency.org/news/feature/holding\\_politicians\\_to\\_account\\_asset\\_declarations](http://www.transparency.org/news/feature/holding_politicians_to_account_asset_declarations)

51 See Law No.04/L-228 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials, article 1.

*Which legal framework should be chosen?* Most countries address asset declarations in their primary legislation, but this is not always the case. In addition to having a particular law regulating asset declarations, many countries also address asset declarations in laws relating to the civil service, conflict of interest, etc.<sup>52</sup> In deciding upon the legislative framework for asset declarations, countries should also consider the specific challenges that they face. In transitioning democracies, asset declarations are considered a powerful tool to combat corruption and more attention should be paid to them by establishing a specific law that specifically tackles asset declarations and the institutions responsible for monitoring them. The high level of perceived corruption<sup>53</sup>, the poor economic situation, and the high unemployment rate (of around 40 percent<sup>54</sup>) in Kosovo increase the risk of bribery and corruption amongst public officials. For this reason, addressing financial disclosures in primary legislation is recommended, and Kosovo complies having addressed financial disclosures in primary legislation, Law No.04/L-228.

*Should one regulation apply to all officials?* Considering the fact that public officials differ from each other in terms of their responsibilities, decision-making power, managerial duties, and, consequently, their corruption potential, countries are recommended to consider preparing different AD forms for different categories of public officials.<sup>55</sup> Particularly, it is recommended that MPs are subject to a specific AD form that would be accessible to the wider public, as MPs are directly elected by the people and their accountability to their constituents is a fundamental principle of democracy. Senior public officials, including ministers and judges, (who are more prone to corruption) should also be issued a specific form for asset declaration which requires specific and detailed financial disclosure. In these forms, countries should take into account the domestic limitations and political environment and the capacity of the agency to handle detailed asset information. As it stands, the Agency in Kosovo provides the same basic form to all public officials, as well as a form for documenting property changes which is also the same for all public officials. (Both forms are available online and should be filled out as often as indicated in the Law on Asset Declarations.) Issuing the same form for all public officials might not be the best option for Kosovo, as having

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52 OECD (2011). Asset Declaration for Public Officials: A Tool to Prevent Corruption. OECD Publishing.

53 Transparency International (2013) Corruption Perception Index. Available at <http://www.transparency.org/cpi2013/results>

54 CIA FACTBOOK (2011). Kosovo. Available at <https://www.cia.gov/library/publications/the-world-factbook/geos/kv.html>

55 OECD (2011). Asset Declaration for Public Officials: A Tool to Prevent Corruption. OECD Publishing.

specialized forms for different ranks of public officials (at least distinguishing between directly elected officials, high level officials and the judiciary, and indirectly elected officials) has shown to be more effective in developing countries.

*Who should be obliged to declare assets?* There is no standardized list of public officials who must declare assets. Public officials are usually required to declare assets based on their level of responsibility, the extent of their decision-making authority, and their managerial powers.<sup>56</sup> However, the capacity of the Agency is also an important determinant that impacts which (and how many) public officials are required to declare assets. If the agency does not have the human and financial resources needed to administer and review the declarations, the AD process becomes only a formality with no real effect on combating and preventing corruption. Therefore, which and how many public officials are required to declare should take into account the type of public official and the capacity of the Agency to receive and monitor declarations. In Kosovo, the Law on Asset Declarations requires senior public officials, ranging from the President of the Republic of Kosovo to central and local Chief Inspectors, to declare their assets.<sup>57</sup> The Law on Asset Declarations has seen many amendments and so has the number of those obliged to declare. Currently, the number of public officials that are obliged to declare their assets has reached almost 3,900.<sup>58</sup> Overall, there are no concrete results that reveal whether widening the scope of public officials who are required to declare has any impact on preventing corruption.<sup>59</sup> Increasing the number of public officials required to declare is not a priority in itself. Rather, it is more crucial to ensure that a comprehensive list of officials required to declare includes those who are at higher risk for corruption and those that have the authority to handle public funds and grant licenses or building permits and that the Agency can monitor, administer and review all submitted AD forms fully and independently.

*What should be declared?* There is no uniform set of assets that should be declared, but it is important that the declarations reflect all substantial income and assets in order to provide a comprehensive picture of a public official's financial situation. The level of detail required in the declaration form depends on the

56 OECD (2011). Asset Declaration for Public Officials: A Tool to Prevent Corruption. OECD Publishing.

57 See Law No.04/L-228 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials, article 3.

58 Hoppe, T. (2013). Comparative Study: Income and Asset Declarations in Practice. Regional School of Public Administration Publishing. Anti-Corruption Agency (2013). Annual Report January-December 2013. Available at <http://www.akk-ks.org/repository/docs/Raportiversionianglisht.pdf>

59 OECD (2011). Asset Declaration for Public Officials: A Tool to Prevent Corruption. OECD Publishing.

capacity of the responsible agency to handle the information properly.<sup>60</sup> The legislation in Kosovo demands that public officials declare their movable and immovable assets, possession of securities, stock owned in companies, cash held in banks, debts to any institution, and annual income, which is in line with international practices. Public officials are also prompted to give additional information with regard to anything not stated in the form.<sup>61</sup> If public officials declare all of the above information properly, the Agency can garner a relatively comprehensive picture of a public official's financial situation. However, in practice, there are problems with the form such as the lack of a consistent use of property terms which make property declarations ambiguous and inhibit the detection of corruption. This paragraph identifies what should be declared when filing asset declarations, while the following paragraph analyzes the timeline of AD filing practices.

*Filing Frequency-* Filing frequency is an important element of a well-designed AD system. Generally, declarations should be collected as often as reasonably needed to keep the data up to date and available for oversight purposes.<sup>62</sup> However, when the Agency determines the required filing frequency, it should also consider the Agency's resources and the responsibilities of various public officials. There should be a balance between the number of public officials obliged to declare their assets and the capacity of the agency to receive and monitor these declarations; otherwise, the process becomes only a formality. The AD legislation, henceforth, referred to as legislation in Kosovo, obliges public officials to submit asset declarations in four cases: a) when taking over a public function; b) regular annual declaration; c) declaration after completing or after being dismissed from a public function; d) declaration upon request of the Agency.<sup>63</sup> A combination of these four cases requires periodic declarations that help the Anti-Corruption Agency monitor the wealth of public officials. Within thirty days of taking office and after completing or being dismissed from a public function, all public officials should declare their assets in accordance with article 5 of the Law on Asset Declaration.<sup>64</sup>

60 World Bank (2012). Public Office, Private Interests: Accountability through Income and Asset Disclosure. International Bank for Reconstruction and Development/World Bank Publishing.

61 See Law No.04/L-228 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials, article 5.

62 OECD (2011). Asset Declaration for Public Officials: A Tool to Prevent Corruption. OECD Publishing.

63 See Law No.04/L-228 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials, article 6, paragraphs 1, 1.1, 1.2, 1.3, 1.4.

64 See Law No.04/L-228 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials, article 5.

This is a common and a fairly standard practice in other countries, as well.<sup>65</sup> The practice of requiring regular annual declarations is also a commonly preferred approach in most countries.<sup>66</sup> In Kosovo, during annual declarations, public officials should declare any change in the status of their wealth. However, it is difficult to determine what constitutes a change in wealth. The current legislation in Kosovo does not set any threshold that defines a change in wealth and only obliges public officials to declare any change in the status of their property. Given this limitation, public officials may or may not declare changes in their wealth, which inhibits the success of this approach. The last case in which a public official must declare assets is in response to a request from the Agency. Literature refers to this approach as “ad hoc” wherein the responsible institution, upon receiving warning or notification by the media or citizens, can at any time require a declaration of assets from public officials.<sup>67</sup> However, no further clarification is provided in the Law of Asset Declarations.<sup>68</sup>

*How should asset declarations be verified?* The institution responsible for receiving declarations is in charge of verifying the content of declarations. Verification of the declarations is a necessary element for ensuring the integrity of the data. If the content of the declarations are not verified, it is impossible to use the AD system as a means for detecting and combating corruption. Particularly in countries where corruption is high and the accountability of public officials is low, verification of data for the purpose of identifying false reporting and corruption is crucial.<sup>69</sup> In this way, verification of asset declarations also addresses public concern regarding the lifestyles of certain public officials<sup>70</sup> and consequently helps to boost public confidence in the integrity of the system. This policy principle however is one of the hardest to implement. Mechanisms for verifying the accuracy of declarations vary between countries but often

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65 Burdescu, R. and Reid, G. and Gilman, S. and Trapnell, S. (2009). Income and Asset Declarations: Tools and Trade-Offs. Stolen Asset Recovery Initiative and World Bank Publishing.

66 World Bank (2012). Public Office, Private Interests: Accountability through Income and Asset Disclosure. International Bank for Reconstruction and Development/World Bank Publishing

67 Hoppe, T. (2013). Comparative Study: Income and Asset Declarations in Practice. Regional School of Public Administration Publishing.

68 See Law No.04/L-228 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials, article 9.

69 Martini, M. (2013). Asset Declaration Regimes in Selected Asian Countries. Transparency International Publishing.

70 OECD (2011). Asset Declaration for Public Officials: A Tool to Prevent Corruption. OECD Publishing.

include a) cross-checking declarations against other sources of information such as property, land, and automobile registries, b) communicating with the tax administration, c) accessing bank accounts, d) conducting evaluations of lifestyle in relation to declared income, e) checking declarations for internal consistency, f) comparing declarations to monitor changes over time, and g) analyzing declarations for potential conflicts of interest between private interests and official duties.<sup>71</sup> Mechanisms to be used for verifying content declarations should be clearly identified in the legislation so that the responsible agency is aware of the oversight mechanisms that are available for evaluating asset declarations. A combination of these approaches is recommended and should take the political, economic and social context of the country into account. The current legislation in Kosovo does not identify any specific mechanisms available for verifying asset declarations. The Law on Asset Declarations stipulates only that "control shall be done in order to verify the truthfulness and accuracy of data contained in the declaration form."<sup>72</sup> In an interview with an official from the Agency, the official did not present any guidelines that are used for the purpose of verifying the data in asset declarations but reported that the Agency contacts responsible institutions to verify the data.<sup>73</sup> However, the Agency did not share information regarding which other agencies are contacted for the purpose of verifying asset declarations. Although, in practice, the Agency may collaborate with other agencies and institutions to verify data, the law does not specify with which institutions the agency should cooperate for this purpose. Thus, both the legislation and the practices are vague in this respect. Overall, the lack of a specific verification process is one of the major policy problems that the AD system faces in Kosovo.

*Which declarations to verify?* The decision to evaluate all declarations involves high costs for the responsible agency. Therefore, the agency should select only some of the declarations for further investigation. Current practices show that there are various approaches used to identify which declarations should be

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71 World Bank (2012). Public Office, Private Interests: Accountability through Income and Asset Disclosure. International Bank for Reconstruction and Development/World Bank Publishing.

72 See Law No.04/L-228 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials, article 15, paragraph 4.

73 Interview with an official from the Anti-Corruption Agency, 03 March 2014. The official wants to remain anonymous.

verified. One approach involves random verification, while another approach is a target approach which prioritizes the declarations of certain public officials whose responsibilities make them more prone to corruption.<sup>74</sup> With the target approach, the responsible agency may use any number of strategies to prioritize the verification of certain declarations, including a) prioritizing verification of the declarations of high-ranking officials, b) prioritizing verification of the declarations of officials from certain agencies, c) prioritizing verification of the declarations of officials with particular duties or functions, or d) verifying the declarations of officials about whom a particular warning notification has been received (otherwise known as an ad hoc approach). While the target approach is preferred in the majority of countries, this approach is not applicable in Kosovo according to the Law on Asset Declarations. Random verification is the only approach applicable in Kosovo under the Law on Asset Declarations. In Kosovo, 20 percent of AD forms are selected at random, according to an official's initials or declaration number, by a draw that is open to the public for oversight; the selected declarations are then subjected to full verification.<sup>75</sup> This approach may be less effective because it may leave out public officials who have high-ranking positions or positions that are more prone to corruption. In accordance with the Law on Asset Declarations, a third approach may also be used; the Agency may conduct in-depth investigations wherein public officials are required to file additional information with regard to the declared assets.<sup>76</sup> Any of these three approaches alone cannot lead to successful results; thus, it is suggested that a combination of the three approaches should be used and embedded in the relevant legislation.

*Which sanctions are needed to enforce asset declaration regimes?* Sanctions are an important mechanism to prompt compliance with the AD requirements. Sanctions can be administrative, disciplinary, reputational or criminal, depending on the public official's position and misdeed.<sup>77</sup> Administrative or

74 World Bank (2012). Public Office, Private Interests: Accountability through Income and Asset Disclosure. International Bank for Reconstruction and Development/World Bank Publishing.

75 See Law No.04/L-228 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials, article 9, paragraph 6.

76 See Law No.04/L-228 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials, article 9, paragraph 6.

77 \*Minor offence excludes the submission of false data. OECD (2011). Asset Declaration for Public Officials: A Tool to Prevent Corruption. OECD Publishing.

disciplinary measures are mainly applied in cases of non-submission or late submission. According to the legislation, each breach of the provisions of the Law on Asset Declarations, if it is not a criminal offence, is considered to be a minor offence\* and shall be punished with a fine of 1,000€-2,500€.<sup>78</sup> Considering that Kosovo's GDP per capita is \$7,600 or approximately 5,500€ (although this does not necessarily represent the annual income of public officials), the penalty fee seems to be set appropriately.<sup>79</sup> Because the financial penalties are significant, this mechanism should effectively prompt compliance among public officials. Apart from financial penalties, the law also provides for protective or disciplinary measures such as prohibition from exercising public functions for up to one year. However, in 2013, disciplinary measures were only applied against two out of three thousand and nine hundred (3,900) officials who declared assets.<sup>80</sup> It is also important to note that different sanctions may apply to different categories of public officials. For example, elected public officials such as MPs, ministers, or heads of state cannot usually be suspended from office for misdeeds related to a declaration of assets.<sup>81</sup> Criminal sanctions, on the other hand, require additional concrete evidence and might be applied in response to the false submission of data. This is not a standard applied in all countries; however, the majority of countries including Kosovo categorize the submission of false data as a criminal offense. Apart from financial penalties, the institutions responsible may impose reputational penalties wherein the names of wrongdoers may be published on the webpage of that institution or in a gazette. The Law on Asset Declarations in Kosovo states that the "Agency shall publish the names of senior public officials who have not declared..."<sup>82</sup> but does not stipulate specifically where these names

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78 See Law No.04/L-228 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials, article 17, paragraphs 1.1, 1.2, 1.3, 1.4, 1.5.

79 CIA Factbook (2013). Kosovo. Available at <https://www.cia.gov/library/publications/the-world-factbook/geos/kv.html>

80 Anti-Corruption Agency (2013). Annual Report January-December 2013. KabilHajdari, Gjilan, Suspended for non declaration of property under request. FaikPrekazi, Mitrovica, Suspended for non declaration of property upon taking office. Available at <http://www.akk-ks.org/repository/docs/Raportiversionianglisht.pdf>

81 World Bank (2012). Public Office, Private Interests: Accountability through Income and Asset Disclosure. International Bank for Reconstruction and Development / World Bank Publishing.

82 See Law No.04/L-228 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials, article 17.

should be published. In this sense, this legal provision remains unclear.

*Should information be open to the wider public?* Public disclosure of asset declarations would considerably bolster the integrity of the system by enabling civil society, citizens, and media to scrutinize the asset declarations. Public disclosure can incentivize public officials to not abuse the power delegated to them.<sup>83</sup> Although, the media and Civil Society Organizations (CSOs) would not have access to all of the information that the Agency has access to (such as land, property, or automobile registries), media and CSOs would have the power to investigate and could invest time in oversight activities that the Agency may not have the capacity for. Additionally, experience has shown that the effectiveness of asset declaration systems in curbing corruption depend to a great extent on the public's ability to access disclosed information.<sup>84</sup> This finding suggests that countries should permit public access to the asset declarations of public officials. In Kosovo, asset declarations are recorded in registers and are kept for ten years in accordance with the Law on Asset Declarations. The data from asset declarations are also published on the webpage of the Anti-Corruption Agency within 60 days of receipt.<sup>85</sup> The data is accessible online without any payment or restriction. In addition, anyone can submit information to the Agency regarding declarations. Public scrutiny of asset declarations supplements the Agency's capabilities and may contribute to triggering investigations and exposure of corruption.

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83 Aaken, A. and Voigt, S.(2009). Do Disclosure Rules for Parliamentarians Improve Political Outcomes? University of St. Gallen, St. Gallen; and University of Marburg, Marburg.

84 OECD (2011). Asset Declaration for Public Officials: A Tool to Prevent Corruption. OECD Publishing. World Bank (2012). Public Office, Private Interests: Accountability through Income and Asset Disclosure. International Bank for Reconstruction and Development/World Bank Publishing.

85 See Law No.04/L-228 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials,article 13, paragraph 1.

# Recommendations

As mentioned above, despite the legislative progress, several problems remain for Kosovo's AD system. As such, this policy report puts forward a set of policy recommendations that should be addressed promptly by the respective institutions in order to effectively use asset declarations as a mechanism for detecting, combating, and preventing corruption and consequently boosting public trust in the integrity of the government.

## The Need To Standardize Asset Declaration Forms

As noted above, we have observed several inconsistencies and irregularities in the vocabulary used to describe assets, particularly movable and immovable assets. The inconsistencies in the vocabulary used to describe assets make the asset declarations ambiguous and difficult to verify. Therefore, we strongly suggest that the Agency develops a list of terms that can be used to describe movable and immovable assets. The list should be updated at regular intervals and should be available on the Agency's webpage. If any declaration is not submitted in accordance with the list, it should be returned to the public official for revision. In order to standardize asset declarations, we recommend that the Agency stipulates whether annual income should be reported as gross or net income. For the purpose of receiving accurate data, the Agency should also indicate the level of specificity that it expects. For instance, for cars, the Agency may decide to request that all public officials declare the type of car and the year of production. The Agency should provide additional clarifications and requirements that will help public officials declare their wealth in a comprehensible manner. Furthermore, the Agency should indicate that any form not filled in accordingly will be turned back for revision. If the public official does not revise the form to the satisfaction of the Agency, the declaration should be classified as a non-submission.

## Establish Mechanisms That Would Help Determine The Real Value of Property

There is no mechanism or guideline that enables the Agency to accurately determine the monetary value of reported properties. This, in turn, allows public officials to

provide inaccurate property values that do not correlate with the current market value or the accrued value of the property. Therefore, the Agency should establish specific guidelines which will allow public figures to determine the monetary value of their assets. If this occurs, declarations will do a better job of showing how wealthy public officials are and of revealing corruption.

## Set Up Clear Guidelines For The Verification Process of Asset Declarations

As discussed, the current legislation does not set out any guidelines for the verification process, which negatively affects the integrity of the system. The Agency should establish a clearly defined verification process which identifies the institutions with which the Agency collaborates and indicates activities that should be conducted in order to verify the data in the asset declarations. The verification process should be transparent and open to the public as it has the potential to enhance the integrity of the system. An administrative instruction could be used to call for the establishment of a verification system, since verifying the data is crucial to the effective implementation of the AD system.

## A Need For a More Representative Sample of Verified Asset Declarations

Since the decision to evaluate all declarations would be costly, the Law in Kosovo stipulates that 20% of all declarations be randomly selected for verification. As explained above, this approach is limited in that it may leave out public officials in positions that are more prone to corruption. Therefore, we suggest that the Agency prioritizes the declarations and verifies the top 20 percent. The Agency can prioritize declarations based on the rank of officials, the agency in which the official works, or the duties or functions of the official. 5% of the total number of declarations can be chosen in line with each approach, totaling 15% of the total declarations. This approach is much more likely to ensure the verification of declarations submitted by officials that are in positions that are prone to corruption. The other 5% can be chosen randomly. In addition, verification of declarations of officials about whom a particular warning notification has been received should be conducted.

## Establish International Cooperation For The Exchange of Information

The agreement with Albania is the only international agreement that provides for the exchange of data for the verification of asset declarations between Kosovo and another country. This, in turn, makes it easier for public officials to hide wealth in other countries, particularly in other states in the region where they may have family or friends and are familiar with the culture and procedures. Therefore, the Agency should seriously address this issue and establish bilateral agreements with countries for the purpose of exchanging information that relates to the wealth of public officials. Kosovo should prioritize countries in the region, since there is a greater likelihood that a public official will purchase assets or will hold accounts in another Balkan country due to proximity, familiarity with the culture and procedures, and close networks.

## Some Smaller Policy Interventions

A number of small policy recommendations should also be addressed by the competent authorities. First, there is only one form of declaration for all public officials. Since the literature acknowledges the advantages of having separate forms for different ranks of public officials, the Agency should create multiple declaration forms that, at the very least, distinguish between elected public officials, the judiciary and other public officials. Second, with regard to obvious discrepancies between actual and reported wealth which are not addressed by the current legislation, we recommend that the Committee on Legislation in collaboration with the Agency address this issue by creating a “warning” provision in the legislation. Third, article 15 of the Law states that the data received from public officials should be published, but it does not clarify where the data should be published. We suggest that the Agency publishes the reported data, as well as the names of officials who do not submit declarations or who submit late declarations, on their webpage and in a gazette that has high readership. Posting the data online and in print is important for ensuring that the data is seen by citizens and is publicly tied to the reputation of the official. Identifying public officials who do not comply with the AD system will increase the reputational and political cost (in the form of lost votes for elected officials) of non-compliance. Finally, the Agency should continue to publish asset declarations online with no restrictions or financial cost for those who wish to access this information. This practice enhances the credibility and integrity of the system.



# **Policy report on the public procurement policy & problems in Kosovo: what reforms need to be introduced?**



# Introduction

A well-established and organized procurement process is an important pillar of good governance. Public procurement refers to the purchase of goods and services by the government for the conduct of their daily activities. This government activity, on average, accounts for 15% of a country's GDP and is considered more vulnerable to corruption than other government activities for three main reasons.<sup>86</sup> First, the process is complex; second, public procurement involves very close interaction between the private and the public sectors; third, public procurement accounts for a large percentage of a country's overall budget. Nonetheless, civil servants are obliged to spend public money in a fair and transparent manner. In order to ensure fair and effective usage of taxpayer money, transparency, accountability, non-discrimination, and integrity must be established as key pillars of procurement policy.<sup>87</sup>

Despite efforts and legislation to establish transparent, fair, and efficient public procurement practices, corruption in public procurement is still present in developed countries and widespread in many developing countries. Many procurement processes are faced by a lack of transparency and accountability which threatens the overall integrity of the public procurement system. Kosovo faces these particular challenges, which are especially hard-hitting as public procurement accounts for roughly one fifth of GDP and is considered an important driver of Kosovo's economy.<sup>88</sup> Procurement malpractice in Kosovo has been reported by national and international media and civil society and local NGOs<sup>89</sup>. The 2013 European Progress Report for Kosovo has acknowledged that the procurement system faces numerous policy problems including contract management and capacity planning, while Kosovo's Office of the Auditor General and Anti-Corruption Agency have acknowledged in their annual reports that the procurement system requires attention and policy reform. Moreover, there have been lack of results in fighting organized crime and corruption<sup>90</sup> and strengthening legislation

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86 OECD (2007) *Integrity in Public Procurement: Good Practice from A to Z*. OECD Publishing.

87 WTO (Year) *General Overview of WTO Work on Government Procurement*. WTO Publishing.

88 CIPE and RIINVEST (2012) *Improving Transparency and Governance of Public Funds: Public Procurement Process in Kosovo*. CIPE and RIINVEST Publishing.

89 Lëvizja FOL (2011). *Enforcement of Legal Provisions on Declaration of Assets of Directly-Elected Central-Level Senior Officials*. Lëvizja FOL Publishing; Kosovo Democratic Institute (2012). *My Tender: Analysis of Legislation on Public Procurement*. Kosovo Democratic Institute Publishing.

90 Transparency International's 2013 Corruption Perception Index ranked Kosovo 111<sup>th</sup> alongside

and its implementation, which inhibits positive developments for democratization and for public procurement policy and practices. This policy report, alongside the EU, the Office of the Auditor General and the Anti-Corruption Agency, finds that the procurement system in Kosovo faces serious challenges that need to be addressed urgently by policymakers and procurement officials.

This report provides an independent analysis of the current procurement legislation and practices in Kosovo. The following section presents an analysis of the internationally recognized principles of public procurement as well as international agreements regarding public procurement. The second section outlines the legislative framework of public procurement in Kosovo. The third section highlights procurement policy problems in developing countries, while the fourth section identifies policy gaps and legislative loopholes particular to Kosovo's public procurement policy and practices. Finally, we issue a number of policy recommendations in line with the European Union Procurement Legislation and identify stakeholders responsible for implementation.

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Ethiopia and Tanzania. Available at <http://www.transparency.org/cpi2013/results>

# Internationally-Recognized Principles of Public Procurement

Due to the vulnerability of public procurement to corruption and fraud, it is challenging yet fundamental to build a legal framework for public procurement upon key principles that will ensure the best usage of taxpayers' money. International organizations, such as OECD, Transparency International, WTO, and EBRD have identified four pillars--transparency, accountability, non-discrimination, and integrity--that are necessary foundations for all systems of public procurement. These foundational principles are interdependent, and each must be enshrined and adhered to in order to ensure the functioning of the public procurement system as a whole. A brief description and analysis of each of these four pillars is provided below.

**Transparency:** "Countries are not transparent because they are developed, but they are developed because they are transparent".<sup>91</sup> Transparency is at the forefront of nearly all democratization initiatives including public procurement. In procurement policy, transparency refers to the degree of openness throughout the entire procurement process. A transparent public procurement process requires that contract notices are published and are accessible to the public and all interested bidders, that all interested bidders receive equal information and clearly understand all requirements and procurement procedures leading up to the award decision, that notices regarding the contract award is published and discloses the name of the chosen tender, the relative advantages of the selected tender, and the reasons for rejecting the other applicants. If the contracting authorities fulfill the requirements for a transparent public procurement process outlined above, the results would be a more competitive and fair bidding process, equal treatment of bidding tenders, integrity and accountability of contracting authorities, and, subsequently, a greater possibility of high-quality results and effective usage of taxpayer money.<sup>92</sup>

**Accountability:** Transparency is often a precondition for widespread accountability in the public procurement process. While the government may be accountable in a

91 Bohorques, E. and Devrim, D.(2012). A New Role for Citizens in Public Procurement. Transparenica Mexicana Publishing.

92 EBRD (2011).Public Procurement Assessment.Review of Laws and Practice in the EBRD Region.EBRD Publishing.

system that lacks transparency, the government and contracting authorities cannot *be held* and judged accountable without transparency. The principle of accountability requires officials to act in “the public interest” and in such a way as to reserve public trust.<sup>93</sup> Accountable procurement officers, contracting authorities, and suppliers should abide by all procurement rules and regulations and face consequences in case of non-compliance.<sup>94</sup> The existence of a well-detailed chain of responsibilities amongst management and procurement officers, as well as the timely and equitable handling of complaints from all potential bidders are indicators of procurement accountability.<sup>95</sup> Moreover, major contracts with large financial awards and complex procurements should be disclosed to media, civil society and the public for oversight.<sup>96</sup> The disclosure of procurement details, particularly for major contracts which are prone to mismanagement and bribery, would support an increase of accountability.

*E-procurement impact on transparency and accountability:* Both transparency and accountability can be enhanced with the implementation of e-procurement. The use of e-procurement would facilitate greater access to up-to date information. E-procurement would also result in a decrease of cumbersome administrative procedures and would reduce costs for both contracting authorities and tenders.<sup>97</sup> Documents entered into the system would be preserved online, saving procurement officers the time and costs of managing hard copies. In this case, it would not be possible to manipulate documentation, because alterations to the documents would be saved in the online system which can easily track who edited a document and when it was edited. Moreover, e-procurement could ensure the release of award information to all potential bidders without delays and would thereby ensure enough time for economic operators to challenge any decisions made by the contracting authorities.<sup>98</sup> Although, there is lack of data on the benefits of e-procurement, the advantages of e-procurement are obvious

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93 The Institute for Public Procurement and Chartered Institute of Purchasing & Supply (2012). Values and Guiding Principles of Public Procurement.

94 Transparency International (2013). Anti-Corruption HelpDesk. Providing On-Demand Research to Help Fight Corruption. Transparency International Publishing.

95 EBRD (2011). Public Procurement Assessment. Review of Laws and Practice in the EBRD Region. EBRD Publishing.

96 OECD (2013). Implementing the OECD Principles for Integrity in Public Procurement: Progress since 2008, OECD Public Government Reviews, OECD Publishing.

97 OECD (2011). Governance at a Glance 2011. OECD Publishing.

98 OECD (2009). OECD Principles for Integrity in Public Procurement. OECD Publishing.

and include easy, low-cost and timely access to information, reduced opportunities for corruption, and enhanced transparency.<sup>99</sup>

**Non-discrimination:** The extent to which contracting authorities apply the non-discrimination principle is an important indicator for how truly competitive the overall tendering process will be. In this context, competition among tenders is important to ensure that public money is spent fairly and effectively. The non-discrimination principle requires the preparation of comprehensive technical criteria to determine eligibility and selection within a technical, non-discriminatory framework. Procurement legislation should clearly explain the importance of non-discrimination in the procurement process and should oblige all procurement officers and civil servants to apply this principle. In addition, well-detailed penalties for those who do not comply with the non-discrimination principle should be stipulated in the legislation. Moreover, this principle is designed to ensure fair competition not only among national bidders but also among international economic operators.<sup>100</sup> When more suppliers apply, the level of competition increases, which in turn, increases the likelihood of high-quality results and competitive pricing for consumers.

**Integrity:** Integrity is an overarching principle, indispensable to the entire procurement process. Integrity is defined as the “use of funds, resources, assets, and authority in line with public interest”.<sup>101</sup> Integrity also refers to behaviors and actions consistent with a set of moral or ethical principles, embraced by institutions to create a barrier against corruption.<sup>102</sup> Both definitions of integrity reference moral and ethical codes of conduct, which, in the case of public procurement, are centered around spending public money in line with the public interest. All three principles outlined above contribute to the integrity of the public procurement system. If transparency, accountability and non-discrimination are injected into procurement processes, the public procurement system will have higher integrity.

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99 Transparency International (2011). E-Procurement Reduces Opportunities for Corruption and Bribery. Transparency International Publishing, Belgium.

100 Transparency International (2013). Anti-Corruption Helpdesk. Providing On-Demand Research to Help Fight Corruption. Transparency International Publishing.

101 OECD (2009). OECD Principles for Integrity in Public Procurement. OECD Publishing.

102 Transparency International (2011). E-Procurement Reduces Opportunities for Corruption and Bribery. Transparency International Publishing, Belgium

Additionally, *contract management* is an important indicator yet also a challenge for integrity. This indicator is relevant to the third part of the procurement cycle, the post-bidding phase. Contract management is meant to ensure the on-time delivery of goods and services and the quality of output as agreed upon in the contract, to ensure understanding between suppliers and contracting authorities, and to record any good or bad experiences with tenders for future reference.<sup>103</sup> Therefore, poor contract management might cause delivery delays, low-quality results that differ from expectations, etc.<sup>104</sup> To sum up, in order to ensure the best usage of taxpayer's money, well-organized contract management is necessary. With an understanding of the internationally-recognized principles of public procurement analyzed above, the following section moves to briefly discuss key, internationally-binding instruments of public procurement.

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103 OECD (2009).OECD Principles for Integrity in Public Procurement. OECD Publishing. Support for Improvement in Governance and Management-SIGMA (2011). Public Procurement: Contract Management. Sigma Publishing.

104 Support for Improvement in Governance and Management-SIGMA (2011). Public Procurement: Contract Management. Sigma Publishing.

# Internationally Binding Instruments of Public Procurement

European and international bodies have encouraged transparency, accountability and non-discrimination in order to promote integrity throughout the entire public procurement process. The involvement of many international organizations also shows the importance, the need, and the obligation for governments in a world of scarce resources to spend the taxpayers' money in the most efficient, fair and transparent manner.

The 1994 Agreement on Government Procurement (GPA) is an agreement established by the World Trade Organization (WTO). This is a “plurilateral” agreement that is not signed by all WTO members and only involves major economies such as Canada, Hong Kong, Norway, the United States, and the European Union etc. This agreement requires signatories to provide equal opportunity to domestic and non-domestic economic operators.<sup>105</sup> Because of this stipulation, many developing countries did not sign the GPA agreement under the pretense that international bidders from developed countries would offer better quality and lower prices due to their advance level of development and would beat out domestic businesses. This would prevent the development of domestic businesses and would have a negative impact on the domestic economy. Kosovo is not a signatory of this agreement, and, based on the current socio-economic situation, could only sign on in the distant future.

Article 9 of the United Nations Convention against Corruption refers to public procurement and management of public finance. Every state party is obliged by this convention to establish a procurement system based on principles of transparency, accountability, and competition (non-discrimination of bidders). The Convention also obliges states to establish tendering rules, award criteria, and penalties in the case that a stakeholder does not comply with the legislation.<sup>106</sup> Kosovo is not part of the United Nations and therefore has not been eligible to sign this agreement.

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<sup>105</sup> WTO Agreement on Government Procurement (“GPA”). Available at [http://www.wto.org/english/tratop\\_e/gproc\\_e/gp\\_gpa\\_e.htm](http://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm)

<sup>106</sup> United National Convention Against Corruption, Vienna 2004. Available at [http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf)

Public procurement is a multifaceted tool of the EU, and its regulation reveals various dimensions that are fundamental to market economics and enhanced market competition.<sup>107</sup> The EU has established four main directives that shape the framework for public procurement. These directives include directive 93/36 on procedures for award of public supply contracts, directive 93/37 on procedures for the award of public works contracts, directive 93/38 procedures for entities in water, transport and telecoms sectors, and directive 92/50 on procedures for the award of public service contracts.<sup>108</sup> These directives do not apply to all procurement contracts but are specific to certain types of public procurement.<sup>109</sup> Contracting authorities, when preparing tender dossiers and technical characteristics, may take into account additional concerns such as environmental sustainability, social considerations, and innovation. Further analysis in the following sections will examine whether procurement legislation in Kosovo aligns with EU procurement legislation.

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107 Christopher, B. (2007). EU Public Procurement Law. Edward Elgar Publishing, UK.

108 The EU Single Market. Public Procurement. Older rules/ guidelines governing existing contracts. Available at [http://ec.europa.eu/internal\\_market/publicprocurement/rules/older/index\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/rules/older/index_en.htm)

109 Transparency International (2013). Anti-Corruption Helpdesk. Providing On-Demand Research to Help Fight Corruption. Transparency International Publishing.

# Legal Framework of Public Procurement in Kosovo

Law No.04/L-042 on Public Procurement in the Republic of Kosovo entered into force on 5 October 2011, and it regulates Public Procurement in Kosovo.<sup>110</sup> This law was initially introduced under United Nations Interim Administration Mission in Kosovo (UNMIK) and was continually revised until the most recent amendments were added in 2011. Law No.04/L-042 aims to regulate the use of public finances and to ensure that public financing is transparent, fair and efficient.

The Law on Public Procurement contains 135 articles that regulate different aspects of public procurement in Kosovo. The Law also assesses other social and economic policy goals such as non-discrimination, economization, efficiency, and green innovation (which aims to reduce the environmental impact of economic growth).

The internationally recognized principles of transparency, accountability, non-discrimination, and integrity (as discussed in section II) are entrenched in the public procurement law in Kosovo. First, Article 7, Equality of Treatment/Non-discrimination, states that “a contracting authority shall treat economic operators equally and non-discriminatorily and shall act in a transparent way.” This article specifies the necessity and obligation of contracting authorities to treat all potential suppliers equally. Second, the issue of transparency is regulated by article 10, Means to Promote Transparency, which obligates every contracting authority to maintain a “well-ordered” and “comprehensive set of records” for each procurement activity, no matter the results. Article 6 of the Law states that the “Law contracting authorities are under an obligation to ensure that public funds and public resources are used in the most efficient and cost-effective manner...” With regard to principles of accountability and integrity, the law requires public officials to make decisions free of any personal interest. While the law on public procurement has embraced all internationally-recognized principles of procurement as discussed in section II, this has not been sufficient to guarantee their full-implementation. The following sub-sections discuss the key institutions that are established by law and together are responsible for the implementation of all aspects of the procurement system.

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<sup>110</sup> See Law No.04/L-042 on Public Procurement in Republic of Kosovo.



# Institutions established by the Law

The Law No.04/L-042 on Public Procurement in the Republic of Kosovo has established four key institutions that are responsible for the implementation of all aspects of the procurement process in Kosovo. Each institution including the Procurement Review Body (PRB), Public Procurement Regulatory Commission (PPRC), Agency of Public Procurement (APP), and Kosovo Institute for Public Administration (KIPA) is responsible for different aspects of the procurement system.

## Procurement Review Body

The PRB is an “independent administrative review body” regulated by article 98 of the Law on Public Procurement. No person or public official may exert any political influence over the decisions of the PRB or over any of its employees. The PRB is a “public authority” and a “budget organization” subject to the same laws and regulations as other budget organizations in Kosovo. The PRB is comprised of five members that are appointed for a term of five years and can be reappointed only once. They are nominated by the Government and appointed by the Assembly based on a recommendation made by an independent selection body established by the Assembly.

In regards to its functions and responsibilities, the PRB is responsible for implementing the procurement review procedures established by the Law. The PRB is the administrative body that has the final authority to review the decisions made by any contracting authority and to decide on its lawfulness. Every potential bidder can submit a file against the decision of the contracting authority to the PRB. The integrity of the procurement process should be ensured by the PRB.

## Public Procurement Regulatory Commission

The PPRC is an “independent regulatory agency”, therefore no public official or individual may exert any influence over any operational or regulatory decision of the PPRC or its members. According to the Law, the PPRC is a “budget organization” and “public authority” that is subject to the same provisions, regulations, and laws as any other

budget organization in Kosovo. Like the PRB, the PPRC is comprised of five members that are appointed for a term of five years and can be reappointed only once. Members are nominated by the Government and appointed by the Assembly as specified in article 89, Appointment of Members.

The PPRC's main responsibility is the overall development and functioning of public procurement provisions of the Law and secondary legislation. PPRC is tasked with the following: a) monitoring and implementing the law, b) issuing performance reports that identify strengths and weaknesses, c) producing annual reports that assess the conditions of the procurement system and identifying areas that need improvement, and d) providing recommendations for possible changes to primary and secondary procurement legislation. In addition, the PPRC is responsible for reinforcing awareness of objectives and procedures of procurement amongst contracting authorities and economic operators; it is responsible for providing technical assistance to both contracting authorities and economic operators with the application and interpretation of the provisions of the law and documents issued by the PPRC; it must support KIPA and other public training and educational authorities. These functions show that the PPRC's role in ensuring the integrity of the procurement system is invaluable.

## Central Procurement Agency

The CPA, according to the Law, is established under the Ministry of Finance and is administered by a director who is appointed for a three year period. Taking into account the "professional expertise", "cost-effectiveness", "efficiency", or other legitimate concerns, the Minister has the authority and the power to designate the CPA as the responsible contracting authority for the conduct of any procurement activity. This means that if the CPA is authorized by the Government, the CPA manages and performs all centralized procurement. According to the Law, the CPA may also be appointed by any contracting authority to conduct a procurement activity on their behalf.

## Kosovo Institute for Public Administration

KIPA in cooperation with the PPRC is responsible for developing trainings and a curriculum related to public procurement and is obliged to ensure that courses are

delivered by professionals. KIPA alone is responsible for organizing examinations and for issuing “basic procurement professional certificates” to individuals that have satisfactorily completed the requirements of the basic courses and “advanced procurement professional certificates” to those who have satisfactorily completed advanced courses. A person that does not hold a basic or an advanced procurement certificate is not eligible to serve as a Procurement Officer. As regulated by Law, a certificate is valid for three years. Interested individuals can also attend a professional procurement training course if there is space available after the staff of procurement offices has been accommodated.



# Policy problems with Public Procurement Law Implementation in Developing Countries

A well-organized and well-functioning public procurement system enhances good governance and contributes to more efficient spending practices. However, many developing countries lack a sound system of public procurement and face a variety of problems due to the perception of public procurement as having a “back-office” function rather than policy significance.<sup>111</sup> Therefore, implementing reforms to public procurement systems in developing countries has proven to be a difficult task. Some of the major problems that developing countries face regarding public procurement include lack of high level policy capacity, absence of political will and low commitment to reform, cartel bidding, non-professional staff who view the process as a “clerical routine,” multiplicity of legal texts and unclear, vaguely defined procedures.<sup>112</sup> Among others, many of these problems also plague the public procurement system in Kosovo, most notably a lack of political will to change, non-professionalism of procurement officers, and contract mismanagement.

Developing countries often lack a high level of policy capacity which presents a major obstacle for the implementation of a strong and well-organized public procurement system.<sup>113</sup> Policy capacity refers to a country’s capacity to conduct policy advising, to provide information and analysis, to structure decision-making, and to coordinate within the government. Thus, policy development and reform can be a relatively difficult task for developing governments and a challenging pre-requisite for establishing a well-functioning public procurement system.

Another common policy problem is a lack of political will amongst contracting authorities which is (often adversely) related to vested personal interests of politicians and public

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111 Hunja, R. (2003). Obstacles to Public Reform in Developing Countries.

112 Thai, K. (2004). Challenges in Public Procurement: An International Perspective. Chapter 1.Challenges in Public Procurement. International Public Procurement Conference Publishing.

Kettle, R and Lember, V. (2010). Public Procurement As An Industrial Policy Tool: An Option For Developing Countries? Journal of Public Procurement.

113 Kettle, R and Lember, V. (2010). Public Procurement As An Industrial Policy Tool: An Option For Developing Countries? Journal of Public Procurement.

procurement officers.<sup>114</sup> Vaguely defined procedures of public procurement allow enough space for public money manipulation, and it is easy for contracting authorities to provide the award to the tender of their choice rather than one that fulfils the criteria. Thus, the political elite in developing countries are predisposed to main this status quo that allows them to easily manipulate the vaguely defined procedures. Another problem related to vaguely defined procedures is the multiplicity of legal acts.<sup>115</sup> The problem with multiplicity of acts is their contradictory content which injects ambiguity in to the procurement processes.

The quality and professionalism of procurement staff are equally important to the legislative framework of procurement. Unprofessional staff who carry out procurement processes are one of the major hurdles for public procurement. Lack of professionalism and lack of recognition of procurement as a specific profession are not phenomena specific to developing countries but also exist in one third of the richest economies, OECD countries.<sup>116</sup> There is a need to have qualified procurement staff that can handle complex procurement processes.<sup>117</sup> Since it is the procurement staff that prepares technical criteria and tender dossiers and evaluates the tenders and the performance of the contracts, low levels of professionalism among procurement staff results in unaccountability towards economic operators and the wider public in general.

Another pervasive problem with procurement occurs with contract performance and management in the post-bidding phase. Establishing adequate mechanisms to control the performance of the contract implementation by the economic operator is a complex task that faces a number of challenges.<sup>118</sup> There are often problems with the quality of goods and services provided, and economic operators commonly struggle to complete the work within the deadline.<sup>119</sup> There is also lack of reporting and lack

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114 Hunja, R. (2003). Obstacles to Public Reform in Developing Countries.

115 Hunja, R. (2003). Obstacles to Public Reform in Developing Countries.

116 OECD (2013). Public Procurement for Sustainable and Inclusive Growth: Enabling reform through evidence and peer reviews. OECD Publishing.

117 Thai, K. (2004). Challenges in Public Procurement: An International Perspective. Chapter 1.Challenges in Public Procurement. International Public Procurement Conference Publishing.

118 Support for Improvement in Governance and Management-SIGMA (2011). Support for Improvement in Governance and Management. SIGMA Publishing.

119 Thai, K. (2004). Challenges in Public Procurement: An International Perspective. Chapter 1.Challenges in Public Procurement. International Public Procurement Conference Publishing.

of accountability between the economic operator's implementation team and the contracting authority. Furthermore, cartel bidding continues to plague procurement in many countries. Cartel bidding refers to illegal agreements between contracting authorities and businesses that influence and often determine which business will win the tender. Cartel bidding results in a non-competitive process which likely leads to lower quality output and higher prices. This section identified some of the common problems that hinder procurement policy. However, many public procurement systems face additional, country-specific challenges. The following section is specific to Kosovo, providing analysis on internal procurement practices and identifying the problems that afflict the public procurement system in Kosovo.



# Analysis and Policy Problems with Public Procurement in Kosovo

Kosovo experiences a high level of corruption which extends to the realm of public procurement. In Transparency International's Corruption Perception Index (CPI) 2013, Kosovo is ranked 111<sup>th</sup> with a score 33 out of 100.<sup>120</sup> It is important to point out that corruption has worsened in previous year. In 2012, Kosovo was ranked in 105<sup>th</sup> place with a score of 34 out of 100.<sup>121</sup> The CPI ranking reveals widespread corruption in Kosovo and shows that the situation is not improving. Additionally findings of the European Commission report that procurement in Kosovo faces many challenges, mainly with contract management, capacity planning, and non-discriminatory setting of technical criteria. Similar findings are acknowledged by the Office of the General Auditor (OAG) and the Anti-Corruption Agency (ACA). For a transitioning country such as Kosovo, corruption in public procurement presents a fundamental problem that not only affects the economy, foreign investments, and public trust in institutions but also has the potential to negatively affect Kosovo's international image. Considering the proportional weight of public procurement in Kosovo's economy, the impact of procurement activities on economic development is immense.

Problems with public procurement in Kosovo can be monitored and analyzed throughout the three stages of procurement, pre-bidding, bidding, and post-bidding. All three stages of procurement are vulnerable to corruption. Several problems have been identified for each specific phase and some problems plague the entire procurement cycle. Generally speaking, cases of misconduct in the sphere of public procurement in Kosovo commonly include the unlawful setting of criteria, lack of needs assessment, extremely low price offers, misevaluation of tenders, falsification of official documents by economic operators, contract mismanagement, delays in project implementation, central procurement, and a lack of integrity and professionalism of procurement officials.

The Public Procurement Review Body report suggests that the number of complaints toward contracting authorities has dropped during the 2009-2012 period as indicated

120 Transparency International (2013).Corruption Perceptions Index. Available at <http://www.transparency.org/cpi2013/results>

121 Transparency International (2012).Corruption Perceptions Index. Available at <http://www.transparency.org/cpi2012/results>

in the table 1.

Year	The total nr. of complaints received	Complaints toward contracting authorities	Total nr. of complaints reviewed	Nr. of complaints in favor of contracting authorities	Nr. of complaints in favor of economic operators (the contract was annulled)	Nr. of complaints sent for reevaluation
2012	x	379↓	331↓	174↓	55↓	102↓
2011	419	386 ↓	367↑	190↑	71↑	106↑
2010	585	430↓	331↓	185↓	62↑	84↑
2009	542	457	347	219	55	73

Table.1 Author's compilation based on Annual Procurement Review Body Reports (2009-2012)

Although, the number of complaints by economic operators toward contracting authorities has decreased, there is no sufficient evidence to conclude that the economic operators are more satisfied with the decisions of the contracting authorities. The decrease could be the result of changes in other immeasurable indicators. For instance, the number of complaints may have dropped due to economic operators' lack of trust in decisions issued by public institutions like the PRB. Another cause of this decrease could be the increasing number of decisions that favor contracting authorities over economic operators. This number of decisions that favor the contracting authority is more than three times higher than the number of decisions that favor the economic operator; although, the number of offers sent for reevaluation has increased over time (with a slight decrease in 2012 compared to 2011). Therefore, economic operators might be discouraged from filing complaints. On the other hand, the PRB itself has faced problems with the nomination of its board members. The mandate of the Assembly of Kosovo, who is responsible for appointing the board members of the PRB, expired in August 2013. Thus, the PRB did not function for eight months (until March 2014), while the number of complaints received during this period was 250, they were not reviewed.<sup>122</sup> The legislation does not set any time-frame that clarifies

122 Kosovo Democratic Institute (KDI) Debate on "Public Money spending through Public Procurement"

26/03/2014. The ex and the newly elected President of the Public Procurement Review Body,

how long the PRB can function without its board members. This issue has been an obstacle for the procurement processes of budgetary organizations, and has delayed the implementation of many projects according to the director of the PRB.<sup>123</sup> While many projects experience delays in implementation, some projects were not implemented at all during the planned year which has led to problems like budgetary deficits.

Below, we provide an analysis of specific procurement policy problems and explain their impact vis-à-vis corruption. Some of the problems we identify are in line with those reported by external auditors like the Office of the General Auditor (OAG) and the Anti-Corruption Agency (ACA).

## Unlawful setting of technical criteria

One of the first and key steps in the preparation of tender dossiers is the drafting of technical criteria, which takes place in the first phase of the procurement cycle and is one of the activities most vulnerable to corruption. This activity marks the starting point for corruption in procurement. Article 7, Equality of Treatment/Non-discrimination, of the Procurement Law obliges all contracting authorities to treat all potential bidders in an equal manner. All contracting authorities are obliged by law to prepare the technical criteria in a non-discriminatory manner and to set criteria that are “objectively assessable” and, consequently, allow as many bidders as possible to apply. However, the technical criteria are often set in an unlawful manner that favors certain economic operators and discriminates against others.<sup>124</sup> That said, many economic operators are immediately excluded from the bidding process, which harms competition and violates a company’s right to apply for work. Corruption in setting the technical criteria in the first phase of public procurement highlights the low level of integrity among procurement officers and their willingness to engage in corrupt activities for personal benefits. According to the Law on Procurement, the certificate which allows procurement officers to work as such can be revoked if they have acted contrary to the law. Setting unlawful

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<sup>z</sup>HysniHoxha, member of the discussion panel.

123 Kosovo Democratic Institute (KDI) Debate on “Public Money spending through Public Procurement”

26/03/2014.The ex and the newly elected President of the Public Procurement Review Body,

<sup>z</sup>HysniHoxha, member of the discussion panel.

124 Office of the Auditor General in Kosovo (2012).Annual Audit Report 2012. Available at [http://www.oag-rks.org/repository/docs/RVA\\_2012\\_Eng\\_224911.pdf](http://www.oag-rks.org/repository/docs/RVA_2012_Eng_224911.pdf)

criteria which favors a particular economic operator is against the law. However, the PRB has only revoked one license to date.<sup>125</sup>

## Lack of needs assessment and sufficient funds

Another shortcoming particular to the pre-bidding phase is the lack of needs assessment and the consequent lack of sufficient funds to pay for goods and services.<sup>126</sup> This mismanagement is related to poor financial planning by contracting authorities, and takes place despite the fact that the Law on Procurement obliges all budgetary organizations to develop a well-detailed annual plan which would clarify objectives, organize public money spending, and to an extent prevent the mismanagement of procurement rules.<sup>127</sup> It is possible that budgetary organizations lack the skills and/or willingness to properly assess the needs and ensure that are enough funds available for a particular procurement activity.

## Extremely low price offers

Another major problem identified is the immense price differences offered by potential suppliers.<sup>128</sup> Enormous price differences and a lack of any administrative instruction that would regulate this issue present confusion and ambiguity during tender evaluations. Article 61 of the Law on Procurement regulates procedures for abnormal value contracts by obliging contracting authorities to request that economic operators bring evidence and explanations for the offered price. However, the problem still persists because contracting authorities are incapable of disqualifying tenders who

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125 This decision refers to the procurement officers working in the Ministry of Trade and Industry. For more see: Procurement Review Body, Decision to annul the procurement license, dated 29/2/2012, available at: [http://oshp.rks-gov.net/repository/docs/vendimet/2012/Sinjal\\_sanim\\_Kline-broje.pdf](http://oshp.rks-gov.net/repository/docs/vendimet/2012/Sinjal_sanim_Kline-broje.pdf)

126 Office of the Auditor General in Kosovo (2012).Annual Audit Report 2012. Available at [http://www.oag-rks.org/repository/docs/RVA\\_2012\\_Eng\\_224911.pdf](http://www.oag-rks.org/repository/docs/RVA_2012_Eng_224911.pdf)

127 See Law No.04/L-042 on Public Procurement in Republic of Kosovo.

128 Interview with the director of Procurement Office at the Ministry of Foreign Affairs, z.ArbenLoshi; Interview with the director of Procurement Officer at the Ministry of Internal Affairs, 24/1/2014.z.AgimFejzullahu ; Interview with the procurement officer at the Ministry of Health, BeratMermullaku, 24/1/2014.

propose unrealistically low offers and who, in most cases, bring some explanation and evidence to support the proposed amount. According to the law, tender proposals and explanations of pricing should refer to the economics of the manufacturing process, any technical solutions offered or chosen, the originality of supplies, and services or outputs proposed. There is no pricing list that could serve as a reference point for the contracting authorities. The lack of such a list presents an additional obstacle to fair competition, since it encourages businesses to offer unrealistically low prices in order to win the award.<sup>129</sup>

## Evaluation of tenders

The evaluation of tenders is yet another challenge that pertains to the bidding phase of the procurement cycle. According to the Law on Procurement, article 59 obliges all contracting authorities to establish an evaluation commission for the examination, evaluation, and comparison of tenders. However, the law does not set any criteria for the establishment of the evaluation commission. Helpful criteria could refer to the professions of the commissioners, years of working in budgetary organizations, etc. In practice, contracting authorities are reported to have composed evaluation commissions in an unlawful manner by selecting officials for the evaluation commission who are close colleagues or friends and who are easily influenced.<sup>130</sup> Members of the evaluation commission often work for their own personal benefits. The evaluation commission sometimes allows certain business to add additional documentation after the deadline, overlooks arithmetical errors which lead to large financial changes post-selection (wherein a chosen tender becomes more expensive than other tenders that applied and were disqualified because of initial high prices); corrects unit prices in cooperation with the contracting authority officers, and enters into contracts with economic operators with known connections to contracting authority officers or members of the evaluation commissions. In this way, contracting authorities enter into contracts with ineligible bidders,<sup>131</sup> resulting in inefficient spending of public money.

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129 Interview with the director of Procurement Office at the Ministry of Foreign Affairs, z.ArbenLoshi.24/1/2014.

130 Anti-Corruption Agency, Kosovo (2012).Annual Report January – December 2012. Available at [http://www.akk-ks.org/repository/docs/ENG\\_Raporti\\_2013-vp.pdf](http://www.akk-ks.org/repository/docs/ENG_Raporti_2013-vp.pdf)

131 Office of the Auditor General in Kosovo (2012) Annual Audit Report 2012. Available at [http://www.oag-rks.org/repository/docs/RVA\\_2012\\_Eng\\_224911.pdf](http://www.oag-rks.org/repository/docs/RVA_2012_Eng_224911.pdf)

## Falsification of official documents by economic operators

The falsification of official documents is a problem in all budgetary organizations in Kosovo.<sup>132</sup> The public procurement documents that are most often falsified are those which relate to the payment of taxes by businesses, taxes paid to employees, and those which are part of the tendering application. Contracting authorities commonly enter into contracts with businesses without verifying the company's background information and past criminal history. Article 99 in the Law on Procurement requests that contracting authorities write a written request to the PRB for disqualifying an economic operator who has submitted false documentation in the tendering application. However, there are only two economic operators listed on the PRB's black list.<sup>133</sup> This low number might be due to the current and the only rational (false documentation presented by economic operators) embedded in legislation according to which a contracting authority can issue complaints to the PRB for adding an economic operator in the Black List. This cause may not be sufficient, as there are other problems with economic operators such as poor performance or delays in project implementation which could put an economic operator on the black list.

## Contract (mis)management

One of the most common misapplications of public procurement relates to the contract management which takes place during the last phase of procurement. Contract management refers to supervision by the contracting authority over the economic operator responsible for the implementation of the contract. According to the Law on Procurement, for each contract, the contracting authority has to nominate a contract manager who is responsible for several activities as agreed upon in the contract. The activities of the contract manager are fundamental to the successful implementation of the contract and include supervision, reporting to the procurement office, and coordination between the contracting authority and the economic operator. However,

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Interview with the director of the Department for Auditing, z.BezadHalilaj, Office of the Auditor General in Kosovo, 28/1/2014.

132 Office of the Auditor General in Kosovo (2012) Annual Audit Report 2012. Available at [http://www.oag-rks.org/repository/docs/RVA\\_2012\\_Eng\\_224911.pdf](http://www.oag-rks.org/repository/docs/RVA_2012_Eng_224911.pdf)

133 Public Procurement Review Body (2012).Annual Work Report 2012. Available at <http://oshp.rks-gov.net/repository/docs/Raporti%20vjetor%20anglisht+kopertina.pdf>

these duties are often not fulfilled in practice. Findings show that oftentimes there is no appointment of a procurement manager and that there is lack of planning for contract supervision.<sup>134</sup> In cases where there is an appointment of a committee to supervise the contract, the committee is composed of members who are willing to accept goods and services that differ in quality from those specified in the contract. This often occurs due to the unlawful appointment of committee members (which is addressed above in the fourth subsection, Evaluation of tenders). In addition, members of the committee in many cases make payments before legal conditions are met.<sup>135</sup> Businesses have little incentive to fulfill their obligations if they have already been paid. Many problems are attributed to the lack of a clear chain of responsibility between businesses and contracting authorities.

## Project implementation delays

Due to a lack of supervisory mechanisms, the implementation of projects is rarely in accordance with deadlines specified under the contract.<sup>136</sup> According to the Law on Procurement, contracting authorities are obliged to issue penalties if the work is not implemented within the deadline specified in the contract. However, contracting authorities rarely issue penalties to businesses that do not implement projects in time.<sup>137</sup> This lack of penalties results in continues misbehavior by economic operators. Generally, there is lack of data surrounding the number of financial penalties issued by contracting authorities.

## The lack of central procurement

According to the Law on Procurement, the government, with the input of the Ministry of Finance, shall establish a list of common procurement activities conducted by

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134 Annual Audit Report (2012). Office of the Auditor General, Kosovo. Available at [http://www.oag-rks.org/repository/docs/RVA\\_2012\\_Eng\\_224911.pdf](http://www.oag-rks.org/repository/docs/RVA_2012_Eng_224911.pdf)

135 Annual Report (2012).Anti-Corruption Agency. Available at [http://www.akk-ks.org/repository/docs/ENG\\_Reporti\\_2013-vp.pdf](http://www.akk-ks.org/repository/docs/ENG_Reporti_2013-vp.pdf)

136 Annual Audit Report (2012). Office of the Auditor General, Kosovo. Available at [http://www.oag-rks.org/repository/docs/RVA\\_2012\\_Eng\\_224911.pdf](http://www.oag-rks.org/repository/docs/RVA_2012_Eng_224911.pdf)

137 Interview with the director of the Department for Auditing, z.BezadHalilaj ; Office of the Auditor General, Kosovo, 28/01/2014.

all budgetary organizations, and, for the purposes of professional expertise, cost-effectiveness, and efficiency, should authorize the Central Procurement Agency (CPA) to perform these activities. This list should be released as an administrative instruction and should be published on the website of the Public Procurement Regulatory Commission. Although the CPA is willing and able to conduct central procurement, no list of common procurement activities has been developed.<sup>138</sup> During our interview with the CPA, there was no specific reason given for this delay and/or lack of political will. The CPA has only conducted procurement activities upon the request of seven contracting authorities.<sup>139</sup> If the government continues to delay the development of this list, there will be more room for corrupt behavior by contracting authorities.

## The Integrity and professionalism of procurement officers

The abuse of official positions by procurement officers for personal benefits is a major challenge to the entire procurement cycle. This problem relates to all of the above-mentioned policy problems. Based on the statistics of the Kosovo Institute for Public Administration (KIPA), there are more than 600 officers that are qualified to work in procurement; however, not all of them work in procurement offices.<sup>140</sup> According to the law on procurement, qualified officials have passed the basic or advanced test and are certified to work in procurement. However, there is much evidence of corruption amongst procurement officials which extends to taking and giving bribes for the purpose of winning a tender or employment, avoiding issuing penalties, and preparing technical criteria that favors specific economic operators. Several officials of public institutions who we interviewed highlighted low integrity of procurement officers as a major impediment to public procurement in Kosovo.<sup>141</sup> According to KIPA, awareness is not the issue as all procurement officers have been educated and certified. Rather, the problem likely has to do with the beliefs, personal interests and lack of integrity of

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138 Interview with the director of the Central Procurement Agency, z.MurselRacaj, 29/01/2014.

139 Interview with the director of the Central Procurement Agency, z.MurselRacaj, 29/01/2014.

140 Interview with the director of the Kosovo Institute of Public Administration, z.BujarThaqi, 28/1/2014.

141 Interview with the director of the Department for Auditing, z.BezadHalilaj; Office of the Auditor General in Kosovo, 28/1/2014. Interview with the director of the Kosovo Institute of Public Administration, z.BujarThaqi; 28/1/2014. Interview with the Chairperson of the Oversight Committee on Public Finance, z.AliSadriu, 04/2/2014.

procurement officers. Prompting procurement officers and businesses to spend public money in a fair, transparent, and efficient manner is a difficult process that takes time.

As stated at the beginning of this policy report, the international principles of public procurement are anchored in the four main pillars of transparency, accountability, non-discrimination, and integrity. Taking into account the policy problems analyzed above, we have evaluated Kosovo's adherence to these principles on a scale from 1 to 5. The numerical value shows approximately to what level each principle has been implemented in Kosovo. A 1 shows the lowest level of implementation and 5 shows the highest level of implementation. Table 2 indicates the level to which Kosovo adheres to each principle.

Principles	Numerical Values
Transparency	3
Accountability	3
Non-discrimination	3
Integrity	3

Table 2. Public Procurement in Kosovo compared to international principles of procurement

The numbers in table 2 suggest that there is a lot to be done to improve current procurement practices in Kosovo. The numerical value three in the table above indicates that certain activities have been carried out with regard to the advancement of procurement practices in Kosovo, but that most principles have only been implemented at a mid-level. The improvements that have been made to public procurement in Kosovo primarily relate to the legislative framework. The law on public procurement has been amended several times, incorporating new provisions that aim to establish a more progressive procurement framework based on internationally-recognized principles and EU legislation. Moreover, the Kosovo Institute of Public Administration has this year for the first time established the advanced test for procurement officials which are more practically oriented than the basic test.<sup>142</sup> However, as indicated in the policy analysis

<sup>142</sup> Interview with the director of the Kosovo Institute of Public Administration, z.Bujar Thaqi, 28/1/2014.

above, the problems in practice are numerous. There are problems with each phase of the procurement cycle that relate to technical criteria, contract management, the evaluation of offers, and the professionalism of procurement officers. These problems have hindered Kosovo's public procurement system. In general, this should not be discouraging for policymakers and procurement officials, but rather it should incentivize them to work harder on establishing a public procurement system that would ensure a fair, transparent, and efficient spending of public money. The next section will provide evidence-based policy recommendations with the purpose of overcoming the current procurement obstacles.

# **Recommendations to overcome misapplications in procurement processes**

The Kosovo government, by employing principles of transparency, accountability, non-discrimination, and integrity in public procurement, can contribute to the protection of public interest and ensure that resources are used wisely in the pursuit of social and economic developments. Having identified numerous problems with the tendering processes in Kosovo, evidenced via analysis, in-depth interviews, and international literature, this policy report moves to present the following policy recommendations.

## **A more precise setting of technical criteria**

One of the first problems that must be dealt with is the unlawful setting of technical criteria in the pre-bidding phase. We suggest that all contracting authorities at the local and central level prioritize this issue in their agendas with the purpose of ensuring more rigorous guidelines for establishing technical selection criteria. We recommend that the contracting authorities draft technical criteria in a measurable and specific manner that does not unfairly favor any economic operator. The setting of fair technical criteria is one of the most important pre-requisites for ensuring fair and transparent usage of public money.

## **Assessment of needs**

Contracting authorities need to improve their evaluation of needs and availability of funds. There are cases when contracting authorities entered into a contract with insufficient funds. We suggest that each contracting authority at national and local level address this issue and prepare a detailed annual plan. The annual plan should clarify objectives and finances. This would help to improve the management of public money and would help prevent the misapplication of procurement rules.

## Revising the rationale behind the Black List

The falsification of official documents is a problem that pertains to all budgetary organizations in Kosovo<sup>143</sup> and is the only reason that contracting authorities can use to issue complaints to the PRB with the aim of adding a particular economic operator in the black list. However, since the black list should contain all economic operators who have abused with the procurement process, the black list should expand to include economic operators who have demonstrated poor performance or experienced long delays in implementation. Contracting authorities and other economic operators should be able to issue complaints relating to poor performance and delays in implementation to the Procurement Review Body, who should consider these economic operators for the black list.

## Establish the Reference Price List

The immense price differences between the offers of potential bidders are a challenging problem that is not properly regulated by the Law on Procurement. Current legislation does not allow contracting authorities to disqualify bidders that offer abnormally low price estimations. Therefore, we suggest the creation of a list of article prices in the form of an administrative instruction. This list should include average prices of articles based on current market prices. Therefore, when economic operators apply with their offers, contracting authorities can refer to the prices in the list when evaluating offers. For an offer to be considered, authorities may allow for a + and - 15% discrepancy between market price and the price suggested by the applicant. Therefore, any economic operator that offers a price 15% lower or 15% higher than the market price should be disqualified accordingly from that particular procurement activity.

## Planned contract management

Evidence shows that many problems exist in public procurement due to lack of planned contract management. We suggest that each contracting authority should

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<sup>143</sup> Annual Audit Report (2012). Office of the Auditor General, Kosovo. Available at [http://www.oag-rks.org/repository/docs/RVA\\_2012\\_Eng\\_224911.pdf](http://www.oag-rks.org/repository/docs/RVA_2012_Eng_224911.pdf)

have a well-detailed contract management plan by the time the contract is signed. Every contract should appoint the project manager, in accordance with the law, who should be responsible for the supervision of the contract. In addition, depending on the complexity of the procurement, the authority should establish a committee that would supervise the contract implementation. Contracting authorities should take seriously the selection of the contract manager, as the contract manager is chiefly responsible for supervising the implementation of the contract.

## **Establish the list of common commodities for procurement (central procurement)**

Although, according to the Law on Procurement, the Central Procurement Agency (CPA) should carry out all commonly used items, the agency is not doing so because the government has not amended the list of commonly used items. We suggest that the government amend and release the list as soon as possible. This list is required so that the CPA, as the central contracting agency, can contribute to efficiency by lowering transaction costs and prices through reduced production costs (economies of scale) and through aggregation of demand which enhances management information. In general, the implementation of this list will enable a more efficient and fair procurement practices, while enhancing the overall integrity of the system.

## **The creation of an administrative instruction that would limit post-contract increases from 3% to 5%**

As evidenced by the reports of the auditing bodies (OAG and ACA), the overall price of the contract usually ends up higher than the one agreed upon. We suggest the creation of an administrative instruction which restricts post-contract price increases to 3-5 percent. A 3-5% increase allowance provides for small, unplanned expenditures or for any small changes or unforeseen costs that arise during implementation.

## Implement e-procurement

The establishment and usage of e-procurement has proven to be successful in increasing the transparency and reducing bribery in public procurement. The implementation of e-procurement would serve as a mechanism to prevent, detect, and sanction corruptive behaviors. All documents would be saved in the system, and any attempt to edit anything would be easily tracked through the system. E-procurement enables online processing of all procurement activities from purchase requests to payment. This means that the system will be useful for all stages of procurement, and all stakeholders will have the available information to scrutinize public funding. As a consequence, transparency and accountability would increase.

## Board's Mandate: Public Procurement Review Body

The Public Procurement Review Body (PRB) is the administrative body that has the final decision in response to a complaint. Therefore, it is extremely important that this institution is fully functioning at all times. Recent events show that the board members' mandate had expired in August 2013 and was not renewed until March 2014, leaving the PRB without board members. Complaints continued to be received, but they could not be reviewed which delayed the implementation of many projects. This scenario might take place again in the future, so it is important to legislatively regulate the mandate of the board. We suggest that all procedures relating to choosing board members begin at least three months before the mandate for current board expires. If this is regulated by an administrative instruction, then even if members of the parliament do not agree with the nominations for PRB board members, there will be time to discuss other possibilities and initiate agreements within the parliament.

## Enhance the integrity and professionalism of procurement officers

Low levels of integrity amongst procurement staff is a major obstacle to the entire procurement cycle. Public procurement requires vigilant and highly qualified civil servants that do not only understand the law but also are knowledgeable about the procurement system and practices. It is important that the Kosovo Institute of Public Administration develop tests that are more practically oriented and that would

educate civil servants not only about the Law on Procurement but also about the entire procurement system in Kosovo.





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