



***CSSProject for Integrative Mediation***

***Situation Report***

***Kosovo***

***Summer 2006***



Stabilitätspakt für Südosteuropa  
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## **Integrative Mediation:**

### Bringing Local Leaders Together

The CSSProject for Integrative Mediation (CSSP) evolved out of ten years of experience of the International Mediator in Bosnia and Herzegovina, Dr. Christian Schwarz-Schilling. The work of the Mediator started informally in 1992 and was formally mandated by the international community and the peoples of Bosnia and Herzegovina from 1995 to 2004. Upon request, the format and structure of mediations were conducted at the local level based on practical needs and local conflicts. The Mediator sought to increase dialogue and reduce tensions by finding step-by-step solutions to daily problems. The format of the process included information visits, mediations, follow ups and round table dialogues. In 10 years the Mediator conducted over 185 local mediations in 55 municipalities. The mandate of the Mediator was completed in December 2004.

Integrative Mediation seeks to apply lessons learned and to adapt the unique Bosnia model for possible use in other parts of South Eastern Europe. The mediation team developed a comprehensive approach to mediation by including various levels of responsibility, multiple actors and a variety of techniques. It combines five different conflict resolution activities, drawing on classical mediation and developing a holistic and decentralized instrument for implementation of agreements. The elements of Integrative Mediation are integrative advocacy, grassroots mediation, consultation, facilitative training, and research & analysis. Throughout the process, Integrative Mediation assists local actors to develop initiatives and to implement confidence-building measures. In addition, it helps to clarify to civil society why certain measures are needed, and enables communities to participate actively in the local peace process. Furthermore, it brings the general and hierarchical process of conflict resolution down to the local level.

Integrative Mediation does not seek to replace or remove ownership of the peace process. Instead, by complementing the peace process Integrative Mediation provides local parties with a conflict resolution framework that enables them to identify for themselves the obstacles to conflict resolution and reconciliation efforts. The main aim of Integrative Mediation is to leave decisions and solutions in the hands of local actors and to strengthen the work of local peace initiatives, thereby facilitating return, co-existence and re-integration at the local level.

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## **Introduction**

At the beginning of 2006 the negotiations on the final status for Kosovo began and ushered in a period of relative insecurity and complexity. These negotiations are to define a future basis for Kosovo beyond the current United Nations administration (UNMIK). On one side of the negotiation table there is the Serbian negotiation team seeking to keep Kosovo as an integral part of its territory. On the other side is the Kosovo Albanian team seeking independence and sovereignty. Since the beginning of the year negotiations have been ongoing under the mediation leadership of the UN Special Envoy for the Kosovo Status Talks (UNOSEK), Martti Ahtisaari.<sup>1</sup> The results of the status negotiations are expected to be announced by the end of 2006 or at the latest by spring 2007.

Will Kosovo be an independent state or not? Much time is spent on this question, and the answer varies depending on ethnic, professional, personal, and institutional considerations. While the current goal is merely to reach an agreement, the conclusion of the negotiations will only be the beginning of a long-term democratization and reconciliation process. Nevertheless, reaching an agreement will give clarity for future policies, foreign investment, and rule of law. It will further increase the possibilities for return, coexistence, and integration. Moreover, it will facilitate the strategic planning of international organizations and NGOs, which until now have been working with a “wait and see” approach. Independent of the progress in the status negotiations, there is an expectation in the international community that Kosovo leaders must continue to work on the main issues, such as local self-governance, democratization, return, integration, property law implementation, etc. International field officers, mission staff and international headquarters continue to encourage tangible progress in this period.

One of the concerns facing Kosovo during this period is that the international community is itself in transition and the results are not yet known. In such a situation, it is difficult for the international organizations to provide adequate guidance on important issues. For example, throughout the year one has been able to observe a multilevel and multi-institutional dynamic as UNMIK prepared for departure and the Kosovo Government (PISG) and the Organisation for Security and Cooperation in Europe (OSCE) assume remaining responsibilities. Moreover, the United Nations High Commissioner for Refugees (UNHCR) has been dealing with developing a two track policy of preparing for a worst case scenario and the potential for post agreement returns.

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<sup>1</sup> Martti Ahtisaari is a well known as a former Finish President and as the International Mediator in the conflict between Aceh and the Indonesian government.

Despite the changing environment, CSSP has continued its projects in the three municipalities where there are ongoing relationships.<sup>2</sup> Furthermore, preparations have been made to ensure the organization is ready for engagement once status negotiations are completed. In addition, CSSP has been given specific attention to advising the Serbian Government on developing mediation at the local level, and on developing a network of regional local mediators within the South Eastern European Mediators Forum (SEEMF).<sup>3</sup>

On 10 to 14 July 2006, CSSP visited Kosovo to assess the situation and to gain feedback from its target municipalities. This report highlights the two main factors that are having a major impact on the situation in Kosovo, status negotiations and the potential for return. The team met with members of the OSCE, UNMIK, the Ministry for Communities and Returns, and the Ministry of Local Government Administration. In addition it met with municipal leaders in Rahovec / Orahovac and Štrpce / Shtërpçë. Further meetings will be undertaken in September 2006.

## **Current Issues**

### *Status Talks*

In the last few weeks there has been extensive media coverage on the slow progress of the final status negotiations. On the broader question of status the official Kosovo Albanian position is that nothing less than full independence is acceptable. However, the Serbian government sees “independence” as unacceptable because it stands to lose 15% of what it perceives as its legal territory.<sup>4</sup> Instead it seeks substantial autonomy for the Kosovo region. Given the sharp divergence in positions, it can be expected that each side will aim at maximizing benefits to influence their respective public opinions. Much rhetoric and several efforts have been seen in this direction. However, because these negotiations go beyond a formal status of Kosovo, they have genuinely proven to be complex with both sides entrenched in their positions. Some of the more difficult issues include decentralization, the protection of religious sites, community representation, return and property issues, and other aspects related to the protection of human rights.

Despite the misgivings, there seems to be consensus that a final status will bring clarity for the people of Kosovo. While many officials agree on this point, there is a difference in the way people at the local level perceive these negotiations and their expectations regarding the outcome. In the Kosovo Albanian community the only word that has

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<sup>2</sup>In this respect Rahovec / Orahovac, Ferizaj / Urosevac and Štrpce / Shtërpçë have been the focus of CSSP's activities.

<sup>3</sup> This forum has been established by CSSP to assist local mediators develop their skills and capabilities. For more information see <http://seemf.cssproject.org>.

significant meaning is “independence” and everything else stems from this point. This sentiment is not shared by Kosovo Serbs, who have significant fears and worries about their future, i.e. status, identity, livelihood, etc. Moreover, in deference to the Kosovo Serb sentiment and the official UN position, international organizations and NGOs have until recently refrained from discussing this issue publicly. As a result each side has continued to believe that their view will prevail and not enough has been done to bring local communities to terms that there might be other considerations than the two narratives presented.

It is important to begin preparations for the next phase which involves implementing commitments and further developing a functioning democratic system. In recent months there has been evidence that Kosovo leaders have made progress and more is to be expected. Specifically, it will be important to strengthen municipal and institutional services at all levels of government, democratic transparency and accountability, protection of human rights, freedom of movement, and the rule of law. Once negotiations are complete, Kosovo will be confronted with issues of self-sustainability, economic development, return and integration, and efficient administration. Moreover, there needs to be an orderly transfer of powers still held by the international community.

While much of the responsibility lies with the Kosovo Government, the role of Serbia is indispensable for achieving progress. The Serbian government’s activities and approach will have a significant impact on the development of Kosovo. Until recently the Serbian Government has not been consistent and clear on representing its interests in a way that all sides can constructively address. There have been criticisms regarding the unwillingness to prepare Kosovo Serbs for possible status changes in Kosovo. While this can be expected from a negotiation tactic point of view, it has had a severe impact on local Kosovo Serb residents who live in dread of what may soon happen to them. As the status negotiations have continued, CSSP has noticed a marked increase in the anxiety and stress levels of local Kosovo Serbs.

### *Status Negotiations and the Municipal Level*

One of the main focuses of status negotiation is the structure of the municipal level and its relationship to the central government, i.e. decentralization. The Serbian Government would like to see various municipalities with a Kosovo Serb majority. These municipalities would also need to have some territorial identification, such as in the North. The Kosovo Albanians accept the principle of decentralization; however, they have been trying to limit the number of municipalities with a Kosovo Serb majority. Furthermore, they would like to keep general oversight or authority over these municipalities. Therefore, the

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<sup>4</sup> As indicated, for example, in the quote of the Serbian Prime Minister Vojislav Kostunica, the Guardian, 24 July 2006.

municipalities have been at the forefront of the conflict and have experienced the most psychological effects of the negotiations.

Recently, for example, the Serbian government pressured Kosovo Serb civil servants to demonstrate loyalty by having to choose between the Serbian and the Kosovo governments. Until now there has been an uneasy compromise accepted by all local sides in which Kosovo Serbs have been receiving two salaries, one from each government. In this way the Kosovo Serbs could keep their pensions, healthcare and other social benefits in the Serbian system and also be officially part of the Kosovo system. The Kosovo government accepted that Kosovo Serbs received more pay for equal work as part of the process of resolving local conflicts and seeking integration.<sup>5</sup> However, the Serbian Government forced the Kosovo Serbs to choose a side. For local Kosovo Serbs, this meant the choice between the Serbian system that guaranteed a minimum of long-term social benefits or the Kosovo system that was new with a limited and unclear future.

The challenges facing municipalities due to the negotiations have been most pronounced in places where the two sides are seeking to find forms of coexistence, such as in the CSSP target municipality of Rahovec/Orahovac. In this municipality this situation has led to the collective resignation of 17 Kosovo Serb municipal employees.<sup>6</sup> Only a couple of Kosovo Serbs who were not on the payroll of the Serbian Government remain in the administration. In addition, the Additional Deputy Municipal President, who is the elected Kosovo Serb representative, has continued to work on the issues. CSSP has experienced the degree of anxiety in direct discussions with local Kosovo Serbs who report from the immense pressure by Serbia.

The departure of Kosovo Serbs from the municipal administration might increase tensions in the short term and possibly places a burden on attempts to improve inter-ethnic cooperation and communication. However, it might also facilitate change and improvement as it will open up space for Kosovo Serbs who wish to make a difference in their local communities. In the case of Rahovec/Orahovac the latter seems to be the case. The municipal leaders have initiated a process to seek new Kosovo Serbs willing to work with and for the local municipal government. They have formed an employment panel which is due to meet in the coming weeks. It will be essential that the municipal leaders have transparent criteria and ensure that Kosovo Serb representation is part of this panel. More importantly, the Kosovo Serb community must receive the signal that they still have a place in Kosovo if they change their minds or are abandoned by the Serbian institutions.

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<sup>5</sup> In some cases some Kosovo Serbs did not actually go to work because of fears to move around, but they still collected salaries. This was also a point of contention that has been boiling under the surface.

<sup>6</sup> The decision affects only civil servants and not appointed persons. As a result, there are still Kosovo Serbs in the municipal communities and mediation committees.

## *UNMIK*

While the situation at the local level is and remains to be challenging, it is noteworthy that despite media flashes to the contrary, there are relatively good working relationships and cooperation between the Serbian Government and the Kosovo institutions, as well as among ministerial advisors. However, these are at the working level and not publicly encouraged or highlighted. The signing of the Protocol of Cooperation on Voluntary and Sustainable Return by the Serbian and Kosovo Governments and UNMIK in June 2006 can be seen as a positive example of this cooperation.

While the progress of negotiations for a future status for Kosovo continues, the handover of responsibilities from UNMIK to Kosovo institutions and other international organisations has already started. This is important to note as it demonstrates that UNMIK is in a process of impending departure. For example, at the municipal level the OSCE has already increased its official responsibilities, such as internal reporting for the international community, and has increasingly become the focal point of future activities and projects.<sup>7</sup> In addition, UNMIK is undergoing a change in its command structure, as the Special Representative to the Secretary General (SRSG), Mr. Soren Jessen-Petersen resigned in the summer. He is followed by Mr. Joachim Rucker, who was the Deputy SRSG in charge of the economic pillar. Given the need for more emphasis on economic affairs in Kosovo, the change is welcomed. It will be important to support Mr. Rucker during this transition phase, as a successful handover is in the interests of all sides.

Currently there is speculation regarding the shape and form of an international follow-up mission to UNMIK. It is widely assumed that this role will be taken over by the European Union, and this speculation is fuelled by the fact that the EU has already an assessment team in Kosovo<sup>8</sup>. Additionally, the shift from an UNMIK led administration of Kosovo towards an UNMIK departure has created the urgency for finding solutions to problems surrounding Kosovo's final status. The question will arise what happens if the final status negotiations are not concluded by June 2007, the end of the current UNMIK fiscal period<sup>9</sup>. If no agreement has been reached on the status, an imposed solution might be seen by some as an option, creating a series of questions and uncertainty regarding the implementation of such a decision. Other options could be to extend UNMIKs mandate, or to find an alternative international mission, in order to maintain international administration of Kosovo. All three cases seem to divert attention from local issues in Kosovo to the international community. It is essential that strategic plans for UNMIKs future be clearly defined independently from the status negotiations.

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<sup>7</sup> The OSCE is undergoing restructuring to better serve municipalities in the coming months.

<sup>8</sup> For more information see for example, <http://www.eupt-kosovo.eu/>.

<sup>9</sup> The end of the fiscal period could prove a convenient point in time for UNMIK closure.

In conclusion, the current situation in Kosovo is very much affected by the status negotiations. While these negotiations are ongoing, the unresolved situation is affecting the local levels where there is a visible degree of anticipation regarding the outcome. Independent of the negotiation process, everyday life continues in Kosovo for all citizens and for representatives of international organisations. While some citizens are waiting for the outcome of the negotiations to make decisions about their future, such as to stay where they are, to return to their place of origin, or to see if an outcome will affect their life planning at all, others are already confronted with decisions now. This is exemplified by the case of Kosovo Serb municipal employees that were forced to make a decision whether to stay with either Serbian or Kosovar institutions. The different international organisations are also witnessing changes to their work as UNMIK is in the process to retreat, thus leaving tasks to be filled by other institutions.

## **Returns**

In the Western Balkans the question of return and integration has been a major source of conflict at the local level. The conflict tends to revolve around the struggle for limited resources available to local leaders. As such CSSP with its local level mediation work is continuously encountering questions related to return processes. It is the local communities that need to find ways and means of resolving conflict and creating a feasible framework for coexistence. The question of return therefore remains a major topic for municipal leaders. It is at the local level that people must face the challenges of inter-ethnic coexistence. Deciding to return involves perceived threats and fears of both the receiving and returning communities. It affects municipal decisions on schooling, employment, infrastructure, institutions, use of language, public interaction etc. The difficulties surrounding these questions are often framed as win-lose situations, as budgets are limited and resources are scarce. How municipal leaders deal with return is a prime indicator of a municipality's level of commitment to democratic reform. Moreover, the quicker a municipality deals with integrating its former residents, the sooner they can focus more resources on other important issues. For these reasons CSSP considers return to be one of the most important issues facing Kosovo in the next few months.

This report will give an overview of the systematic approach to return in Kosovo. In a simplified manner, the return process can be divided into three periods: (a) the previous system starting in 1999 when most return related matters were the responsibility of the international community; (b) the current reforms foreseen, in which responsibility for return is increasingly handed over to Kosovo institutions; and (c) the future return possibilities after the announcement of a final status. Before the systematic details of these periods will be assessed in the following, CSSP likes to put the spotlight on the most important actors of the return system: the individual returnee and the municipalities confronted with the question of return.

*Return: an individual perspective*

What the return system does not consider is that the individual pressure on a potential returnee is immense. Usually after years of fighting, return and integration become difficult because displaced persons return to a very different environment. Their properties often are destroyed, damaged, or occupied; there is mistrust towards local law enforcement officers; local bureaucracies are perceived as resistant and discriminatory; and there are daily obstacles to reintegration. The issues of concerns are multiple. First, there is the question of citizenship and potential loss of social benefits. Second there is the fragile security situation leading to limited freedom of movement in turn. Thirdly, there are family concerns such as economic sustainability, schooling, health care, language barriers, historic and cultural differences, etc. Fourthly, in many places property issues related to immovable and agricultural property remain unresolved. Moreover, the question of return for Kosovo Serbs adds further psychological pressure as Kosovo at this stage has an undefined status. A Kosovo Serb returnee is therefore potentially facing the change of a once majority community member within Serbia to a minority community member within Kosovo should it become independent. The transition from the former Serbian system to the current Kosovo system is not easy for a Kosovo Serb and it is not facilitated by the fear that paralyzes most potential returnees. A new system can give the impression that one has to fight for his/her interests and that the fight may yield little in return. Potential, perceived and real discrimination is on the mind of every returnee.

Returning to an environment connected to very negative and painful memories (e.g. destruction or occupation of property, flight of family members, or loss of friends) is not easy and requires intense assistance and time-consuming reconciliation. The settlement of hostilities is a precondition for people to start with the process of reconciliation, which is a step to allow return. In Kosovo, there is a special situation because there is no official settlement to the conflict as no status for Kosovo has been determined. Kosovo is an internationally administered entity, which today is neither independent nor governed by Serbia. This uncertainty does not provide people with the clarity to (re)build their lives. In comparison, in Bosnia and Herzegovina the signing of the General Framework for Peace (Dayton Peace Agreement) created a foreseeable basis for people to build a future upon. A settlement, e.g. status, for Kosovo does not exist, leaving displaced people and refugees in uncertainty, thus making the decision to return more difficult.

*Return: a municipal perspective*

The municipalities on the other side have to face the organisational difficulties related to the return process. Given the wide range of problems returnees are confronted with, it is unsurprising that some municipalities are confronted with major hazards implementing

return projects at the operational level. The low and uneven capacities of the municipalities have thereby often undermined the ability of Municipal Returns Officers (MRO) to carry out their mandate.<sup>10</sup>

Municipal leaderships are exposed to the demands of their citizens, which vary from requests for employment to the support of local sports clubs, humanitarian aid to infrastructure improvements. Most municipalities struggle with annual budgets that are too limited to fulfil all responsibilities sufficiently. In such a situation returnees are easily perceived as an additional burden to the already limited means available to a municipal leadership to cater to its citizens. This notion is more pronounced if the returnees belong to a community other than the community that has filled the positions within the municipal leadership. On the other hand members of a returnee community tend to receive support such as reconstruction of their houses, improvement of infrastructure, refurbishments of schools, etc. by the international community bearing the risk of being perceived as unjust treatment by members of the resident community. The perception of unjust allocation of resources can lead to dissatisfaction and grounds for new conflict.

### *The Return System*

The sections above identified the environment for return in Kosovo from a perspective of both returnees and municipalities. In order to better understand the individual and organisational implications the return process may have, the following section will further examine the structure of the current “return system” in Kosovo. This system appears complex for an outsider to understand, despite recently published and easy to read manuals. The system involves many different actors and institutions and on sight there seems to be a lack of harmonized structures and interactions. In order to give a brief overview, some important elements of the return system will be highlighted.

The key to the return process are the Municipal Working Group on Returns (MWG).<sup>11</sup> The MWGs are composed of municipal authorities, police, Internally Displaced Persons (IDP) representatives, UNMIK, UNHCR, OSCE, NGOs, other UN agencies, and sometimes civil society groups.<sup>12</sup> The MWG can decide to invite representatives of the Ministry of Communities and Returns, the Ministry of Local Government Administration, or other Ministries or organizations that are important. This body is tasked with setting priorities and agreeing on potential return projects which are developed into “concept papers”. In order to implement these concept papers, the recently published Revised

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<sup>10</sup> Cf Government Assistance Returns (GAR), Final Report of the Sub Project: “Mainstreaming Returns into the Work of Municipal Government”, European Centre for Minority Issues (ECMI) 2006, page 12.

<sup>11</sup> The MWGs have also been referred to as the Municipal Working Groups on Return (MWGR).

<sup>12</sup> See Annex I Municipal Level: Coordination.

Manual on Sustainable Return<sup>13</sup> also provides the MWG with the power to create so called Task Force/ Project Teams.<sup>14</sup> These expert groups are designed to facilitate the implementation process.

It remains to be seen whether the revised operational functions of the MWG are able to overcome some of the main weaknesses of the previous return system. A criticism that was often expressed to CSSP during field visits is that concept papers get written without enough influence on the drafting process from local leaders of the municipality. On the other hand international representatives express concern that not enough input is provided from local representatives. This lack of communication and exchange between the international members of MWGs and municipal authorities often led to poor identification with the aims and objectives of the concept papers on the side of local leaders. There further appear to be more concept papers in circulation than there are capacities to implement them. This backlog of concept paper implementation is said to have potential returnees waiting for return initiatives up to two years, thus putting the credibility of the cooperation between local leaders and international experts at risk. Another weak element of the MWG is the lack of clarity on the procedure of how IDP representatives are selected to work in the MWG. The Revised Manual for Sustainable Return is trying to have more defined roles, and include local stakeholders, but the document is still missing preciseness in that respect.

The focal point of the municipal return structure is the Municipal Returns Officer (MRO). In the view of CSSP MROs serve a mediation function between the various stakeholders and the municipal leaders. MROs by the nature of the position seek to improve the return process, but face challenges to their work that cannot be solved at their level. Evidence on the effectiveness of MROs is mixed. In many cases, they lack the means and support to conduct their work, and have limited impact on funding priorities for potential returnees. MROs often have no identifiable budget, need to request vehicles to attend meetings such as the MWGs, and in general have a low priority within municipal needs. The MROs also often lack impact on MWGs outcomes even if they are responsible. In addition, there are not enough initiatives to bring together MROs with overlapping interests to discuss cooperation and develop communication and exchange of data. The first Kosovo-wide meeting for MROs was organized only in March 2006.<sup>15</sup> Moreover, the MROs have no direct operational linkage with the Ministry for Communities and Returns, causing further confusion regarding lines of responsibilities. It appears that the success of an MRO strongly depends on the individual who fills the post. Given the key role and function of the MROs negotiation, mediation and communication skills are

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<sup>13</sup> See Revised Manual on Sustainable Return, Pristina July 2006, available at [www.unmikonline.org/srsg/orc/documents/Manual\\_ENG.pdf](http://www.unmikonline.org/srsg/orc/documents/Manual_ENG.pdf).

<sup>14</sup> See Annex II Municipal Level: Operation.

<sup>15</sup> While this is welcomed it is somewhat late in the process.

needed. Therefore more focus should be put on building these functions of MROs and strengthening their logistical framework.

Above the municipal level the next higher level is the ministerial level of PISG. Here the Ministry of Communities and Returns has been established in support of the return process. In theory, the Ministry should be coordinating the return process. However, the Ministry has been caught up in resolving various institutional and internal challenges. While ministry officials attend field meetings, their intention and focus have been unclear.<sup>16</sup> For example, the relationship between the Ministry and UNMIK Office of Communities, Returns and Minority Affairs was challenged this year, as Minister Slavisa Petkovic was accused of overspending and mismanaging.<sup>17</sup> At some point fiscal responsibility was taken away from the Ministry. However, the Ministry currently is in process of improving its field coordination and is drafting a budget for 2007. People within the Ministry, however, indicate that the budget is insufficient to meet the needs and demand and therefore is in need of municipal investment and support. If returns increase in the next year to the successful conclusion of status negotiation, this need will increase and the gap between need and availability will widen.<sup>18</sup>

One question that has arisen in recent months is the relationship between the Ministry of Communities and Returns and the Ministry of Local Government Administration in the area of returns. According to the Revised Manual for Sustainable Return, the Ministry of Local Government Administration shall assist municipalities to develop policies that are consistent with the operational framework and international norms on return, IDPs, refugees and reintegration. The Ministry of Local Government Administration is already active in municipalities with joint financing of projects related to return. The overall impression is that the level of involvement of the Ministry of Local Government Administration is deepening. At the same time, the role of the Ministry of Communities and Returns remains unclear. There seems to be an overlapping grey area where responsibilities and resources are not clearly defined. While currently there appear to be some shortcomings in the Ministry of Communities and Returns, the concern is that the situation may become more complicated and less effective if responsibilities for return projects are shifted to another ministry which in theory is not responsible for return. Therefore, it is important that ministries fulfil their functions and that other ministries are not used to compensate for temporary deficiencies.

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<sup>16</sup> Ministry officials are invited to all joint meetings organized by CSSP. Until recently they have attended all meetings.

<sup>17</sup> UNMIK sources state that about Euro 2,630,000 were spent and not accounted for by the Ministry of Communities and Returns in 2005. See for example, [www.euinkosovo.org/upload\\_economic/Economic%20News%2001%20%2002%20May.pdf](http://www.euinkosovo.org/upload_economic/Economic%20News%2001%20%2002%20May.pdf)

<sup>18</sup> This effect was seen in Bosnia and Herzegovina where return and reconstruction continue to be worked on long after the process was official declared finished by the international community.

While UNMIK is responsible for policymaking, UNHCR is monitoring and recording data of the return process. Due to the strong UNMIK mandate, the role of UNHCR appears to be much less visible than is usually expected. Nevertheless, UNHCR, together with its implementing partner NGOs, is responsible for “Go-and-See” visits.<sup>19</sup> These visits are a comprehensive exercise as they include logistical aspects such as the coordination with police and KFOR. As a pre-condition for a “Go-and-See” visit 5 to 10 families must express their desire to a local NGO (UNHCR implementing partner). The format for a “Go-and-See” visit includes three components. Firstly, the visit needs to have an inter-ethnic component, for example the visit to neighbours of another ethnic group than the potential returnee, or a meeting with local leaders. Secondly, the property owned by the potential returnee must be visited and assessed for potential return. Thirdly, the “Go-and-See” visit must include one additional component/wish, for instance the visit to a religious site, school, hospital, etc. While these “Go-and-See” visits are useful, there is no guarantee that return will result out of them, or that participants will be considered for a concept paper. Moreover, some IDPs do not fit the criteria or conditions for a go-and-see visit and find these procedures challenging. More important is to understand if returns are happening; and if so, what conditions lead to successful return.

### *Latest Developments*

The return system described above has evolved and changed in order to better facilitate the services for potential returnees. In summary three changes have occurred in summer 2006 that will further impact the return process:

1. **The beneficiary selection criteria have been changed.** The original consideration was that the support for return had to be to the “place of origin”, e.g. the exact house or department that the IDP/refugee lived in at the time of relocation. With the newly revised instructions return can be supported to property owned by the returnee prior to January 2006. This means that return can be supported to property of the returnee other than the exact location of origin. As a result of this change people can be supported to return to their property, if they owned more than one property, and support for return is no longer limited to the one property the person was living in prior to the conflict. This compromise shifts the emphasis from property solution and takes into consideration that people have other properties than the one they physically lived in at the time of the conflict. Therefore, people that were too concerned to return to their original home, e.g. for perceived lack of security, now have the option to return to secondary properties. Thereby they are no longer considered as displaced persons or refugees. The

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<sup>19</sup> As a matter of complete information there are besides “Go and See” visits also “Go-and-Inform” visits. These are trips out of Kosovo to address potential returnees of the situation in Kosovo, and thereby facilitate the decision to return.

other option was to support return to any place and restricting ownership of property prior to the set date of January 2006. However, that option most likely would have supported the creation or strengthening of mono-ethnic enclaves<sup>20</sup>.

2. **The Governments of Serbia and Kosovo and UNMIK have signed the Protocol of Cooperation on Voluntary and Sustainable Return.** The signing of a joint protocol (6 June 2006) has been a positive development as it allows joined funding by the Serbian state and Kosovo for return projects. It is a significant step towards cooperation, and a joint approach to address the problem of refugees. The concern is that some of the details prescribed, e.g. the timeframe of 60 days for municipalities to prepare the announced return is challenging for the administrations at the local level to implement. A Direct Dialog Working Group on Return has been established to discuss issues around the challenges of the implementation of the protocol. Overall there is the expectancy that over time structures will be sufficiently strengthened to support return as described in the protocol.
3. In 2003 the Manual for Sustainable Return was drafted in order to create a base document for return. **In July 2006 the Revised Manual for Sustainable Return was released.** The revised manual states that “the objective of the returns process is to fulfil all the citizenship rights and needs to those who seek to rebuild their lives in Kosovo”<sup>21</sup>. An important aspect of the revised manual is that it prescribes more transferral of responsibilities from UNMIK to Kosovo institutions. It can be considered as an indication of withdrawal of the UN administration and an increase of responsibility for the return process by Kosovo institutions. The Revised Manual for Sustainable Return includes changes, and/or amends the return procedures, it also specifies more clearly who is responsible for the different sections within the return process, e.g. it includes a list of institutional roles and responsibilities. The publication of the Revised Manual can be expected to be welcomed by Kosovo and international staff involved with the return process. However, a preliminary overview of the Revised Manual suggests that in its current form there is a need for further clarification as parts of the manual are not specific enough.<sup>22</sup> It can be foreseen that there are some parts of the return process and assignment of responsibilities that will need more clarification in the future.

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<sup>20</sup> It is also more difficult to justify using donations to reconstruct houses at any place desired by the beneficiary.

<sup>21</sup> Revised Manual for Sustainable Return, page 7.

<sup>22</sup> For an illustrative overview of the different levels established under the Revised Manual for Sustainable Return see Annex I-IV.

### *Inconsistencies to the Return Process*

Return does require sufficient funding, and currently there is a reported lack of sufficient resources<sup>23</sup>. While funds are needed to generate return projects, there is also the question of having a credible return process. The assumption can be made that some concept papers are not well drafted, however, the fact remains that resources are spent in order to design project proposals which will then not be considered for implementation in near future due to the lack of funding. The credibility of the international community is at stake if concept papers raise false expectations and do not follow through due to lack of funds.<sup>24</sup> It further discourages capacity building as work efforts committed to by local partners appear fruitless and run the risk to be considered a waste of time and resources.

One type of return that appears to be of a particular challenge is the return of minorities in urban areas/city centres where there is a different community as a majority. One of the likely reasons for this is that the perception of threat and lack of security of the returnee is higher in an environment where there is less association to their own people. Fear to speak one's own language in a perceived hostile environment, difficulty with minority schooling, and access to jobs has an impact on the return to urban areas/city centres. For example, it is for the above reasons that urban area returns receive high attention as is seen in the municipality of Klinë / Klina (2005). Moreover, urban returns are challenged by issues of property rights, lack of core mass of minorities, language issues and other culturally linked issues. For example, in Ferizaj / Uroševac, IDPs have offered to return as a group to a collective sight in the town but this was rejected on previous occasions by the municipal and international representatives. However, any return to the town centre of this municipality would be a major breakthrough. Until now, return seems more possible to villages and remote areas, but if returns are to be successful more needs to be done to guarantee return to the municipal centres.

Besides the voluntary return process there is also forced return. Forced return is done by governments that have been hosting refugees, e.g. Germany that is now repatriating people back to Kosovo. The moment of publication of this report does not yet allow addressing the consequences of this type of return. However, noteworthy is that plans exist that will hand the responsibility from UNMIK to the Kosovo Ministry for Interior. This will be another example of handing over responsibility to Kosovo institutions. It is an important indication of responsibility handover as forced return is a challenging process, also for the international administration. The Revised Manual for Sustainable Return does not address forced return, and therefore does not provide guidance on how to deal with this type of return at the municipal level. Forced return could prove to be a

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<sup>23</sup> One figure that is being circulated in Pristina is the sum of 70m Euros that is currently missing to implement the existing concept papers.

<sup>24</sup> In the case of the Roma settlement in Mitrovica, funding was difficult to achieve despite an army of personnel working on the issues to find a mutually acceptable solution.

challenge for some municipal leaderships if the process receives momentum. For instance in the case of Germany, numbers indicate that there are above 35.000 people from the Roma, Ashkali, Egyptian community that will be repatriated to Kosovo.<sup>25</sup> In the absence of an alternative accommodation mechanism it will remain to be seen how the people will be absorbed upon arrival.

Besides the regular return process there is also the question of property rights. In order to deal with property issues, UNMIK passed Regulation 1999/23 which established the Housing and Property Directorate (HPD) and the Housing and Property Claims Commission (HPCC) in November 1999<sup>26</sup>. These two bodies should regularize housing and property rights in Kosovo and resolve disputes over residential property. The development in respect to HDP is that again responsibility is being handed over to a Kosovo institution, the Kosovo Property Agency (KPA)<sup>27</sup>. While UNMIK adopted regulation No. 2006/10 in March 2006 on the resolution of claims relating to private immovable property, including agricultural and commercial property, the number of restitutions of illegally occupied housing remains low. Furthermore, there is still no effective procedure for restitution and compensation of property.<sup>28</sup> In recent meetings with IDP representatives CSSP gained the impression that regular citizens are often missing an understanding of how to process their individual cases. It is good that some organisations provide free legal assistance to assist people in their requests. However, the perception that there are IDPs which are overburdened with the current framework, and who can not resolved their cases remains.

In the case of Rahovec / Orahovac for example, wine production is a major source of revenue and recognition. However, Kosovo Serbs have been complaining of their lack of opportunity to access their lands and gain some of the benefits of this industry. In this area both sides need to do more to ensure that property rights are resolved; minority access to agricultural land is assured; and development funds are provided.<sup>29</sup>

### *Return after Status*

According to Kosovo and international representatives there is an expectation that the return process will receive a renewed dynamic following the announcement of a final status solution. Opinions vary on how significant this new dynamic of people movement

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<sup>25</sup> See BBC News Online, "Germany returns Kosovo refugees", (May 2005) available at <http://news.bbc.co.uk/2/hi/europe/4562123.stm>.

<sup>26</sup> Cf <http://www.hpdkosovo.org/aboutus.htm>.

<sup>27</sup> Cf <http://www.kpaonline.org/default.aspx>.

<sup>28</sup> Cf Ambassador Kai Eide, "A Comprehensive Review of the Situation in Kosovo", (Report to the UN Secretary General, 4 October 2005), Annex I, page 22, para. 55.

<sup>29</sup> Kosovo Serbs in Rahovec/Orahovac have complained to CSSP about this situation in the past.

will be once the results of the status talks get announced<sup>30</sup>. Consideration should be given to this post-status return debate as there appears to be a consensus that movements of people to some degree will occur. Taking the different opinions into account, it appears likely that the dynamic to return will differ depending on the geographic area, e.g. proximity to community majority areas, the socio-demographic design of the area (e.g. ethnic composition, age, education), and the attitudes of the local administrations in respect to minority protection and support.

It is expected that there will be a period of one to two years after a final status settlement in which return will remain an issue. After this timeframe, international financial and material resources will begin to decrease and even become negligible. This opinion is based on the fact that the status question for Kosovo has been undefined for the past 7 years. There are some people that might make their decision whether to stay where they are or to move dependent on what the framework of a future Kosovo will be once it has been decided. However, in the past few years people have adapted their life to the location that they currently reside in. For the people that believe the new framework for Kosovo to have an impact on the decision to move from where they currently reside can be expected to be done at short notice, as the basis for such a decision is likely to be fear of uncertainty that the new status encompasses. Return processes do depend on seasons, e.g. unlikely in winter or during a school period, and thereby create return cycles. According to return experts a heightened return ratio can be expected within the first two return seasons after the status definition. The experience in other parts of the former Yugoslavia, e.g. Bosnia and Herzegovina, is that in international funding for returns there is a point in time where funding for return projects has a drastic decline, making it unlikely to forecast larger donations for return to be available long after the Kosovo status question has been resolved. This is an important aspect to consider as funding gaps can contribute to potential conflict at the local level, and it can discredit the entire international community in demonstrating shortcomings at the level where people need to find a way to live.

In order to complete the recent findings in Kosovo in respect to return one comment needs to be added. Regardless of the return structures and procedures all representatives of Kosovo and international institutions and organisations that deal with return express the opinion that the major challenge to return is finance and unemployment. The resolution of this challenge goes beyond the return process but needs to be addressed for all of future Kosovo, regardless of the outcome of the status negotiations.

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<sup>30</sup> Noteworthy in order to understand the dimension of this case is that the media (Reuters, DPA, Der Standard, all Kosovo publications) is openly reporting on international contingency plans, which are in place for a potential mass movement of up to 70.000 people out of Kosovo in the case of Kosovo independence.

Return remains to be a strong aspect for citizens of Kosovo in everyday life, and this aspect needs to be addressed in a comprehensive manner in order to allow Kosovo a smooth transition into the future. Currently there is a structure and system to deal with return, however, it remains doubtful how conducive the design of concept papers is that do not get attention or for which there are no financial means for implementation. Improvements have occurred, this year such as a better definition of responsibility and a handover strategy by UNMIK. However, the changes are not sufficient enough and further clarification of roles and responsibilities are needed, and it will assist the return process if roles, e.g. MROs, and institutions such as the Ministry of Communities and Returns will be clearer structured and harmonized. There are areas of property ownership which also need to be addressed. Return is an issue that affects many citizens in Kosovo and an issue at which the credibility of the international community can be questioned if further improvements are not made.

### **Visit to CSSP Target Municipalities**

On the short trip to Kosovo from 10 to 14 July 2006 CSSP visited two of its target municipalities; Rahovec / Orahovac and Štrpce / Shtërpçë. The visit to Rahovec / Orahovac was predominantly a follow up visit to the Problem-Solving Workshop which was held for key leaders from 15 to 19 May 2006 in Skopje. The visit to Štrpce / Shtërpçë was a short courtesy visit at the request of the Deputy Additional Municipal President. Both municipalities can be used as examples to issues addressed in this report.

#### *Rahovec / Orahovac*

The overall feedback for the Problem-Solving Workshop was positive. In individual discussions participants expressed their gratitude, and explained some of the observations they made in respect to how skills of the workshop can be applied in everyday life. Overall activity in the municipality has been less due to the summer break. The municipal leadership reported that the less active summer period was used to do delegation visits abroad, e.g. Switzerland, to promote the municipality for potential future business and cooperation. The more critical aspect is that due to pressure from the Serbian Government 17 Kosovo Serb employees of the administration had collectively handed in their resignation. The Kosovo Serbs remaining in the administration are the Additional Deputy Municipal President who considered it his obligation to stay and the MRO who never followed suit to Serbian directives. At the time of the visit the discussion was how to proceed with the newly created facts. The idea that was circulated at the time was to find new young and dynamic Kosovo Serbs that were willing to replace the

vacant positions<sup>31</sup>. Replacement hiring is expected to be a positive outcome to the current challenge. How this will influence the situation of the former municipal employees in the future remains to be seen. CSSP will visit Rahovec / Orahovac in September 2006 and hold a joint mediation. As an example Rahovec / Orahovac demonstrates the impact of pressure from Serbia can have on the local situation. Without the guidance from Serbia, it can be assumed that not all 17 Kosovo Serb municipal employees would have resigned from their position. Good coexistence in Rahovec / Orahovac has a chance, but much depends on the Kosovo Albanian and Kosovo Serb reactions in the future.

### *Štrpce / Shtërpçë*

The situation with its Kosovo Serb majority population is more difficult to analyse as this trip did not allow sufficient time in the municipality for a comprehensive assessment. According to the UNMIK Municipal Representative the situation remains in a similar low activity mode as the municipality appears to have been in the past few months. The Kosovo Albanian Additional Deputy Municipal President blames the Kosovo Serb Municipal President for a lack of communication and cooperation with Kosovo institutions. He would like to move closer to Pristina, but is frustrated about the disinterest and what he considers as obstruction of the municipal administration to move towards such cooperation. CSSP's impression is that there is little but not enough improvement since the last mediation round. CSSP will make a more in depth assessment on the trip to Štrpce / Shtërpçë in September 2006. On this occasion a more comprehensive round of discussions with municipal leaders will be conducted and it is envisioned to organise a new joint meeting. Little progress has been achieved on the question of inter-municipal return. The situation of IDPs in Štrpce / Shtërpçë is a good example of people waiting for the resolution of the Kosovo status question.

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<sup>31</sup> The up to date news at the time of writing this report is that the OSCE is assisting the administration in drafting the vacancy announcements, which are expected to be released shortly. The first appointments have been made.

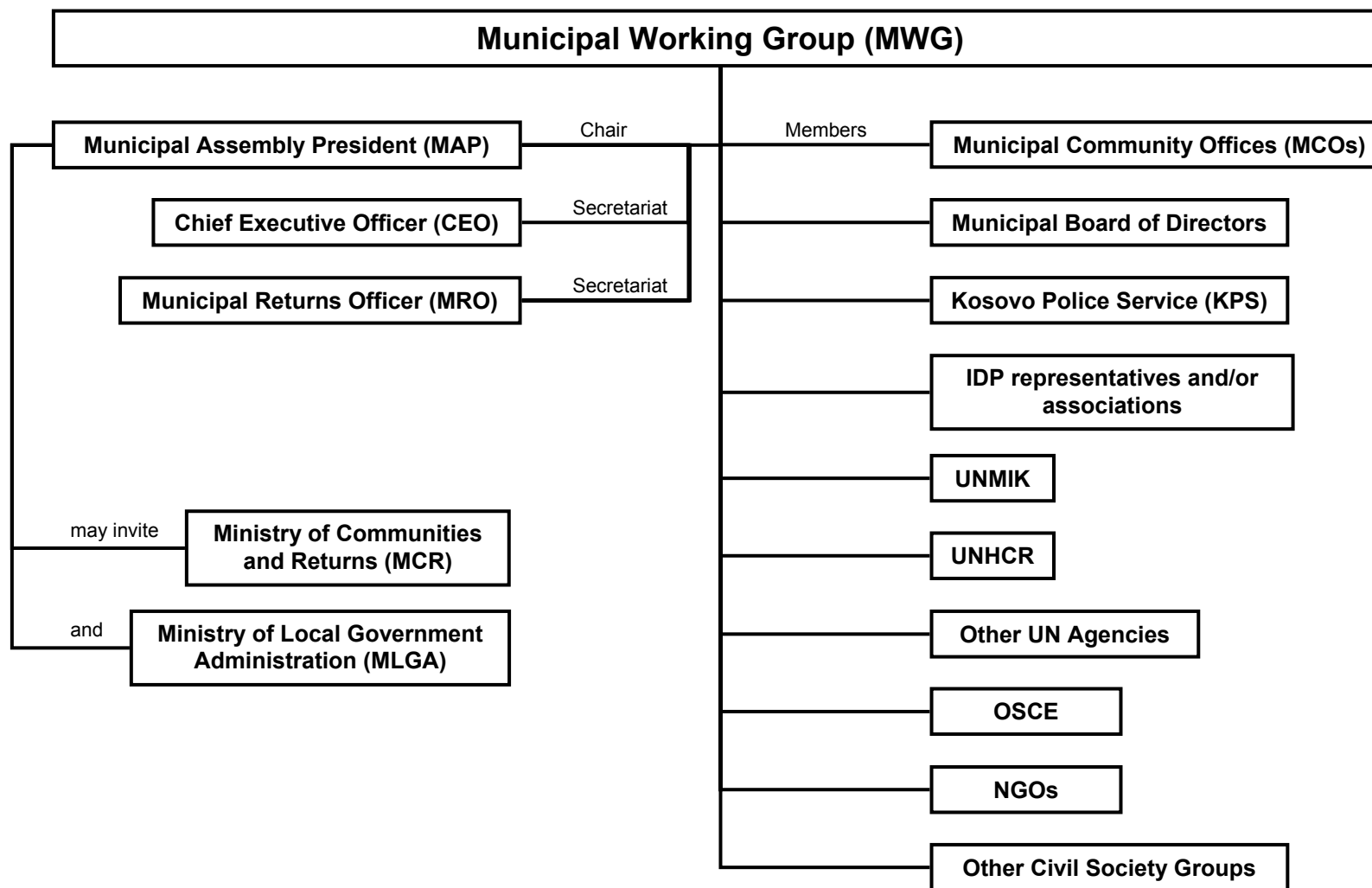
## Recommendations

While this report is not an exhaustive research agenda on the issues of status negotiation and the return process, some conclusions can be drawn from recent visits to Kosovo. Below are the most important observations for the summer 2006:

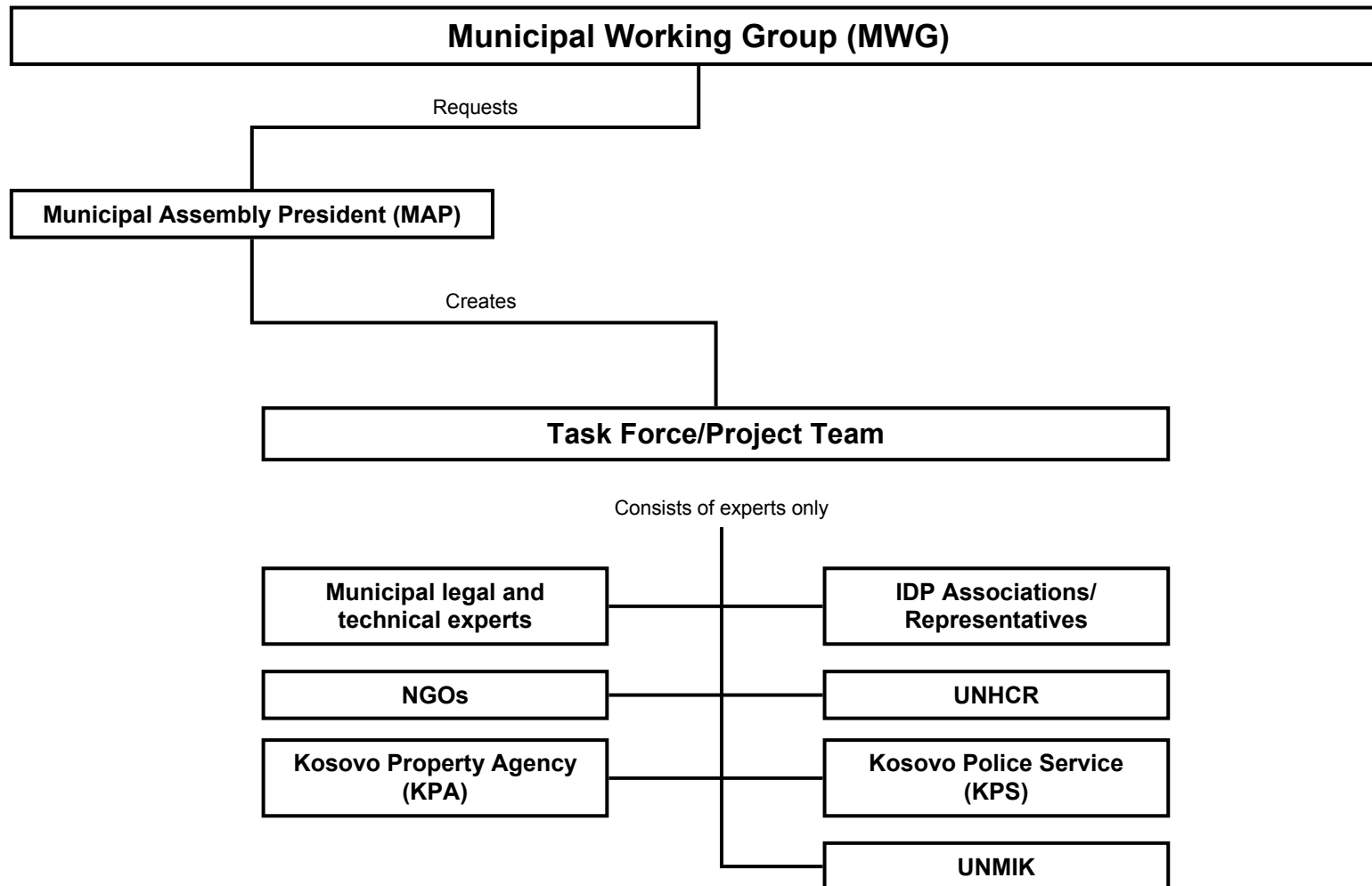
1. As the Ministry for Communities and Return and the Ministry of Local Government Administration increase their involvement in the return process, there will be a potential for institutional or organizational conflicts. Each Ministry has its own mandate and areas of responsibilities and recent developments have blurred the lines between these two institutions. Such developments may at first seem necessary to compensate for current deficiencies but may have medium-term negative effects. More importantly, the role of the Ministry of Communities and Returns needs to be clarified and strengthened, if there is the interest in having a functional Ministry for Communities and Return in the future.
2. While there have been good efforts at improving the return process, there are still unanswered questions and concerns for the municipal level. In future, it will be essential to support returns locally. Municipalities should have specific budget lines reserved for supporting municipal returns.
3. In the past, the role of MROs has been weak and dependent on the goodwill of all institutions. However, given the mediation role of MROs, they play a significant role in the reintegration process. Therefore, this function needs to be strengthened. More resources should be dedicated to training MROs in communication, mediation and negotiation skills. In addition, more efforts need to be made to strengthen the role of MROs in the Municipal Working Groups.
4. It is of the highest reconciliation priorities to ensure that the return process is credible, effective, and sustainable. Therefore, it is important to provide sufficient funds for the return process in a post status negotiation phase. This will not only facilitate return but furthermore contribute to integration.
5. In the past a large amount of funds have been invested in return-related projects with limited results. Paradoxically, there is a funding gap for projects and concept papers. A needs and feasibility assessment of the current concept papers should be undertaken, and new funding expectations and priorities should be set to ensure more creditability to the system.

6. Recently the role of UNHCR has been less visible in Kosovo despite its considerable amount of experience in return processes in South Eastern Europe. It is important to clearly consider the role of UNHCR in the post-status negotiations period.
7. All institutions officially active within the return process should have a clearly defined mandate to prevent overlaps of activities. This will facilitate the overall return process and contribute to the establishment of democratic structures.
8. While it is understandable that all sides seek to maximize gains in the status negotiations, the effects on the population should be minimized. It is not beneficial for either side for residents to be forced to choose or to make life altering decisions at this moment. CSSP appeals to the Serbian Government and the leaders of Kosovo to avoid all initiatives in this regard.

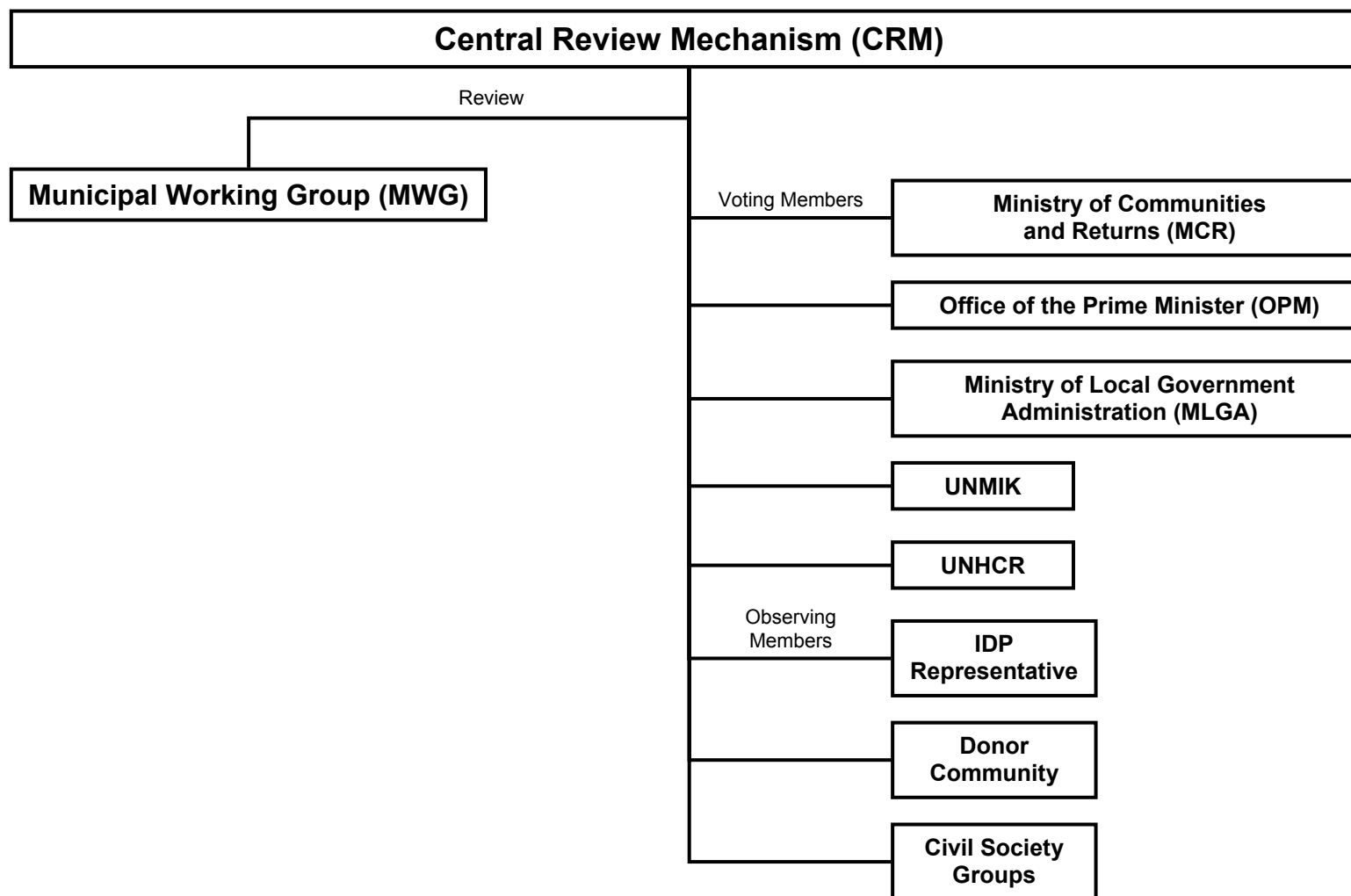
## Annex I Municipal Level: Coordination



## Annex II Municipal Level: Operation



### Annex III Municipal Level: Review



## Annex IV Community Level: Coordination

