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Introduction

The Legal Profession Reform Index (LPRI) is an assessment tool implemented by the American Bar Association Rule of Law Initiative (ABA ROLI). It was developed by the ABA’s Central European and Eurasian Law Initiative (ABA/CEELI), now a division of ABA ROLI, together with its other regional divisions in Africa, Asia, Latin America, and the Middle East/North Africa. Its purpose is to assess the process of reform among lawyers in emerging democracies. The LPRI is based on a series of 24 factors derived from internationally recognized standards for the profession of lawyers identified by organizations such as the United Nations and the Council of Europe. The LPRI factors provides benchmarks in such critical areas as professional freedoms and guarantees; education, training, and admission to the profession; conditions and standards of practice; legal services; and professional associations. The LPRI is primarily meant to enable ABA ROLI or other legal assistance implementers, legal assistance funders, and emerging democracies themselves to implement better legal reform programs and to monitor progress towards establishing a more ethical, effective, and independent profession of lawyers. In addition, the LPRI, together with ABA ROLI’s companion Judicial Reform Index (JRI), Prosecutorial Reform Index (PRI), and Legal Education Reform Index (LERI) also provides information on such related issues as corruption, the capacity of the legal system to resolve conflicts, minority rights and gender equality, and legal education reform.

ABA ROLI embarked on this project with the understanding that there is no uniform agreement on all the particulars that are involved in legal profession reform. In particular, ABA ROLI acknowledges that there are differences in legal cultures that may make certain issues more or less relevant in a particular context. However, after more than a decade of working on this issue in the field, ABA ROLI has concluded that each of the 24 factors examined herein may have a significant impact on the legal profession reform process. Thus, an examination of these factors creates a basis upon which to structure technical assistance programming and assess important elements of the reform process.

The technical nature of the LPRI distinguishes this type of assessment tool from other independent assessments of a similar nature, such as the U.S. State Department's COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES and Freedom House's NATIONS IN TRANSIT. This assessment will not provide narrative commentary on the overall status of the legal profession in a country. Rather, the assessment will identify specific conditions, legal provisions, and mechanisms that are present in a country's legal system and assess how well these correlate to specific reform criteria at the time of the assessment. In addition, it should be noted that this analytic process will not be a scientific statistical survey. The LPRI is based on an examination of relevant legal norms, discussions with informal focus groups, interviews with key informants, and on relevant available data. It is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country’s legal system at a particular moment in time through the prism of the profession of lawyers.

Scope of Assessment

Assessing legal profession reform faces two main challenges. The first is defining the terms “legal professional” and “lawyer.” The title Legal Profession Reform Index is somewhat of a misnomer. The LPRI focuses its attention on lawyers; however, most of the world’s legal professions are segmented into various categories. For example, the Council of Europe lists several distinct categories of legal professionals, including judges, prosecutors, lawyers, notaries, court clerks, and bailiffs. ABA ROLI could have included all of these professions, and perhaps others, in its assessment inquiry; however, the resulting assessment would likely become either overly complex or shallow.

In order to keep the LPRI assessment process manageable and to maintain its global applicability and portability, the LPRI focuses on professions that constitute the core of legal systems; i.e.,
professions that are universally central to the functioning of democratic and market economic systems. As a result, ABA ROLI excluded from the LPRI such professions as notaries, bailiffs, and court clerks, because of variations and limitations in their roles from country to country. In addition, ABA ROLI decided to exclude judges and prosecutors from the scope of the LPRI assessment, in order to focus this technical tool on the main profession through which citizens defend their interests vis-à-vis the state. Independent lawyers, unlike judges and prosecutors, do not constitute arms of government. Furthermore, ABA ROLI has developed the JRI, which focuses on the process of reforming the judiciaries in emerging democracies, the PRI, an assessment tool for prosecutors, and the LERI, an assessment tool for assessing the state of legal education in a given country.

Once ABA ROLI determined which category of legal professionals would be assessed by the LPRI, the remaining issue was to define the term “lawyer.” In the United States and several other countries, lawyers constitute a unified category of professionals. However, in most other countries, lawyers are further segmented into several groups defined by their right of audience before courts. For example, in France, there are three main categories of advocate lawyers: avocats, avoués à la Cour, and avocats aux Conseils. An avocat is a lawyer with full rights of audience in all courts, who can advise and represent clients in all courts, and is directly instructed by his clients and usually argues in court on their behalf. An avoué à la Cour has the monopoly right to file pleadings before the Court of Appeal except in criminal and employment law cases, which are shared with avocats. In most cases, the avoué à la Cour only files pleadings but does not argue before the court. He has no rights of any sort in any other court. The avocat aux Conseils represents clients in written and oral form before the Court of Cassation and the Conseil d’Etat (the highest administrative court of France). See Sanglade & Cohen, The Legal Professions in France, in THE LEGAL PROFESSIONS IN THE NEW EUROPE: A HANDBOOK FOR PRACTITIONERS at 127 (Tyrrell & Yaqub eds., 2nd ed. 1996). In addition to rights of audience, other factors further complicated efforts to define the term “lawyer,” including the large number of government lawyers and corporate counsel who are not considered independent professionals and the practice in some countries of allowing persons without legal training to represent clients. These issues posed a dilemma, in that, if ABA ROLI focused exclusively on advocates (generally understood as those professionals with the right of audience in criminal law courts), it could potentially get an accurate assessment of perhaps a small but common segment of the global legal profession, but leave the majority of independent lawyers outside the scope of the assessment, thus leaving the reader with a skewed impression of reform of the legal profession. For example, according to the Council of the Bars and Law Societies of the European Union, there were 22,048 lawyers practicing law in Poland in 2002. Of that number, only 5,315, or 24%, were advocates. If, on the other hand, the LPRI included all persons who are qualified to practice law, that might also produce an inaccurate picture, in that it would include non-lawyers and lawyers who are not practicing law. In order to keep its assessment relatively comprehensive yet simple, ABA ROLI decided to include in the universe of LPRI lawyers those advocates and civil practice lawyers that possess a law degree from a recognized law school and that practice law on a regular and independent basis; therefore, excluding government lawyers and corporate counsel if necessary. In addition, because some of the factors only apply to advocates, ABA ROLI decided to expand and contract the universe of lawyers depending on the factor in question.

Methodology

The second main challenge faced in assessing the profession of lawyers is related to substance and means. Although ABA ROLI was able to borrow heavily from the JRI in terms of structure and process, there is a scarcity of research on legal reform. The limited research there is tends to concentrate on the judiciary, excluding other important components of the legal system, such as lawyers and prosecutors. According to democracy scholar Thomas Carothers, “[r]ule-of-law promoters tend to translate the rule of law into an institutional checklist, with primary emphasis on the judiciary.” CAROTHERS, PROMOTING THE RULE OF LAW ABROAD: THE KNOWLEDGE PROBLEM at 8, (CEIP Rule of Law Series, Working Paper No. 34, Jan. 2003). Moreover, as with the JRI, ABA
ROLI concluded that many factors related to the assessment of the lawyer’s profession are difficult to quantify and that “[r]eliance on subjective rather than objective criteria may be ... susceptible to criticism.” ABA/CEELI, JUDICIAL REFORM INDEX: MANUAL FOR JRI ASSESSORS at ii (revised ed. 2006).

In designing the LPRI methodology, ABA ROLI sought to address these issues and criticisms by including both subjective and objective criteria and by basing the criteria examined on fundamental international and regional standards, such as the United Nations Basic Principles on the Role of Lawyers; the International Bar Association’s Standards for the Independence of the Legal Professions, General Principles of the Legal Profession, and International Code of Ethics; the Union Internationale des Avocats’ Turin Principles of Professional Conduct for the Legal Profession in the 21st Century; the Council of Europe’s Recommendation R(2000)21 on the Freedom of Exercise of the Profession of Lawyer; and the Council of Bars and Law Societies of Europe’s Charter of Core Principles of the European Legal Profession and Code of Conduct for European Lawyers. In addition, ABA ROLI was able to rely on best practices ascertained through more than 10 years of its technical legal assistance experience reforming the profession of lawyers in emerging democracies.

Drawing on these sources, ABA ROLI compiled a series of 24 aspirational statements that indicate the development of an ethical, effective, and independent profession of lawyers. To assist assessors in evaluating these factors, ABA ROLI developed a manual that provides a guiding commentary of the factors and the international standards in which they are rooted, clarifies terminology, and provides flexible guidance on areas of inquiry. A particular effort was made to avoid giving higher regard to common law, as opposed to civil law concepts, related to the structure and function of the profession of lawyers. Thus, certain factors are included that a common law or a civil law lawyer may find somewhat unfamiliar, and it should be understood that the intention was to capture the best that leading legal traditions have to offer rather than model the LPRI on one country’s legal profession system. The main categories incorporated address professional freedoms and guarantees; education, training, and admission to the profession; conditions and standards of practice; legal services; and professional associations.

In creating the LPRI, ABA ROLI was able to build on its experience in creating the JRI and the newer CEDAW Assessment Tool in a number of ways. For example, the LPRI borrowed the JRI’s factor “scoring” mechanism and thus was able to avoid the difficult and controversial internal debate that occurred with the creation of the JRI. In short, the JRI, and now the LPRI, employ factor-specific qualitative evaluations; however, both assessment tools forego any attempt to provide an overall scoring of a country’s reform progress since attempts at overall scoring would be counterproductive. Each LPRI factor, or statement, is allocated one of three values: positive, neutral, or negative. These values only reflect the relationship of a factor statement to a country’s regulations and practices pertaining to its legal profession. Where the statement strongly corresponds to the reality in a given country, the country is given a “positive” score for that statement. However, if the statement is not at all representative of the conditions in that country, it is given a “negative.” If the conditions within the country correspond in some ways but not in others, it is given a “neutral.”

The results of the 24 separate evaluations are collected in a standardized format in each LPRI country assessment. As with the JRI, the PRI, and the LERI, there is the assessed correlation and a brief summary describing the basis for this conclusion following each factor. In addition, a more in-depth analysis is included, detailing the various issues involved. Cataloguing the data in this way facilitates its incorporation into a database, and it permits users to easily compare and contrast the performance of different countries in specific areas and – as LPRIs are updated –

1 CEDAW stands for the UN Convention on the Elimination of All Forms of Discrimination Against Women. ABA ROLI developed the CEDAW Tool in 2001-2002.
2 For more in-depth discussion on this matter, see C.M. Larkin, Judicial Independence and Democratization: A Theoretical and Conceptual Analysis, 44 Am. J. Comp. L. 605, 611 (1996).
within a given country over time. There are two main reasons for borrowing the JRI’s assessment process, “scoring,” and format. The first is simplicity. Building on the tested methodology of the JRI enabled a speedier development of the LPRI. The second is uniformity. Creating uniform formats enables ABA ROLI to cross-reference information generated by the LPRI into the existing body of JRI, PRI, and LERI information. This gives ABA ROLI the ability to provide a much more complete picture of legal reform in target countries.

Two areas of innovation that build on the JRI experience are the creation of a correlation committee and the use of informal focus groups. In order to provide greater consistency in correlating factors, ABA ROLI forms an ad hoc committee that includes the assessor, relevant Country Director and local staff, and select ABA ROLI D.C. staff. The concept behind the committee is to add a comparative perspective to the assessor’s country-specific experience and to provide a mechanism for consistent scoring across country assessments. The use of informal focus groups that consist of not only lawyers, but also judges, prosecutors, non-governmental organization (NGO) representatives, and other government officials is meant to help identify issues and increase the overall accuracy of the assessment.

The follow-on rounds of implementation of the LPRI will be conducted with several purposes in mind. First, they will provide an updated report on the legal professions in emerging democracies by highlighting significant legal, judicial, and even political developments and how these developments impact the independence and quality of legal profession. They will also identify the extent to which shortcomings identified by earlier LPRI assessments have been addressed by state authorities, legal professionals, and others. Periodic implementation of the LPRI assessments will record those areas where there has been backsliding, note where efforts to reform the profession of lawyers have stalled and have had little or no impact, and distinguish success stories and improvements in legal profession reform efforts. Finally, by conducting LPRI assessments on a regular basis, ABA ROLI will continue to serve as a source of timely information and analysis on the state of legal profession independence and reform in emerging democracies.

The overall report structure of follow-on LPRI reports as well as methodology will remain unchanged to allow for accurate historical analysis and reliable comparisons over time. These reports will evaluate all 24 LPRI factors. This process will involve the examination of all laws, normative acts and provisions, and other sources of authority that pertain to the organization and functioning of the legal profession, and will again use the key informant interview process, relying on the perspectives of several dozen or more lawyers, judges, NGO leaders, and journalists who have expertise and insight into the functioning of the lawyers. When conducting the follow-on assessments, particular attention will be given to those factors which received negative values in the prior LPRI assessment.

Each factor will again be assigned a correlation value of positive, neutral, or negative as part of the follow-on LPRI implementations. In addition, all follow-on assessment reports will also identify the nature of the change in the correlation or the trend since the previous assessment. This trend will be indicated in the Table of Factor Correlations that appears in the LPRI report’s front-matter and will also be noted in the conclusion box for each factor in the standardized LPRI report template. The following symbols will be used: ↑ (upward trend; improvement); ↓ (downward trend; backsliding); and ↔ (no change; little or no impact).

Social scientists might argue that some of the criteria would best be ascertained through public opinion polls or through more extensive interviews of lawyers and court personnel. Being sensitive to the potentially prohibitive cost and time constraints involved, ABA ROLI decided to structure these issues so that they could be effectively answered by limited questioning of a cross-section of lawyers, judges, journalists, and outside observers with detailed knowledge of the legal system. Overall, the LPRI is intended to be rapidly implemented by one or more legal specialists who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors.
The LPRI was designed to fulfill several functions. First, the LPRI provides governments and legal system stakeholders with a comprehensive assessment of the state of legal profession in the country, thus enabling them to prioritize and focus reform efforts. Second, ABA ROLI and other rule-of-law assistance providers will be able to use the LPRI’s results to design more effective programs that help improve the quality of independent legal representation. Third, the LPRI provides donor organizations, policymakers, NGOs, and international organizations with hard-to-find information on the structure, nature, and status of the legal profession in countries where the LPRI is implemented. Fourth, combined with the JRI, the PRI, and the LERI, the LPRI contributes to a comprehensive understanding of how the rule of law functions in practice. Finally, the LPRI results can also serve as a springboard for such local advocacy initiatives as public education campaigns about the role of lawyers in a democratic society, human rights issues, legislative drafting, and grassroots advocacy efforts to improve government compliance with internationally established standards for the legal profession.

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Assessment Team

The Kosovo LPRI 2009 assessment team was led by Dawn Schock, and included Kosovo Staff Attorney Kushtrim Tolaj. The team received strong support from other members of ABA ROLI’s staff in Kosovo, including Country Director Gina Schaar, former Kosovo Country Director David Sip, interim Country Director Kathy Ladun, Senior Staff Attorney Fatmir Kutlovci, and Staff Attorney Arben Isufi. Staff in Washington, D.C. also assisted, including Simon Conte, Director of the Research and Assessments Office, Olga Ruda, Research Coordinator, Laura Berger, Program Manager, and Megan Niedermeyer, Program Officer. Brie Allen, Legal Analyst for the Research and Assessments Office, served as editor and prepared the report for publication. The conclusions and analysis are based on interviews that were conducted in May 2009 and relevant documents that were reviewed at that time. Records of relevant authorities and a confidential list of individuals interviewed are on file in the Washington, D.C. office of ABA ROLI. The assessment team is extremely grateful for the time and assistance of those who agreed to be interviewed for this project.
Executive Summary

Brief Overview of the Results

The 2009 Legal Profession Reform Index (LPRI) assessment for Kosovo reflects a legal profession whose remarkable pace of development has slowed after a decade of steady progress. In addition, some systemic and institutional challenges remain, and are among Kosovo’s most entrenched and difficult problems. Of the 24 factors analyzed in this assessment, the totals of positive, neutral and negative factor correlations remained nearly constant compared to the 2007 distributions, with seven factors receiving positive correlations, thirteen receiving neutral correlations (one more than in the 2007 Kosovo LPRI), and four factors (those relating to the right of audience, minority and gender representation, alternative dispute resolution, and the role of the legal profession in law reform) receiving negative correlations (as compared to five negative correlations in the 2007 Kosovo LPRI). Overall, the correlations assigned for four factors (those relating to access to clients, preparation to practice law, resources and remuneration, and disciplinary procedure) improved since 2007, while three factors (those relating to lawyers’ right of audience, non-discriminatory admission to the profession, and the role of the profession in law reform) evinced a decline, in two cases from a neutral to a negative correlation and in one case from a positive to a neutral correlation.

Most notable among recent developments was Kosovo’s 2008 declaration of independence and adoption of a Constitution that guarantees the independence of the legal profession. These events were followed by a number of legislative enactments that hold considerable potential but are too new to have produced a significant effect on the legal profession as of yet. Despite positive developments since independence, Kosovo’s lawyers continue to labor within a justice system widely believed to be more responsive to unethical practices than to the skilled exercise of legal acumen. The low numbers of minorities and women admitted into the practice of law continues to be a challenge. Additionally, lawyers face significant challenges in having their cases heard by the courts. These issues are negatively impacted by serious difficulties within the judiciary, such as the process of vetting and reappointing of all Kosovo’s judges, which has led to a lack of oversight over the court system, and the lack of a formal judicial nomination and discipline process. Other challenges concern the government’s failure to offer the bar examination since January 2008, the almost total lack of alternative dispute resolution mechanisms, and the Kosovo Chamber of Advocates (KCA’s) failure to meet its potential to impact law reform by systematically and effectively drawing on the expertise of its members to influence the drafting and enactment of superior laws.

Positive Aspects Identified in the 2009 Kosovo LPRI

- Changes to legislation and practice hold the promise of increasing the independence and other rights of legal professionals. Legislatively, independence of the advocacy was strengthened by the explicit inclusion of that guarantee in the new Constitution and several reiterations of the guarantee in the new Law on the Bar. Further, the KCA also appears to be on the cusp of finally resolving a longstanding dispute with the Ministry of Trade and Industry, assuring Kosovo’s lawyers that they are subject to direct regulation only by the KCA. Lawyers’ access to detained clients has also improved markedly since the 2007 LPRI.
Lawyer training and resources continue to improve. Although not yet implemented in practice, **continuing legal education for advocates is mandated** for the first time in Kosovo by provisions in the new Law on the Bar. The University of Pristina’s **Law Faculty has undergone a rigorous accreditation process**, with the result that its **curriculum meets international standards** and includes more clinical course offerings. Finally, **lawyers’ access to at least the Albanian versions of Kosovo’s laws has improved** through the posting of resources to websites and the distribution of published sources.

**The KCA continues to mature as a professional organization** as evidenced by its development of a five-year strategic plan. It has made efforts to assist minority law school graduates in obtaining training as praktikants. It has also **developed and adopted an Ethics Code** for its members, which is considered to be one of the most progressive in the region. Additionally, the KCA has **developed and implemented a disciplinary system** that incorporates international standards and best practices in many aspects of its operation. The disciplinary system has continued to strengthen, as evidenced by the increase in the number of complaints against lawyers it has processed and resolved since its inception.

A **fully functioning Legal Aid Commission (LAC) was established in 2007**, charged with delivering legal assistance in civil cases. Additionally, **a recent MOU between the LAC and the KCA requires the KCA to provide legal assistance in civil cases.** These developments are beginning to show a promise for future improvements to the access to justice by Kosovo’s indigent population.

**Concerns Relating to Regulation of Legal Profession and Representation of Clients Before the Courts**

- The **appointment of ex officio counsel** for the defense of indigent criminal defendants is too **susceptible to manipulation by unethical authorities** who are motivated by the potential for personal gain rather than by the desire to appoint competent counsel. The **lack of a uniform and transparent set of guidelines and procedures for such appointments** allows the police, prosecutors, and courts to recommend or select for vulnerable defendants inferior counsel, including relatives and friends of the authorities, and those prepared to pay bribes. Officials may also use their influence to **interfere with already existing attorney-client relationships**, to the detriment of both the clients and their counsel and in violation of the law.

- The **widespread corruption in the court system** negatively impacts the practice of law, **causing some legal professionals to discontinue practice areas** because they believe success can be had only by paying bribes. Corruption also inspires a general sense that outcomes in cases are more dependent on the use of unethical practices than on the application of good lawyering skills.

- In an effort to rid the courts of corruption, the international community, with the cooperation of the Kosovo government, has undertaken a **two-year long process of vetting and reappointing all of Kosovo’s judges**. This process, while believed by many to be essential to the ultimate success of the courts, has **slowed the already backlogged courts even further**, to the point that many characterize the judicial system as nonfunctional and on the verge of collapse. Further, the process has resulted in at least a temporary failure of the Kosovo Judicial Council (KJC) to exercise its competencies. Most significantly, **the KJC has not filled any judicial vacancies** since the vetting process began and **has not processed complaints of judicial misconduct**. **Together, these problems within the judiciary have had a negative impact on lawyers’ ability to appear before the courts to represent their clients.**
Concerns Related to the Admission to the Profession

- Despite enacting a Law on the Bar that requires the government to conduct the bar examination four times a year, no examinations have been offered since January 2008, leading to a backlog of over 350 candidates waiting to sit for the examination. This failure results in delays in the professional development of these candidates, as well as deprives Kosovo of talented candidates to fill positions as judges, prosecutors, and advocates.

- The de facto segregation of Kosovo society along ethnic lines continues not only to be reflected in the representation of minorities among law faculty students, praktikants, and candidates sitting for the bar examination, but also appears to be increasing and becoming more entrenched. The student bodies of the law campuses of the University of Pristina in Mitrovica and Pristina are, for all practical purposes, completely segregated along ethnic lines. The situation is also negatively impacted by the continued closure of the courts in the Mitrovica district, which limits the opportunities for minority candidates to fulfill the apprenticeship prerequisites for admission. Additionally, there has been a decline in the percentage of female law students in recent years.

Other Concerns Identified in the 2009 Kosovo LPRI

- The KCA has not yet devised and implemented an effective program for influencing law reform. Despite the legal expertise of its members, the KCA has been largely ineffectual in lobbying the government for positive legal change. The most pronounced example of this is the KCA’s failure to persuade the Assembly to amend a section of the new Law on the Bar’s that conflicts with the KCA’s existing disciplinary system and has the effect of weakening the current disciplinary practices.

- A significant portion of Kosovo’s legal practitioners, including non-advocate lawyers who practice law in governmental institutions and agencies, as in-house counsel to corporations, and as staff attorneys for NGOs, are outside the purview of the Ethics Code and lawyer disciplinary system. Additionally, the existing disciplinary system is weakened by a failure to make public the results of disciplinary proceedings.

- Despite recent improvements in legal education in Kosovo, the curriculum at the University of Pristina Law Faculty does not mandate ethics training for its students, and there are concerns over class size, the need for even more practical skills training, and the lack of transparency in examinations and grading. Additionally, the law faculty is under-resourced and housed in a substandard facility.

- Due primarily to a lack of resources, the courts are unable to provide high-quality, timely translations for minority parties and their counsel. A lack of support staff and copy machines in the prosecutors’ offices also means that defense counsel’s legal right to access relevant case materials is often delayed or denied altogether.
Kosovo Background

The Republic of Kosovo, the world’s newest independent state, was formally created in February 2008, when the Assembly of Kosovo unanimously passed a declaration announcing its independence from Serbia. As of the writing of this assessment, 60 United Nations [hereinafter UN] member states, including the United States and a majority of European Union [hereinafter EU] member states, as well as Taiwan, have formally recognized Kosovo’s independence. Despite its declaration of independence and adoption of a new Constitution in June 2008, Kosovo does not yet enjoy full political autonomy, but is subject to external oversight by the recently commissioned European Union Rule of Law Mission in Kosovo [hereinafter EULEX]. Likewise, Kosovo’s security at this time is ensured through the continued military presence of the NATO Kosovo Force [hereinafter KFOR].

Kosovo’s present status can be understood only within the broader context of the dissolution of the Socialist Federal Republic of Yugoslavia [hereinafter SFRY] during the 1980s and 1990s. For most of the twentieth century, Kosovo was an administrative region of Yugoslavia, as part of the territory of South Serbia within the monarchical Yugoslavia that existed between the two World Wars, or as a province of the Serbian Republic, which was one of the constituent entities within the SFRY federation created in 1944. Under the 1974 SFRY Constitution, Kosovo enjoyed the status of an “autonomous province” within the territory of the Serbian Socialist Republic, with some attributes of limited sovereignty, such as power over its own police, courts, and civil defense. However, following Serbian President Slobodan Milosevic’s rise to power, Kosovo’s autonomy became severely restricted. In 1989, the over 80% ethnic Albanian majority in Kosovo was placed under martial law. War broke out in Serbian-controlled Kosovo in 1997-1998, as the Kosovo Liberation Army conducted a political and military struggle for an independent Kosovo. Following a period of bitter local conflict and periods of international negotiations, NATO forces began an air war against Yugoslavia in March 1999. The 78-day war ended in June 1999, when Yugoslav forces withdrew from Kosovo.

After the cessation of major hostilities and continuing through to its declaration of independence in 2008, Kosovo was administered as a UN Protectorate with an international civilian administration and military security presence as authorized by the UN. See generally UN SECURITY COUNCIL RESOLUTION 1244 (June 10, 1999) [hereinafter RESOLUTION 1244]. The international civilian administration, known as the United Nations Mission in Kosovo [hereinafter UNMIK], was headed by the Special Representative of the UN Secretary General [hereinafter SRSG] and was charged with such functions as policing, defense, foreign affairs, and certain justice matters, until the status of Kosovo could be resolved. See RESOLUTION 1244; see also generally UNMIK REGULATION No. 2001/19 ON A CONSTITUTIONAL FRAMEWORK FOR PROVISIONAL SELF-GOVERNMENT IN KOSOVO (May 15, 2001, as amended by UNMIK REGULATION No. 2002/9 (May 3, 2002)). The international security presence was separately operated through KFOR, whose troops and international personnel were not subject to the authority of UNMIK and enjoyed immunity from the Kosovo justice system. In a major initiative to resolve Kosovo’s status during this period, UN Special Envoy Martti Ahtisaari devised a step-by-step proposal for Kosovo’s independence. REPORT OF THE SPECIAL ENVOY OF THE SECRETARY-GENERAL ON KOSOVO’S FUTURE STATUS (S/2007/168) AND THE COMPREHENSIVE PROPOSAL FOR THE KOSOVO STATUS SETTLEMENT (S/2007/168/Add.1) (March 26, 2007) [hereinafter AHTISAARI PLAN]. Because that plan was opposed in the UN Security Council by Russia, the UN Secretary-General Ban Ki-moon proceeded instead with a different plan, entailing that the UN maintain a position of strict neutrality on the question of Kosovo’s status. At the request of Serbia, a UN General Assembly resolution adopted on October 8, 2008 requested that the International Court of Justice issue an opinion on the legality of Kosovo’s unilaterally proclaimed independence. UN SECURITY COUNCIL RESOLUTION NO. 63/6 (October 8, 2008). As of the date of drafting of this report, the Opinion had not yet been issued.
Kosovo’s declaration of independence has been accompanied by a change in its international oversight arrangement. The EU has established the EULEX, which is a deployment of 2,000 EU police and civilian resources in continuation of the UNMIK presence in Kosovo envisaged by Resolution 1244. See EU COUNCIL JOINT ACTION 2008/124/CFSP ON THE EUROPEAN UNION RULE OF LAW MISSION IN KOSOVO, (Feb. 4, 2008); see also EU COUNCIL JOINT ACTION 2009/445/CFSP. As a result, UNMIK has downsized its mission and turned many of its operations over to EULEX. But because Resolution 1244 can be derogated only by a new UN Security Council resolution and Russia opposes any such resolution, as of the drafting of this report, UNMIK is remaining indefinitely in Kosovo as a secondary international mission, with its reserved powers transferred to the Government of the Republic of Kosovo and EULEX. Like the UN, the EU as a whole has refrained from taking a position on the status of Kosovo. As before, KFOR continues to operate separate and apart from EULEX’s administration.

Legal Context

The Constitution of Kosovo, which was ratified on April 9, 2008 and entered into force on June 15, 2008, proclaims the Republic of Kosovo as a parliamentary representative democracy. CONSTITUTION OF THE REPUBLIC OF KOSOVO art. 1 [hereinafter CONST.]. Governance is based on the principle of separation of powers and checks and balances. Id. art. 4(1).

The executive power is exercised by the Government of Kosovo led by the Prime Minister, with the President as the head of state. Id. art. 92(1). The President is elected by the Kosovo Assembly. Id. arts. 65(7), 86(1). The President is charged with representing Kosovo abroad and overseeing the implementation of foreign policy; promulgating laws approved by the Assembly; and appointing the Prime Minister. Upon the recommendation of the Kosovo Judicial Council [hereinafter KJC], the President appoints and dismisses all judges, including the president of the Supreme Court. Upon the recommendation of the Kosovo Prosecutorial Council [hereinafter KPC], the President also appoints and dismisses prosecutors. Id. art. 84(17).

Legislative power is exercised by the single-chamber, 120-member Kosovo Assembly. Id. art. 64(1). Members are elected proportionally, every three years, with representation based on the share of votes they receive. Id. arts. 64(1), 66(1). Twenty seats are reserved for representatives of ethnic minorities, including ten seats reserved for Kosovo’s ethnic Serbs. Id. art. 64(2). The Assembly is empowered to pass laws; amend the Constitution; ratify international treaties; elect and dismiss the President of Kosovo; elect members of the KJC and the KPC, and nominate Constitutional Court judges. Id. arts. 65(1)-(4), 86(1).

By law, the judiciary is independent and impartial. Id. art. 102(2). The judiciary is comprised of several different levels of courts: minor offenses courts, municipal courts, district courts, a commercial court, a Supreme Court, and a Constitutional Court, which was created in 2008 and constituted in 2009. ABA ROLI, 2007 KOSOVO JUDICIAL REFORM INDEX, Vol. III; see also LAW ON THE CONSTITUTIONAL COURT, Law No. 03/L-121 (Dec. 16, 2008). The President of Kosovo appoints, reappoints, and dismisses judges, at the recommendation of the KJC. CONST. art. 104(1). Judges are initially appointed for three-year terms and may then be reappointed permanently until retirement age. They may be removed from their positions for criminal offenses or neglect of their duties. Id. arts. 104(4), 105(1). The Supreme Court is the highest court in regards to non-constitutional questions. Id. art. 103. At least three Supreme Court judges must be ethnic minorities, and the composition of the judiciary must generally reflect the ethnic and gender composition of Kosovo. Id. art. 104(2). The KJC is charged with administering the courts, developing the judiciary’s budget, and assigning judges to courts throughout the country. The KJC has 13 members, including five elected by judges and eight elected by the Kosovo Assembly. Of the eight members elected by the Assembly, at least one must be a member of the Kosovo Chamber of Advocates [hereinafter KCA] and four must be selected by minority Assembly delegates, including two selected specifically by Kosovo’s ethnic Serbs. Id. art. 108(4), (6).
The Constitution also contains transitional provisions that recognize the Ahtisaari Plan and mandate cooperation with the international civilian authorities envisioned there, including an International Civilian Office [hereinafter ICO]. CONST. arts. 146-147. KFOR is also recognized in the Constitution. Id. arts. 126, 153.

The laws applicable in Kosovo are a combination of laws passed by the Kosovo Assembly, certain UNMIK regulations and subsidiary instruments, and laws that were in force in Kosovo on March 22, 1989 – the last day on which Kosovo held autonomous status within the SFRY. The latter body of law includes the federal provisions of the former SFY, Kosovo’s former provincial laws, as well as some provisions of the law of the former Socialist Republic of Serbia. Laws promulgated in Kosovo after March 22, 1989 may be applied only if they address a situation not covered by a prior law and are nondiscriminatory. UNMIK regulations and subsidiary instruments take precedence over any conflicting prior laws. UNMIK REGULATION NO. 1999/24 ON THE LAW APPLICABLE IN KOSOVO § 1 (Dec. 12, 1999).

In addition, the Constitution incorporates by reference and makes directly applicable in Kosovo several international human rights instruments, including the Universal Declaration on Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms [hereinafter ECHR] and its protocols, the International Covenant on Civil and Political Rights and its protocols, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. CONST. art. 22. In case of a conflict between these international agreements and instruments and domestic laws or acts of public institutions, the international documents have priority.

**Historical Context**

The current status of the legal profession in Kosovo can be best understood in the context of the country’s rapid institutional and legal evolution over the past several decades. During the period of Kosovo’s autonomous province status within Yugoslavia, Kosovar Albanians fully participated in the legal profession as judges, prosecutors, advocates, law professors, and other legal professionals. A Law on Advocacy and Other Legal Assistance provided for a self-governing KCA based in Pristina, which registered qualifying advocates. See generally LAW ON ADVOCACY AND OTHER LEGAL ASSISTANCE (Nov. 22, 1979) [hereinafter 1979 LAW ON ADVOCACY]. But this relative autonomy ended in 1989 when Serbia assumed control of many of Kosovo’s autonomous institutions, including its judicial system, and proceeded to expel vast numbers of Kosovar Albanians from the legal profession.

For the entire decade of the 1990s, Kosovar Albanians were frozen out of the legal profession, with negative impacts that are still reflected today. Ethnic Albanian advocates were deregistered, judges and prosecutors were dismissed, law professors were prohibited from teaching, aspiring lawyers were banned from the “official” law school at the University of Pristina, qualifying applicants were not permitted to take the bar exam (which the Serbian authorities ceased administering by 1992), and other legal professionals were denied the opportunity to practice their professions. Members of Kosovo’s Albanian community established an illegal shadow government and a parallel education system funded by a 3% “tax” on personal income of Kosovar Albanians within and outside Kosovo. This system included a law faculty that operated out of private houses in Pristina, providing legal education to ethnic Albanian students on a clandestine basis. It is acknowledged that this home-based education was substandard at best. The credentials awarded by this underground law school were not, of course, recognized by the Serbian authorities, and graduates were unable to take the bar exam and thus become advocates.

By the time the war ended in 1999, many capable Kosovar Albanian lawyers had fled, while those who remained lacked recent experience or access to current developments in laws and practices.
Thus, competent legal professional were severely lacking. Previously registered advocates had been educated and practiced during the Socialist era, and were not adequately prepared for work in the new democracy and market economy; few had direct knowledge of modern business laws and international human rights standards. The people needed to run the institutions of the profession – the KCA, the law school, the courts – had to be recruited, trained, and supervised by persons who, in many cases, were only slightly more qualified. Institutional memory had disappeared or become stale, and physical facilities had been damaged from war or allowed to deteriorate. The importance and effect of the deprivations of the 1990s cannot be overstated; Kosovo lost an entire generation of lawyers and other legal professionals, as well as their vital support systems.

Overview of the Legal Profession

As discussed in this assessment, the Kosovo legal profession is currently comprised of the following categories of practitioners:

- **Advocates**, who are registered members of the KCA and have obtained a license to practice law, which grants them the right to represent clients in any proceeding before any forum in Kosovo, including the criminal courts. To become licensed, an individual must earn a Master of Laws degree, serve a one or two year internship as a **praktikant**, and pass the bar examination.

- **Jurists (non-advocate lawyers)**, who have graduated with at least a Bachelor’s degree in law and serve as advisors to governmental institutions and agencies, in-house counsel to corporations, and staff attorneys for NGOs without having to undergo any further education or licensing. A non-advocate lawyer, however, cannot represent a client in a criminal court and, generally, cannot represent clients other than his/her employer in civil and administrative matters – unless he/she is granted the status of a power of attorney lawyer by the client.

- **Prosecutors**, who oversee the investigation and prosecution of criminal suspects and defendants. As with judges, until recently, anyone who earned a Master of Laws degree, served a one or two year internship as a **praktikant**, and passed the bar examination could become a prosecutor. Now all future prosecutors must complete additional training and testing requirements.

- **Judges**, who serve on municipal and district court, the Commercial Court, the minor offenses courts, and the Kosovo Supreme Court, as well as on the new Constitutional Court. Until recently, anyone who earned a Master of Laws degree, served a one or two year internship as a **praktikant**, and passed the bar examination could be appointed as a judge. Now all non-Constitutional Court judicial candidates also must complete additional training and testing requirements.

- **Praktikants**, who are Master of Laws graduates and are undergoing a one or two year training or internship in a court, prosecutor’s office, advocate’s office, or other office that implements laws, in fulfillment of the requirements to sit for the bar examination. While under supervision, a **praktikant** can act as an advocate in certain circumstances and is then bound by the same ethical duties as an advocate. Following service as a **praktikant**, many law school graduates go on to become judges, prosecutors, or advocates.

- **Notaries**, who notarize deeds, reduce parties’ agreements to writing, and certify the signatures of those who sign transactional documents. Any jurist who has practiced in a legal field for three years and passes a qualification examination may be appointed a notary.
Additionally, the practice of law in Kosovo is not legally limited to those with law degrees or, indeed, to legal professionals. Kosovo’s civil procedure legislation allows litigants to empower anyone of legal capacity to represent them in civil court proceedings. LAW ON CONTESTED PROCEDURES art. 86.1 (Law No. 03/L-006, June 30, 2008) [hereinafter LAW ON CONTESTED PROC.]. These power of attorney lawyers are not required to have any specific training and are widely used in Kosovo.

The scope of this assessment is generally limited to advocates. While jurists and power of attorney lawyers could also fall within the substance of this assessment, the fact that they are not registered and that no statistics or records of their participation in the practice of law exists makes an overall assessment of those groups virtually impossible. However, several LPRI factors, such as those pertaining to legal education, can be applied to the broader categories of legal professionals as outlined above.

Organizations of Legal Professionals

KCA

The KCA is a registered non-governmental organization with an established organizational structure that has a primary mandate of maintaining the independence of the legal profession as guaranteed in the Constitution. CONST. art. 111(1); LAW OF THE REPUBLIC OF KOSOVO ON THE BAR art. 1(1) (Law No. 03/L-117, Feb. 12, 2009) [hereinafter LAW ON THE BAR]. Reconstituted in 2001 after the war, the organization has grown from 300 members in January 2004 to over 500 members today. Anyone wanting to fully represent clients before Kosovo’s forums in all substantive matters, including criminal matters, must register with the KCA. The KCA admits advocates to the profession; administers a three-tiered advocate disciplinary system; administers a praktikant training program; provides continuing legal education [hereinafter CLE] for its members; cooperates with the Legal Aid Commission [hereinafter LAC], the courts, and prosecutors in providing counsel for the indigent; administers programs to increase the number of women and minority KCA members; cooperates with the University of Pristina Law Faculty in conducting clinical class offerings; and conducts public awareness programs, including the occasional provision of free legal advice. The KCA is funded through licensing fees, membership dues, and international donations.

Other Organizations

Various branches of the legal profession have established their own membership organizations, such as the Kosovo Judges Association [hereinafter KJA], the Kosovo Public Prosecutors Association [hereinafter KPPA], and other NGOs pursuing the interests of their members and other objectives. Unlike the KCA, these are voluntary groups that are funded by a combination of membership dues, governmental assistance, and international donor contributions. Additionally, a Women Law Students’ Association was started in May 2009 at the University of Pristina, with the support of ABA ROLI. There are also the Kosovo Association of Jurists and the Kosovo Young Lawyers’ Association, both of which are voluntary organizations.
Kosovo LPRI 2009 Analysis

While the correlations drawn in this exercise may serve to give a sense of the relative status of certain issues, ABA ROLI emphasizes that the factor correlations and conclusions possess their greatest utility when viewed in conjunction with the underlying analysis and compared to the LPRIIs published in Kosovo in 2004 and 2007. ABA ROLI considers the relative significance of particular correlations to be a topic warranting further study. In this regard, ABA ROLI invites comments and information that would enable it to develop better or more detailed responses in future LPRI assessments. ABA ROLI views the LPRI assessment process as part of an ongoing effort to monitor and evaluate reform efforts.

Table of Factor Correlations

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<tr>
<td>Factor 1 Ability to Practice Law Freely</td>
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<td>Factor 5 Equality of Arms</td>
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<td>Factor 6 Right of Audience</td>
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I. Professional Freedoms and Guarantees

Factor 1: Ability to Practice Law Freely

Lawyers are able to practice without improper interference, intimidation, or sanction when acting in accordance with the standards of the profession.

<table>
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<tr>
<th>Conclusion</th>
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<tr>
<td>Recent legislative enactments, including a new Constitution, appear to strengthen guarantees of the professional independence of advocates. However, uniform and widespread reports of improprieties in the appointment of <em>ex officio</em> defense counsel, other inappropriate conduct, and institutional problems continue to undermine the independent and free practice of law in Kosovo.</td>
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Analysis/Background:

Until February 2009, the legal profession was primarily governed by the 1979 Law on Advocacy. That law explicitly mentioned the independence of individual advocates in providing legal services and the independence of the bar. 1979 LAW ON ADVOCACY arts. 4-7. The general acts of the KCA, however, remained under the supervision of the Kosovo government, which had the power to stay the execution of a KCA general act if it contradicted the law as interpreted by the Constitutional Court. *Id.* art. 11.

As of June 2008, the guarantees of professional independence appear to have been strengthened by explicit inclusion in the new Constitution, which defines advocacy as an independent profession that provides services “in the manner provided by law.” CONST. art. 111(1). The new Law on the Bar, enacted in 2009, has replaced the 1979 Law on Advocacy as the primary law that governs the delivery of legal services by advocates. It has a number of provisions explicitly addressing the independence and freedom of advocates. In particular, the bar is deemed a free and independent occupation. LAW ON THE BAR art. 1. This independence is safeguarded in a number of specific ways, namely, through a right to engage in a free and independent occupation, to independently provide legal assistance, and to work through the KCA, which has the right to regulate the practice of law through the promulgation of normative acts. A prospective advocate completes his/her application for admission into the advocacy profession by a solemn oath, a portion of which includes the promise to “exercise the profession of an advocate . . . independently.” *Id.* art. 7.

The limitations on the KCA’s independence established in the prior law on advocacy have been retained in the new law. The new Law on the Bar reaffirms the government’s power to suspend application of a KCA act that conflicts with the law, pending a Supreme Court decision. *Id.* art. 28(1). However, in contrast with the 1979 Law on Advocacy, this power is now expressly limited to guaranteeing the KCA’s adherence to the law and legislation and “must not undermine the autonomy of the Chamber of Advocates.” LAW ON THE BAR art. 28(1); 1979 LAW ON ADVOCACY art. 11(1). In addition, the KCA is now accountable to the Assembly of Kosovo, the Government of Kosovo, and other governmental institutions. LAW ON THE BAR art. 28(3).

Both the Law on the Bar and the 1979 Law on Advocacy also contain limitations on an advocate’s independence, which are in accordance with international standards and best practices. Kosovo advocates are thus subject to reasonable restrictions against disseminating confidential information, accepting representations that constitute conflicts of interest, and improperly discriminating against clients. *Id.* art. 11. Additionally, they are subject to the KCA Code of Professional Ethics of Advocates, violations of which subject an advocate to disciplinary action by the KCA’s Disciplinary Committees. See generally KCA CODE OF PROFESSIONAL ETHICS OF ADVOCATES (as amended July 7, 2007) [hereinafter ETHICS CODE]; see also Statute of the Kosovo
The assessment team did not receive any reports of these laws being applied improperly to intimidate or interfere with advocates’ legitimate performance of their professional duties.

Other laws place reasonable restrictions on lawyers’ independence, primarily for the purpose of ensuring orderly and efficient court proceedings. Thus, judges are empowered in both criminal and civil proceedings to warn, fine, and/or have lawyers removed from proceedings if they fail to conform their behavior to court orders. **Code of Criminal Procedure of the Republic of Kosovo** art. 335(1)(2) [hereinafter **Crim. Proc. Code**] (Law No. 03/L-003, promulgated by UNMIK Regulation 2003/26, as amended Nov. 6, 2008); **Law on Contested Proc.** arts. 307-310. Punishments under these provisions are subject to the lawyer’s right of immediate appeal; they may also be revoked by the trial panel. In criminal matters, the court may deny an advocate who continues to disrupt proceedings the right to represent or defend his/her client, in which case the court must also inform the KCA of the advocate’s transgressions. **Crim. Proc. Code** arts. 336-337. One recent case reported on in the press provides an example of the potential judicial misuse of these sanction powers. In that case, which involved the implication that the court itself was involved in a corrupt property transaction, a judge threatened to sanction an advocate for purportedly providing false information (information that implicated the court in the crime) to the press. Once the story was published, however, the court relented. **Koha Ditore Newspaper** (April 24, 2008). No other instances of the courts’ misusing these laws were cited by interviewees.

The assessment team received reports of an on-going dispute, discussed in a previous LPRI assessment, that at least some in the bar believe reflects an attempt by the Ministry of Trade and Industry [hereinafter MTI] to improperly interfere with the KCA’s independent licensing and oversight of advocates. **ABA ROLI, Legal Profession Reform Index for Kosovo, Volume II** at 14 (April 2007) [hereinafter 2007 Kosovo LPRI]. This dispute appears to be nearing final resolution. The conflict centers on the MTI’s insistence that advocates’ practices be registered as businesses. The MTI claims its registration requirement is intended to fulfill its duty to obtain appropriate information for the purpose of levying taxes. Some advocates, however, assert that the MTI will use the information it obtains improperly or will seek to expand its mandate so as to interfere with advocates’ duties of confidentiality. While the dispute over this practice is not yet settled, it was reported that the KCA reached a turning point in resolving this dispute in December 2008, when the deputy Prime Minister met with KCA representatives and affirmed the position taken in the Constitution that all branches of the judicial system, including the bar, should function independently, and no license other than that issued by the KCA should be required for advocates. In February 2009, the KCA met with the Minister and Permanent Secretary of MTI, who acknowledged the deputy Prime Minister’s position. A draft memorandum of understanding [hereinafter MOU] to reflect the parties’ agreement was subsequently prepared and was submitted to the MTI in April 2009 for its review. The draft MOU provides a mechanism for the KCA to directly provide relevant data on advocates to the Kosovo Tax Administration, without the involvement of the MTI. However, in the meantime, at least one advocate has been fined by the MTI for failure to register. The advocate challenged that fine in court, and the case has been pending for two years and remains unresolved.

The most serious and widespread indication of improper interference with advocates’ free and independent representation of their clients stems from the procedures, or the lack of procedures, for the appointment of *ex officio* criminal defense counsel. Criminal detainees and defendants are guaranteed the right to competent counsel. **Law on the Bar** art. 17(2); **see also Crim. Proc. Code** art. 74. In practice, counsel is usually selected by the police, the procuracy, or the courts, which are all obliged to contact a defense advocate when requested by a detainee, prisoner, or criminal defendant, and this is considered a right held by the advocate as well. **Law on the Bar** art. 17(2). Once appointed, counsel can be dismissed only for specifically outlined reasons. **Code of Criminal Proc.** art. 75.
Despite these legal protections, it was widely reported to the assessment team that the entities responsible for appointing counsel routinely and improperly interfere with existing advocate/client relationships, misrepresent advocates’ competence to unsophisticated clients, and otherwise abuse their powers. In particular, most of the advocates interviewed by the assessment team, and a significant number of other justice system actors, reported improprieties in the appointment of *ex officio* counsel that amount to direct and indirect interference in a criminal defense counsel’s representation of his/her client. These allegations of impropriety are threefold. First, the police, prosecutors, and court officials will contact or influence a defendant’s initial choice of counsel based on improper criteria, such as recommending less than competent or zealous counsel in order to hasten the processing of a case and/or predetermine the result, or calling on family or friends for the appointments rather than supporting the appointment of the most skilled advocate. Second, officials will promote the “serial” appointment of *ex officio* counsel: the police recommending the appointment of one counsel, the prosecutor urging the appointment of a different advocate, and the court recommending the appointment of yet another advocate, in violation of the law and to the potential detriment of the defendant, who loses continuity of knowledge and strategy in his/her defense, along with incurring the delays attendant to these reappointments. Finally, officials will interfere even in privately hired advocate/client relationships, by suggesting to the defendant that another advocate might be a better choice.

The alleged motivations underlying these improprieties are that the police, prosecutors, and courts are more concerned with getting a conviction and/or processing the case quickly than in guaranteeing the defendant a skilled advocate; that the officials favor advocates who are family and friends; and that the appointing officials are responding to bribes. Indeed, it is widely believed that certain advocates routinely pay the police, prosecutors, and judges to appoint them to cases. The purported evidence of these improprieties is the fact that the same advocates repeatedly receive appointments, even though the KCA has a procedure in each region for randomly selecting advocates to serve as appointed defense counsel. According to that procedure, each regional KCA president prepares a list of advocates available for *ex officio* appointment and submits that list for use by the appointing officials, who are supposed to select advocates at random.

Officials counter these allegations by asserting that it is difficult to find advocates to take the *ex officio* cases and that repeat appointments are simply a reflection of which advocates are most consistently available. Additionally, at least one president of a district court stated that he had never received from the KCA a list of advocates available to take *ex officio* appointments. And in the District Court in Pristina, the court president must approve *ex officio* appointments as a measure to guard against favoritism or unfairness in appointments.

Other complaints of judicial corruption and dysfunction were voiced, representing less direct but equally debilitating interferences with a lawyer’s ability to freely practice. Many interviewees commented that regardless of the level of professional skills brought to bear on a problem by even a highly skilled lawyer, participants in the present justice system will be ill-served given judicial corruption, poorly trained judges, outside political influences, and poor judicial disciplinary systems. Allegations of corruption included statements that payments can be made to judges and prosecutors in order to move cases more quickly toward resolution and to guarantee a result. One lawyer stated that he no longer handles inheritance cases because they take at least a year to resolve unless a bribe is paid, in which case they can be resolved in as little as one month. Another lawyer estimated that more than half of judges accept bribes. Many of the interviewees described networks of intermediaries who either help judges directly solicit bribes or are known to be conduits for bribes to make their way to judges. In some cases, lawyers pay these intermediaries to assure appointments, while in other cases judges dispatch intermediaries to the families of defendants to solicit bribes. It should be noted that in its most recent report dated July 2008, the Kosovo Ombudsperson’s Office highlighted continued accounts of “widespread practices of corruption within the judiciary.”

*REPUBLIC OF KOSOVO OMBUDSMAN INSTITUTION EIGHT ANNUAL REPORT, 2007-2008 at 21.*
While suggesting that corruption and improper influence was commonplace, most interviewees were unable to supply specific facts or examples of such conduct. But the belief in a significant corrupt influence in the justice system was so widely and uniformly expressed during the assessment that, even if untrue, the strength of the perception alone is debilitating. The assessment team, though, was supplied with a very credible account of a senior judge intervening in a pending criminal case to change another judge’s order, thus allowing a defendant to be released from detention pending an appeal. The defendant was reportedly represented by a friend of the senior judge.

While not directly related to improper interference, intimidation, or sanctions on lawyers, the ability to practice law freely has also been negatively impacted by the institutional changes and reforms that have occurred within the judiciary since independence. In an effort to rid the courts of corruption and improve competence, the international community, with the cooperation of the Kosovo government, has undertaken a two-year long process of vetting and reappointing all of Kosovo’s judges. This process, while believed by many to be essential to the ultimate success of the courts, has contributed to already serious backlogs within the court system, to the point where interviewees frequently expressed concern that the judicial system did not function and was in danger of collapsing. Additionally, since the vetting process began, the KJC has not filled any judicial vacancies or processed complaints of judicial misconduct. See Factor 6 for more details on this subject and its effect on lawyers’ right of audience.

**Factor 2: Professional Immunity**

*Lawyers are not identified with their clients or the clients’ causes and enjoy immunity for statements made in good faith on behalf of their clients during a proceeding.*

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<th>Conclusion</th>
<th>Correlation: Positive</th>
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<tr>
<td>Kosovo lawyers are not identified by official sources with their clients or their clients’ causes, although instances were reported of members of the public mistreating and threatening lawyers based on their representation of unpopular clients. Lawyers enjoy immunity from criminal and civil liability for statements made in good faith on behalf of their clients during court proceedings.</td>
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**Analysis/Background:**

Although no law contains any explicit provisions with regard to the issue, no indication was given to the assessment team that Kosovo’s lawyers are identified with controversial clients or are mistreated as a result of identification by any official source such as courts, prosecutors, police, governmental agencies, or other lawyers. There are instances, though, when the public or opposing parties impacted by outcomes in cases in which lawyers participated disparaged or threatened lawyers. For example, lawyers who have enforced trademarks, with the result that certain local businesses have been shut down, have been criticized and threatened by the employees of those businesses. And in a recent case reported in the press, a lawyer representing a client alleging a fraudulent property scheme was threatened by unidentified sources presumed to be aligned with the opposing parties. *Koha Ditore Newspaper* (April 24, 2008).

Likewise, no indication was given that lawyers lack either criminal or civil immunity for statements made in good faith on behalf of their clients during proceedings. The Criminal Code excepts from punishment any “insult” delivered in the exercise of one’s official duties or delivered with no intent to disparage. *Criminal Code of the Republic of Kosovo* art. 187 (Law No. 03/L-002, promulgated by UNMIK Regulation 2003/25, as amended Nov. 6, 2008) [hereinafter Criminal Code]. It also excepts from punishment any allegedly defamatory statement that is in fact true or
made based on a well-founded belief that it was true. id. art. 188. Similarly, there is no civil liability for alleged defamatory statements “made in the course of any stage of pre-trial processes, and judicial or administrative proceedings, by anyone directly involved in that proceeding,” unless the statement is “totally unrelated” to the proceeding. CIVIL LAW AGAINST DEFAMATION AND INSULT art. 9(c) (Law No. 02/L-65, promulgated by UNMIK DL-058-2008, June 15, 2006).

Until February 2009, advocates were also protected by a provision that prohibited their detention for committing a criminal offense in the course of exercising their duties “without the preliminary permission of the court that is handling the same trial.” 1979 LAW ON ADVOCACY art. 21. No similar provision is contained in the new Law on the Bar. The reasons for the exclusion of this immunity provision from the new law are not clear, but could be based on an analysis that it is redundant of the protections available under the Criminal Code and the Civil Defamation and Insult Law. When questioned about the current state of the law, advocates did not express concern that the immunity provisions were substantially weakened, nor has there been any indication that advocates will be treated differently under the Law on the Bar than under the 1979 Law on Advocacy.

**Factor 3: Access to Clients**

*Lawyers have access to clients, especially those deprived of their liberty, and are provided adequate time and facilities for communications and preparation of a defense.*

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<th>Conclusion</th>
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<tr>
<td>Lawyers are provided access to their detained and incarcerated clients and generally have adequate time and facilities for confidential communications, sufficient for the preparation of a defense.</td>
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**Analysis/Background:**

Kosovo’s laws protect advocates’ right to access to their detained clients. Defense counsel is explicitly guaranteed the right to communicate with clients confidentially, both orally and in writing. CRIM. PROC. CODE art. 77(2). In an improvement over the 1979 Law on Advocacy, which made no mention of this right, lawyers now have the right to meet with their detained clients in private, with no time restrictions. LAW ON THE BAR art. 17.

The right to access detained clients is also inferred by other legal instruments that protect the defendant’s right to counsel. For example, the criminally accused is guaranteed the minimum rights of adequate time and facilities for the preparation of a defense. CONST. art. 30(3); CRIM. PROC. CODE art. 12(1). Similarly, the defendant has the right to counsel during all stages of proceedings (CRIM. PROC. CODE art. 69(1)), including specific protections for this right from the time of arrest (id. arts. 12(6), 14(1)[2], 213(1)-(2), 214(1), 214(4)); before and during every examination (id. arts. 69(2), 218(1), 231(2)[4], 231(3), 269(3)); during the confirmation hearing (id. art. 314(1)-(2)); and during the main trial (id. arts. 321(1)-(2), 342). Additionally, the defendant must be informed of his/her right to defense counsel at various stages of proceedings, including: at first examination (id. arts. 12(5), 269(3)); before every subsequent examination (id. arts. 69(2), 231(2)[4]); when deprived of liberty (id. arts. 14(1)[2], 214(4), 270(6), 279(5)[1], 282(2)); at the beginning of the confirmation hearing (id. art. 314(1)); in the summons to appear at the main trial (id. art. 321(2)); and at the main trial (d. art. 356(2)[3]). Finally, the Kosovo Constitution expressly incorporates the guarantees contained in the ECHR. CONST. art. 22(2). Among others, this includes the rights of persons charged with a crime to have adequate time and facilities to prepare a defense, and to defend himself/herself in person or through legal assistance of his/her own choosing, including free legal assistance if the interests of justice so require. ECHR art. 6.3.
These statutory mandates are generally met in practice, and the assessment team received no complaints of an inability to meet with detained or incarcerated clients, nor any indication that time limitations are ever placed on such meetings. A small number of lawyers did complain that criminal detainees are questioned by police before being given the opportunity to consult with counsel, in violation of the law; however, other interviewees stated that was not the case in their regions. It was noted that most prisons have facilities to accommodate advocate/client meetings, but that some of the police stations are lacking in this regard.

**Factor 4: Lawyer-Client Confidentiality**

*The State recognizes and respects the confidentiality of professional communications and consultations between lawyers and their clients.*

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<th><strong>Conclusion</strong></th>
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<tr>
<td>Generally, the laws of Kosovo recognize lawyer-client confidentiality, and the government respects the confidentiality of professional communications and consultations between advocates and their clients. This is particularly true with respect to detained and incarcerated clients. There is little indication that these laws are widely or systematically disregarded. A recent change in the statute specifically governing advocates appears to weaken protections for evidence held in advocates’ offices, but there is as yet no indication that confidential communications have been afforded less respect in actual practice.</td>
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Analysis/Background:

Defense counsel has the right to communicate freely and confidentially, orally and in writing, with detained clients. CRI M. PROC. CODE art. 77(2). Specifically in regards to provisional arrest and police detention, arrested persons also have the right to communicate with defense counsel orally and in writing, and “communications between an arrested person and his/her defense counsel may be within sight but not within hearing of a police officer.” Id. art. 213(3). Further, the advocate’s right to meet with his/her client in private is guaranteed, and although the meeting may be observed by authorities, it may not be overheard by them. LAW ON THE BAR art. 17(1).

The assessment team received a few complaints that prison guards on occasion stand too close to advocate/client conversations to allow for truly confidential communications during consultations; one complaint that the telephones for advocate/client consultations in a particular prison were in such poor repair that detainees had to shout to be heard during calls; and one complaint that prosecutors on occasion expect defense counsel to confer with their clients in the prosecutor’s presence. However, most advocates were satisfied that they are generally afforded circumstances sufficient for confidential consultations with their detained clients.

With respect to the protection of confidences outside of detention facilities, it has been noted that the Law on the Bar provides fewer protections than those previously afforded under the 1979 Law on Advocacy. In particular, the prior statute specifically limited the search of an advocate’s office in accordance with a warrant issued by an investigative judge in a criminal proceeding involving the advocate. That law also required that the warrant specify the particular document or case for which the search is conducted, and provided that the search may not violate a client’s right to confidentiality. Additionally, the KCA had to be informed in advance of the search and was allowed to have a representative present. 1979 LAW ON ADVOCACY art. 22. Moreover, consistent with his/her duty to keep client confidences, an advocate could not be required to testify regarding matters confided to him/her by a client. Id. art. 15. The Law on the Bar, on the other hand, contains no provision on searches of advocates’ offices. Thus, while the advocate is required to keep confidences, the new Law on the Bar apparently contains no concomitant obligation on the
government to respect those confidences. **LAW ON THE BAR** art. 11(4). However, general protections against searches and seizures applicable to lawyers’ offices do exist in other areas of the law. Furthermore, an advocate may not be “interrogated as a witness for the person he/she has provided legal assistance to.” *Id.* art. 11(5). It is not clear whether this provision actually intends to prevent an advocate from being used as a witness adverse to a client regarding confidential matters.

More general privacy provisions also apply to lawyers, including the privacy of all correspondence, telecommunication, and other forms of communication, a requirement for court approval for searches of private establishments, and an inviolable right to confidentiality of communications that may be limited only temporarily by court order and for specifically delineated reasons. **CONST.** art. 36. Likewise, the ECHR, incorporated by the Kosovo Constitution, generally recognizes a protected privacy right in correspondence. **ECHR** art. 8.

In the small amount of time that has passed since the adoption of the new Law on the Bar, there has been no indication that the law has effected authorities’ treatment of client confidences or caused advocates to be concerned that the change in the law will lead to fewer actual protections. However, given how recently the Law on the Bar was adopted, it may be too soon to fully realize the consequences of the amended law.

**Factor 5: Equality of Arms**

*Lawyers have adequate access to information relevant to the representation of their clients, including information to which opposing counsel is privy.*

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Despite numerous statutory safeguards for the equality of arms in criminal matters, defense counsel in some regions are not readily provided with information to which the prosecution is privy and which they are promised under the law. This is due primarily to a lack of sufficient resources. Additionally, in regards to both criminal and civil cases, the poor quality of and delays in obtaining translations of court documents puts minority counsel at a disadvantage.

**Analysis/Background:**

The Constitution guarantees equal protection of rights before any governmental tribunal or agency and the right to examine witnesses. **CONST.** art. 31(1)(4). Further, the defendant and prosecutor have equal status during criminal proceedings, unless otherwise provided in the law. Similarly, the defense counsel has the same rights as the defendant, with the exception of those rights that are explicitly reserved for the defendant. **CRIM. PROC. CODE** art. 77(1). These rights include the right to be present during site inspections and the right to the pre-trial examination of any witnesses examined by the prosecution and intended to be called at trial. *Id.* arts. 254, 156(1). At all stages of proceeding, the defense is entitled to have full access to the records of the examination of the defendant and material obtained from or belonging to the defendant, among other items. Once the investigation is completed, the defendant may inspect and copy all records and physical evidence available to the court. The defendant may also inspect and copy any other items in the prosecutor's possession that are material to the preparation of a defense or that the prosecutor may intend to introduce at trial. The prosecutor may refuse to produce these materials only if there are sound reasons to believe that providing them may jeopardize the investigation or public safety. In that event, the defense may seek an order from the pre-trial judge ordering production. *Id.* art. 142.
Special provisions protect defendants’ rights once indictments have been confirmed. Id. art. 307. The prosecutor must provide the defense with: records of statements or confessions; names of witnesses the prosecutor intends to call to testify and any prior statements they have made; the identifications of persons whom the prosecutor knows to have exculpatory information and records of any statements from them; the results of any physical or mental examinations or scientific analyses conducted in connection with the case; criminal and police reports; and information about tangible evidence obtained in the investigation. Thereafter, if the prosecutor receives any new materials of this nature, he/she must provide them to the defense within 10 days of receipt. Id. The defense has a reciprocal obligation to disclose to the prosecutor information with respect to any alibi defense or exculpatory ground, along with a list of prospective defense witnesses. Id. art. 308.

Finally, advocates are also entitled to information and documents relevant to their cases and may require from public institutions explanations, information, and documentation pertinent to the advocate’s representation. The law also guarantees an advocate’s right to participate in investigations and proceedings by questioning witnesses and reviewing documents. LAW ON THE BAR art. 16.

A significant number of advocates complained to the assessment team that, despite the existence of these statutory guarantees, prosecutors do not produce the files and evidence as they are obliged to under the law. This criticism was most often heard from those advocates practicing in Pristina. While a few interviewees attributed this failure to an intentional reluctance by the prosecutors to meet their legal obligations, many believed the problem was due to a lack of staff, photocopy facilities at the court, and funds, exacerbated by the fact that confidential files cannot be removed for copying. The prosecutorial and court officials generally agreed, noting that in some cases, the failure to produce documents is simply a result of a disagreement between the prosecutor and the defense counsel as to whether production is required by law. More often, though, according to those sources, expense and logistics negatively impact the prosecutors’ ability to comply with production requests. The prosecutors’ budget, which is set by the Ministry of Justice [hereinafter MOJ], does not provide funds for the production of documents to defendants. Consequently, the prosecutor’s office has entered into an oral agreement with the KCA that defense counsel will pay the reproduction costs. But only some defense counsel are complying with this arrangement. Moreover, most prosecutors’ offices lack sufficient staff and copy machines, causing defense counsel to make multiple trips to the court before copies are available.

Defense counsel emphasize that they are subjected to considerable added expense and delay when they are forced repeatedly to seek court orders to obtain the materials. It was also noted that less diligent defense counsel frequently do not bother to obtain the materials, to their clients’ detriment. And while copies are generally provided free of charge to the defense in ex officio cases, the same delays and obstacles to procuring essential information are still present. Also, it was suggested by a small number of interviewees that this state of affairs allows prosecutors who withhold production for improper reasons to escape sanctions by blaming their behavior on insufficient resources.

In addition to concerns over bureaucratic obstacles to obtaining information, defense counsel opined that judges and prosecutors do not treat them as equals. The standard perception is that the judges and prosecutors see themselves as somewhat aligned in representing the state in a proceeding in opposition to the defense.

The discrepancies in treatment discussed above are also reflected in the actions of the international community in Kosovo, which has spent considerable amounts of effort and money on training and reforming the judiciary and procuracy, in comparison to efforts focused on working with the private bar. To date, both UNMIK and EULEX have provided training for local judges and prosecutors, but no international defense counsel has been appointed, nor have any trainings occurred for local counsel. Moreover, international aid has supported the development
of the Kosovo Judicial Institute, which trains judges and prosecutors but very rarely invites defense counsel to any trainings. Likewise, the U.S. Department of Justice has for years offered trainings for Kosovo’s prosecutors but, until very recently, it held very few courses for defense counsel. However, this international focus on judicial and prosecutorial training appears to be broadening in the last few years, to include at least the awareness of the need for more training opportunities for defense counsel. This is particularly true with respect to the recently promulgated provisions of the Criminal Code and the Crim. Proc. Code, which provide for plea bargaining; the adoption of this new practice would clearly require adequate training of both the prosecution and defense in order for it to produce just results.

Equality of arms is not well-defined outside of the criminal procedure context. In civil cases, all parties to a proceeding have the right to review the contents of the court file. LAW ON CONTESTED PROC. art. 122.1. The parties also have the right to read the case record and object to its contents. Id. art. 137.2. Further, upon request a party shall be provided translations of all evidence submitted during court proceedings. Id. art. 96.2. The only problem reported with respect to civil proceedings, which is equally a problem in criminal matters, is the poor quality of and delays in translating evidentiary documents, court transcripts, and other essential materials. In particular, one ethnic Serb advocate complained that most translators are Croats and cannot produce adequate Serbian translations. It was also reported that the court translators are overworked and often do not have sufficient resources to translate documents in a timely manner, forcing minority parties to choose between proceeding without the translations and incurring significant delays in resolving their disputes.

**Factor 6: Right of Audience**

*Lawyers who have the right to appear before judicial or administrative bodies on behalf of their clients are not refused that right and are treated equally by such bodies.*

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<th>Conclusion</th>
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<td>The assessment team did not receive any reports of advocates being denied the right to appear either in court or before administrative bodies on behalf of their clients. However, serious concerns were expressed over legal and funding issues that create court backlogs and, in some cases, have entirely prevented courts from functioning. Further, defense advocates are not always given access to the documents that they are legally entitled to, and minority lawyers are at a disadvantage due to poor translation services.</td>
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**Analysis/Background:**

The advocate’s right to appear on behalf of his/her client includes not only the right to participate in proceedings but also the right to investigate, pose questions to clients, witnesses, and experts, and review all pertinent laws and documents. LAW ON THE BAR art. 16(2). This right is not limited to any particular forum and can be seen as applying in court and administrative venues, in both criminal and civil proceedings. Id. Further, in criminal proceedings defense counsel has the same rights, with limited exceptions, as the defendant, including the right to comment on all incriminating facts and evidence, to present exculpatory facts and evidence, and to examine and call witnesses. CRIM. PROC. CODE arts. 10(2), 77(1). Legal representation in civil matters in Kosovo is not limited to licensed advocates. Any legally competent person, regardless of whether he/she is a licensed advocate, can represent persons in civil proceedings. LAW ON CONTESTED PROC. art. 86.1. Additionally, in order to provide training opportunities for aspiring advocates, the law also allows Kosovo’s advocates in training, or praktikants, to participate in most legal proceedings. CRIM. PROC. CODE art. 70(1); see also LAW
ON THE BAR art. 2(2). In criminal trials, the praktikant may replace an advocate only if the crime with which the defendant is charged carries a maximum sentence of less than five years. If the potential sentence is over five years, the praktikant may represent the defendant only if the praktikant has passed the jurisprudence examination. Only a full-fledged advocate may represent a defendant in a matter before the Supreme Court of Kosovo. CRIM. PROC. CODE art. 70(1).

Kosovo’s laws contain reasonable limitations on a lawyer’s right to represent clients. For example, conflict of interest rules preclude an advocate from representing multiple defendants in the same case; representing a defendant in a case in which the advocate or a person related to him/her is the injured party; participating in a case if the advocate is related to the prosecutor or judge, or has previously been either a prosecutor or judge in the case, with some exceptions; or has been summoned as a witness in the main trial. Id. arts. 71, 72; see also LAW ON THE BAR art. 11(7)-(9). An advocate’s right to appear can also be curtailed in some instances by a judge acting pursuant to his/her powers to ensure orderly and efficient proceedings in the courtroom. For example, judges may censure of lawyers by fining them, sentencing them, or removing them from a case. In those situations, the lawyer has an immediate right to appeal, and judges are obligated to inform the KCA of their actions. CRIM. PROC. CODE arts. 336-337.

No indication was received that lawyers are improperly prevented from appearing on behalf of their clients in any significant sense, although the assessment team did receive reports of isolated instances of improprieties. For instance, in one case, a lawyer was sanctioned by a judge for refusing to leave the judge’s chambers and for continuing his argument after proceedings were closed. But there was no indication that this constituted a misuse of the judge’s powers to control the proceedings. In another case, which was publicized in the press, ex parte communications seemed to be the basis of a widely criticized result. In that case, when a civil plaintiff checked the court file to ascertain the status of his property dispute which had been pending for seven years, he found that, according to the file, he was dead. Apparently, the opposing lawyer had made this representation to the court, and without providing the plaintiff with notice or the opportunity to be heard, the court had accepted the defendant’s statement without proof. The Alive Finds Himself Dead in Court, KOHA DITO RE NEWS PAPER at 6 (April 25, 2009). Finally, complaints have been filed against the MTI for improperly withholding from advocates licenses to enforce trademarks on behalf of their clients. At least one of these complaints, however, has recently been resolved by the Kosovo Supreme Court in favor of the advocate.

The most frequent complaint in regards to the right of audience was that the courts are functioning so slowly and erratically that it amounts to a systemic de facto interference with both advocates’ and clients’ right of audience. Many interviewees contacted during the assessment expressed the opinion that Kosovo’s court system is on the verge of collapse. Interviewees described the state of Kosovo’s judiciary in very critical tones. One advocate opined that the situation was “much worse this year than last and much worse than in years before.” Another described the situation in the courts is “as bad as it can get.” Many advocates used the word “disaster” to describe the current functioning of the courts.

The reasons given for the current situation are diverse, but the principal explanation is the process of completely vetting and reappointing all of Kosovo’s judges and prosecutors that began in April 2009 and may last as long as 24 months. The UNMIK regulation governing the judicial reappointment process, which is now included in the Constitution, establishes a new commission, the Independent Judicial and Prosecutorial Commission [hereinafter IJPC] for the purpose of, among other things, filling judicial vacancies. CONST. art. 105; UNMIK ADMINISTRATIVE DIRECTIVE NO. 2008/02, IMPLEMENTING UNMIK REGULATION NO. 2006/25 ON A REGULATORY FRAMEWORK FOR THE JUSTICE SYSTEM IN KOSOVO § 1.1 (Jan. 17, 2008). However, the IJPC has not yet begun vetting judges, and the KJC has not been convened to appoint judges since June 2008. Thus, no judicial transfers, hiring, or disciplinary proceedings have taken place since June 2008. Interviewees recounted several recent examples of judicial positions left unfilled because of a
lack of direction from the KJC. Interviewees also complained that there is no body to which to report judicial misconduct.

The reappointment and vetting process is widely seen as being absolutely critical to the future of Kosovo’s justice system. However, the overwhelming opinion of those practicing in the courts is that judges are demoralized by the possibility they will lose their jobs, and offended (at least in the case of the most senior judges) by a process that disregards their years of contribution to the judiciary. In some cases, judges have purportedly already started to leave the bench to begin careers as lawyers. Overall, the effect of the reappointment process has been to slow the already backlogged court system to a virtual standstill. Interviewees spoke at length about resulting delays; for instance, one advocate had five trials postponed in the two week period prior to his interview with the assessment team.

Serious problems within the court system, separate from the reappointment process, affect lawyers’ right to audience. The lack of an effective court system is most pronounced in the Mitrovica region, where the courts have not functioned since the beginning of violent protests and the occupation of the courthouse and the prosecutor’s office that followed Kosovo’s declaration of independence in February 2008. The Mitrovica court serves one town and 49 villages. EULEX has begun to hold trials there on an ad hoc basis and has held three trials as of May 2009. However, the official courthouse remains closed. A parallel court, which hears only civil matters, is being run by the Serbian government from a house in Northern Mitrovica. But that body and its decrees are not recognized by the Kosovo government, and in any case its facilities are inadequate to fully and effectively meet the demand for judicial services.

With respect to whether advocates are treated equally once given the right of audience, by law the defense and prosecution have equal status in criminal proceedings, unless the law provides otherwise. CRIM. PROC. CODE art. 10(1). In civil cases, all parties to a proceeding have the right to review the contents of the court file and to read and comment on the official record of proceedings. LAW ON CONTESTED PROC. arts. 122.1, 137.2. All parties are also entitled to translations of evidence and court documents submitted during court proceedings. Id. art. 96.2. As discussed in greater detail in Factor 5, there are complaints that the defense counsel is not always provided with the documents and evidence to which they are entitled, and that minority advocates are not provided with effective and timely translations. Both of these complaints are attributed primarily to a lack of sufficient financial and staff resources.
II. Education, Training, and Admission to the Profession

Factor 7: Academic Requirements

Lawyers have a formal, university-level legal education from institutions authorized to award degrees in law.

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<th>Conclusion</th>
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<tr>
<td>Licensed advocates are required to have a formal, university-level legal education from institutions that are licensed and accredited by the Kosovo government to award degrees in law. Presently, only one such institution formally exists, the University of Pristina Law Faculty.</td>
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</table>

Analysis/Background:

In order to register with the KCA to obtain a license to practice law, an applicant must graduate from a licensed and accredited law school and must pass the Kosovo bar examination. LAW ON THE BAR art. 6(1.3), (1.5); see also KOSOVO ASSEMBLY LAW ON HIGHER EDUCATION IN KOSOVO § 12.1 (Law No. 2002/3, promulgated by UNMIK REGULATION No. 2003/14, May 12, 2003) [hereinafter HIGHER EDUCATION LAW]. In order to sit for the bar examination, the applicant’s law degree must be a four-year bachelor of law program diploma, or a five-year master of laws program diploma. KOSOVO ASSEMBLY LAW ON THE BAR EXAMINATION art. 2.1 (Law No. 02/L-40, Jan. 20, 2006 based on UNMIK REGULATION No. 2001/9) [hereinafter LAW ON THE BAR EXAMINATION].

All higher education in Kosovo, including legal education, is regulated by the Ministry of Education, Science, and Technology [hereinafter MEST]. HIGHER EDUCATION LAW §§ 4.1(b), 4.1(k). The MEST regulates both public and private providers of higher education and promotes the quality of higher education through the processes of licensing and accreditation. Id. §§ 4.3-4.4. Licensing is generally based on statutorily outlined quantitative criteria, while accreditation ensures that Kosovo’s institutions of higher education meet applicable qualitative standards. Id. §§ 10, 11. Both public and private providers of higher education must have a license to operate. Id. § 10.1. All licensed providers must obtain accreditation and submit to periodic audits and quality assessments. Id. § 11.1. The MEST oversees licensing and accreditation through the Kosovo Accreditation Agency [hereinafter KAA]. See generally MEST ADMINISTRATIVE INSTRUCTION No. 24/2003 (Dec. 8, 2003). Only accredited institutions may award academic degrees and diplomas. HIGHER EDUCATION LAW § 12.1.

At present, the University of Pristina is the only institution in Kosovo authorized to award law degrees. The University of Pristina, like all public institutions of higher education, was created by the MEST, ratified by the Kosovo Assembly, and is in the process of becoming full accredited, with its institutional accreditation granted in March 2009, and academic accreditation expected to follow later in 2009. Id. §§ 6.1, 6.4. The University of Pristina enacted its statute for governance and management in 2004. See generally STATUTE OF THE UNIVERSITY OF PRISTINA (July 5, 2004) [hereinafter UNIVERSITY STATUTE]; see also HIGHER EDUCATION LAW § 13. This statute provides, inter alia, for the operation of a separate faculty of law, located in Pristina. UNIVERSITY STATUTE art. 65.4.

The University of Pristina in Mitrovica was created in 1961 as part of the University of Belgrade’s Pristina facility, and it was merged with the University of Pristina in 1969. However, since 2001, the University of Pristina in Mitrovica has been relocated in Mitrovica and operates within the educational system of the Republic of Serbia, primarily serving Kosovo’s ethnic Serbs. It has opted out of Kosovo’s legal framework for the regulation of higher education. When the Council of the University at Mitrovica adopted its Statute on November 14, 2006, it did so pursuant to the
Serbian Law on Higher Education. The University of Pristina in Mitrovica is, consequently, declared to be a legal entity founded by the Republic of Serbia, with its seat in Pristina and a temporary seat in Mitrovica, and which implements programs of strategic interest to the Republic of Serbia. Statute of the University of Pristina at Mitrovica arts. 2-4. Although there is no specific provision for a law faculty (see id. art. 17), one does operate at the University in Mitrovica. Although it is not licensed by the MEST, the Kosovo government nevertheless recognizes the University of Pristina in Mitrovica and, in practice, law graduates from the Mitrovica campus are allowed to sit for the Kosovo bar examination.

The University of Pristina (in Pristina)'s license to operate is intended to continue indefinitely. Higher Education Law § 10.6. Subject to compliance with its licensing requirements, the University of Pristina was also statutorily deemed accredited until August 31, 2004, and should have been subject to re-accreditation procedures during the 2003-2004 academic year. Id. § 11.4. That process, however, did not occur. Instead, since July 2008, the MEST has embarked on a new system of re-licensing and accreditation that, by the time of its anticipated conclusion, will require the University of Pristina to meet not only the standards of the Higher Education Law, but also the European university accreditation standards such as the Bologna Process Towards the Creation of a European Higher Education Area [hereinafter Bologna Declaration] and the European Credit Transfer and Accumulation System [hereinafter ECTS]. See MEST Administrative Instruction No. 11/2004 on Establishment of a Kosovo Accreditation Agency § 13 (Feb. 16, 2004) [hereinafter KAA Instruction]; see also generally MEST, Strategy for Development of Higher Education in Kosovo 2005-2015 (2004) [hereinafter Higher Education Development Strategy].

The accreditation process at the University of Pristina is conducted under the auspices of the National Commission for Quality Assurance, which includes the KAA, and was assisted initially by the internationally recognized accreditation agency, the British Accreditation Council [hereinafter BAC]. KAA Instruction § 5. Accreditation is proceeding in two stages. The first phase, termed “institutional accreditation,” focused primarily on the assessment of overall university facilities, administrative staff, student services, and record keeping. That phase concluded in March 2009 with the result that the University of Pristina was institutionally accredited. The second phase, “academic accreditation,” is currently underway and focuses on the individual faculties’ curricula, teaching techniques, and grading methods. Internally, the quality assurance process is governed by the University of Pristina Quality Assurance Committee, which has been in existence since October 2007. University Statute arts. 219-227. As part of the University’s internal academic accreditation process, University of Pristina faculties are engaged in a process of self-evaluation, according to procedures that each developed in consultation with the KAA. The self-evaluations are then followed by the inspections of external evaluators that include international experts and KAA representatives. As of the writing of this report, the academic accreditation of the University of Pristina Law Faculty was still pending, but it remains empowered to issue diplomas. The accreditation process is anticipated to conclude by the end of 2009.

Between October 1, 2007 and September 30, 2008, 652 students graduated from the University of Pristina’s four-year Bachelor of Laws degree program. During that same time period, 65 Master of Laws students graduated from the University of Pristina. Currently, 3,512 students are enrolled at the Law Faculty.

The University of Pristina in Mitrovica has declined to participate in the MEST’s accreditation process. However, it was granted accreditation by the Accreditation Commission of the Serbian Ministry of Education at the end of 2008.

As of the publication of the 2008 Kosovo Legal Education Reform Index there were ten private unaccredited law schools operating in Kosovo. ABA Roli, Legal Education Reform Index for Kosovo at 25 (June 2008) 24 [hereinafter Kosovo LPRI]. However, as of the drafting of this assessment report, there are no private universities licensed by the MEST to award law degrees in Kosovo. Interviewees see the lack of unaccredited private law schools as a positive
development, given the need for a formal accreditation process. As a result of the MEST's relicensing review during 2008, 30 other private institutions, eight of which had law programs, lost their licenses. The BAC concluded that none of the private institutions reviewed met the licensing criteria. Based on that conclusion, the Kosovo government prohibited the private institutions from enrolling new students, though the private providers continued educating the approximately 4,000 currently enrolled students based on the licenses issued by the MEST before the accreditation process started. But because those programs have never been accredited, the resulting degrees will not qualify the graduates to take the bar examination in Kosovo.

Legal education in Kosovo consists of a Bachelor of Laws degree program, a Master of Laws degree program, and a Doctorate degree program. UNIVERSITY STATUTE art. 101. Until the 2001-2002 academic year, the Bachelor's program comprised four years of study, the Master's an additional year, and the Doctorate an additional three years, a so-called 4+1+3 program. Starting in 2001, the University changed the Bachelor's program to three years and the Master's to two years, or a 3+2+3 program. Based on a consensus that the 3+2+3 program placed too many curriculum requirements on students in the Bachelor's program and created employment difficulties for the three-year Bachelor graduates, the program was again modified beginning in the 2006-2007 academic year to a 4+1+3 system. The Bachelor of Laws degree is now awarded following the completion of 180-210 ECTS credits after graduating from secondary school. HIGHER EDUCATION LAW §2.2(a)(1); UNIVERSITY STATUTE art. 104.10. The Master of Laws degree requires completion of a Bachelor of Laws degree and the successful completion of an additional 90-120 ECTS credits. UNIVERSITY STATUTE art. 105. The Doctorate degree requires 180 ECTS credits in addition to the completion of Bachelor of Laws and Master of Laws degrees. Id. art. 106.

Factor 8: Preparation to Practice Law

Lawyers possess adequate knowledge, skills, and training to practice law upon completion of legal education.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
<th>Trend: ↑</th>
</tr>
</thead>
</table>

Recent changes in the law school curriculum provide improved practical skills training to a greater number of students and reflect Kosovo’s growing appreciation of the importance of skills training in the academic setting. Deficiencies in the schooling of law students still remain, however, including the lack of mandatory ethics instruction, too few clinical course offerings, overly large class size making interactive instruction impossible, lack of transparency in grading, low faculty salaries, and the generally poor conditions of school buildings.

Analysis/Background:

All providers of higher education in Kosovo, including the University of Pristina Law Faculty, must comply with the Bologna Declaration, including the use of the ECTS system. KAA INSTRUCTION § 13; see generally HIGHER EDUCATION DEVELOPMENT STRATEGY. At the University of Pristina, the University Senate is charged with approving the curricula for individual academic divisions, including the Law Faculty. UNIVERSITY STATUTE arts. 48.1(d), 49.6, 103.2. The Law Faculty, in turn, makes proposals to the University Senate on academic matters such as the content of study programs, curriculum details, ECTS point values, and changes in the curriculum. Id. arts. 67.1, 77.3, 100.2, 103.1.

The Law Faculty curriculum was revised beginning with the 2007-2008 academic year, in order to more closely integrate the Bologna Declaration's principles and to improve the variety and substance of course offerings. This was done in cooperation with the U.S.-based Chicago-Kent
School of Law, the University of Graz in Austria, and the University of Orebro in Sweden. The new Bachelor of Laws program consists of seven semesters of four mandatory courses and at least one elective course each, followed by the eighth semester in which the students take classes relevant to a chosen area of specialization. Mandatory courses include the origins of law, the history of state and legal institutions, economics, Roman law, international human rights, constitutional law, criminal law and procedure, civil law and procedure, economic policy, administrative law and procedure, criminology, family law and inheritance, international organizations, international public law, law of obligations, private international law, labor law, EU law, finances and financial law, legal methodology and writing, criminology and penology, and trade law. In the eighth semester, students are required to take courses in one of the following specialized modules: constitutional and administrative law, criminal law, civil law, international law, or financial law. In the Master of Laws program, the students choose a specialized area of study from among the following fields of study: constitutional, financial, international, criminal, and civil law.

Beginning in the fall 2008 semester, an elective course on Legal Ethics and Professional Responsibility was developed and is now offered with the support of ABA ROLI. The course includes a survey of legal ethics codes, the discussion of hypothetical legal ethics dilemmas, and mock trial cases involving ethical issues. To date, 40 law students have taken the course. However, the University of Pristina’s law curriculum does not require students to complete any courses on legal and professional ethics. This is true despite the fact that licensed advocates are subject to an ethics code that is enforced by a disciplinary procedure which can result in the suspension or revocation of the license to practice law. KÇA Statute art. 116.

It is generally believed that the theoretical curriculum of the University of Pristina Law Faculty is on par with international standards. However, given that the majority of classroom content is theoretical, there is little emphasis on the professional skills needed to practice law. Since 2005, the Law Faculty has attempted to address this shortcoming, embarking on a program to offer progressively more elective clinical components along with its primary mandatory courses. See below for further details on this program. The following clinical course offerings are now available as part of the Bachelor of Laws curriculum: civil law clinic, family and inheritance law clinic, criminal law clinic, and financial law clinic. These clinics are taught by assistant professors and include observation of courtroom proceedings, drafting and analysis of contracts and other legal documents, and interactive discussions with students. To date, 480 students have taken these clinical classes.

The Law Faculty has also been developing practical skills courses with the help of ABA ROLI and the United States Agency for International Development [hereinafter USAID], as well as other donors. Among these are one-semester civil and criminal law clinics. These clinics include instruction by practicing advocates, judges, and prosecutors, with both classroom instruction and role play exercises focusing on legal problem solving and strategy, client counseling, and communication. Students also complete a six hours per week externship, during which they rotate between courts, prosecutors’ offices, and advocates’ offices as appropriate for observation, mentoring, and practical skills instruction. Each semester concludes with a mock trial. As of the date of the drafting of this report, approximately 360 students completed one of these semester-long clinics.

One ABA ROLI-developed course is a one-semester Legal Methodology class that is now mandatory during the third year of study. This course emphasizes critical thinking in theory and practice, utilizes cases to develop analytical and advocacy skills, and concludes with a demonstration of learned skills through the preparation and presentation of oral arguments. Additionally, with support from the U.S. Department of Justice’s Office of Overseas Prosecutorial Development, Assistance, and Training [hereinafter OPDAT], ABA ROLI has also developed, and the Law Faculty now offers as an elective, a two-semester Trial Advocacy course that consists of one semester of instruction and interactive exercises on the fundamentals of handling cases, trial preparation, and skills and professional ethics, and a one-semester clinic for those who score at
the top of a written eligibility test. The clinic allows students to work on actual cases under the supervision of experienced private practitioners and is conducted in conjunction with the Kosovo LAC, which refers cases to the clinic. Memorandum of Understanding between the University of Pristina Law Faculty, ABA ROLI, the U.S. Embassy in Pristina, and the Kosovo Legal Aid Commission §§ 1-4 (April 16, 2009). Clinical students may represent clients in court with proper authorization and under the supervision of a licensed advocate. Law on the Bar art. 2(2). Finally, during the 2008-2009 school year, the Law Faculty piloted a two-semester seminar on Legal Writing and Research developed by ABA ROLI. The seminar included instruction on legal language, the principles and techniques of legal writing, legislative procedures (exemplified through visits to the Kosovo Assembly), and legal research.

A small number of select law students are also able to develop professional skills through participation in moot court competitions, which are largely financed through the support of NGOs and foreign governments. This includes the University of Pristina’s participation in the Phillip Jessup International Law Moot Court Competition, the Willem C. Vis International Commercial Arbitration Moot Court Competition, and the regional Balkan Case Challenge. Each year, 12-14 students participate in these competition teams. Additionally, in 2007, the Law Faculty with support from USAID opened a state-of-the-art model courtroom for students to use when developing their advocacy skills.

In addition to concerns about the theoretical nature of instruction at the University of Pristina, interviewees reported that other significant challenges remain with respect to the quality of legal training provided. Classroom instruction largely takes the form of lectures, with little interactive involvement by the students. In fact, such involvement is virtually impossible at the level of the Bachelor of Laws program, given the large enrollment and class size in the Law Faculty, where the lecture classes typically have 250-500 students. The enrollment numbers are far more favorable at the Master of Laws level, where the largest classes have 60 students in each section of the criminal specialty. The physical condition of the building that houses the Law Faculty is substandard and overcrowded, and the library is inadequate despite recent support in the form of volumes donated by the NGO World Learning. Faculty salaries are low and not commensurate with the degree of education and academic excellence expected of law school professors. There are also some complaints among students that grading at the Law Faculty is unfair and corrupt, with professors giving preference to the children of friends and colleagues or to those with powerfully connected families. It is not clear if these claims can be substantiated or whether they are a reflection of a prevalent cynicism, itself troubling and significant, that most achievements in Kosovo are available only to those who can exert influence by improper and opaque means.

Factor 9: Qualification Process

*Admission to the profession of lawyer is based upon passing a fair, rigorous, and transparent examination and the completion of a supervised apprenticeship.*

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
<th>Trend: ↔</th>
</tr>
</thead>
</table>

Applicable laws require would-be advocates both to pass an independently administered bar examination and to complete a one or two year apprenticeship as a *praktikant*. The KCA is continuing its well-respected *praktikant* training program and has recently announced a new class of 20 participants, although it is generally thought that more opportunities for *praktikants* are needed, especially in minority communities. Additionally, despite the enactment of a new law calling for the regular administration of the bar exam four times per year, the exam has not been offered since January 2008, creating a backlog of over 350 candidates.
Analysis/Background:

In order to register with the KCA and thus become a licensed advocate able to represent clients in all matters and before all forums, including in criminal matters, an advocate must, inter alia, pass the bar examination and complete a one-year training period as a praktikant in a court, a prosecutor’s or an advocate’s office, or a two-year training period in a public administration office. LAW ON THE BAR art. 6(1.4). The praktikant training is also a prerequisite to sitting for the bar examination. LAW ON THE BAR EXAMINATION arts. 3.1, 3.2.

The KCA oversees the regulation of praktikants. LAW ON THE BAR arts. 34, 35. The KCA Executive Board issues official certificates of completion of internships that qualify praktikants to sit for the bar examination and later to register with the KCA. LAW ON THE BAR EXAMINATION art. 3.2. Unless otherwise prohibited by law, a praktikant can act in a case, with written authorization and under the supervision of an advocate. LAW ON THE BAR art. 2(2). The praktikant is bound by the same ethics rules that advocates are subject to. KCA STATUTE art. 45

In 2009, the United Nations Development Program [hereinafter UNDP] began funding a training program for praktikants, which will accommodate 20 trainees working with the KCA, 60 trainees working with the prosecutor’s offices, and 60 working with the courts for 9-12 months of training. UNDP will pay experts to conduct training seminars and will provide a stipend of EUR 158 (approximately USD 215) per month for each praktikant. A total of 39 candidates applied for the 20 KCA praktikant positions, and 180 candidates applied for the 60 praktikant positions in the courts. The assessment team was unable to obtain statistics on the number of candidates applying for the 60 praktikant positions with the procuracy. The KCA supervises the praktikant program for trainees that work for it, while the KJC supervises praktikants working in the courts and the MOJ supervises the praktikant program in the procuracy.

The KCA program was advertised in the newspapers five weeks prior to the application deadline. The selection criteria were set by the KCA praktikant committee, which gives preference to women, minorities, and English speakers. The applicants’ academic transcripts and letters of recommendation were reviewed, and applicants were then interviewed by a three-member working group of the committee. Applicants were informed of their selection by the coordinator of the program who is on the permanent staff of the KCA, and those not selected had eight days in which to review the credentials of those selected and, if desired, file a complaint for consideration and resolution by the full committee. The relatively low number of applicants this year – 39 compared to as many as 70 in past years – may be due to the fact that the backlog of those waiting for the training has been addressed and that many law graduates of the three-year Bachelor’s program that was in force in 2001-2006 must now complete a two-year Master of Laws program before being eligible to undertake the praktikant training.

The KCA has offered a formal praktikant training program since 2002 along the same lines as the above-mentioned program funded by UNDP. Praktikants who receive their training from KCA advocates must first register with the KCA and enter into a contract with the host advocate. KCA STATUTE arts. 19-22. The advocates providing the training must have an office and at least three years of experience. KCA REGULATION FOR ENGAGEMENT OF INTERNS AT ADVOCATES’ OFFICES § VI.1 (Oct. 31, 2008). For its first several years, the KCA was able to provide stipends for only 10 participants in its praktikant training program, although an additional 10 praktikants still participated without the stipend. In more recent years, international donors have provided some stipends. The past and present programs are nominally monitored by the coordinator who, by authority of the praktikant committee, may assess the advocates’ offices hosting the praktikants. The coordinator also finds advocates to host the praktikants if the praktikants are unable to do so. In practice, it has been difficult to find advocates to act as hosts. The committee has employed

\[3\] In this report, Euros [hereinafter EUR] are converted to United States dollars [hereinafter USD] at the average conversion rate for the time when the interviews were conducted (USD 1.00 = EUR 0.74).
evaluation forms for the program since 2002, and it has uniformly received high marks from participants. It is generally thought to be one of the KCA’s most successful programs, and many of the program’s approximately 140 graduates are now working in government ministries or as respected advocates.

It is generally thought that praktikant training programs should be expanded to offer opportunities to a greater number of persons. The training of praktikants is more difficult in the outlying regions, especially Serbian enclaves. This is particularly true with respect to law students in Northern Mitrovica, where the official courts and the procuracy are not functioning on a full-time basis, obviating praktikant opportunities in the courts and procuracy and lessening the workloads of prosecutors and private advocates, with a concomitant decrease in the amount of work for praktikants. In the present economy, and in the outlying regions in particular, there is less work for advocates, which means that those praktikants working in advocates’ offices may be exposed to only a relatively small number of cases, hurting the breadth of their training and leading to inequality in the training of those praktikants working with advocates as opposed to those in prosecutors’ offices or the courts. Also, there is no means outside of Pristina to monitor the praktikants’ experiences. At least one interviewee suggested that a commission or board needs to be formed to monitor the praktikants’ experiences in order to ensure adequate training.

After completion of the praktikant internship, would-be advocates may sit for the bar exam. Prior to January 2008, the bar examination was administered under a 1977 law of former Yugoslavia. The January 2008 examination was the first bar examination administered under the new Law on the Bar Examination. Under both the new and the old laws on the bar examination, the exam consists of separate written and oral components. One of the most significant changes under the new law is the requirement that a candidate must now successfully complete the written portion of the exam before being eligible to take the oral portion. LAW ON THE BAR EXAMINATION art. 10; ADMINISTRATIVE INSTRUCTION NO. XX, ON THE PROGRAM AND WAYS OF TAKING THE BAR EXAMINATION, promulgated under UNMIK REGULATION 2001/9 [hereinafter BAR EXAMINATION INSTRUCTION].

The bar examination encompasses the following topics: criminal law, civil law, constitutional system and judicial organization, trade law, labor law, administrative law, international law, and EU human rights laws. LAW ON THE BAR EXAMINATION art. 4.3; BAR EXAMINATION INSTRUCTION art. 25.

The examination is overseen by the MOJ. Prior to the reintroduction of the exam in 2001, the exam was given when what was deemed to be enough (typically 30) people had applied to take it, except in the case of minority candidates, for whom the examination was given without the delay of waiting for additional registrants. The names of test takers on the written portion of the exam are coded to shield candidates’ identities. BAR EXAMINATION INSTRUCTION art. 9.2. Nevertheless, some interviewees hold the opinion that family and other connections influence grading, which is more of a possibility with the oral component of the exam. Historically, the passage rate has fluctuated mainly between one-fourth to slightly over one-third, as reflected in the following table:
BAR EXAMINATION PASSAGE RATES, 2001-2008

<table>
<thead>
<tr>
<th>Exam date</th>
<th>No. of exam takers</th>
<th>No. of exam takers who passed</th>
<th>Pass rate, %</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001 (Dec. only)</td>
<td>77</td>
<td>26</td>
<td>33.8</td>
</tr>
<tr>
<td>2002</td>
<td>360</td>
<td>193</td>
<td>53.6</td>
</tr>
<tr>
<td>2003</td>
<td>380</td>
<td>131</td>
<td>34.5</td>
</tr>
<tr>
<td>2004</td>
<td>381</td>
<td>98</td>
<td>25.7</td>
</tr>
<tr>
<td>2005</td>
<td>226</td>
<td>81</td>
<td>35.8</td>
</tr>
<tr>
<td>2006</td>
<td>221</td>
<td>104</td>
<td>49.3</td>
</tr>
<tr>
<td>2007</td>
<td>201</td>
<td>98</td>
<td>48.8</td>
</tr>
<tr>
<td>2008 (Jan. only)</td>
<td>74</td>
<td>22</td>
<td>29.3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1,911</strong></td>
<td><strong>753</strong></td>
<td><strong>39.4</strong></td>
</tr>
</tbody>
</table>


Over this period, 28.7% of those passing the examination were women and 3.8% were ethnic minorities. However, the actual annual passage rates for those groups are not available. In addition to ensuring that announcing and administering the exam occur in all official languages (Law on the Bar Examination art. 5), efforts by the MOJ to increase ethnic minority participation in the bar examination have included granting eligibility to take the test to law graduates of the University of Pristina in Mitrovica, providing transportation to and from the examination site for minority candidates, administering the exam to minority candidates without delay (as occurred under the previous law on the bar exam), and enlisting the help of a minority government official in distributing study manuals and recruiting candidates from minority communities. International donors have also provided training for minority advocate candidates; however, at the time of the drafting of this report, only one minority candidate had registered for the UNDP’s training program being offered in anticipation of the next bar examination. See Factor 11 for more details on minority participation in the bar examination.

The bar examination is to be governed by the Committee on Bar Examination, consisting of a president and six members proposed by the MOJ and appointed by the Assembly. Id. arts. 6-7. Since the MOJ’s advent in 2006, it has sent five separate proposals to the Assembly seeking the constitution of the Committee. All of the MOJ’s proposals to date have been denied for reasons ranging from one Assembly member’s personal desire to sit on the Committee to a more general desire by those Assembly members holding Master of Laws degrees to effect a change in the law that would allow their admission to practice without taking the examination. In fact, the latter proposal was made by the Legislative Committee to the SRSG, who rejected it. As a result of the lack of a Committee on Bar Examination, the bar exam has not been administered since January 2008, creating a backlog of over 350 candidates. This is despite the fact that, by law, the exam is to be given on a regular schedule of four times a year. Law on the Bar Examination art. 9.1; Bar Examination Instruction art. 7.

A number of the 350 candidates waiting to sit for the bar examination have written a public appeal to the President of the Assembly and to EULEX complaining about the delays. Some of those waiting to take the examination have applied for judicial appointments under the new IJPC process and are provisionally enrolled in the magistrate training program on the condition they later provide proof of having passed the bar exam. Others are young graduates waiting to begin their legal careers. Additionally, UNDP has proceeded with distributing a comprehensive bar review manual and holding training sessions for bar exam candidates. To date, 350 people have taken the UNDP training and copies of the study manual have run out, indicating a significant and increasing demand for the examination. But at the time of the drafting of this report, no resolution had been reached and no examination had been scheduled.
Factor 10: Licensing Body

Admission to the profession of lawyer is administered by an impartial body, and is subject to review by an independent and impartial judicial authority.

<table>
<thead>
<tr>
<th>Conclusion</th>
<th>Correlation: Positive</th>
<th>Trend: ↔</th>
</tr>
</thead>
<tbody>
<tr>
<td>Admission to the advocacy is administered by the KCA, pursuant to authority conferred on it by the Law on the Bar. The criteria for admission are based on a candidate’s ability to perform the functions of an advocate and are seen as being impartially and fairly administered in practice. Decisions relating to the advocate registration process can also be appealed to the courts.</td>
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</table>

Analysis/Background:

Admission to the practice of criminal law is governed by the Law on the Bar, which declares the KCA to be an independent organization charged with maintaining the bar registry, enrollment in which conveys a license to practice law. LAW ON THE BAR arts. 1, 4. The criteria for admission to the KCA include:

- Possessing appropriate professional skills;
- Being a permanent resident of Kosovo;
- Holding a law degree;
- Completing the praktikant training;
- Passing the bar examination;
- Swearing the KCA mandated oath;
- Not having a criminal conviction that would violate the Ethics Code;
- Not having been dismissed or suspended from work as a judge or prosecutor within five years of the application date; and
- Not having taken actions that could violate the Ethics Code; in particular, activities that could undermine professional independence.

Id. art. 6. Pursuant to its rule-making authority, the KCA also requires proof from the Center for Social Work that a candidate does not have a mental disability, the recommendation of two advocates from the region in which the applicant will be practicing, and completion of the oath within 30 days. Id. arts. 1(3.4), (6); see also KCA STATUTE art. 18. Upon the submission of a written application for registration, accompanied by evidence that the applicant meets the criteria outlined above, the KCA Executive Board must reach a decision within 60 days. LAW ON THE BAR art. 5(1); KCA STATUTE art. 13. The application must also be accompanied by a EUR 750 (approximately USD 1,020) registration fee. LAW ON THE BAR art. 5(3).

Applicants can challenge a denial of a registration within 15 days of the Executive Board’s decision, by filing an appeal with the Commission for Complaint Review. KCA STATUTE art. 14. The Commission for Complaint Review is elected by the KCA Assembly and may not include members of the KCA Executive Board. Id. The Commission must rule on the challenge within 60 days pursuant to a procedure administered by the oldest member of the KCA, who must also sign the decision. Id. arts. 14, 15. The Law on Administrative Procedures, which governs the advocate registration process, provides that decisions relating to the registration process can also be appealed to the courts. LAW ON ADMINISTRATIVE PROCEDURE (Law no. 02/L-28, promulgated under UNMIK REGULATION 2001/9, July 22, 2005) arts. 5, 132, 133 [hereinafter LAW ON ADMIN. PROC.].

In practice, every candidate who meets the above-listed statutory criteria is registered and given the license to practice as an advocate. The application form for admission is available at the KCA office and can be downloaded from the KCA website (http://oak-
Between January 2008 and the drafting of this report, three applications have been returned to candidates because they contained insufficient information. But the assessment team did not receive complaints that any candidate for admission was unfairly denied admission, nor were there any reports of complaints filed under the Law of Admin. Proc. to challenge the KCA’s administration of the registration process.

**Factor 11: Non-Discriminatory Admission**

*Admission to the profession of lawyer is not denied for reasons of race, sex, sexual orientation, color, religion, political or other opinion, ethnic or social origin, membership in a national minority, property, birth, or physical disabilities.*

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<td>The assessment team did not find evidence of any overt discrimination in the admission to the practice of law or in regards to the institutions and programs tangential to receiving a law license. However, the de facto segregation of the population along the lines of ethnic and national origin has a generally negative impact on the admission of minorities into the advocacy. Additionally, while interviewees did not report discrimination against female advocate candidates, the percentage of female law students and advocates is significantly lower than the percentage of women in the population as a whole.</td>
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**Analysis/Background:**

Kosovo’s population is comprised of 92% Albanians, 5.3% Serbs, and 2.7% other ethnic or national minorities. **Kosovo Statistical Office, Demographic Changes of the Kosovo Population: 1948-2006** at 7 (Feb. 2008). As of February 2009, Kosovo’s 517 advocates included 40 minorities, a total of 8% of the advocacy. This included 29 Serb advocates (6% of all advocates), 7 Turkish advocates (1%), and 4 Bosnian advocates (less than 1%). **Statistical Overview on KCA Membership** (Feb. 28, 2009) [hereinafter KCA Membership Statistics]. A total of 55 advocates, or 11% of the KCA’s membership, are female, which represents a slight increase from the 10.4% representation in 2007 and a significant increase over the 7.1% representation in 2004. *Id.; see also* 2007 Kosovo LPRI at 38. While minority and female candidates for the advocacy are provided thorough de jure protections against discrimination, there is some evidence that de facto discrimination against minorities is on the rise.

To be admitted into the advocacy, an individual must first obtain admission into several different institutions or programs: a law faculty, the bar examination, praktikant training, and the KCA. The Higher Education Law, which applies to law faculties, specifically requires that higher education be accessible to everyone in Kosovo without direct or indirect discrimination on any basis, such as sex, race, sexual orientation, physical or other impairment, marital status, color, language, religion, political or other opinion, national, ethnic or social origin, association with a national community, property, birth or other status, or age. **Higher Education Law §§ 3.1, 3.2, 13.5(a); see also** University Statute art. 6. Likewise, the bar examination must be administered without regard to “race, color, religion, gender, political opinion, national, social origin, wealth, birth or position.” **Law on the Bar Examination** art. 2.1. Additionally, those receiving social assistance benefits and those with 50% disabilities as a result of the war can apply for fee waivers when sitting for the bar examination. **Bar Examination Instruction** art. 6.4. No specific legal provisions prohibit discrimination in the admission to the KCA’s registry of praktikants training in advocates’ offices or to the KCA itself, though the KCA is obliged to cooperate in promoting fundamental human rights. **Law on the Bar** art. 28(2). Additionally, all of Kosovo’s institutions are subject to the anti-discrimination provisions in the new Constitution, which sets forth the
principles of equality of all individuals, protection of rights (including the right to political participation) for all ethnic communities, gender equality, and the incorporation into the law of international human rights conventions. CONST. arts. 3, 7, 21, 22, 24.

The assessment team did not receive any reports of overt discrimination based on ethnicity or national origin in regards to admission into the University of Pristina Law Faculty, permission to sit for the bar examination, or admission into praktikant training or the KCA. Nevertheless, de facto segregation based on ethnicity or national origin exists in some of these institutions, just as it does in most segments of the society generally. Virtually all students at the University of Pristina Law Faculty are ethnic Albanians, while virtually all of the students at the University of Pristina’s Mitrovica campus are ethnic Serbs. In the 2007-2008 academic year, for example, the Law Faculty in Pristina had 4,596 students, of which four were Turkish, five were Bosnian, four were Roma, Ashkali, or Egyptian, and none were Serbs. 2008 KOSOVO LERI 25. For the 2008-2009 academic year, the Law Faculty had an enrollment of 3,512 students, of whom 5 were Roma, 4 were Turkish, and 2 were Bosnian. KJA, PARTICIPATION OF WOMEN AND REPRESENTATIVES OF MINORITIES IN THE JUSTICE SYSTEM IN KOSOVO at 4 (2009) [hereinafter KJA PARTICIPATION STUDY]. A nominal 3% of the candidates that have passed the bar examination since January 2007 have been minorities. Bar Exam Passage Rates. Of the 350 candidates who have completed the UNDP-funded bar examination review course in anticipation of the next bar examination, only one is a minority. Of the praktikants who have received certificates of completion of the praktikant training from the KCA since January 2007, none are minorities. No ethnic minorities applied for admission to the KCA’s most recent formal praktikant training program in 2009. Moreover, in the largely Serbian Northern Mitrovica, the courts have nearly ceased functioning due to periodic violence, and praktikant training opportunities are severely limited. While 8% of the KCA’s 517 members are ethnic minorities, which is roughly commensurate with the minority percentage in the population generally, there are currently no minority members on the KCA Executive Board. In contrast, in 2007, there was one Serb member on the KCA Executive Board.

Efforts have been made to recruit and provide support to minorities attending the University of Pristina Law Faculty (in Pristina), completing the praktikant training, sitting for the bar exam, and joining the KCA. For instance, at the University of Pristina, the University Senate has authorized special admission procedures for ethnic Serb, Roma, Bosnian, and Turkish students, although no specific minority recruitment policy exists for the Law Faculty itself. UNIVERSITY STATUTE art. 77.5. Similarly, the agency overseeing the bar examination has attempted to recruit and facilitate minority candidates’ sitting for the examination by enlisting the help of the Serbian Minister for Communities and Return, providing transportation to and from the test site (which is necessary because minority candidates may not feel safe traveling in all parts of Kosovo), giving the examination without delay upon receiving an application from minority candidates, and offering the written exam in all official languages.

The KCA’s praktikant committee gives preference to minority candidates in its admissions to its formal praktikant training program, as well as advertises the praktikant program in Serbian enclaves and hires translators for its training classes. In 2008, the KCA provided financial support to a young Serb advocate in setting up his office and paying his initial licensing fees. Additionally, the KCA plans to consider at its upcoming General Assembly meeting later in 2009 two proposed rule changes designed to facilitate the increased participation of minorities in the advocacy. The first of these will reduce the initial licensing fee of EUR 750 (approximately USD 1,020) to a yet-to-be-determined lower amount for minority advocates. The second will allow the administration of the advocates’ oath in regional offices outside of Pristina and, consequently, closer to areas with concentrated minority populations (particularly the ethnic Serb populations). As of the drafting of this report, the KCA’s Gender and Minority Committee was also planning to host a series of educational seminars for advocates in the near future, focusing on the KCA’s minority members and taking place in communities with ethnic Serb populations and one in a resort setting in Macedonia.
Related to the issue of discrimination in admittance to the legal profession is a recent controversy regarding the KCA members’ ability to practice law in Serbia while still maintaining their license to practice in Kosovo. This issue is of particular concern to the KCA’s ethnic Serb members. The controversy centers on the issuance of the 2009 KCA membership card, which, by law, must be given to each advocate who is registered with the KCA. KCA Statute art. 6. The membership card is to state in Albanian, Serbian, and English detailed information on an advocate. Id. art. 7. The 2009 KCA membership card was printed to include the words “Republic of Kosovo,” written across the top of the card. This addition was made without the KCA Executive Board notice, consideration, or approval, and was not required by the language of the KCA Statute.

After approximately 90% of the KCA’s 2009 membership cards had been distributed, a representative of the KCA’s 29 Serb advocates contacted the KCA’s leadership to inform them that the new membership card presented obstacles to their ability to practice law in Serbian courts. These advocates were relying on their KCA membership cards as proof of license in Serbian courts, pursuant to the practice of the Serbian Chamber of Advocates to give authority to Kosovo licensed advocates to practice in Serbian courts. Given that Serbia has refused to recognize Kosovo’s declared status as an independent republic, the KCA ethnic Serb members were concerned that the new membership cards, with the heading “Republic of Kosovo,” would not only be refused by the Serbian courts but would also subject the card bearers to threats of violence.

A range of possible solutions were suggested by the KCA’s Serb members, the KCA leadership, and the KCA’s international partners and donors. These suggestions were presented to the KCA Executive Board and the KCA membership in a series of special sessions. Ideas included reissuance of revised 2009 cards, or providing labels to update the 2008 cards (which do not bear the term “Republic”). The KCA membership retained an advocate and issued a letter to the KCA’s Serb members on behalf of the Executive Board, stating that the 2009 cards would not be withdrawn nor would any sort of alternative card be authorized. The letter noted that advocates are granted the authority to practice law via a registration certificate, not the membership cards. Copies of the registration certificates are available to any member at any time and do not bear the term “Republic.” The KCA Executive Board was unanimous in its issuance of the letter and based its decision at least in part on the fact that members of a national bar association do not generally use their admission to one bar to practice in the courts of another country. Thus, the KCA Executive Board was concerned that facilitating the practice of Kosovo’s advocates in Serbia would constitute a de facto admission that, despite its declaration of independence, Kosovo is still a part of Serbia.

Opinions vary as to the fairness and wisdom of this outcome. Representatives of the ethnic Serb membership feel they were not given adequate opportunity to address the Executive Board on this issue. Some members of the international community, while commending the democratic processes employed by the KCA, nevertheless see the failure to accommodate Serb members’ special needs during this time of transition as undercutting the KCA’s ability to serve as an unbiased regulator of the legal profession.

In the meantime, at least one Serb KCA member has been ordered by a Belgrade judge to produce his KCA membership card at the next scheduled hearing. The advocate is uncertain as to whether he will be allowed to continue his representation of multiple defendants in that court if he relies on his 2009 KCA membership card to prove his licensure. Reportedly, this advocate risks losing 15-20% of his client base if he can no longer practice in Serbia. Interviewees reported that an advocate cannot be a member of both the Kosovo and the Serbian bar associations (see LAW ON THE BAR arts. 6.12, 6.15), and thus many Serb KCA members are concerned they will need to choose between practicing law in Kosovo or in Serbia. There are estimates that if this occurs, the KCA would lose up to half of its ethnic Serb members. Additionally, in response to this controversy, some the Serbian KCA members have called for the creation of a parallel KCA, reminiscent of the parallel Serbian court system presently operating in
Northern Mitrovica and the parallel education system operated by the Albanian community during the 1990s.

Women are also admitted to the four institutions and programs critical to obtaining a license to practice law in percentages lower than that in the general Kosovo population, despite the absence of overt signs of discrimination in their admission to the profession. Enrollment in the University of Pristina Law Faculty during 2008-2009 academic year is 3,512 total students, with 1,167 female students (or approximately 33%). This represents a decrease from a 45% female enrollment in 2006-2007 and 44.5% in 2007-2008. KJA PARTICIPATION STUDY at 4; see also 2007 KOSOVO LPRI at 32; see also 2008 KOSOVO LERI at 25. The gender statistics are even lower when only the Master of Laws level of study is considered, where the total current enrollment is 764 students, with 176 (23%) female students. KJA PARTICIPATION STUDY at 6. Out of the advocate candidates who passed the bar examination in 2008, 31.8% were women, which is slightly lower than the average passage rate for women of 33.5% between 2004 and 2007. Bar Exam Passage Rates. During 2008, 32% of those persons completing their praktikant training were female. It should be noted, though, that so far in 2009, more than 50% of the applicants for the KCA’s praktikant program were women.

Interviewees had varied and complex explanations for the low representation of women in the institutions of the advocacy as compared to the general population and the University of Pristina Law Faculty’s student body. However, it was often noted that frequently it is the individual woman’s choice to place familial responsibilities ahead of career decisions.
III. Conditions and Standards of Practice

Factor 12: Formation of Independent Law Practice

Lawyers are able to practice law independently or in association with other lawyers.

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<td>Though legally able to form joint offices, Kosovo’s advocates have traditionally practiced individually, and that is still the case with the vast majority of the KCA members. However, very recently there has been a growing interest in forming law firms, a nascent trend that appears to be tied to an anticipated need for the services of commercial law firms as Kosovo’s economy develops.</td>
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Analysis/Background:

The independence of Kosovo’s advocates is guaranteed by various pieces of legislation. See, e.g., CONST. art. 111(1); LAW ON THE BAR arts. 1, 3; KCA STATUTE arts. 2, 3, 4.1. Particularly pertinent to this factor, the independence of the bar is achieved through the independent practice of law as a “free occupation.” LAW ON THE BAR art. 1(3.1). Advocates are allowed to practice together in a joint office of two or more advocates and are empowered to employ other advocates. Id. arts. 30(3), 31, 33. A joint office is to be based on a contract, which sets forth the mutual obligations of the associated advocates and which is to be registered with the KCA. Id. art. 31. In turn, the KCA keeps a register of joint offices, which by law should (but does not yet) include details about the contract and form of association of the joint office. KCA STATUTE arts. 23, 29, 31. The advocates working in a joint office share obligations related to the office and its employees, but professional and personal responsibility remains vested in each individual advocate. Id. art. 32. At the same time, advocates practicing in joint offices are responsible for the work that they perform for their office. ETHICS CODE art. 88. Members of a joint law office may replace each other in representing the firm’s clients with the consent of the clients. Id. art. 31.4. By law, advocates are limited to practicing law at only one law office within Kosovo. LAW ON THE BAR art. 30(1).

The former 1979 Law on Advocacy also authorized advocates to merge their practices in “common offices” with the same legal status as other business entities. 1979 LAW ON ADVOCACY art. 38. Those offices were required to have at least three, rather than two, advocates bound by a contract establishing their relationship and its terms and submitted to the KCA for registration. Id. arts. 29, 30. Advocates practicing in a common office were personally liable, jointly and severally, for obligations to third parties. Id. art. 33. Those advocates participating in a common office had to be of “equal status” and were expected to preserve their independence in the course of their duties. Id. art. 31. The definition of “equal status” was unclear. The Law contained other ambiguities with respect to advocates’ ability to practice in concert. For example, it had a prohibition on advocates working “in a common enterprise,” which was interpreted by some, in an apparent contradiction to other provisions, as a prohibition against advocates being employed in situations where they did not also have votes or share in the firm’s profits. Id. art. 36.

Despite the fact that the 1979 Law on Advocacy appeared to authorize, albeit with ambiguities, the formation of joint offices, many of the advocates interviewed by the assessment team cited the new Law on the Bar as appearing to be part of a nascent trend toward the formation of law firms. While only one joint office of more than two advocates was reported in the 2007 Kosovo LPRI (see id. at 33), since the passage of the Law on the Bar, at least one more such office has been formed from the merger of three existing law offices, and one branch office of an Albanian law firm that has a total of five advocates, two of them based in Kosovo, has recently opened. Additionally, there are a number of two-advocate offices operating in Kosovo that qualify as “joint
offices” under the new law, but did not qualify as such the old. Other law offices are also rumored to be exploring the possibility of merging. Nevertheless, the vast majority of Kosovo’s advocates remain in solo offices. Some interviewees stated that the traditional mentality of advocates is to practice alone. Further, the majority of advocates interviewed by the assessment team held the belief that specializing in certain areas of practice is not a good business decision, as it would not yet draw enough business.

But the recent increase in interest in the formation of law firms also appears to parallel a growing interest in the development of commercial law skills. It is the opinion of established and successful commercial law advocates that future prosperity for advocates lies in the formation of law firms, which are seen as being better able to serve the needs of commercial clients than sole practitioners. The commercial practice of law in Kosovo consists mainly of trademark enforcement, advising foreign clients on domestic laws, contracts, banking, public procurement issues, due diligence for banks and international financial institutions, and the licensing and registration of companies. The practice of law within the few firms in Kosovo mimics aspects of firm practice internationally. Advocates engage in online research through subscriptions to large legal databases, and work more than 40 hours per week during active periods. Additionally, many of the matters handled by advocates for international clients are managed completely through the Internet, and the few offices with commercial law practices maintain websites in order to attract international business. As in many jurisdictions, the Ethics Code strictly limits advocate advertising, but it makes specific allowance for placing identifying information and credentials on websites. ETHICS CODE art. 96.

Factor 13: Resources and Remuneration

_Lawyers have access to legal information and other resources necessary to provide competent legal services and are adequately remunerated for these services._

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<td>Lawyers are generally able to obtain legislation. While advocates’ incomes surpass those of other members of the justice sector, such as judges and prosecutors, they are, nonetheless, reported to be low.</td>
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Analysis/Background:

Most of the lawyers interviewed by the assessment team stated that they have adequate access to Kosovo’s laws through a number of recently improved resources. Websites such as the Kosovo Assembly website (http://www.assembly-kosova.org), the website of the Official Gazette (http://www.gazetazyrtare.com) and, where applicable, the UNMIK website (http://www.unmikonline.org/regulations/unmikgazette/index.htm) all offer access to legislation. The few lawyers who do not have access to computers obtain laws in hardcopy through the Official Gazette, which is reportedly published in a timely manner and is available by subscription. The Official Gazette’s 2008 publications are also available on the KJC website (http://www.kgjk-ks.org). Additionally, the KCA, with the support of ABA ROLI, distributed CD versions of compilations of the laws of Kosovo to lawyers throughout the country. A very limited number of the laws are also available in the KCA library, the holdings of which are listed on its website (http://oak-ks.org/index.php?option=com_content&task=view&id=67&Itemid=2).

However, the translations of laws published in Albanian into Kosovo’s other official languages (Serbian and, at the municipal level or at the discretion of government officials, Turkish, Bosnian, and Roma; see CONST. art. 5) are frequently of such poor quality that non-Albanian speaking minority lawyers do not have the same ease of access to legislation as Albanian speakers.
Additionally, the lack of scholarly commentary on laws — a natural result of a large number of laws being enacted in the short time since the declaration of independence — is detrimental to judges’ and advocates’ abilities to interpret and implement laws. Interviewees also reported that judicial decisions are not regularly published. While the lack of published decisions is of less concern in a civil law system such as Kosovo’s than a common law system, interviewees drew attention to fact that the new Constitution’s reliance on case law of the European Court of Human Rights was a challenge to Kosovo’ civil law trained advocates.

Fees for advocates’ services are set by law or by contract. The KCA is obliged to set fees for advocate remuneration. LAW ON THE BAR art. 39(1.3). The KCA has done that through publication of an official tariff, which sets a range of fees for specifically enumerated tasks in different courts. The tariff sets fee amounts in a “piecemeal” fashion, with different steps taken during the representation of a case resulting in individual payments of varying amounts of money. Fee amounts vary by the court level at which a case is heard and, in civil cases, by the amount in controversy. Additionally, advocates may enter into contracts with their clients that vary from the fees listed in the tariffs. ETHICS CODE arts. 102, 105.

Most interviewees stated that only a handful of lawyers make a great deal of money, while most lawyers earn above-average salaries in comparison with other Kosovo citizens (who net, on average, EUR 211 (approximately USD 287) per month). Kosovo Statistical Office, Kosovo in Figures 2008 (April 2009). However, lawyers generally believe that they are under-compensated. Most lawyers practice in relatively modest settings, with one- or two-room offices that contain minimal furnishings. Advocates rarely earn more than the tariff amounts, with private contracts for rates higher than the published tariffs uncommon, as most clients have difficulty meeting even the tariff rates. Advocates sometimes enter into “gentlemen’s agreements” below the tariff rate in order to help the client. There was some disagreement as to whether contracting below the tariff rate was an ethical violation, with at least one interviewee believing that to be the case unless the services are offered fully pro bono. In the case of clients with little money, lawyers may also simply reduce the services they bill for. For example, a lawyer may instruct a client in an inheritance case on what documentation to gather to begin the case and what steps to take after the court filing, reducing the lawyer’s role solely to preparation of the court filing, and thus reducing the client’s costs.

There is a small class of lawyers with primarily corporate clients who are routinely able to bill at rates higher than those reflected in the tariffs. Reportedly, the average billing rates for these lawyers is approximately EUR 125 (approximately USD 170) per hour for partners and EUR 60 (approximately USD 82) per hour for less experienced advocates. The rates charged by such advocates are the same for both international and local clients. Even these advocates, however, will bill at the tariff rates for routine litigation matters.

The assessment team received a number of complaints regarding payment for ex officio advocates. Interviewees opined that payments for ex officio appointments are too low and that payments are not always made regularly. The reliability of payment depends on which entity appoints the advocate. It was reported that the police are extremely unreliable in paying the advocates they appoint. The prosecutor’s office also has a reputation for only partial and unreliable payments. The courts, however, have reportedly improved markedly over the past year in paying their appointed advocates, following protests by the KCA. There is a particular problem with the adequacy of payment for complex cases, the fair compensation for which frequently exceeds the cap mandated by the tariff, making those cases unattractive to experienced advocates who can find better compensated employment elsewhere. Issues with the functionality of Kosovo’s courts also contribute to payment problems for privately retained advocates, because many clients will pay only once a case is concluded, which can take many years.
Factor 14: Continuing Legal Education

Lawyers have access to continuing legal education to maintain and strengthen the skills and knowledge required by the profession of lawyer.

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<td>While a newly enacted Law on the Bar makes CLE mandatory for Kosovo’s advocates, a regulation and system for CLE monitoring and delivering has yet to be enacted. In the meantime, CLE opportunities, while becoming more frequent in Pristina, are nevertheless inadequate to meet the needs of the bar and are too dependent on international donors.</td>
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Analysis/Background:

With the enactment of the 2009 Law on the Bar, CLE for advocates is now mandatory. Law on the Bar art. 15. But the implementation of that requirement is dependent on the drafting and adoption of regulations by the KCA, which are not yet in place. Id. It is anticipated those regulations will set the minimum requirements, devise a delivery system, and develop a procedure for tracking and enforcing advocates’ mandatory CLE credits. The KCA’s Committee on Continuing Legal Education appointed a working group to devise such a system, and the Committee, which met throughout April and May of 2009 with the support of ABA ROLI, devised a draft proposal that was further reviewed and revised during a KCA legislative review workshop. A final proposal is expected to be presented to the next KCA Assembly meeting, later in 2009, with the aim that at least an interim system will be in place within the eight-month deadline established by the Law on the Bar. Id. art. 40(4).

There is little doubt that advocates will benefit from a mandatory CLE system. Due to historically poor legal education, a rapidly changing legal landscape, and a 10-year interruption during the 1990s in legal education and practice for most advocates, the advocacy skills of Kosovo’s practicing bar receive generally unsatisfactory reviews from those inside and outside the profession. The Office of the Ombudsman, which is charged with processing citizen complaints about Kosovo’s governmental departments and agencies, states that the most obvious problem in 80% of the cases it processes is the lack of adequate legal representation. This is particularly evident in criminal cases with ex officio appointed counsel, although it is true in civil cases as well. In one particularly egregious case, the ex officio advocate never met with his client, filed unintelligible submissions with the court and billed the client EUR 3,000 (approximately USD 4,082), forcing the client to sell property to cover the fee – despite the fact that the advocate was being paid by the court. The advocate lost his license to practice as a result of the incident, but later registered as a notary and continued performing essentially the same work he did before losing his law license.

More CLE programs are needed in all practice areas and those CLE courses that have been offered should be repeated, as they have likely only reached a small fraction of the advocacy. More attempts must also be made to offer CLE courses in the regions, where some advocates complain of no available trainings. Additionally, interviewees suggested that more education opportunities should be made available on the subject of ethics, the delivery of services to clients, law office management, and comparative European justice systems (rather than the focus, to date, on the American legal system). The rapid promulgation of new laws since the Constitution became operative in June 2008 has led to considerable gaps in the knowledge of the practicing bar and the judiciary. There is also a growing awareness of the need for a more skilled and sophisticated commercial law practitioners. Some advocates are also calling for the establishment of substantive legal specializations requiring a higher level of focused CLE. Finally, much of the training offered is available only due to international support, although the
KCA has made recent progress in taking the initiative to develop and present its own programs, particularly for young advocates.

In May 2008, the UNDP donated a new and well-equipped, albeit small, training center to the KCA, which is located in the center of Pristina. The center consists of an office and a large room set up with a conference table that can comfortably seat 25-30 people. The conference room has a projection screen, a computer, and a projector. Most KCA-sponsored trainings are held there. While a complete accounting of the KCA’s CLE trainings is not available, following is a list of the seminars held during September 2008 through December 2008, in Pristina and the regions, along with the numbers of advocates that attended and any supporting partner organization:

- The History of the KCA and Ethical and Professional Advocacy, two sessions (42 attendees);
- Arbitration, held with support from Bearing Point (31 attendees);
- Indictment and Executive Procedure (18 attendees);
- Business Organizations, held with support from Bearing Point (26 attendees);
- Plea Bargaining, held with support from ABA ROLI (15 attendees);
- Trademarks, held with support from Bearing Point (19 attendees);
- Ensuring the Presence of Witnesses in Criminal Procedure and Cross-Examination (23 attendees);
- Justice for Minors, held with support from UNICEF and ABA ROLI (13 attendees); and
- Drafting and Passing Laws (19 attendees).

Additional seminars have also been offered in Law Practice Management, with support from ABA ROLI; Legal Consultancy Skills and Legal Ethics in Commercial Law, both with support from the Kosovo Private Enterprise Program and Booz Allen Hamilton; and Trial Advocacy Skills, with support from OPDAT and ABA ROLI.

This schedule of trainings indicates that advances are being made in providing diverse and numerous trainings to the practicing bar. But these efforts are at this time too centered in Pristina, reach too few advocates, and are too dependent on international support to meet the new mandatory CLE requirements.

**Factor 15: Minority and Gender Representation**

_Ethnic and religious minorities, as well as both genders, are adequately represented in the profession of lawyer._

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Minority participation in the bar is proportional to that in the general population. Women continue to be underrepresented in the legal profession, with the number of women enrolled at the University of Pristina Law Faculty decreasing in recent years. However, the KCA has made efforts to increase the participation of both women and minorities in the legal profession.

_Analysis/Background:_

The Constitution recognizes the primacy of gender equality. _CONST. art. 7(2)._ It also guarantees freedom from discrimination based on race, color, language, national or social origin and other bases. _Id. arts. 3, 21, 22, 24._ As of 2006, Kosovo’s population was comprised of 92% Albanians, 5.3% Serbs, and 2.7% other ethnic or national minorities. _KOSOVO STATISTICAL OFFICE, DEMOGRAPHIC CHANGES OF THE KOSOVO POPULATION: 1948-2006 at 7 (Feb. 2008)._ As of February 2009, Kosovo’s 517 advocates included 40 minorities, a total of 8% of the advocacy. This
includes 29 Serb advocates (6%), 7 Turkish advocates (1%), and 4 Bosnian advocates (less than 1%). **KCA Membership Statistics.** A total of 55 advocates, or 11% of the KCA’s membership, are female, which represents a slight increase from the 10.4% representation in 2007, and a significant increase over the 7.1% representation in 2004. *Id.; see also* 2007 **KOSOVO** LPRI at 38. Therefore, ethnic minorities are present in the KCA’s membership proportionally to their representation in the general population, while women are significantly underrepresented.

By contrast, women are better represented at the University of Pristina Law Faculty (although the number of women enrolled in the Law Faculty is decreasing) and in the *praktikant* training programs than in the advocacy as a whole, while ethnic minorities are largely absent from those institutions. Enrollment in the Law Faculty for 2008-2009 is approximately 33% female, which represents a decrease from a 45% female enrollment in 2006-2007 and 44.5% in 2007-2008. **KJA PARTICIPATION STUDY** at 4; 2007 **KOSOVO** LPRI at 32; 2008 **KOSOVO** LERI at 25. The enrollment in the Master’s level of study is 23% female. **KJA PARTICIPATION STUDY** at 6. Of those passing the last bar examination, 31.8% were women, which is only slightly lower than the percentages since 2004 (on average 33.5%). **Bar Exam Passage Rates.** Those completing their *praktikant* training during 2008 were 32% female, and in 2009, more than 50% of the applicants for the KCA’s *praktikant* program were women. There is a small number of minority students at the University of Pristina Law Faculty, though there are no Serb students. In 2008, the Law Faculty reserved 18 spaces for minorities, though only 12 applied: two ethnic Bosnians, five ethnic Turks, and five Roma, Ashkali, and Egyptians. Of these 12 applicants, only 11 matriculated. Only one minority candidate has registered for the UNDP’s review courses for the next bar examination. No minorities applied to participate in the KCA’s *praktikant* program in 2009.

The reasons for women’s under-representation in the private practice of law are many. It is reported that while the numbers of women in the judiciary and the procuracy are improving – women constitute 27% of the judiciary and 22% of the procuracy – it is still more difficult for a woman than a man to be successful in private practice due to the mentality of potential clients, who are more comfortable with a male than a female lawyer. **KJA PARTICIPATION STUDY** at 14, 18. One interviewee cited the example of a female lawyer in Pristina who uses only her first initial on the signage outside her office, so that potential clients do not know until they enter the office that she is a woman. A female advocate interviewed by the assessment team related that clients will come in, see her and ask for the advocate, assuming she is an assistant. These interviewees did note, though, that in some cases female clients will request a female advocate. One reason given for the prejudices of some clients is that they will assume the female advocate has other household duties as well and will be less dedicated to the case. In a 2006 study, the Organization for Security and Cooperation in Europe [hereinafter OSCE] discerned several additional reasons for women’s under-representation in the profession: a historical legacy, given that there were no female advocates registered until 1974; perceived gender bias; lack of childcare facilities, the need for family support and flexible working hours; and a preference among many female lawyers for other legal careers within the judiciary, civil service, or NGO sector. **OSCE, GENDER AND MINORITY COMMUNITY REPRESENTATION IN THE KOSOVO CHAMBER OF ADVOCATES** at 14-16 (Nov. 2006). Interestingly, among the small number of associations that could be termed law firms, women are well-represented. In one non-family based firm, one of two partners is female, and all other full-time advocates in the firm are women. In another Albania-based firm, one of five partners is a woman. The generally accepted explanation for this is that women prefer work environments that offer more support and opportunity for flexible work arrangements than is generally available in a solo practice.

The KCA has actively developed programs to support and increase the number of women in the profession. In 2008-2009, the KCA Gender and Minority Committee instituted an annual essay contest for law students to compete for small scholarships, asking for papers on issues pertinent to women and minorities in the legal profession. It has also started a mentoring program that has matched 25 female Master of Laws students with practicing advocates, prosecutors, and judges.
At the University of Pristina, a Women Law Students Association has also recently been formed with the support of ABA ROLI.

The KCA also has programs to enhance ethnic minority participation in the advocacy. The KCA’s *praktikant* committee gives preference to minority candidates in admissions to its formal *praktikant* training program. In 2008, the KCA provided financial support to a young Serb advocate in setting up his office. Additionally, the KCA plans to consider at its upcoming General Assembly meeting later in 2009 two proposed rule changes designed to facilitate registration of minorities. The first of these will reduce the initial licensing fee of EUR 750 (approximately USD 1,020) to a yet-to-be-determined lower amount for minority advocates. The second will allow the administration of the advocates’ oath in regional offices outside of Pristina and, consequently, closer to areas with concentrated minority, particularly Serb, populations. The KCA’s Gender and Minority Committee is also planning to host a series of educational seminars for advocates in communities with Serb populations and one in a resort setting in Macedonia, focusing on the bar’s minority members. The Committee has also ensured, through support from the National Center for State Courts, that the monthly KCA Bulletin will be published in Serbian as well as Albanian.

As discussed in greater detail in Factor 11 above, the KCA has recently been embroiled in a controversy concerning the issuance in 2009 of annual KCA membership cards with the words “Republic of Kosovo” printed on the top of each card. Many of the 29 Serb members of the KCA use their KCA cards to represent clients in the Serbian courts, which had been allowed under a long-standing practice of the Serbian Bar Association. The Serb members expressed their concern to the KCA leadership that the use of the word “Republic” would cause the courts in Serbia to refuse them access and would subject them to the threats of violence. The KCA responded by holding at least two special Executive Board sessions and additional meetings in each of the regions to discuss the matter. The result was that the Executive Board refused to issue any new cards. At least one ethnic Serb KCA member was under order by a Serbian judge to produce his KCA identification card, while other Serb KCA members interviewed by the assessment team reported they had not been hindered from practicing in the Serbian courts. One interviewee predicted that the KCA could lose up to half of its Serb members because of the dispute. Advocates have mixed reactions to the KCA’s decision, with some viewing the decision as fair and some questioning the need for such a divisive action. As of yet, the KCA has not lost any Serb members as a result of the dispute.

**Factor 16: Professional Ethics and Conduct**

*Codes and standards of professional ethics and conduct are established for and adhered to by lawyers.*

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<th>Conclusion</th>
<th>Correlation: Neutral</th>
<th>Trend: ↔</th>
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Advocates are subject to the KCA’s Ethics Code, which was amended in 2007 and is thought to be one of the most progressive such codes in the region. However, non-advocate jurists are not governed by any code of ethics and are subject only to general criminal and civil laws. Opinions vary considerably within the practicing bar as to whether advocates are aware of and adhere to the Ethics Code, but the pervasive opinion among those outside of the profession is that advocates frequently violate the Ethics Code.

**Analysis/Background:**

The KCA is mandated to issue a code of professional ethics for advocates. *Law on the Bar* art. 39(1.2); see also 1979 *Law on Advocacy* art. 9. The KCA has fulfilled this commitment through
the enactment in 2005 of the Ethics Code, which it most recently amended in 2007. The Ethics Code is generally thought to be one of the most progressive in the region and has been lauded as a significant achievement by the bar.

The Ethics Code sets forth preliminary principles and then spells out more detailed provisions pertaining to: confidentiality (see arts. 16-20), client relations (id. arts. 21-32), representation in criminal defense matters (id. arts. 33-35), relations with the bar (id. arts. 36-41), relations with state authorities and entities (id. arts. 42-50), obligations with respect to payment (id. arts. 51-53), relations with opposing parties (id. arts. 54-59), reciprocal relations between advocates (id. arts. 60-73), relations with praktikants (id. arts. 74-80), legal assistance to those in need (id. arts. 81-85), the organization of the advocate’s office (id. arts. 86-95), advocate advertising and business solicitation (id. arts. 96-99), and obligations with respect to fees and costs (id. arts. 100-105). The only complaints that the assessment team received with respect to the substance of the Code were complaints – generally from younger advocates – that it too severely curtails advocate advertising. In fact, the KCA Executive Board took action on this issue during 2008, urging all members to abide by the provisions of the Ethics Code with respect signage and the prohibition on advertising non-legal services. However, the appropriate extent of limitations on advocate advertising is a common debate in bar associations throughout the world, and in that respect, disputes regarding the limitations on advertising contained in the Kosovo Ethics Code do not appear to be out of the ordinary.

There is a divergence of opinion among advocates as to whether Kosovo’s advocates take the Ethics Code seriously and generally adhere to it. Some interviewees opined that advocates do abide by the Ethics Code, though many are not well informed about it, and that more education and training opportunities are needed. Others believe that advocates generally know the Code exists but choose to remain ignorant of its details. Many state that because the economic situation of many advocates is difficult and the courts are not functioning in an effective way, many advocates are simply trying to survive and do so in the easiest way possible, which includes simply ignoring the Ethics Code. It was particularly suggested that newly licensed advocates are in need of more training on the Ethics Code.

There is less divergence of opinion outside of the bar where the impression is widely held that many advocates routinely engage in unethical practices. Both advocates and government officials held this opinion. Interviewees accused advocates of many unethical acts: routinely paying police, prosecutors, and court officials to obtain ex officio appointments; representing clients despite conflicts of interest; representing multiple defendants in the same case; bribing courts and judges; filing fraudulent documents with the courts; providing cell phones to prisoners in violation of regulations; charging fees of clients in the course of appointments that are paid for by the government; and improper advertising. The most pervasive complaint is the failure to provide competent representation, especially in the course of ex officio appointments. The assessment team received numerous accounts of clients who had never met with or heard from their appointed counsel; appointed counsel who failed to make appearances in court; counsel who made appearances but were unprepared and unknowledgeable about their assigned cases; and counsel who submitted briefs and other filings that fell well below the standard for competent representation. At least one international participant in the justice system questioned whether the environment in Kosovo is such that a criminal defense advocate cannot truly be counsel to the individual rather than to his/her clan. This interviewee asserted that judges must play a strong role if they see such behavior in cases before them. He also sees a significant potential for unethical behavior in the use of plea bargaining, a practice which was recently codified into law but which has yet to be applied in a significant number of cases. Further, he sees the potential for prosecutors to use plea bargaining simply as a way of decreasing their caseloads.

Some steps have been taken to strengthen the impact of the Ethics Code on the advocacy. The KCA holds sporadic trainings on the Code and has recently held two seminars for young advocates on professional ethics. In 2009, the Kosovo Private Enterprise Program and U.S. Judge Advocate General lawyers stationed at the U.S. army base at Camp Bondsteel held a
training focused on ethics in the commercial law setting and drawing on the experience of international commercial advocates. The Ethics Code has also been distributed to Kosovo’s judges to enable them to help enforce its provisions in the cases that come before them. The KCA also has a cooperative arrangement with the KJA, the KPPA, and the Kosovo Police Association that strives to develop and implement joint anti-corruption programs. See generally Strategic Plan for a Transparent and Non-Corrupt Judicial System (Oct. 2007). Praktikants in KCA’s formal training program are required to receive training on the Ethics Code. Moreover, beginning in the fall 2008 semester, the University of Pristina Law Faculty, in conjunction with ABA ROLI, has developed and is offering an elective course in Legal Ethics and Professional Responsibility. The course includes a survey of legal ethics codes, hypothetical legal ethics dilemmas, and mock trial cases involving ethical issues. But only 40 students have taken the course to date, and ethics education is not mandated for graduation from the University of Pristina, nor is the subject tested on the bar examination. Additionally, many advocates offer the opinion that if enforcement, discussed in greater detail under Factor 17 below, were more uniform and transparent, the Ethics Code would inevitably be more assiduously observed.

A further concern regarding the Ethics Code is the fact that non-advocate legal professionals are not subject to its provisions. While the KCA is empowered to instigate judicial proceedings to stop the unauthorized practice of law, that power is significantly limited by the fact that non-licensed law school graduates and power of attorney lawyers (who are not even required to hold law degrees) are legally authorized to offer a broad range of legal services. LAW ON THE BAR art. 3; see also LAW ON CONTESTED PROC. art. 86.1. Because these individuals are not registered with and licensed by the KCA, they fall outside of the purview of the Ethics Code. Their actions are subject only to criminal and civil laws and they can be challenged in civil suits or by prosecutors; or, if they act on behalf of a governmental entity, the office of the Ombudsperson.

Most government ministries and agencies employ individuals who graduated with at least a Bachelor’s degree from the Law Faculty, but who have never taken the bar examination and registered as advocates with the KCA. These individuals typically perform a host of legal services, including representing their respective agencies in administrative and judicial proceedings. But they are subject to no specific ethical dictates other than those which may or may not be applied by their employers and Kosovo’s criminal and civil laws. Interviewees related a case where a jurist representing a municipality in a judicial dispute over the validity of a municipal contract was ordered by the mayor of the municipality to miss a judicial hearing. The result was a decision favorable to the mayor, who was improperly involved in the contract in his individual capacity, but not favorable to the municipality. Had the jurist been subject to rules other than the direct orders of his superior, he may have had some basis on which to avoid manipulation by a corrupt superior.

Similarly, power of attorney lawyers, who need not meet any qualifications other than possessing legal capacity, may represent clients in civil matters. LAW ON CONTESTED PROC. art. 86.1. These power of attorney lawyers are not subject to any code of ethics or similar document. No statistics exist on the prevalence of these non-licensed representations, but it is thought to be a common practice throughout Kosovo. The use of power of attorney representatives was reported to be particularly high in Pristina with respect to traffic cases, and is also prevalent in Peja and Mitrovica. In its Strategic Plan, the KCA anticipates lobbying for these non-advocate jurists to be included within the KCA; and meanwhile, the KCA also plans to continue efforts to abolish the position of power of attorney lawyers. KCA, KCA FIVE-YEAR STRATEGIC PLAN at 10-12, 36 (Feb. 2009) [hereinafter KCA STRATEGIC PLAN].
Factor 17: Disciplinary Proceedings and Sanctions

Lawyers are subject to disciplinary proceedings and sanctions for violating standards and rules of the profession.

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Kosovo’s lawyers are subject to a reasonably well-functioning fledgling disciplinary system, which includes a consistently applied set of procedures that can result in significant sanctions. However, there are several persistent problems with the system. There is an absence of written committee procedures, a failure to publish the results of disciplinary cases, low public awareness of disciplinary mechanisms, and insufficient financial support for the disciplinary system. Most troubling, however, is the fact that the newly enacted Law on the Bar contains provisions that would negatively impact the existing disciplinary structure.

Analysis/Background:

The KCA’s current disciplinary system was established in 2007 pursuant to the KCA Statute, which, in turn, was authorized by the 1979 Law on Advocacy. 1979 LAW ON ADVOCACY arts. 9, 64; see also KCA STATUTE arts. 97-110. The system is largely modeled on the Irish Law Society’s disciplinary system, as it has approximately the same size membership as the KCA and the KCA members visited Ireland on a study tour.

The KCA’s disciplinary system consists of three committees within the KCA: the Committee for Client Relations, the Disciplinary Committee, and the Disciplinary Committee for Complaints. KCA STATUTE art. 97. The Committee for Client Relations consists of five KCA members. Id. art. 98. The Disciplinary Committee is comprised of six KCA members and three non-lawyer/advocate members. Id. art. 101. The Disciplinary Committee of Complaints has nine members, three of which are non-advocates. Id. art. 109. All committee advocate members are chosen by the KCA General Assembly for three-year terms with the right to re-election. Id. art. 97. The lay members are elected by the advocate members of the respective committees. Id. There is also an administrative coordinator who is a staff member of the KCA and whose duties include keeping records, sending documents and notices to the complainant and the defendant advocate, keeping records of the proceedings, and preparing the file documents for trial.

Disciplinary complaints are initiated against advocates by the Committee for Client Relations, based on the request of a citizen, judge, prosecutor, representative of the MOJ, or an official of the KCA. These persons may lodge complaints with the administrative coordinator or with the chair of the Committee. Id. art. 121. Most of the complaints are written and are submitted by mail, but they can also be made in person at the KCA office or in discussion with the chairperson. Id. arts. 122, 123. In that case, the coordinator or chair of the Committee for Client Relations will speak with the complainant in confidence and explain further the submission procedure. If the person has trouble writing the complaint, the coordinator may write it out, but it will be authenticated in that case by the chair of the Committee. The coordinator then drafts a letter of notification regarding the complaint, which is sent to the advocate along with a copy of the complaint. The advocate then has 15 days to file a response. Id. art. 122. If he/she does not respond, the process proceeds nonetheless. In the meantime, the chair of the Committee for Client Relations forms a panel of three members who are assigned to the complaint. Most often, the chair also sits on the panel. The panel utilizes the standards and factors set out in the Crim. Proc. Code to decide whether the complaint merits further disciplinary proceedings. The panel then makes its recommendation to the full Committee for Client Relations, which usually waits until it accrues a number of complaints before it acts. If the full Committee decides that there is no basis for further proceedings, that decision is reduced to writing and given to the complainant and the advocate. Id. art. 126. The complainant is also informed at that time that he/she has the
right to pursue the matter before the Disciplinary Committee. *Id.* Typically, one to two months pass between the filing of the complaint and the decision by the Committee for Client Relations.

If the Committee for Client Relations determines that further action is warranted on a complaint, it makes a written request for the Disciplinary Committee to take further action. *Id.* art. 125. At the same time, the chair of the Committee for Client Relations appoints one of that Committee’s members to serve as the prosecutor in the case. *Id.* art. 99. Most often, the chair himself/herself takes on that role. The Discipline Committee then acts similar to a first instance court, and the procedure is governed by the Crim. Proc. Code. *Id.* art. 100. The chair of the Discipline Committee appoints a panel of three of its members to hear the case, always including the chair and one lay member. *Id.* art. 101. In preparation for the trial, the prosecutor from the Committee for Client Relations has the right, in practice (though not set forth in any law), to request documents from the parties and others, but does not have any particular power to force production of evidence, although the advocate is under a legal obligation to produce the client's file. The assessment team was informed that the prosecutor does not have problems obtaining documents by request. The Disciplinary Committee’s proceedings occur in the KCA offices, and at the proceedings, the advocate is entitled to participate and to have representation. *Id.* arts. 132, 107. The complainant is also invited to participate, but it is not clear from the law whether he/she is guaranteed a right to attend. *Id.* arts. 130, 131. The proceedings are closed to the public. *Id.* art. 105. In those cases where the complainant has decided to pursue a matter on her own after the Committee for Client Relations has concluded its review, the complainant generally acts as the prosecutor. That complainant is entitled to representation according to general practice, but thus far complainants have elected to proceed without representation.

After resolution by the Disciplinary Committee, the losing party may file an appeal with the Disciplinary Committee of Complaints, which sits as a second instance court. *Id.* arts. 108, 138. The Committee employs the Crim. Proc. Code and acts in panels of four members, who are appointed by the chair and include two lay members. *Id.* art. 109. These sessions are held without the presence of the parties, unless the panel decides their participation is necessary. *Id.* art. 100. There are four possible outcomes of Disciplinary Committee of Complaints decisions: approval of the Disciplinary Committee’s decision, reversal of the decision, an order remanding the dispute to the Disciplinary Committee for further action, and amendments to the decision of the Disciplinary Committee. *Id.* art. 139.

The KCA Statute outlines the statutes of limitation for various types of offenses; generally, a one year limitation for less serious offenses and two years for more serious offenses, with the statutes beginning to run at the time that the offense occurred. *Id.* arts. 140, 141. The KCA Statute further lists those offenses considered “serious,” which include, for example, advocates misrepresenting their credentials for licensing, dishonesty in the course of representation, and violations of client confidences. *Id.* arts.112-114. Disciplinary sanctions include: private reprimands, public reprimands, fines from EUR 250 to EUR 2,500 (approximately USD 340 to USD 3,400), and temporary suspension of the right to practice law for a period of six months to five years. *Id.* arts. 116, 118, 119. In cases where a suspension of the license to practice is mandated, all courts are notified. *Id.* art. 120. As a general practice, complete decisions of the disciplinary system are not made public. The KCA President determines what information about the disciplinary cases can be published within legal confidentiality requirements. An advocate has a right to appeal a suspension of his/her license to the Kosovo Supreme Court. *Id.* art. 139; *see also* 1979 LAW ON ADVOCACY art. 68. The complainant has no such right to appeal. However, if the complainant believes the advocate’s conduct constitutes a criminal violation, he/she can take the case to a prosecutor for additional action. This right is outlined in the final letter sent to the complainant, which follows a form maintained by the administrative coordinator of the system in the KCA office.

In addition to adhering to the KCA Statute’s provisions, the discipline committees operate according to procedures that have not been codified or approved by the KCA General Assembly. These procedures are, at this point, largely based on past practice and have been uniformly
applied to date, largely because the coordinator and the chair of the Committee for Client Relations have been the same since the inception of the current system. Continuity and transparency would be aided, though, by the codification of all disciplinary system procedures into writing. A draft regulation to this effect exists, and a working group of the KCA Executive Board was formed in September 2008 to delve into this process.

Since its inception in 2007, the disciplinary system has processed 70 complaints. Of the initial 21 cases, 19 were dismissed on statute of limitations grounds. These were mainly cases that originated in the period before the disciplinary system was established. One of those cases was pursued in court through criminal proceedings, and that case is still pending. Since that initial set of cases, only two have been dismissed on statute of limitations grounds. Most sanctions to date have consisted of reprimands, and most cases filed have not involved allegations of serious misconduct under the statute. The most severe cases have gone through the courts as criminal prosecutions. There were four such cases pending at the time of the drafting of this report. In more serious cases, the disciplinary system suspends its proceedings pending finality in the criminal proceedings. KCA Statute art. 144. The disciplinary case will then resume. Although the disciplinary system has the right and power to reach decisions independently of the criminal judgments in these cases, the criminal decisions will be relevant to the disciplinary system because the KCA Statute specifically references criminal convictions as relevant to the determination of whether an offense is "serious." Id. art. 112. In one of the four pending cases, the advocate has been sentenced to one and a half years, and in another to nine years, but neither decision entered into force as of the drafting of this report.

The public’s awareness of their rights under the disciplinary system has improved since 2007. This is due mainly to informational meetings initially held by the KCA’s Ethics Committee and ABA ROLI throughout Kosovo, and because of the distribution of publications and CDs produced with the support of ABA ROLI. Additionally, in June 2008, the KCA, with support from the European Commission [hereinafter EC], also published a series of brochures for public dissemination, some of which addressed the KCA’s disciplinary function. However, despite these recent efforts, it is widely believed that the public remains largely uninformed of the advocate disciplinary system and its right to initiate claims there.

The disciplinary system has not received any formal complaints from those disciplined. However, non-KCA participants in the justice system frequently voiced the opinion that the KCA discipline system is not effective. Further, they are concerned that, until punishment for unethical conduct is assured, advocates will not adhere to the Ethics Code. Supporting this contention is the fact that many advocates advertise in violation of the Ethics Code, with apparent impunity, as well as perform translation services in violation of the Ethics Code and generally lack of awareness that cases are actually being processed by the system. The publication of results in disciplinary cases would greatly enhance the overall awareness of the disciplinary system and contribute to the advocates’ education about what is and is not allowed under the Ethics Code. Additionally, one judge reported initiating a disciplinary complaint to the KCA, but then not receiving any response to his complaint for about nine months. When the judge spoke with the KCA just prior to his interview with the assessment team, he was told that he had not received a reply because the Disciplinary Committee was not functioning properly, though steps would be taken to correct the matter.

The assessment team also frequently received the complaint that the disciplinary system does not have adequate resources. Members of the Disciplinary Committees are not paid. Two members of the Committee for Client Relations who live outside of Pristina do not receive any travel reimbursement, and as a result they cannot participate fully in Committee proceedings, while other Committee members, including the chair, must take more than their fair share of duties. Nor are the physical facilities adequate to the Committees’ tasks, as the KCA’s premises consist only of three small offices and a relatively small conference room.
A developing problem regarding the disciplinary system is the fact that the new Law on the Bar disregards the newly established system and envisions its own disciplinary framework that many believe to be less progressive and less effective than the existing system. See LAW ON THE BAR art. 26. A review of the new Law on the Bar reveals considerable inconsistencies between the disciplinary system prescribed in the Law and the existing system set forth in the KCA Statute and described in this factor. For example, the Law on the Bar would replace the KCA’s three Disciplinary Committees with just one committee. Id. art. 21; see also KCA STATUTE art. 60. Moreover, that one committee would have only five members, none of whom would be lay members. LAW ON THE BAR art. 26(1). Rather than maintaining the carefully detailed procedures for processing of complaints through a three-tiered structure, the new Law anticipates only one proceeding before the five-member committee, which would decide cases by majority vote. Id. art. 26. No appellate review internal to the KCA is foreseen, with the only appellate right being the right to appeal to an unnamed “administrative body.” Id. art. 26(7). Finally, the new Law on the Bar includes one positive revision: the maximum fine amount is increased from EUR 2,500 (approximately USD 3,400) to EUR 5,000 (approximately USD 6,800). Id. art.18(7).

The KCA leadership has begun an analysis and review of the inconsistencies between the two laws, and planned a series of discussions at the regional and central levels of the organization about how to best resolve the resulting issues. At the time that this assessment was drafted, that series of meetings had just started. 4 KCA members were divided into those who believed the KCA Statute should be harmonized with the Law on the Bar and those who advocated lobbying for legislative amendments to the Law on the Bar in order to preserve the existing disciplinary framework. The KCA’s past efforts to lobby against the adoption of the new Law on the Bar’s disciplinary system have been criticized as ineffective. Although the KCA submitted written suggestions for amendments to the draft law to the SRSG, there is no indication that those recommendations were then passed on to the Kosovo Assembly.

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4 It should be noted that following the completion of the assessment team’s interviews and initial drafting of the 2009 Kosovo LPRI report, but prior to the report’s publication, several developments occurred with respect to the inconsistencies in the two disciplinary frameworks. New regulations passed by the KCA during its annual meeting in September largely preserve the existing disciplinary system. The KCA’s meeting resulted in several additional developments, including the adoption of new regulations on legal specializations and law firms.
IV. Legal Services

Factor 18: Availability of Legal Services

*A sufficient number of qualified lawyers practice law in all regions of a country, so that all persons have adequate and timely access to legal services appropriate to their needs.*

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<th>Conclusion</th>
<th>Correlation: Neutral</th>
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<td>In general, Kosovo has a sufficient number of advocates to meet the demands of its population, both in Pristina and outside of the capital. However, many people are unable to afford legal services, and many ethnic minorities are unable to access services from minority advocates.</td>
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Analysis/Background:

KCA’s statistics show that Kosovo’s 517 advocates are distributed among the seven regions as follows:

<table>
<thead>
<tr>
<th>NUMBER OF ADVOCATES IN KOSOVO, 2007-2009</th>
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<tr>
<td>Region</td>
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<td></td>
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<tr>
<td>Pristina</td>
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<td>Ferizaj</td>
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<td>Peja</td>
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<td>Gjakova</td>
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<td>Prizren</td>
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<td>Mitrovica</td>
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<td>Gjilan</td>
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<td><strong>Total</strong></td>
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*Source: KCA.*

As demonstrated in the Table above, the distribution of advocates in Kosovo has changed little since 2007. With an estimated population of approximately 2.13 million people (*see Kosovo Statistical Office, Kosovo in Figures 2008 at 10 (Apr. 2009)*), the current number of advocates translates to a ratio of approximately 4,120 persons per one advocate. As the capital of Kosovo, and its largest city with the population of about 240,000 residents, Pristina has the highest concentration of advocates, with the ratio of about 1,132 persons per advocate. Nevertheless, given the country’s relatively small size, even the remote areas with fewer advocates can be accessed within a day’s driving, and while the poor condition of roads can make travel challenging, the entire country is still within relatively easy reach of Pristina.

The only areas reported to have a shortage of advocates are the Serbian enclaves. This is due, in part, to the fact that many persons living in these enclaves are displaced persons who tend to find it difficult to establish relationships with local advocates. Additionally, these displaced persons may live in areas where there are no Serb lawyers, although many of the ethnic Albanian lawyers interviewed indicated they have Serb clients. For those without financial means, it can also be difficult to travel from remote areas into the cities where the courts are located and where most lawyers have their offices. It was also reported that in at least one of the smaller regions there are only a few lawyers capable of delivering adequate representation in difficult family law matters, particularly those involving domestic violence. The poor economy is also said to impact
the quality of legal services being delivered by some advocates, namely those forced for economic reasons to take on more cases than can be adequately handled.

Rather than a shortage of lawyers, most lawyers interviewed indicated that the bigger problem is that many of the regions are so economically depressed that people cannot afford to hire lawyers and the lawyers do not have enough work. It is thus the lack of means rather than an insufficient number of lawyers that leads to a large number of clients being represented by unlicensed practitioners, particularly in traffic cases in Pristina, and in the Peja and Mitrovica regions. Exact figures are not available on the number or distribution of non-advocate legal representatives in the country. This unlicensed representation is allowed by law in civil cases. LAW ON CONTESTED PROC. art. 86.1. Some interviewees noted that although advocates have long attempted to have this statutory provision repealed, the KCA is also aware that citizens who cannot afford the services of an advocate depend on non-advocates in civil cases. This is given as one of the reasons that the law regarding non-advocate legal representatives has not yet been changed.

Positive steps have been taken recently to improve access to legal services, particularly among Kosovo’s ethnic Serb population and financially disadvantaged persons. As discussed in detail in Factor 19 below, a new LAC is now providing legal services to indigent persons. Additionally, the MOJ runs a Court Liaison Office with 11 offices throughout the Serbian enclaves. At these offices, a staff of 28 persons, 98% of whom are ethnic Serbs, ensure that minorities and displaced persons are physically present in court. They also deliver documents back and forth between the clients and the courts. The KCA Executive Board has also approved, and will present for approval by the full KCA General Assembly later in 2009, a rule change allowing new bar members to register and take the oath in the regions rather than having to travel to Pristina. It also was reported to the assessment team that the Serbian government has asked Serbian lawyers to do more work in Kosovo.

As has been discussed in greater detail in Factor 6 above, a majority of those interviewed for this assessment believed that, regardless of the number and distribution of advocates, the citizens of Kosovo do not have adequate access to legal services due to the poorly functioning courts. Several factors contribute to this situation: the interruption in legal skills development and education during the 1990s; the complex and confusing interplay of Yugoslavian law, UNMIK regulations, and Kosovo Assembly enactments; and the ongoing judicial vetting process. The situation is especially troubling in Mitrovica, where the courthouse has been closed since March 2008. Although EULEX began holding trials there in March 2009, trials are only occurring on a limited basis, with fewer than 15 hearings having taken place as of the drafting of this report. Furthermore, the MOJ reports that the ICO has requested that it establish a special appeals court for Northern Mitrovica, but the MOJ has refused to consider a separate court structure for the Serbian population in Kosovo.
Factor 19: Legal Services for the Disadvantaged

Lawyers participate in special programs to ensure that all persons, especially the indigent and those deprived of their liberty, have effective access to legal services.

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Kosovo’s advocates deliver legal services to indigent persons in three ways, with varying degrees of success. Significant progress has been made toward the delivery of legal aid in civil and criminal cases through the formation of the LAC and its recent MOU with the KCA to provide advocates for persons who could not otherwise afford representation. Legal assistance is delivered less effectively through the appointment of ex officio defense counsel in criminal cases. Finally, Kosovo’s advocates are encouraged to provide pro bono assistance, though it is not clear how many have undertaken that obligation so far.

Analysis/Background:

Kosovo’s advocates are obliged to provide legal services regardless of their clients’ “national, ethnic, racial, or religious backgrounds, gender or language, political affiliation or financial, educational or social situation or any other personal trait.” LAW ON THE BAR art. 11(2). With respect to indigent clients, advocates fulfill this obligation through the newly formed LAC in civil and administrative cases; through ex officio appointments by the police, prosecutors, and courts in criminal cases; and generally through pro bono services.

The Kosovo Constitution incorporates the protections contained in the ECHR. CONST. arts. 21(2), 22(2). Although the ECHR does not explicitly guarantee a right to counsel in civil cases, case law interpreting the ECHR specifies that in certain limited cases there is a right to free legal counsel in civil cases. OSCE, LEGAL REPRESENTATION IN CIVIL CASES at 5 (June 2007), available at http://www.osce.org/documents/mik/2007/06/24936_en.pdf. Thus, the LAC was established in Kosovo in September 2007 for the general purpose of delivering legal services in civil matters. UNMIK REGULATION NO. 2006/36 ON LEGAL AID § 1.1 (June 7, 2006) [hereinafter LEGAL AID REGULATION]. The LAC is an independent governmental agency which receives from the Kosovo Assembly a budget of approximately EUR 270,000 (approximately USD 367,350) per year. Id. §§ 1.1, 1.2, 4.14. However, a portion of that budget is being withheld by the KJC in regards to a dispute over payment for criminal legal assistance. The LAC has five regional offices located in Pristina, Prizren, Gjilan, Peja, and Mitrovica, each of which coordinates with the regional offices of the KCA. The Pristina LAC office acts as the secretariat and coordinates the work of all regional LAC branch offices. Id. § 5.3. On December 3, 2008, the KCA entered into an MOU with the LAC, pursuant to which the KCA provides the LAC every three months with a list of advocates available to take LAC-referred cases. See id. § 7.3. The LAC primarily handles cases regarding inheritance, property, administrative, employment, divorce, and child custody. Id. § 9.

The LAC is governed by a Commissioner and a LAC Board of eight members: one nominee from the Kosovo Supreme Court, two nominees of the Ministry of Returns and Communities, one nominee of the Ministry of Work and Social Welfare, one nominee of the MOJ, one KCA representative, and two representatives from women’s NGOs. Id. §§ 4.2, 4.4. The Commissioner is separately nominated by the Prime Minister. Id. § 4.3. The Board meets twice a month and reports annually to the Kosovo Assembly. According to interviewees, all of LAC’s decisions are approved by the Board, including hiring and firing decisions and the development of policies. The Commissioner acts solely to implement the Board’s decisions.

Countrywide, the LAC staff consists of 21 employees. Each regional office has two legal officers, who are law graduates but not necessarily licensed advocates, and one administrative staff. LAC staff does not give legal advice; instead, they provide information and general advice. All legal
matters are handled by KCA advocates. Case processing begins when the client meets with a LAC assistant who explains the LAC application process and helps with completion of the necessary forms. Once the LAC assistant has established that the financial criteria and other bases for LAC involvement are met, the case is passed to a LAC legal officer who appoints an advocate from the KCA list. The officer assembles all of the documentation and sends the file to the appointed advocate. Once the case is assigned to an advocate, the LAC pays the advocate the fees and has no further involvement, except to monitor (via review of the invoices submitted by the advocate) that the advocate is continuing to work on the matter.

To qualify for legal aid, an applicant must demonstrate an annual income below EUR 267 (approximately USD 363) per month. Given the roughly 44% unemployment rate, approximately 76% of Kosovo’s population would currently qualify for legal aid, including some of the administrative staff of the Commission itself. The LAC’s statistics show that it made contact with clients in roughly 1,400 cases in 2008, and an additional 516 cases between January 2009 and April 2009. In 2008, 35% of the LAC’s contacts were with female clients and approximately 10% with minority clients.

The LAC has not received any complaints about misconduct by appointed advocates and reports that its clients are satisfied with the services it provides, although criticism was levied against the LAC staff for being hard to contact on the telephone. During the assessment interviews, one legal aid recipient and her advocate were shown to be under the false impression that the client was obliged to pay filing costs in the court for her divorce claim and the filing of the claim was being delayed for that purpose; however the misunderstanding was then corrected by the LAC.

According to the LAC tariff, advocates will be paid for different tasks in the range of EUR 10 to EUR 140 (approximately USD 13.6 to 190.5). The LAC is seeking additional resources and has submitted a written request for space in government facilities in order to save money on rent. The LAC reports that it could also use additional cars to support the regional offices’ staff travel to the courts. Further, the LAC expressed a need for additional legal officers, though it has not turned any cases away for lack of personnel. There are some reports of advocates refusing to take LAC cases because the compensation is low, but there is no indication that the LAC has been unable to find sufficient advocates for its cases. The LAC has also entered into an MOU with the Law Faculty at the University of Pristina and ABA ROLI to provide cases for the University of Pristina’s legal clinic courses. LEGAL AID REGULATION § 8.2(e).

To inform the public of its services, the LAC has run television ads on the national stations and has distributed brochures in five languages. Despite these efforts, the public remains generally unaware of its services, and the Commission lacks the resources for more outreach, although it has recently instructed its regional offices to request local television stations to make public service announcements about the LAC and its services.

While there is no absolute guarantee of legal aid in civil cases, criminal defendants are entitled to representation, even if they cannot afford counsel. A person charged with a crime has the right “to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay of legal assistance, to be given it free when the interests of justice so require,” ECHR art. 6.3; see also CONST. arts. 21(2), 22(2). Further, “if the interests of justice so require and if the defendant has insufficient means to pay for legal assistance,” competent defense counsel must be appointed for the defendant and paid for from government funds. CRIM. PROC. CODE art. 12(4). Only advocates registered with the KCA or, in certain cases, praktikants working under their supervision can represent defendants in criminal cases. Id. art. 70. If a mandatory defense is required and the defendant does not engage counsel, the competent authority conducting the pre-trial proceedings (either the prosecutor or police) or, once the trial commences, the president of the court is required to appoint ex officio a defense counsel at public expense. Id. arts. 73(1)-(2), 74(1). Advocates, in turn, are under an obligation to participate in the ex officio delivery of services to the indigent. LAW ON THE BAR art. 14(1).
Further, advocates are precluded from refusing an *ex officio* appointment “without any reason.” **ETHICS CODE** art. 11.

Since 2007, payment for *ex officio* services has been provided by different entities, depending on who appoints counsel. Advocates appointed by the prosecution are paid through the MOJ, those appointed by the police are paid by the police, and those appointed by the courts are paid by the KJC. There is some debate as to whether the LAC’s mandate under the Legal Aid Regulation includes the responsibility to pay for and supervise the appointment of *ex officio* defense counsel, but to date the LAC has not had any such involvement. The LAC has written a request to the KJC in an attempt to assert its perceived mandate over *ex officio* appointments, but no resolution has been possible since the KJC is currently not functioning.

There is considerable dissatisfaction with the current system for making *ex officio* appointments among both the appointing entities and the appointed advocates. First, there appears to be no coordination or consistency in procedures among the appointing entities. This creates a number of problems, including the phenomenon of “serial appointments”: it is not unusual for a criminal defendant to have different counsel at each stage as his/her case passes from the police to the prosecutor to the court. One interviewee related that often an arrest and initial appointment of counsel is made in one jurisdiction, only to later discover that the case is properly filed in another jurisdiction, thus causing the court to appoint new counsel from that region. However, more often serial appointments are the result of corruption. Police, prosecutors, and the courts repeatedly give cases to the same advocates for reasons of familial or friendship ties or based on the receipt of bribes. In these cases, the change in counsel is effected by the prosecutor, judge, or court staff suggesting to the defendant that he/she would be better served by choosing a different advocate, who is then mentioned by name in an attempt to persuade the defendant to request the favored advocate. Indeed, even an interviewee at an appointing entity admitted that, without “connections,” it is difficult for advocates to get appointments. On the other hand, the appointing entities claim that they are often forced to appoint new counsel because the previously appointed advocate fails to appear, and they naturally then draw on those advocates whom they know are reliable or simply on those who make themselves most available at the courthouse. What seems clear, however, is that this constant change in counsel slows the progress of a case and may create opportunities for mistakes, inconsistencies in defense strategies, and other negative impacts on the defendants’ right to effective counsel.

A second equally significant criticism of the *ex officio* appointment system is the lack of good quality representation. Prosecutors and courts complain that they must call as many as 10 advocates before one agrees to take an appointment. The appointing authorities also complain that, although there are exceptions, it is often the most inexperienced and, in some cases, the least talented advocates who are most often available for appointment. This is most commonly the case in those complex cases that will take the most time to resolve and which actually require the most experienced and able of counsel, but because fees are capped, these cases often fall to inexperienced or less qualified advocates. One appointing official characterized most of the advocates who take *ex officio* appointments as untalented and corrupt. However, one judge noted that there was less of a problem getting experienced female advocates to accept appointments, particularly for cases involving female victims of crimes. The assessment team was provided with specific accounts of appointed advocates performing no tasks whatsoever on cases, necessitating their replacement. The complaint was also made that despite the fact that an advocate can represent only one defendant in a case, there are instances of one advocate representing multiple defendants in the same case. However, it is not clear how that illegal representation is allowed to proceed.

The KCA has made attempts recently to correct some of these problems by having each regional office provide the prosecutors and courts in its region with a list of advocates available for *ex officio* appointments. This program, however, started only two months prior to the assessment interviews and so is not yet fully implemented; indeed, it was made clear during the assessment interviews that some of the appointing entities were unaware of the lists. Moreover, it is apparent
that some of the lists consist of all of the advocates licensed in a region, and so do not provide any guarantee that the advocates presented are willing or available to take appointments. Finally, as one presiding official noted, he cannot force a particular choice of advocates on his prosecutors as, by law, each functions independently.

It is an advocate’s “duty of honor” to provide pro bono services, but this does not constitute an enforceable requirement. ETHICS CODE arts. 81, 82. Similarly, while advocates are required to participate in publicly financed legal services, in regards to pro bono service advocates are only “entitled to provide free legal assistance when soliciting poor clients.” LAW ON THE BAR art. 14(3).

While the KCA has supported public events that have included the free delivery of legal services, it is difficult to ascertain how widespread such services are. For example, during the first Law Day commemoration held in Pristina in January 2009 and the first Lawyers Day event held in June 2009, KCA advocates were on-hand to provide free legal advice to the public. Free legal services are also provided through the live client clinics run by the University of Pristina Law Faculty and ABA ROLI.

Non-advocate legal professionals also provide legal assistance to indigent persons through NGOs. For example, the Gjakova Women’s Association [hereinafter GWA] has a staff of four non-advocate jurists who monitor trials, help women prepare their legal documents and cases before getting a lawyer, conduct public outreach and education on legal rights, and work with women living in a domestic violence shelter. These jurists handle all aspects of legal cases up to the point where a licensed advocate is needed in court, at which point the GWA helps the client find a pro bono, an ex officio, or a LAC advocate. Approximately 1,000 people seek the GWA’s assistance annually. Of that number, 350-400 receive specific legal aid in the form of case preparation and approximately 500 receive advice and information. At times, there are too many requests for the staff to handle. This is particularly the case when, for example, a governmental agency issues a decision that impacts large numbers of citizens, such as in pension cases. Since the inception of the LAC, the GWA and other groups working to provide legal aid have had funding problems, apparently because donors are under the impression that the LAC is handling all legal aid matters. A portion of LAC’s budget is designated for grants to non-governmental partners. See LEGAL AID REGULATION § 8.2(d)). On that basis, the GWA, a local women’s rights NGO named Norma, and two other similar NGOs have petitioned the LAC for funding; as of the drafting of this report, they anticipate that it will be forthcoming.

Factor 20: Alternative Dispute Resolution

**Lawyers advise their clients on the existence and availability of mediation, arbitration, or similar alternatives to litigation.**

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<td>Although Kosovo law anticipates and supports dispute resolution processes, no formal alternative dispute resolution [hereinafter ADR] providers, services, mechanisms, or facilities exist, nor are these concepts widely known or understood in the legal community. To date, the only type of ADR commonly utilized by lawyers is pre-trial settlement discussions.</td>
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**Analysis/Background:**

Kosovo has a number of laws that advocate for the use of formal ADR, but no infrastructure exists for the implementation of those laws. For instance, the Law on Arbitration anticipates the conduct of arbitrations in fulfillment of contractual arbitration agreements, and provides detailed rules to govern arbitration procedures. See generally LAW ON ARBITRATION (Law No. 02/L-75,
The first instance court in a civil case is called upon to inform parties during a proceeding of the possibility of reaching a settlement on some or all of the claims at issue, and to help them achieve that goal. See generally Law on Contested Proc. arts. 411-419. A party is also allowed to go to court before filing suit with an offer to settle, with the court then being obligated to invite the opposing party to court to hear the offer. Id. art. 419. Furthermore, there are extensive provisions for the arbitration of disputes before an arbitration tribunal, including the use of arbitration either as an **ad hoc** method of resolving controversies as they arise or as a pre-dispute contractual commitment made at the time of a business or similar relationship is established by contract. See generally id. arts. 511-531. Reportedly, the laws governing family disputes also mandate that the courts encourage reconciliation. Administrative tribunals are required to make similar efforts. Law on Admin. Proc. art. 52. The LAC is directed to provide mediation services and support the development of ADR. Legal Aid Regulation § 8.2(f). Finally, an advocate should "before starting the procedure or during procedure, insist that the dispute between parties be settled with an agreement . . ." Ethics Code art. 31.

ADR is also provided for in criminal cases, including authorizing the referral of certain types of criminal cases to an independent mediator with the consent of both the injured party and the defendant. In some circumstances, the judge is also authorized to explore pre-trial settlement with defendants and prosecutors. Crim. Proc. Code arts. 228, 474. Additionally, newly enacted provisions in the Criminal Code and the Criminal Procedure Code provide the framework for plea bargaining. See generally Law on Supplementation and Amendment of the Provisional Criminal Code of Kosovo (Law No. 03/L-002, Nov. 6, 2008); Law on Amendment and Supplementation of the Kosovo Provisional Code of Criminal Procedure (Law No. 03/L-003, Nov. 6, 2008).

Many of these provisions have been included in Kosovo’s laws based on a widely held belief that the routine use of ADR could reduce the current backlog of cases in the court system. But however well-drafted these provisions are, there is virtually no infrastructure for the implementation of ADR. Indeed, the only ADR practices that are routinely used are pre-trial settlement discussions and reconciliation. Most of the lawyers interviewed by the assessment team recognized an ethical duty to attempt settlement of their clients’ disputes before going forward in court. This was particularly so in family law cases, where it is recognized that forms of ADR often mitigate conflict and preserve relationships. Likewise, judges also reported attempting to effect settlements in cases before them. But more formal ADR services, providers, and facilities do not exist in Kosovo.

Those lawyers who practice primarily in commercial law area, and particularly those with international clients, are familiar with the routine use of ADR clauses in contracts and with international providers of those services. But even commercial lawyers have little experience with actually participating in ADR proceedings in these alternative forums. Reportedly, in limited instances, the Kosovo Economic Chamber, an independent voluntary organization of businesses, helps to facilitate resolutions of business disputes; recently it mediated a dispute between a Turkish corporation and its local partner.

Attempts are being made to incorporate ADR methodologies into the justice system. The University of Pristina Law Faculty now offers an elective course in arbitration in the Bachelor’s program. A team of four or five students from the University of Pristina Law Faculty also has the opportunity to participate in the annual Willem C. Vis International Commercial Arbitration Moot Court Competition. The UNDP included sessions on both arbitration trial procedure and international arbitration in its review course for the next bar examination. CLE courses, sponsored by ABA ROLI and the KCA, have been held on plea bargaining, but according to interviewees, there is still considerable resistance to its use from judges, prosecutors, and advocates. USAID has also committed to supporting a new, as yet unspecified, project to further develop ADR potential.
V. Professional Associations

Factor 21: Organizational Governance and Independence

*Professional associations of lawyers are self-governing, democratic, and independent from state authorities.*

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<td>The KCA is a self-governing body, membership in which is mandatory for all licensed advocates. The KCA leadership generally governs the organization according to democratic principles. Under both the 1979 Law on Advocacy and the new Law on the Bar, the KCA has been subject to limited governmental oversight. Nonetheless, indications are that it operates independent from state authorities, although the recent enactment of the Law on the Bar did impose a new internal structure on the organization.</td>
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**Analysis/Background:**

All advocates must be members of the KCA. LAW ON THE BAR art. 4. The independence of the advocacy is guaranteed by the Constitution and the legal documents that regulate the profession. CONST. art. 111(1); see also LAW ON THE BAR art. 1(1); see also KCA STATUTE art. 2.

Prior to the enactment of the Law on the Bar in February 2009, the KCA operated pursuant to the 1979 Law on Advocacy, which defined the KCA as an independent, professional, and self-governed organization. 1979 LAW ON ADVOCACY art. 7. The KCA oversaw, *inter alia*, the acts of admitting or removing advocates from the profession and, hence, the licensing process, as well as advocate discipline. See id. arts. 40, 48-53, 64, 68. The KCA was given the mandate to establish and regulate the details of its organizational structure, policies, and functions through the enactment of the KCA Statute, although the government reserved the power to approve or reject the Statute. Id. art. 8. The KCA was also subject to other forms of limited governmental oversight. Its fee tariff had to be approved, and the government retained supervisory powers over the general acts of the organization and the power to request reports from the KCA. Id. arts. 10-11.

The new Law on the Bar reiterates that the advocacy is a free and independent occupation. LAW ON THE BAR art. 1(1). Specifically, the bar’s independence is achieved, in part, through the KCA, an independent public organization, and through the KCA’s power to issue normative acts aiming to regulate and organize the law practice. Id. art. 1(3.1), (3.3), (3.4). Like its predecessor, the Law on the Bar outlines the types of legal assistance to be provided by advocates (id. arts. 2-3); sets out the conditions for entering and exiting the legal profession (id. arts. 4-10); and sets forth advocates’ rights, obligations, and responsibilities (id. arts. 11-19). There are also governmental limitations on the KCA’s powers, in particular, the government’s power to review the lawfulness of KCA acts and authority to suspend the application of any act that conflicts with existing laws, pending review by the Supreme Court. Id. art. 28(1). The KCA also is obliged to cooperate with the government in promoting human rights and working toward the democratization of society. Id. art. 28(2). The KCA is accountable to the Kosovo Assembly, the Government of Kosovo, and other government agencies. Id. art. 28(3). It is not clear whether these newly enacted limitations on the KCA’s powers are intended to, or will in fact, alter those already present under the previous law. However, no interviewee indicated a belief that the provisions the new Law attempts to impose further restrictions on KCA’s independence than were established under the 1979 Law on Advocacy.

The KCA leadership is comprised of the president, Executive Board, and General Assembly. Id. art. 21(1). The president presides over General Assembly and KCA meetings id. arts. 21.2, 23.
The president also chairs the Executive Board, which is an eleven-member group, tasked with implementing the president’s decisions, initiating disciplinary procedures (when not initiated by the Disciplinary Committee), and managing the KCA’s budget. *Id.* arts. 24, 25(2.5), (2.6). The General Assembly is the highest body within the KCA; it is charged with electing the KCA president, the members of all of the KCA entities, such as the Executive Board and the Disciplinary Committee, approving normative acts, and approving the annual budget. The General Assembly makes decisions based on a majority of votes, with a quorum of 50% of its membership present. *Id.* art. 22(1), (5), and (6).

In a significant departure from the previous law, the new Law on the Bar details a new internal structure for the KCA. *Id.* arts. 20-29. There currently exist, therefore, significant inconsistencies between the KCA’s present structure as established in the 2007 KCA Statute and the structure envisioned in the new Law on the Bar. In particular, the number of KCA’s current nine standing bodies is reduced to five. *Id.* art. 21; KCA STATUTE art. 60. Most significantly, there would be only one Disciplinary Committee of five advocate members in place of the existing three-tiered Disciplinary Committee structure and process, which provides for multiple levels of review of a complaint, includes lay members, and has received wide acclaim. LAW ON THE BAR art. 26; KCA STATUTE art. 97; see also Factor 17 above for in-depth discussion of disciplinary proceedings and sanctions. The terms of office for members of KCA’s governing bodies are increased from three to four years, and the term of the KCA President is increased from one year to two. LAW ON THE BAR art. 21(2); KCA STATUTE art. 61. The KCA General Assembly, which historically consisted of all KCA members, was reduced in 2007 to consist of only representatives elected by the regional branches. The new law restores the full Assembly. LAW ON THE BAR art. 22. One positive development from the new law is that CLE is now mandatory for all advocates. *Id.* art. 15; see also Factor 14 above for detailed analysis of CLE requirements.

The KCA is required to conform to the new Law’s provisions within eight months. LAW ON THE BAR art. 40(4). Thus, the bar has held a number of meetings and workshops to explore means of harmonizing the KCA Statute and the new Law. So far, particularly with respect to the disciplinary provisions, which are the most problematic inconsistency between the two enactments, no consensus has been reached on whether to revise the KCA Statute or to lobby for changes to the new Law. Despite the disruption in its internal operations occasioned by the new law, the KCA members interviewed by the assessment team did not see the Law as an attempt by the government to interfere with the organization’s independence. Instead, its enactment is seen as evidence of the KCA’s failure to effectively lobby and inform lawmakers. Importantly, it does not appear that the new Law on the Bar’s revisions impact the KCA’s ability to function democratically.

While the government is not generally seen as interfering in the KCA’s operations, KCA members are divided over the issue of whether the KCA operates in a free and transparent manner. Some interviewees state that power within the organization is too often held by the same small group of people, whose terms of office often last too long. It appears, though, that progress has been made in this regard in the past few years. In 2008, the KCA President was elected based on a procedure that allows candidates to run by obtaining members’ signatures rather than simply being nominated by the Executive Board. REGULATION ON THE WORK OF THE KCA ASSEMBLY (Jan. 27, 2001) art. 13. In another matter of considerable dispute, the KCA’s Serb members have complained they were not invited to personally address the KCA Executive Board to discuss solutions to problems arising from the inclusion of the words “Republic of Kosovo” on KCA membership cards. See Factor 11 above for more details on this controversy.

While membership organizations exist for other branches of the legal profession, including the KJA and the KPPA, the KCA is the only professional organization of advocates. The new Law on the Bar further anticipates the formation of bar offices or societies made up of KCA registered members. LAW ON THE BAR art. 33.
Factor 22: Member Services

Professional associations of lawyers actively promote the interests and the independence of the profession, establish professional standards, and provide educational and other opportunities to their members.

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<td>Although it has significantly increased its delivery of member services, the KCA remains an organization in transition. While even its harshest critics are complementary of the organization’s functioning in comparison to other entities in the country, the KCA's current membership is frustrated with what is seen as a slow and erratic path toward development. The KCA has increased CLE offerings to its members, increased publications, and improved its planning efforts and responsiveness. However, its lobbying efforts have been unsuccessful, and it has received significant criticism for its handling of a recent dispute with its Serb members.</td>
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Analysis/Background:

The primary task of the KCA is to regulate and control the law practice in Kosovo. LAW ON THE BAR art. 20(3). To that end, the KCA admits advocates to the bar, oversees their participation in it, and offers support to those in the legal profession. Id. arts. 5-20; KCA STATUTE art. 1. Its special tasks include preserving the authority and autonomy of advocacy; supervising advocates and joint offices of advocates for the protection of clients; improving the professionalism of advocates and praktikants; improving the ethics of advocates; studying factors affecting the rights of citizens; advising of the government on measures that are needed to advance the advocacy and the rights of citizens; overseeing the bar’s finances; assisting retired advocates and advocates’ employees; and cooperating with other legal professionals’ associations and institutions, both nationally and internationally. KCA STATUTE art. 4. The KCA is also required to maintain a library for the use by all licensed advocates and praktikants (id. arts. 151-155); recognize 10 different specialties within the profession and certify qualifying advocates (id. arts. 156-162); and publish a biannual bulletin for its members (id. arts.163-165).

The KCA has made considerable progress toward performing many of the tasks that are enumerated in the KCA Statute. Its Ethics Code and the current three-tiered disciplinary structure for its enforcement are thought to be among the most progressive in the region, and enforcement of the Ethics Code has improved recently, with over 60 complaints processed since 2007. The KCA’s praktikant training program is now in its seventh year and encompasses a formalized course of trainings for praktikants. A total of 20 new praktikants were admitted to the program in 2009, which is being conducted with support from the UNDP. See Factor 9 above for a discussion of the praktikant program. During 2008, the program included study trips to a Kosovo jail and a study trip to Albania. As a result of outreach efforts by the KCA leadership, KCA members are also serving as supervisors for clinical programs in conjunction with the University of Pristina Law Faculty and the LAC, and teach clinical skills courses at the Law Faculty. See Factors 7 and 8 above for an overview of these courses and programs. KCA members have also held meetings with students of the Law Faculty and have invited students to visit the KCA offices and become familiar with its functions. Further, as discussed in Factor 14 above, the number of CLE offerings to KCA members has increased, although more will be needed now that CLE has been made mandatory by the new Law on the Bar. Additionally, the KCA’s Gender and Minority Committee has established a regular schedule for meetings, and has begun sponsoring an annual essay contest for law students and running a mentoring program for women law students, advocates, judges, and prosecutors.

The KCA has also improved its informational services. The organization has established a website, http://oak-ks.org, which is updated regularly and provides links to the KCA Statute and
Ethics Code, as well as a directory of the KCA library’s holdings and a roster of the KCA membership. During 2008, 140 new documents and articles were added to the website, for a total of 200 documents. Between June and November 2008, there were approximately 7,000 visitors to the site, and over 11,000 articles were accessed. The KCA also produces a monthly informative bulletin, AVOKATI KOSOVAR. The KCA Executive Board appointed an editor-in-chief, editorial board, and operational task force to supervise the drafting of that publication, as well as an editor-in-chief, editor, and editorial board for its more substantive biannual publication, AVOKATURA. The production of both publications has been more regular, although the editorial quality of the monthly bulletin is said to need improvement. The KCA also produces a number of other publications on topics ranging from its history to subjects relevant to public education on the legal system.

The KCA has cooperated with other organizations in joint projects, such as bench-bar roundtable discussions with the KJA and the drafting and implementation of a Strategic Plan for a Transparent and Non-Corrupt Judicial System (in cooperation with the KJA, the KPPA, and the Kosovo Police Association). In 2009, the KCA also contributed to the establishment of a Kosovo Law Day, during which KCA members provided free legal services to the public and the KCA President participated in a debate and question and answer session on current topics in the law. The KCA has also established a fund, which has been used once, to help minority advocates establish and equip their law offices. In an effort to improve legislative lobbying efforts, it has sponsored two workshops involving key participants from governmental departments that draft and enact legislation. In April 2009, the KCA’s representatives assisted the MOJ with legislative drafting and participated in lobbying efforts at the Kosovo Assembly.

The KCA has expended considerable effort on improving its organizational structure and operations. Most notably, it underwent a comprehensive organizational assessment in 2007 and recently drafted and mapped out the implementation of a Five-Year Strategic Plan, both with the support of ABA ROLI. The Strategic Plan identified five goals – improved administration, legislative lobbying, discipline and ethics, legal excellence, and membership development and services – and outlined concrete steps toward reaching them. In December 2008, the KCA Executive Board approved a Regulation on the Organization and Work of Committees that, in part, formalizes six permanent committees (on CLE, strategic planning, ethics and discipline, human resources, public relations, and editing and publications), and requires the committees to make biannual reports to the KCA Executive Board. The KCA has also established working groups or special commissions to analyze and make recommendations with respect to administrative matters, staff wages, human resources, media contacts, regional meetings, establishing legal specializations, drafting a regulation mandating CLE participation, and drafting forms for court filings in criminal and civil cases in a program supported by USAID. To improve relations between the generations of advocates, the KCA established the Presidents’ Club for senior members and former KCA presidents in December 2008. In addition to accomplishing planning and reorganization, the KCA has recently improved it facilities. During 2008, the KCA completed physical renovations of its offices to create more space for employees and files. In January 2009, the EC equipped each of the KCA regional offices with a computer and a printer.

Advocates and other interviewees held widely divergent opinions on the KCA’s delivery of membership services. Some advocates, even those who have been very active in the organization for a number of years, state that it has given nothing back for their annual fee and the hard work over the years. However, even those persons felt motivated to continue working with the organization for the good of future generations of advocates. Others rate the KCA’s delivery of services as decent, noting marked improvements to the KCA since it was reconstituted in 2001. Other interviewees working within the justice sector gave the KCA high marks when compared to equivalent organizations such as the KJC and the KPPA, though some find the KCA lacking in comparison with the rate of development of bar associations in other Balkan states. Critics see Kosovo’s advocates as generally apathetic and disengaged from the
development of the legal profession. It was also said that the organization as a whole sees itself primarily as a licensing body, but that it should also see itself as a member service organization.

The KCA was also criticized for its failure to reach a compromise in the recent dispute over the issuance of member identification cards containing the potentially problematic words “Republic of Kosovo.” See Factor 11 above for additional details on this controversy. Criticisms were also leveled against the KCA regarding the lack of compensation for KCA members for their service, the lack of services to KCA members outside of Pristina, problems arising from an administrative staff that bears too much loyalty to past KCA administrations and fails to take instruction from those in authority, and the lack of an executive director to ensure efficient day-to-day operations of the organization.

Factor 23: Public Interest and Awareness Programs

Professional associations of lawyers support programs that educate and inform the public about its duties and rights under the law, as well as the lawyer’s role in assisting the public in defending such rights.

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<tr>
<th>Conclusion</th>
<th>Correlation: Neutral</th>
<th>Trend: ↔</th>
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<tr>
<td>The KCA has improved its public outreach efforts, but those efforts remain limited in scope and duration and have not yet significantly impacted a public that needs considerable education about its legal rights. In a new mission statement to be presented to the full KCA General Assembly for approval at its next meeting, the KCA acknowledges that one of its primary obligations is to educate the public.</td>
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Analysis/Background:

Like its predecessor, the new Law on the Bar does not explicitly recognize an obligation on the part of the KCA to educate the public regarding their legal rights and the systems for enforcement of those rights. The KCA Statute is similarly silent on this point. Nevertheless, the KCA Executive Board is presenting for approval by the full KCA General Assembly at its next meeting a mission statement that states, in part, “[t]he mission of the KCA is to strengthen the rule of law in Kosovo by . . . promoting the public’s understanding of the law and justice system.”

The KCA has undertaken a number of programs designed to educate the public. In 2007, the KCA worked with ABA ROLI to air public service announcements on television, informing the public of the right to be treated equally in the courts and about the mechanisms to bring complaints against advocates and judges. Some of these televised spots featured the cartoon “Justice Kid,” targeting children and teaching gender and ethnic equality, the importance of following the law, and the need to solve problems by talking through them rather than fighting. In January 2009, the KCA participated in Kosovo’s first Law Day, which featured informational speeches by leaders of different sectors of the justice system, a moot court demonstration, a public debate and question and answer session, and free legal advice for the public from KCA members. In June 2009, the KCA hosted a Lawyer Day public event, at which it distributed copies of the new Constitution and brochures describing the KCA’s work, and provided free legal services to as many as 30 citizens.

As discussed in Factor 23 above, the KCA’s public website, http://oak-ks.org, provides useful links to laws and articles, and between June and November 2008, there were approximately 7,000 visitors to the site and over 11,000 articles were accessed. The KCA has also produced a number of other publications to inform the public of its rights. These include a pamphlet on the KCA’s background, organization, and activities, which gives an introduction to the legal
profession in Kosovo. In support of the Lawyer Day initiative, the KCA also published and disseminated multiple copies of eight brochures to familiarize Kosovo’s citizens with their rights, the KCA’s structure and functions, and the workings of the advocate disciplinary system. KCA also has plans to initiate a special service for citizens to obtain basic legal information by telephone and/or e-mail. This service will be funded by the KCA and provided for a few hours every day by two prakikants working at the KCA office.

By all accounts, these efforts have not yet substantially improved the public’s awareness of their legal rights. It was reported that the public is not well-informed of its legal rights, and this is particularly true with respect to those who need legal representation the most. In one case, a party who qualified for free legal aid and was assigned an advocate by the LAC nevertheless believed that she had to find the money to pay the filing fee for her case, even though that fee is also covered by the LAC. Her advocate, handling her first case for the LAC, was also under that honest misimpression. Similarly, several examples were reported of criminal defendants represented by ex officio counsel who defrauded them into paying for representation.

Factor 24: Role in Law Reform

Professional associations of lawyers are actively involved in the country’s law reform process.

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<th>Conclusion</th>
<th>Correlation: Negative</th>
<th>Trend: ↓</th>
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The KCA has only recently actively expressed an awareness of its obligation to participate in the development of Kosovo’s laws. It was unable to influence the contents of the recently enacted Law on the Bar. It remains to be seen whether the KCA’s recent effort to mobilize members will result in success in amending the Law on the Bar or harmonizing it with the KCA Statute.

Analysis/Background:

The KCA must actively propose “initiatives for law preparation to competent legislative institutions.” LAW ON THE BAR art. 28(4). The KCA should also “inform local competent bodies of different instances regarding the situation and measures that need to be undertaken for the advancement of advocacy and the rights of citizens and legal entities.” KCA STATUTE art. 4.6. Additionally, one of the five strategic goals identified by the KCA in its Strategic Plan is improved legislative lobbying efforts. KCA STRATEGIC PLAN at 5-6.

Beginning in 2008, the KCA commenced participating in the preparation and drafting of new legislation. KCA representatives participated in drafting the MOJ’s draft law on amnesty; laws impacting the courts, prosecutors, courts’ council and prosecutorial council; and the draft Law on the Bar. The KCA has also sponsored two seminars for its members on techniques and procedures for drafting laws. Similarly, the KCA has taken an active role in resolving a legislative dispute of particular concern of its members. The KCA has long objected to the MTI’s requirement that advocates register their practices with that entity. Through meetings held in 2008 and 2009, a draft MOU was prepared and submitted to the MTI for final review in April 2009, providing a mechanism for the KCA to directly provide advocate data relevant to the advocates’ tax obligations to the Kosovo Tax Administration, without the involvement of the MTI.

While the KCA has made these limited efforts to be involved in and to impact Kosovo’s law reform process, it has met with only limited success. The KCA has been criticized as not fully embracing its obligation to lobby for legislative changes and for sending staff rather than expert advocates to the Kosovo Assembly’s law drafting sessions. Most notably, the recently enacted Law on the Bar contains numerous inconsistencies with the KCA Statute and is widely criticized by the KCA.
membership in many of its aspects, particularly with respect to its establishment of an advocate disciplinary system less progressive than the one set forth in the KCA Statute. The enactment of the Law on the Bar has generated considerable activity and debate within the KCA over how best to harmonize that law with the KCA Statute. For years prior to the passage of the new Law on the Bar, the KCA was aware of its content. During that time, the KCA, along with ABA ROLI, unsuccessfully provided to the SRSG some written suggestions for amendments. However, interviewees characterized these efforts as too weak to have a realistic chance to succeed.

Since the enactment of the new Law on the Bar, the KCA has held a three-day workshop to identify the inconsistencies between the new Law and the KCA’s own Statute and procedures, form working groups for harmonization of the two laws, and create a roadmap for harmonization. As a result of the workshop, the KCA has begun working with the Kosovo Assembly’s Legislation and Judicial Committee to prepare proposals for amending the Law on the Bar. The concrete proposals developed so far include a new Article 23 regarding a general annual meeting of the full KCA membership to be held on June 10; a new Article 24 providing for a “House of Representatives” to be convened annually; and a new Article 26 that would conform the new Law on the Bar with the KCA Statute insofar as the latter has developed what is seen as a progressive disciplinary system for advocates. While the new Law on the Bar contains a number of problematic provisions, it should also be noted that portions of it are seen as improvements on the prior law. These provisions include Article 4, which recognizes the advocates’ right to specialize; Article 15, which establishes mandatory CLE; and Articles 30, 31, and 33, which clarify the different forms of businesses of advocates.

It is clear to many advocates that a bar active in legislative reform is critically needed at this stage of Kosovo’s legislative development. Given the rapid evolution of laws, harmonizing and completing the legal framework requires local expertise to be applied in an orderly and systematic fashion, a fact acknowledged by the KCA leadership in their Strategic Plan. KCA STRATEGIC PLAN at 5-6.
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<tr>
<th>Acronym</th>
<th>Description</th>
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<tr>
<td>ABA/CEELI</td>
<td>American Bar Association/Central European and Eurasian Law Initiative</td>
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<td>ABA ROLI</td>
<td>American Bar Association’s Rule of Law Initiative</td>
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<td>ADR</td>
<td>Alternative dispute resolution</td>
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<td>BAC</td>
<td>British Accreditation Council</td>
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<td>CLE</td>
<td>Continuing legal education</td>
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<td>EC</td>
<td>European Commission</td>
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<td>ECHR</td>
<td>European Convention for the Protection of Human Rights and Fundamental Freedoms</td>
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<td>ECTS</td>
<td>European Credit Transfer and Accumulation System</td>
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<td>EU</td>
<td>European Union</td>
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<td>EUR</td>
<td>Euros</td>
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<td>GWA</td>
<td>Gjakova Women’s Association</td>
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<td>ICO</td>
<td>International Civilian Office</td>
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<td>IJPC</td>
<td>Independent Judicial and Prosecutorial Commission</td>
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<td>KAA</td>
<td>Kosovo Accreditation Agency</td>
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<td>KCA</td>
<td>Kosovo Chamber of Advocates</td>
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<td>KFOR</td>
<td>NATO Kosovo Force</td>
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<td>KJA</td>
<td>Kosovo Judges Association</td>
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<td>Kosovo Judicial Council</td>
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<td>Kosovo Prosecutorial Council</td>
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<td>LAC</td>
<td>Legal Aid Commission</td>
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<td>LERI</td>
<td>Legal Education Reform Index</td>
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<td>LPRI</td>
<td>Legal Profession Reform Index</td>
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<td>MEST</td>
<td>Ministry of Education, Science, and Technology</td>
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<td>MOJ</td>
<td>Ministry of Justice</td>
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<td>MOU</td>
<td>Memorandum of Understanding</td>
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<td>MTI</td>
<td>Ministry of Trade and Industry</td>
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<td>NATO</td>
<td>North Atlantic Treaty Organization</td>
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<td>OPDAT</td>
<td>U.S. Department of Justice, Office of Overseas Prosecutorial Development, Assistance, and Training</td>
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<tr>
<td>OSCE</td>
<td>Organization for Security and Cooperation in Europe</td>
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<tr>
<td>SFRY</td>
<td>Socialist Federal Republic of Yugoslavia</td>
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<td>SRSG</td>
<td>Special Representative of the UN Secretary General</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNDP</td>
<td>United Nations Development Program</td>
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<td>UNMIK</td>
<td>United Nations Mission in Kosovo</td>
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<tr>
<td>USAID</td>
<td>United States Agency for International Development</td>
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<td>USD</td>
<td>United States dollars</td>
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