

Anti-corruption justice and collaboration in Kosovo

Challenges and recommendations



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Corruption is of significant concern in Kosovo for its citizens, civil society, the government and the international community. Efforts to address corruption have involved strengthening the criminal justice sector where key agencies such as the police, prosecutors, courts, Anti-Corruption Agency (ACA), tax, customs and procurement authorities and civil society, are expected to collaborate: actively share information and work together throughout the prosecution process. Currently, they do not do this sufficiently well – and few corruption cases are resolved. This brief assesses the main challenges in interagency collaboration and suggests remedies for improving existing coordination mechanisms, reviewing the mandate of the ACA and ensuring collaboration is instilled as a matter of routine.¹



Interagency Collaboration: Progress to date

Corruption existed in Kosovo before its independence (Spector et al. 2003), but the level was not commensurate with that experienced today. Now, corruption is considered as one of the top three issues of concern facing Kosovars, alongside unemployment and poverty (UNDP 2016). The Government of Kosovo acknowledges that the level of corruption is significant, highlighting it as an internal risk to Kosovo in a security sector review (Government of Kosovo 2014). The international community shares this view.

Box 1. Office of the Prosecutor

In 2013, the Office of the Prosecutor worked on 778 cases of corruption, resolving 40% by the end of the year through dismissal, closure, or termination. In 2013, 47% of those filed led to indictment. In 2014, 45% were resolved out of 976 cases, with 47% resulting in indictment. In the first half of 2015, 18% of the corruption cases were resolved, 61% of these resulted in indictment. By comparison, the courts worked on 655 corruption cases in 2014, and gave a verdict in 35% of the cases; 120 judgements were made against 132 people, of which 35 individuals were sent to prison. The rest were fined or given other sentences, whilst 41 cases were acquitted. In the first half of 2015, 17% of the 490 cases were resolved; 46 judgements were made against 65 people, 14 of which were sentenced to prison, whilst 12 cases were acquitted (KIPRED 2016).

For example, in a recent report, the European Commission (EC) notes the continued lack of progress regarding high-level corruption prosecutions, purporting that investigations of this nature are rare and those that are taken fail to result in convictions (EC 2015). Against a backdrop of revised mandates, new strategies, and in some cases, institutions, a lack of interagency collaboration is consistently referred to as a significant obstacle to increasing the rate of successful convictions (Brady 2016).

EU accession has been presented as a possible stimulus for change in this regard as the EU expects the Kosovar government to make significant improvements regarding the investigation and prosecution of high-level corruption cases before the accession processes is implemented (Brady 2016).² However, such incentives alone could be misguided as they may influence institutions to work to achieve the short-term goals of EU accession, rather than build sustainable processes and procedures that result in a more effective, efficient and transparent criminal justice system in Kosovo, enabling it to better manage corruption cases (KDI/TI 2016).

In 2015 Kosovo is rated as the most corrupt country in the region, assessed as being 103 of 160 countries in the Transparency International's Corruption Perceptions Index (TI 2015).

A background study conducted by U4 in early 2016 found that interagency collaboration in the justice sector has improved considerably in the last three years, but that this has yet to translate into more convictions (Brady 2016). Recent improvements include memoranda of understanding (MOU) between institutions, the establishment of inter-institutional contact points, increased dialogue between bodies, and a more active role of the Kosovo Prosecutorial Council (KPC) and increasingly the Kosovo Judicial Council (KJC). For example, the Anti-Corruption Agency (ACA) has MOU with institutions such as police, prosecutors, European Union Rule of Law Mission in Kosovo (EULEX), Customs Office, Tax Office, Financial Investigations Unit; the Kosovo Judicial Institute provides joint training to a wide range of institutions within the justice sector; the police and prosecutors have joint investigation teams. Whilst these improvements have entailed positive changes in communication and cooperation

between and within agencies, they have yet to result in increased prosecution and conviction rates (Brady 2016).

The outstanding problem is multifaceted. There is a lack of a coordination mechanism for interagency collaboration at both the strategic and operational level. Despite political rhetoric committing to building greater collaboration, politicians have yet failed to address it in reality. There is also a habit of developing new initiatives rather than strengthening and adequately assessing the impact of existing ones. At the operational level, there is a lack of trust between institutions, few incentives for

greater collaboration and little consequence if institutions do not collaborate. Regardless of progress with MOU and joint investigation teams, prosecutors still blame poor file quality on the police and/or the ACA. There is also a lack of incentives for provision of information between institutions, for example between the ACA and the Tax Authorities (Brady 2016). These issues are compounded by a slow administration of justice, insufficient accountability of judicial officials, judicial structures prone to political interference, lack of funding, concerns about disputed appointments and unclear mandates for key institutions, namely the Kosovo Judicial Council, Kosovo Basic

Prosecution Office, and the Office of the Chief State Prosecutor (EC 2015).

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What are the obstacles to inter-agency collaboration?

Based on the research and the U4 workshop in Pristina in May 2016, three key obstacles were identified that if addressed may have a significant positive impact on interagency collaboration and also the investigation and prosecution of corruption cases in the Kosovo context. The following list is not exhaustive but represents some key areas for potential improvement.

Insufficient coordination mechanisms

Kosovo lacks a mechanism coordinating the work of institutions responsible for detecting, investigating and prosecuting corruption cases (UNDP 2014). These criticisms are made despite the establishment of the National Anti-Corruption Council (NACC) by the former President of Kosovo on 14 February 2012, which aimed to act as a

coordination mechanism. Albeit the functions of the NACC include coordinating activities in preventing and combating corruption; identifying and coordinating activities in support of the implementation of the national strategy in fighting corruption; determining the priorities and policies for the implementation of the legislative agenda in increasing effectiveness in the fight against corruption; coordinating the work and activities of the responsible institutions in strengthening existing mechanisms to fight corruption; raising the awareness of society for the prevention and fighting of corruption, it has failed to work as designed. To date the NACC is criticised for being highly political and being more of a reporting mechanism to the government than a coordinating body (KDI/TI 2016).

Incoherent Institutional Design

Many respondents of the background study report overlaps and/or gaps in institutional mandates (Brady 2016). This has led to a disjoint between institutions, dual or simultaneous investigations and a lack of mandate delivery (Brady 2016). The ACA represents a good example of this. It was established in July 2006, becoming operational in February 2007. Article 5 of the Law on the ACA (no. 03/L-159, 12/2009) provides the authorisation and power to initiate and undertake the detection and preliminary administrative investigation of corruption cases. These preliminary investigative powers are criticised for causing overlap with the work of the police, resulting in simultaneous investigations. This is compounded because the ACA has no obligation to inform the police of a complaint. As a result, both institutions can conduct preliminary investigations on the same case, at the same time without knowing about it. That said, the ACA often reports complaints to the police if the complaint relates to real time activities.

Overlap has also arisen due to the KPC's Strategic Plan for Inter-Institutional Cooperation in the Fight against Organized Crime and Corruption 2013–2015. Section 2 sets out that the KPC seeks to improve the quality of information and statistical data about the detection, investigation and prosecution of corruption offences. It also discusses increasing public awareness through improving the quality of information provided to the public and media and improving cooperation with the public and media (KPC 2013). This has the potential for overlap with the ACA with respect to corruption cases as they share a similar role.

As mentioned, the power given to ACA is limited to the completion of the preliminary administrative investigation, upon which the ACA must forward the complaint to the prosecution office for further action. This lack of executive powers is coupled with inadequate resources to conduct in-depth investigations into complaints received. This, in part, has led the police and prosecutors to question the quality of files presented by the ACA (Brady 2016).

Lack of trust and incentives

When institutions were asked why improvements in interagency collaboration have yet to positively affect the

conviction rate of high profile cases, many apportioned blame to other institutions. For example, some judges note that the courts can only deal with cases put in front of them (Brady 2016). The Appeals Court reiterates this, alleging that the failure in acquiring a conviction often relates to investigation failures, both at the police and prosecutorial levels. Conversely, prosecutors blame the inability to act on files from the police and/or the ACA on their substandard quality. It is difficult to find out where the liability lies given that there is no consistency in how institutions report progress. This current approach illustrates a culture of blame and lack of accountability. This undermines opportunities for collective responsibility and finding shared solutions. Furthermore, there are few incentives to working more closely together or in some cases to internally improve conditions to tackle corruption. Some institutions single-handedly go beyond or extend their mandate to address issues identified rather than seeking collaboration. This can be seen in KPC's Strategic Plan for Inter-Institutional Cooperation in the Fight against Organized Crime and Corruption 2013–2015 which overlaps in part with the mandate of the ACA with regard to data collection and communication with the public and media (Brady 2016). This approach may be due to perceived inadequacies and/or to exert control.

Where can progress be made?

Despite the improvements in interagency collaboration and given the remaining obstacles, a strategic approach is required. This will ensure that a higher number of investigations and prosecutions are translated into convictions. Three keys recommendations, if implemented effectively, might help.

First, *re-establish a coordination mechanism*. Given that the NACC has yet to establish itself as an effective coordination mechanism, and with the appointment of the new president,³ it may be timely to amend and properly enforce the roles and responsibilities to make it more effective going forward. Alternatively, it could be disbanded and a new body established (Brady 2016). Either option needs to be designed and implemented in such a manner that ensures better coordination, not only at the political level but also at the strategic and managerial levels. This tiered approach is likely to ensure a multiple level impact increasing the opportunities for success, but clear guidelines are required to prevent political interference in managerial matters. One of the first activities of a revised NACC, or alternative, should be to provide terms of reference, setting out aims and objectives for greater interagency collaboration to all institutions working in this area to ensure that they understand what is expected of them. This could look somewhat like a Transparency International Integrity Pact (Marquette and Peiffer 2015). It would serve as a written agreement between the NACC and other institutions setting out what is expected of each party and a commitment to deliver. It could also include a monitoring system providing for independent oversight by civil society over the pact, thereby increasing the accountability. This approach would help build trust, an important factor in the success of such pacts. Incentives may also be required to ensure a greater level of buy-in than before. It is imperative that the implementing institutions are provided with the authority and resources to



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positively affect change. To ensure impact at the operational level, the mechanism could also regularly bring together a contact point from all relevant institutions to act as a conduit for collaboration, information exchange, update and discussion and feedback on issues raised. This group would provide the strategic direction to interagency collaboration at the operational level, free from political interference.

Secondly, *review the mandate of the ACA*. This is imperative given that the ACA is criticised for both having too much and too little powers. Given these criticisms and the approaching end of the ACA director's term of office at the end of September 2016, it may be timely to review its mandate. There should be a number of core elements of this review, such as an examination into whether the ACA's powers to conduct preliminary administrative investigations should be expanded to include full investigative authority or removed, and the impact of both. If greater investigative authority relates to criminal offenses, there may be a problematic overlap with the police and prosecution. The impact of this should be assessed. Another element could be an analysis of why the ACA has no power to

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investigate the origin of assets and whether it should. All evaluations should be based on an independent assessment of ACA's work.

Third, *collaboration should be instilled as a matter of routine*. Frontline staff in each institution should be encouraged to work with those from other institutions more regularly and proactively, which is likely to instil collaboration as a matter of routine. To incentivise this approach at the frontline level, evidence of interagency collaboration could be assessed as part of performance evaluations. This will also help develop a more collective culture internally and externally. Regarding specific investigations and/or prevention programmes, relevant institutions should come together more in joint teams, with shared responsibility, to ensure a more collaborative approach. It is also recommended that liaison individuals, or teams, from relevant institutions are embedded in other institutions for complex cases to reduce duplication. It will also encourage cross fertilisation of ideas and practices. This could be

done through short, medium and long term secondments between institutions. This process should be made as easy as possible and not laden with bureaucracy.

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Notes

1. This brief draws on an unpublished background study "Mapping the Current Obstacles to Interagency Collaboration in the Justice Sector in Kosovo" conducted by the author and presented at the U4 workshop "Strengthening the Role of the Kosovar Justice Sector in Fighting Corruption" hosted by the Royal Norwegian Embassy and the Kosovo Judicial Institute in Pristina in May 2016.
2. The EC have recommended to the Council of the European Union and the European Parliament that Kosovo should be transferred to the visa-free list for short stays in the Schengen zone due to the hard work and successful efforts of the Kosovo authorities (Qafmolla 2016). It is still unclear as to when the vote will take place.
3. President Thaci was elected President of Kosovo on 26 February 2016, taking office on 7 April 2016.