



DON'T FIX WHAT AIN'T BROKE – II

Position Paper on
Pensions in Kosovo



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Paper Rationale

In April/May 2016, the Ministry of Labour and Social Welfare has initiated the process of amending the Law LAW NO. 04/L-131 on Pension Schemes Funded by the State¹. The drafting of the Concept Document required to justify the necessity for policy change and analyzing the policy options to address the policy objectives was carried out discretely and was not properly discussed with relevant stakeholders. The Social Economic Council, which is the body in charge of facilitating social dialogue has never even discussed either the necessity to change the current law, nor the policy options available to address the challenges with the existing policy. Aside from procedural and technical (process related) deficiencies, the content of the proposed legal changes are also problematic and some provisions even violate basic rights and could be considered illegal and unconstitutional.

Historical Overview of Kosovo's Pension System Development

Before the 1999 armed conflict, Kosovo was part of the former Yugoslav pension system which was based on pension and invalidity insurance principle. In this 'pay-as-you-go' pension system, contributions made by current workers to the pension fund were used to pay benefits to the pensioners, hence linking generations. The level of the pensions was determined on the basis of work experience and earning levels.² Prior to 1989, Kosovo had an autonomous pension fund that collected contributions and paid benefits when it was disbanded. In the same period, Kosovar workers were excluded from the system and were massively laid off from work. By the beginning of the conflict, Belgrade stopped paying pensions to past contributors who had earned this right through labor. In the aftermath of the conflict, emergency relief system was established, but pensioners were not

¹ Official Gazette of Republic of Kosovo. Law NO. 04/L-131 on Pension Schemes Funded by the State. <http://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=9517>.

² <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Pensions-DP/0707.pdf>

treated with urgency. Recognizing the need of pension system for the population, in 2001, two years after the end of conflict, donors took action and provided substantial leadership in encouraging UNMIK in selecting a pension model that can be sustainable in the long-run. The pension policy design was led by consultants funded by USAID, with involvement from representatives of UNMIK, the EU, the IMF, the World Bank, DFID and the ILO³. International civil presence through UNMIK⁴ Administration started a social assistance program that included payments to certain categories of elderly on needs-tested basis. These payments however, covered only a fragment of the elderly population, and were seen as social assistance rather than pension benefits.

By 2003, the pension model had been selected and the new three-pillar system move away from the system based on both linear and vertical solidarity (solidarity/redistribution between pensioners and solidarity between generations) to a well-defined personal savings system. The new system was established in three pillars—namely, a flat rate basic pension, a scheme of mandatory pension savings, and a voluntary pension savings scheme for companies or workers.

UNMIK Regulation 2001/35 of Pensions in Kosovo provided the legislative base for Pillars II and III—was the first act to regulate the pension policy in Kosovo after 1999. The regulation 2002/1510 laid the legislative foundation for Pillar I so as to allow for the entire three components of the system to become operational in 2002. In April of the same year, the Assembly approved the Law no. 2011/04-L-101 on Pension Funds of Kosovo, which abrogated the Regulation no. 2005/20 and Law no. 03/L-08411.

³ <http://legalpoliticalstudies.org/download/Policy%20Report%2006%202012%20eng.pdf>

⁴ United Nations Interim Administration Mission in Kosovo, authorized the Secretary-General to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo could enjoy substantial autonomy. Its task was unprecedented in complexity and scope; the Council vested UNMIK with authority over the territory and people of Kosovo, including all legislative and executive powers and administration of the judiciary

Current Pension Legal Frameworks

Law no. 04 / L-131 on Pension Schemes Funded by the State⁵ is the Law currently regulating the benefits and scope of the Basic Pension Scheme in Kosovo which represents the First Pillar of the Pension System. It is complemented by the Law No. 2011/04-L-101 on Pension Funds of Kosovo⁶ and Law No. 2012/04-L-168 on Amending and Supplementing the Law no. 04-L-101 on Pension Funds of Kosova.

Pillar 1 - Basic Pension

This pension is a linear set and applies to all person older than 65 years of age habitually residing in Kosovo. This pension is given to all that fit the age criteria and is not work-related. The monthly cash benefit from this pension scheme in 2002 was 28 EUR, 35 EUR in 2003 and remained 40 EUR from 2004 until 2008. Since April 2014, the pension is 75 euros. As of September 2015 there were 130.320 persons who were beneficiaries of Basic Pensions.⁷

The Kosovo Pensions Administration (KPA) is responsible for administering this pension through monthly money transfers. The amount of basic pension distributed per person is to be set annually, based on the minimum consumption needs as per the monthly food basket⁸. Any amount less than this would place pensioners at risk of poverty. Table below shows how the monthly basic pension has changed from beginning (2002) to 2015, including government projections for 2016-2018.

The table shows that the monthly rate (in Euro) distributed monthly to pensioners in year 2011-2013 was based on the minimum consumer basket (63 Euro in 2012). While there is a little more than the basket of goods, a

⁵ <http://www.atk-ks.org/wp-content/uploads/2010/09/Law-No.-04-L-101.pdf>

⁶ Official Gazette of Republic of Kosovo. Law No. 2011/04-L-101 on Pension Funds of Kosovo <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2815>.

⁷ Kosovo Agency of Statistics.

⁸ World Bank, The Kosovo Pension Reform: Achievements and Lessons , 2007, at: <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Pensions-DP/0707.pdf> and Group for Legal and Political Studies, Pension System in Kosovo, p. 7.

person living with only this basic pension will probably find it very difficult to live independently and thus will have to rely on family members for support⁹.

Table 1 – Monthly Basic Pensions 2002-2018

| Year | Number of Beneficiaries | Monthly rate | Annual budget allocated for basic pensions |
|-------------|-------------------------|--------------|--|
| 2002 | 93.087 | 28 € | 17,874,763.00 |
| 2003 | 108.279 | 35 € | 44,459,960.00 |
| 2004 | 116.932 | 40 € | 54,193,599.00 |
| 2005 | 124.893 | 40 € | 59,133,333.00 |
| 2006 | 127.356 | 40 € | 63,766,380.00 |
| 2007 | 131,874 | 40 € | 63,133,100.00 |
| 2008 | 138.847 | 40 € | 65,641,485.00 |
| 2009 | 130,347 | 45 € | 73,603,960.00 |
| 2010 | 109,585 | 45 € | 63,640,920.00 |
| 2011 | 107.145 | 45 € | 61,196,210.00 |
| 2012 | 113.043 | 50 € | 73,983,888.00 |
| 2013 | 117.042 | 60 € | 82,388,924.00 |
| 2014 | 122.363 | 75 € | 89,836,507.00 |
| 2015 | 130.320 | 74 € | 119,083,713.00 |
| 2016 | n/a | 74 € | 123,480,000.00 |
| 2017 | n/a | 74 € | 134,602,500.00 |
| 2018 | n/a | 74 € | 128,955,000.00 |

Source: Ministry of Labour and Social Welfare & RKS Annual Budget

For those that contributed to the pension system of the Republic of Serbia prior to the conflict, additional pension to pensioners was implemented since the year 2008. The monthly pension is fixed at 35 Euros, and will be paid in addition to the basic old age pension if at least 15 years of contribution is

⁹ Budgeting for Social Welfare - A Gender+ Analysis to Inform Gender Responsive Budgeting in the Ministry of Labour and Social Welfare in Kosovo for 2016-2018

evidenced in the former system. According to the Pension Administration Department (PAD), an estimated 28,135 pensioners—or around 20% all pensioners over 65 years of age—collected pensions as of January 2009. This number is expected to increase in the future.

Pillar 2 - Individual (Mandatory) Pension Savings

The mandatory pension savings system provides pensions that supplement the basic pension, which covers employees and other economically active person older than 18 years. This is mandatory for persons born after year 1946, while for those that were born before that year the contribution was left on voluntary basis. Every employer is obligated to withhold pension savings contributions for his employee at 10% of the employee's gross salary, which is shared by the employer (5% of gross salary) and employee (5% gross salary)—although one can opt to pay a maximum of 15% (Voluntary Pensions Pillar III). Records of these transactions are managed by the Kosovo Pension Savings Trust (KPST) who engages in investments abroad by exchange with major European asset managers. Overseas funds and domestic investment is not under legal jurisdiction; however, there are high standards for security. Collectively, KPST participant assets surpassed 100 million Euro beginning in 2005 and reached 200 million by the end of 2006. These assets are centralized in order to minimize administration fees. The pension level and method is dependent on the amount of collected assets

Table 2 shows the planned expenditures for contributory pension for 2016 and 2017 based on the annual budget of Republic of Kosovo¹⁰.

¹⁰ Laws on Kosovo Budget in consecutive years:

<http://www.kuvendikosoves.org/common/docs/ligjet/Ligji%20per%20Buxhetin%20e%20Kosoves%202014.pdf>

<http://www.kuvendikosoves.org/common/docs/ligjet/05-L-001%20sh.pdf>

<http://www.kuvendikosoves.org/common/docs/ligjet/Buxheti%202012.pdf>

<http://www.assembly-kosova.org/common/docs/ligjet/04-L-165%20PL%20per%20buxhetin%202013.pdf>

Table 2 – Actual & Planned Expenditure for Contributory Pension

| Year | Subsidies & transfers |
|------|-----------------------|
| 2013 | €47,897,475.00 |
| 2014 | €47,897,475.00 |
| 2015 | €68,633,800.00 |
| 2016 | €68,946,380.00 |
| 2017 | €70,022,499.00 |

Table 3 shows the annual contributory pension per person in Euro. Each year, this contributory pensions has increase slightly. The amount is planned to increase by one Euro annually from 2016-2018.

Table 3 – Annual Pension per Person

| Year | in Euro |
|------|--------------|
| 2013 | 1,372 |
| 2014 | 1,601 |
| 2015 | 1,690 |
| 2016 | 1,659 |
| 2017 | 1,660 |
| 2018 | 1,661 |

Pillar 3 - Voluntary Pension System

The voluntary pension system is organized on the company level as a supplementary pension fund of the employer or on an individual basis as a supplemental individual pension. Kosovo’s Central Bank regulates and supervises the private companies that offer voluntary pension insurance. The following is a table depicting the characteristics of each pillar¹¹:

¹¹ World Bank, The Kosovo Pension Reform: Achievements and Lessons , 2007, at: <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Pensions-DP/0707.pdf>.

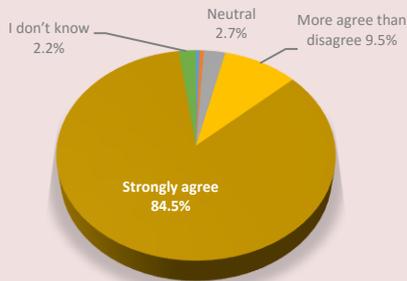
| | Pillar I Basic Pensions | Pillar II Individual Savings Pension | Pillar III Voluntary Individual or Employer Pension |
|--------------------------|--|---|--|
| Participation | Universal | Mandatory | Voluntary |
| Eligibility | All citizens | Contributors | Voluntary contributors |
| Contribution rate | n/a | 5% employee and 5% employer | Depends |
| Coverage | All habitual residents, either 65 years of age and over or 100% disabled | Phased implementation: All working habitual residents | Initially very limited |
| Provider | Kosovo Pension Administration | Kosovo Pension Savings Trust | Employers, Pension Funds, Insurance Companies, Banks |
| Regulatory Bodies | Ministry of Labor and Social Welfare; Ministry of Economy and Finance | Banking and Payments Authority of Kosovo (BPK) | Banking and Payments Authority of Kosovo (BPK) |
| Investments | n/a | Professional Asset Managers | Licenses Asset Managers and Insurance Companies |
| Collection Agent | n/a | Tax administration | Employers, Pension Funds, Insurance Companies, Banks |

Table World Bank, Social Protection

Snapshot of the Current Situation within Target Audience

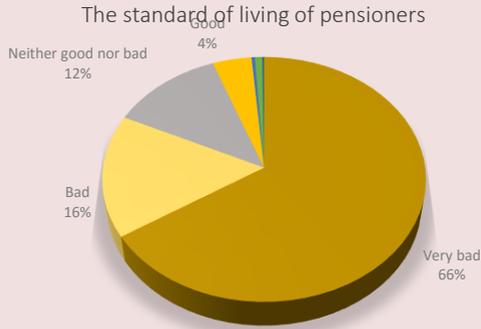
In year 2015, IKS implemented a Survey on the Citizens' Perceptions and Attitudes Towards Standard of Living and Welfare¹² with 1,100 respondents. One section in this survey was dedicated to the perceptions of citizens on social assistance, services, and social security system in Kosovo. The following were some of the responses and views obtained.

The government is responsible to provide an acceptable standard of living for the elderly?



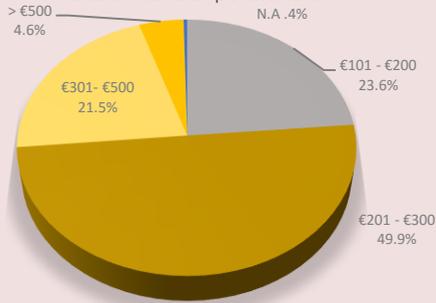
Kosovars appear to be sensitive towards the elderly. The respondents interviewed, by large believe that the government is also responsible for providing acceptable living standards for the elderly. While 84.5% of them strongly agree that it is the government's responsibility to provide the elderly with a decent living standard, an additional 9.5% states to agree more than disagree with that statement. Only half a percent claim to completely disagree or to disagree more than agree.

12 KES Publications 'Standard of Living & Welfare' Report 2, 2015



To this end, 65.9% of respondents rate the standard of living of pensioners as 'very bad', 16.2% of respondent's state that the standard of living is 'bad' for pensioners. Citizens were also asked about the minimum level that the basic pension should be in order to cover the basic needs of pensioners. To this end, 50% of respondents place this value between 201 EUR – 300 EUR, with an additional 21.5% of them estimate it between 301 EUR – 500 EUR. Almost 24% of citizens believe that basic pension should be between 101 EUR – 200 EUR Only 4.6% of respondents believe that the minimum basic pension value should be higher than EUR 500.

At what level should the basic pension be in order to cover for the basic needs of pensioners?



Process Assessment

Given that the Law subject to this document and the revision process impacts every citizen of Kosovo within the existing and potentially next generations, the revision/change process should be widely consulted and general public consensus on the needed changes should be reached. The process until now has been rather discreet, involving primarily MLSW staff and external consultants provided by different local and international organizations. As such, process cannot be considered neither inclusive, nor open and transparent.

Furthermore, the scope and application of changes proposed in the working group on Amending and Supplementing the Law completely changes the pension scheme in Kosovo. It exceeds by far the maximum 40% change that can be facilitated by on Amending and Supplementing process. Legally, the proposed changes can only be incorporated through a New Law Drafting. As such, the process of on Amending and Supplementing the Law is inadequate policy planning/change tool to introduce the changes in the pension system in Kosovo.

A third drawback related to the process of facilitating/designing the changes in the existing pension system in Kosovo is that the policy objective of the proposed reform is reducing the burden on the public budget, without taking into consideration the policy objectives of the existing and the proposed schemes. The proposed changes do not take into account neither the specifics of the target population affected by it (pensioners), nor the social risk that the pension system seeks to address, namely—Old Age Risk.

Content Assessment

The protection from old age risk is also recognized by European Social Charter, which in its Article 23 states, ‘Every elderly person has the right to

social protection¹³. The Kosovo Constitution recognizes that all major treaties sharing universal values of rights are applicable in Kosovo, inclusive of the European Social Charter. With Pillar II being represented by compulsory Individual Pensions Savings Scheme, which is independently managed and invested by the Kosovo Pensions Savings Trust, the state completely removes its obligation and protection for its citizens. Furthermore, the Individual Savings Scheme is not guaranteed in any way by the Government, though it obliges its citizens to put their old age savings in it. The funds can completely evaporate with no prior warning, if financial markets where these funds are invested collapse. During the 2011 crisis, the Pensions Savings Trust Investments suffered millions in losses, testifying to the insecurity of the funds invested. With Pillar I Basic Old Age Pension removed, and Pillar II of Pension Savings at odds with market performance, Kosovo pensioners remain completely unprotected, thus failing to comply with guarantees under the European Social Charter and other international legal documents and conventions drafted in the spirit of the Charter.

Article 1.4 of the Law subject to change defines **Basic age pension** – the minimal regular monthly pension paid to all citizens of the Republic of Kosovo who have reached the age of sixty-five (65), regardless if they have been employed or not and those who meet the criteria set forth by this Law.¹⁴ Old Age pension is the only pension which is universally only awarded to resident citizens, hence denying the retired Kosovars this right of protection which is guaranteed by both constitution and international treaties and documents, to which Kosovo adheres to. The current old-age pension scheme is a clear old-age protection scheme, which is neither related to work or income. Conditionality to income transforms this scheme into poverty scheme, which analyzed through the lens of active contributors in the workforce, is discrimination. Those that have saved, because of their work and have saved in the pension savings trust, are denied the old age pension, which the current law entitles them with. Similarly, those that have been able to own assets and

13 European Social Charter (Revised) 03. V. 1996. Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000168007cf93>

¹⁴ Official Gazette of Republic of Kosovo. Law NO. 04/L-131 on Pension Schemes Funded by the State. <http://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=9517>

benefit from renting those assets, are also denied the only right that they are entitled to in the country of origin, conditioned they also reside.

All conditionality that is proposed under the current draft amendments, is thus neither legal nor justifiable for an old-age pension scheme, which the first pillar of the Kosovo Pension Scheme is. While some conditionality is also applied in pension schemes in other countries, comparing them to Kosovo is not accurate and may lead to grave misconceptions. The states that provide conditionality in income and social status are states that have pension insurance systems. In Kosovo such level of protection for pensioners does not exist. Pension insurance is usually manifested in the form of a national pensions fund, which applies both horizontal linkages in distribution of pensions, as well as, vertical linkages between generations (pay-as-you-go schemes). In either case, they are much more different from the pensions savings system represented in the second pillar of the Kosovo system, which represent individual savings accounts which is 'filled' privately, and to which the states makes no contribution (unless working for the state). The investment portfolio of KPST is also not guaranteed by the Government of Kosovo, thus, further making any conditionality principle comparable to that of Kosovo. The proposed changes will be very difficult to implement as given the unpredicted situations that may arise, there may be pensioners depleting their savings, very quickly, or those that have not saved enough, or in worse case scenarios, bankruptcy of the Pensions Trust, would leave all elderly unprotected.

The draft text discussed by the working group for on Amending and Supplementing the Law No. 04/L-131 on Pension Schemes Funded by the State introduces major changes in the pension system in Kosovo, which exceed the maximum 40% content change allowed to be facilitated through Amending and Supplementing process. As per the proposed wording in the draft document, the implication from this 'cosmetic' change is that the Pillar I of the current Pension System completely disappears. As such, the risk of old age, which according to the definition provided in the law which is subject to change, remains uncovered.

Through the proposed Reform, a new scheme called "Old Age Social Pension" is introduced, which unlike the current scheme is a scheme addressing the risk of old age, but poverty among the elderly population. This change alone,

represents a change of 1/3 of the pensions system in Kosovo or the entire Pillar I of the system, which requires a completely new process of re-thinking pension policy and addressing the challenges of the current system. This however cannot be carried out without broad consultations and public debate, as the impact from this policy has not been assessed at all.

The population in Kosovo is relatively young, and the number of basic pension beneficiaries in the system throughout the years has remained more or less the same. Although it is projected that there will be an increase of the population of 65 and older and a drop in fertility rate, the situation would still be favorable in regard to sustaining a decent pension for the contributors of the system. With a country like Kosovo, where ageing population is not an issue, removing the protection from old age is neither required, nor it serves for improving the pensions system and protection from old age risk. The shortening of the period of personal visits of the pensioners from 6 months (which applies currently) is a breach of their basic rights and should be considered as harassment. Such scrutiny is not common in any of the schemes financed by the Ministry of Labour and Social Welfare. As such, obliging pensioners visit the Pensions Administration Offices is inhumane and blatant manifestation of bullying and harassment towards pensioners.

The abuse furthermore continues with having them re-apply if they miss out one registration in time and bring forth all necessary certificates and documentation is further breach of pensioners' basic rights. If the pensioners have provided the documentation once and is in MLSW files, having them re-register from the beginning is an intentional harassment aimed at lowering their willingness to pursue their right. Given that third-age is often associated with worsened health condition, temporary or permanent age-related conditions and diseases, the repeated process of application can be considered purposeful harassment to discontinue the benefits they are entitled. If their status is discontinued because of failure to visit the pensions offices, them appearing (after whatever period that may happen) should consist of only presenting themselves with a valid picture ID.

While modern decision and policy making requires citizen-centered policy making and responsive attitude of the government, the proposed policy is not adequate given the socio-economic situation in Kosovo, and does not take into account the needs and specific context of the target audience it aims to address. It impoverishes the already poor social protection system in Kosovo

and worsens the quality of service for its recipients. It is aimed solely on decreasing the burden on the budget, and as such, it has brought about grave consequences for current and future generations.

In addition, the second major content-related flaw is represented in the law treating income earned during active life as current income at the time of retrieving it from the PST. Pension Savings are personal savings of every person that have been earned throughout its active participation in the labor force, which for most people is over 40-years' time. At the time of 65, pensioners are entitled to receive back their savings, which at best, can be considered as their impoverishment, as they are depleting their life-long savings. The currently proposed draft considers the return of personal savings as regular current income and considers it as grounds for expulsion from the basic pension scheme. On the same principle (considering it current income), the pension is taxed, which again is a blatant breach of pensioners rights and further worsening of their already bad financial situation.

Final Remarks and Recommendations: The Way Forward

Pension schemes are mechanisms to reduce the risks of poverty amongst the elderlies and they ensure dependable income to maintain living standards throughout retirement. Thus, pension policies in place impact the economic situation of elderly people. It impacts their risk of being affected by poverty and social exclusion during their pensioner life. Given that aging is an irreversible process, the reform affects every citizen of Kosovo which will retire solely on contributions made in the post 2004 period. The proposed changes under the current process of Amending and Supplementing exceed 40% maximum change allowed to be facilitated through such processes. As such, if approved would constitute a breach of the basic legal principle on the basis of which it is determined what process will certain policy modification will follow.

The policy changes proposed through the process of Amending and Supplementing has neither been publicly debated nor involved significant impact analyses, though the reform directly affects every citizens of Kosovo.

Given the percentage of population that pensioners represent in Kosovo (70% of citizens being under the age of 35 years), provides for no grounds to move forward with such major policy change in such abrupt manner. As such, the current process should immediately be suspended. If the MLSW and the Government of Kosovo consider that a policy change is necessary, the working group for drafting the new Law of Pensions Schemes Funded by the State or an overarching Pension System Reform should be initiated and an inclusive and open process facilitated. Interested parties should be included in the working groups to ensure that the new system adequately addresses the needs of the population it serves.

The reform process, if any, should be aimed at improving the services/benefits for the elderly, reducing the administrative bureaucracy related to benefiting from the old age pension scheme, and releasing ministry resources to identify and remove possible abusers with the scheme. The reform should not put a burden on the pensioner to prove s/he is alive, but instead, it should refine the system to automatically remove deceased persons from the scheme. To this end, the practice of some municipalities to oblige religious communities to report all burials should be supported as it enables immediate de-registration of the dead from the lists of recipients of this benefit. Making compulsory to report all burials is a mandatory step that the future policy should entail. This alone, would eliminate the need for any personal appearances of pensioners to MLSW offices to prove they are alive. Initiating such major policy change, without any urgent necessity, without taking into account the condition of the target audience and solely tailoring the policy to remove its burden from the budget, is inadequate and should not be pursued in the next reform process. MLSW is responsible for ensuring that the most vulnerable categories are protected and that there is a sound social system that is tailored to specifically cater to the most vulnerable categories (which all elderly are). It cannot initiate reform processes aimed at worsening the protection of its citizens without any major economic crisis. Kosovo has not experienced any economic crises, instead, it has shown slow steady growth even in times when global economy has not performed. Any attempt to formulate pension policies with motivation to reduce its budget costs, and not with the intention to increase the protection and robustness of the system, will have detrimental effects on current and generations to come.

ABOUT US

The Kosovar Stability Initiative (IKS) is an independent, not-for-profit think tank focusing on empirical research and analysis of socio-economic development in Kosovo. IKS was created in 2004 in recognition of the pressing need for independent, in-depth analysis of important issues involved in promoting stability and prosperity in Kosovo. Its innovative and policy-relevant research aims at initiating debates on important issues for Kosovo's future.

We believe that evidence-based public debate stands at the core of democratic decision-making and economic transformation in the country. IKS does not have party, political or any other organizational affiliation.

IKS's highly experienced and multidisciplinary team is committed to achieving its objective. An Advisory Board, including Kosovar and international analysts and practitioners, also supports its work.

Since its inception, IKS has worked on numerous empirical research projects focused on issues such as governance, economic development, urban planning, cultural heritage, corruption in post-war reconstruction, environmental issues, education, Kosovo's image problem and the current muddled governance structure.

IKS is also part of an ESI-inspired network of think-tanks across South East Europe and associate member of ECAS.

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