

## **Final Draft**

# **FINAL EVALUATION OF THE KOSOVO NOTARY PROJECT**

**2006 - 2014**

By the INNOVABRIDGE Foundation, Caslano / Switzerland

Dieter von Blarer, lic.iur, Advokat

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## TABLE OF CONTENTS

TABLE OF CONTENTS .....	2
<b>ACRONYMS .....</b>	<b>3</b>
<b>1. INTRODUCTION.....</b>	<b>6</b>
1.1 Background .....	6
1.2 Methodology.....	8
<b>2. RELEVANCE .....</b>	<b>8</b>
2.1 Context.....	8
2.2 Relevance .....	9
2.3 Relevance for Swiss Strategy in Kosovo .....	10
<b>3. EFFECTIVENESS AND VALUE ADDED .....</b>	<b>11</b>
3.1 Intended/planned outcomes and outputs .....	11
3.2 Adequate project design .....	15
3.3 Achievements / Sustainability .....	16
3.4 Challenges & Risks.....	17
<b>4. EFFICIENCY .....</b>	<b>18</b>
4.1 Cost-benefit analysis .....	18
4.2 Management and steering .....	19
4.3 Reporting and Accounting.....	19
<b>5. SDC policy .....</b>	<b>19</b>
<b>6. LESSONS LEARNED .....</b>	<b>20</b>
6.1 Select a strategic niche.....	20
6.2 Select highly specialised practitioners .....	20
6.3 One donor approach .....	20
6.4 Strategic commitment of the government.....	21
6.5 High impact on governance – doubtful impact on the judiciary .....	21
6.6 From humanitarian need to transitional justice to sustainable legal services .....	21
<b>7. CONCLUSIONS.....</b>	<b>21</b>
<b>8. RECOMMENDATIONS.....</b>	<b>22</b>
<b>Annex .....</b>	<b>24</b>

## ACRONYMS

AD	Administrative Directive
CEPEJ	European Commission for the Efficiency of Justice
CRP/K	Civil Rights Program Kosovo
CS	Country Strategy
CSO	Civil Society Organisation
DAC	OECD's Development Assistance Committee
DoJ	UNMIK Department of Justice
ECHR	European Court of Human Rights
EULEX	European Union Rule of Law Mission
EUSR	European Union Special Representative
FRY	Federal Republic of Yugoslavia
GoK	Government of Kosovo
HPCC	Housing and Property Claims Commission
HPD	Housing and Property Directorate
ICO	International Civilian Office/EU Special Representative
IDMC	International Displacement Monitoring Centre
IDP	Internally Displaced Person
I-H-N	Institut International des Hautes Etudes Notariales
KCA	Kosovo Cadastral Agency
KJC	Kosovo Judicial Council
KPA	Kosovo Property Agency
KPCC	Kosovo Property Claims Commission
KPCVA	Kosovo Property Clarification and Verification Agency
KPCVC	Kosovo Property Clarification and Verification Commission
LoN	Law on Notary
MoU	Memorandum of Understanding
MoJ	Ministry of Justice
NATO	North Atlantic Treaty Organization
NCK	Notary Chamber of Republic of Kosovo
NGO	Non-governmental Organisation
PAK	Privatisation Agency in Kosovo
POE	Publicly Owned Enterprise
SC	Steering Committee
SCO	Swiss Cooperation Office
SDC	Swiss Agency for Development and Cooperation
SOE	Socially Owned Enterprise
SRSg	Special Representative of the Secretary-General of the UN
ToT	Training of Trainers
UINL	Union International du Notariat
UNMIK	United Nations Interim Administration Mission in Kosovo
UNSC	United Nations Security Council

## EXECUTIVE SUMMARY

The **Kosovo Notary Project** has been based on a forward-looking and contextually innovative strategy to *support the development of rule of law and the consolidation of the judiciary* in Kosovo. Its main aim has been to shift the competence to issue and verify legal documents for authorisations and business transactions, including selling and buying of immovable properties, from the overloaded municipal courts to private notaries, who provide this service more efficiently and effectively to the citizens of Kosovo and to foreign investors. The oversight and control function remains with the Ministry of Justice (MoJ) as well as the licensing of new notaries after successful examination. The project did not only support the *Government of Kosovo* (GoK) through a close cooperation with the “*Institut International des Hautes Etudes Notariales*” (I-H-N) to develop a legal framework for a private notary system, but it also supported the implementation of the law, the training of the first notaries including the required exam and the implementation of a *Notary Chamber of the Republic of Kosovo* (NCK)<sup>1</sup>. In 2012 the first Notary offices opened their doors to the public.

A notary is a legal official who has been entrusted by the public authority with the safeguarding of the freedom of consent and the protection of the rightful interests of individuals. A signature by the notary confers authenticity to legal acts. Furthermore, notaries have duties that exceed the simple authentication of acts and, indeed, often advise citizens about the different possibilities available regarding the adoption of acts and their legal consequences.

As a guarantor of legal security, the notary has an important role to play in limiting litigation between parties. Thereby, he/she is a major actor in preventive justice.<sup>2</sup>

SDC supported the development and implementation of the notary system in Kosovo as the sole donor<sup>3</sup>. It had chosen a highly specialised small team from the Institut International des Hautes Etudes Notariales (I-H-N) as an implementing partner.

The I-H-N developed the relevant legislation, training material and institutional set up. The Project supported the development and institutionalisation of the NCK, which will take over training responsibilities and some disciplinary power for and within the notary profession. The chamber will also represent the interest of the notaries in front of the Kosovo institutions and other legal professions (lawyers/bailiffs/bankruptcy administrators). The department of legal professions within the MoJ was also empowered to fulfil its tasks and organize future exams and the functioning of the relevant examination commission.

Given SDC’s financial support to the notary system in Kosovo from the legislation to the implementation, this review serves as the final assessment of the notary project’s institutional relevance, effectiveness and efficiency (2005-2014). The central question posed in this assessment is whether the Notary project’s initial objectives were achieved and what the future challenges are for the credibility and integrity of the Notary system in Kosovo. The report also provides lessons learned related to the chosen strategy and the relevance for property rights and the business environment in Kosovo. The review considers the historical and socio-political dynamics in which the project had to operate. An in-depth analysis of the legislative framework for the Notaries in Kosovo is beyond the scope of this assessment.

The report is structured in eight parts: the first part provides an introduction with a background overview and the methodology used for the analysis; the second part addresses historical context and relevance; the third part deals with issues linked to the project’s effectiveness and the fourth part deals with issues of efficiency. Some references to SDC Policy are made in the fifth part. Lessons learned from the Notary Project are provided in the sixth part while the seventh part provides overall conclusions and the eighth part provides recommendations. The findings in the report were informed by a document review as well as observations and interviews during a mission in Kosovo from February 1 to 6, 2015.

<sup>1</sup> [www.noteria-ks.org](http://www.noteria-ks.org)

<sup>2</sup> CEPEJ: Report on "European Judicial Systems – Edition 2014 (2012 Data): Efficiency and Quality of Justice", Chapter 14, p. 434

<sup>3</sup> For HPD and KPA SDC was a substantial donor among others.

## **Overall Results**

By February 2015, 74 Notaries (including 18 women and 5 minorities<sup>4</sup>) had opened offices all over Kosovo. Out of 38 municipalities 32 are directly served by a notary office<sup>5</sup>.

The examination of the notaries received high recognition for its integrity. The MoJ together with experts decided to provide bar codes for each candidate in order to make the examination anonymous for the correction by the examination commission. Two experts of the Union International du Notariat (UINL) provided supervision of the process. The MoJ issued transitional rules for the initial set of exams to reach a sufficient number of active Notaries<sup>6</sup>. In a first competition 38 Notaries were licensed and opened offices in May 2012. After a second examination an additional 35 notaries were licensed and opened offices in 2013. In addition to this results overview, the assessment concludes that *with respect to effectiveness*, the Project has delivered a notary system for Kosovo, which serves the public need effectively and with credibility. While before people had to queue in front of the courts for hours for a simple verification of signatures and wait for months for the court to deal with the estates of deceased family members, clients are now served allegedly timely and effectively by the new system.

The project met its challenges related to efficiency against set-backs in legislative work and in the first examination. Given an often reform adverse environment, seven years from starting the legislative process to installing the first notary offices is time-wise an excellent outcome.

## **Areas of remaining future concern**

The notary system in Kosovo faces several challenges, which threaten to impact on its so far rather impeccable reputation. The Law on Notaries (LoN) is in a process of amendment. While the MoJ aims at a full amendment of the law, the I-H-N would prefer a swift amendment of Chapter II of the Law dealing with exams and assuring the development of the capacity for next generation notaries. Laws such as the *Family Law* and the *Inheritance Law* need amendments to be aligned with the *LoN* to provide legal clarity on the competences of the courts and the notaries.<sup>7</sup>

While the integrity of the examination proceeding has been protected by a strong role of the UINL and the I-H-N, there are concerns related to the impartiality of the licensing and office competition procedure, which allegedly brought well-connected candidates “better” office environments, e.g. in the middle of Pristina. There is a certain tendency of some notaries and the chamber of notaries to monopolize legal services beyond the definition in the law, where mandatory notarial acts are clearly defined. This might lead to tensions with the bar association.

Some stakeholders lobby for more or a full liberalisation of the notary profession, especially related to the territorial “jurisdiction”. The main objective of the project was to bring the notary services closer to the people and to release some of the pressure on the judicial system in Kosovo. More or full liberalisation of the new profession would not improve the quality of services but rather threaten its integrity and credibility. After all, notaries provide a public function within a marked, which is controlled by rules of the state.

The notaries and other professions dealing with immovable property issues, construction and planning need to negotiate IT access to the KCA database in order to improve their efficiency and effectiveness.

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<sup>4</sup> The minorities include 2 Goran, 2 Bosnian and 1 Serb.

<sup>5</sup> North Mitrovica, Leposavic, Skenderai, Decan, Zubin Potok and Zvecan are not yet directly served by a notary office. To mitigate the absence of a notary office in a municipality Administrative Instruction No. 8/2011 on the „Number and Locations of Notary Offices as well as Premises and Equipment Required for a Notary” Art. 9 foresees: “*For a transitional period until a completion of a notary service in all municipalities, the Minister of Justice may authorize and oblige an appointed notary to provide notary services in another municipality without changing the notary office address.*”

<sup>6</sup> ADMINISTRATIVE DIRECTIVE No. 7/2010 ON THE NOTARY EXAMINATION

<sup>7</sup> According to the LoN, the notaries have competence to deal with non-contentious inheritance issues. According to the Inheritance Law, the courts still have such competences as well. The President of the Pristina Municipal Court still has 800 inheritance cases that the people would rather have him deal with than the notaries.

## **Swiss Contribution**

Switzerland financed the entire costs for the legislative and operational transition to move the “notary services”, which were previously delivered by the courts to a new notary system with private offices all over Kosovo. The costs of **CHF 1'874'690.00**<sup>8</sup>, namely including the intensive legislative work of the I-H-N with the MoJ, the training of the first and second group of candidates for the notary exam and monitoring of the exam by international experts, development and setting up the NCK, organizing the validation of the relevant legislation and the institutional relevance of the NCK for a successful accession to the UINL seems to be a fair price for the delivered results. SDC also participated and co-chaired the Steering Committee of the project together with the MoJ. In this capacity SDC and if needed the Swiss Embassy lobbied for legal solutions in line with international standards and transparency of the different processes within the project (e.g., legislation/examination etc.).

**In summary**, the Kosovo Notary Project considerably contributed to the improvement of the environment to do business in Kosovo, and also to an easy access to notarial services for citizens for documents of daily need such as authorisation to use someone’s car (even within the family); authority for grandparents to travel abroad with their grandchildren; the implementation of a 50-year-old Yugoslav law rendering the signature of both spouses under a contract selling the family house or apartment mandatory. While there is no hard evidence, that the caseload of the courts was reduced by the new notary system, the high number of notary acts delivered to clients suggest a palpable release of the pressure on the courts<sup>9</sup>. The impact is more visible on the “governance side” of this service. The transformation of the bureaucratic notary services by the courts into a service and client oriented notary system that is close to the people, brought good governance into a sector in which people depend on different aspects of life and economic development.

## **1. INTRODUCTION**

### **1.1 Background**

The former Federal Republic of Yugoslavia (FRY) did not have a notary system. Legal acts requiring official stamp and signature (e.g., real estate transactions, verification of a signature, etc.) were delivered by the municipal courts. After the armed conflict in Kosovo (1998-1999) it turned out that the justice system is heavily overburdened. 24 municipal courts had to not only deal with litigious cases, but also provide “notary services” on specific contracts and verification of signatures on simple documents such as a power of attorney. Anecdotal evidence by some interlocutors confirm that in certain courts people had to line up starting sometimes at 05:00 o’clock in the morning and not knowing if they would be able to finalize their business by the end of the day. While the courts were drowning in several thousand cases, the simple services of the “notary branch” were neglected. Corruption and favouritism were allegations discrediting this system. But also, the system hindered the efficiency and transparency of doing business in Kosovo. While lawyers could prepare documents related to for example, real estate transactions, such documents could not be finalized, as they needed a stamp and a seal of the courts. The lack of easy access for the verification of simple signatures under a contract also fostered mistrust among actors in the local economy. Cases of fraud and forgery added to a general climate where especially potential foreign private investors would be reluctant to involve in the development of the local economy in Kosovo.

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<sup>8</sup> Until June 2014 and including CHF 20'000.00 provided for legislative support by the I-H-N to UNMIK prior to Phase I of the project.

<sup>9</sup> In 2013 notaries delivered around 238'000 and in 2014 around 395'000 notarial acts to clients.

In 2010 the Kosovo Judicial Council estimated the caseload of civilian/criminal and execution cases in the Kosovo court system at 200'000<sup>10</sup>. In 2013 the statistics of the Kosovo Court System presented it as follows<sup>11</sup>:

	Court	Number of cases courts had in process during the Reporting Period (R.P.)	Out of the total number of cases:		Number of cases courts have completed during the R.P.	Number of uncompleted cases at the end of the R.P.
			Number of inherited uncompleted cases in the end of R.P.	Number of received cases in process during the R.P.		
1	Supreme Court	10605	904	9701	10491	114
2	Special Chamber	16424	9313	7111	3819	12605
3	The Court of Appeal	18980	7613	11367	11698	7282
4	Basics Court	839668	345676	493992	393414	446254
	Total	885677	363506	522171	419422	466255

The backlog of court cases remains one of the main concerns for the EU and EULEX<sup>12</sup>.

To mitigate the challenges faced by the judicial system in Kosovo UNMIK started to prepare legislation on a notary system in 2004. In 2008 the LoN was endorsed by the Kosovo assembly. The implementation of the law including preparation, examination and licensing of notaries for a reasonable coverage all over Kosovo took another four years until the first notaries could open their offices in May 2012. In the meantime, 14 bailiffs (private enforcement agents) have also taken up activities as well as bankruptcy administrators<sup>13</sup>. How much the outsourcing of the notary, enforcement and bankruptcy competences from the courts will improve their efficiency might be visible in some years.

The statistics of the KJC suggest that between 2010 and 2013 the backlog of court cases has more than doubled. The statistic does not differentiate consistently between litigious and none litigious cases<sup>14</sup>. Therefore it is difficult to assess the impact of the Kosovo Notary Project on the caseload of the courts. However notaries have delivered around 395'000 notary acts to clients in 2014 and around 238'000 in 2013. These numbers suggest that either there has been a considerable reduction of such cases at the courts or that people now use these services because they are much easier accessible.

The notary system has also an impact on the "governance" in the real estate market. The context has changed from the housing crisis after the war, which was addressed by the Housing and Property Directorate (HPD) (phased out in 2006), to aspects of transitional justice and a restitution procedure under the KPA (main mandate finalized in 2014) and finally the notary system, which provides among others, services for real estate transactions and mortgaging, hence it improves timely services around real estate transaction and opens up better access to credits. However, as long as the Kosovo Cadastre has not regained its full

<sup>10</sup> Decision of the KJC for a strategy to reduce old cases (November 2010)

<sup>11</sup> KJC Annual Report 2013

<sup>12</sup> EU Kosovo Progress Report October 2014 p.p. 12 - 14

<sup>13</sup> EU Instrument for Pre-Accession Assistance (IPA) 2014 to 2020

<sup>14</sup> Litigious cases being those to be decided by the court and none litigious those addressed by new judicial services such as the notaries, the bailiffs, the mediators or the bankruptcy administration.

credibility and reliability, the real estate market in Kosovo will not gain trust especially that of the international investors, but partly also the trust of well-informed Kosovars and the diaspora<sup>15</sup>.

The long way to fully align Kosovo laws into a comprehensive legal system with as few contradictions as possible remains an obstacle to full trust in the system. The same goes for a still wider spread perception of corruption and nepotism in the Kosovo establishment<sup>16</sup>.

## 1.2 Methodology

Data for this final assessment is derived from several sources: i) An assessment mission with interviews in February 2015 ii) Project Documents from Phase I to Phase III and reports thereto as well as materials received from the project team iii) publicly available information on the Kosovo judiciary, the legal professions and the applicable laws from the MoJ website.

The assessment complies with the DAC Evaluation Quality Standards and is guided by the following questions:

- **Relevance:** *Has the project addressed a developmental challenge in the given time and context?*
- **Effectiveness:**
  - *Assessment of intended/planned outcomes and outputs;*
  - *Adequate project design (intervention strategy, approach, methods and instruments, etc.)?*
  - *Is the project leaving behind a functional notary service with solid **sustainability** chances?*
- **Efficiency:** *Have human and financial **resources** been efficiently used by converting them into intended results (including cost-benefit considerations)?*
- **SDC Policy:** *Has the project been aligned to SDC transversal themes?*

The evaluator conducted 15 meetings during the assessment mission and participated in the Steering Committee of the project.

## 2. RELEVANCE

### 2.1 Context

To understand the development of property rights, in the former FRY, the succeeding Republic of Serbia and Montenegro and lastly the post 1999 property rights arrangements in Kosovo, it is worth citing from the 2007 Final Report of the Housing and Property Claims Commission (HPCC):

*“... As a result of nationalization in 1945, property was declared socially owned and much private land and property was transferred to Socially Owned Enterprises (SOEs). In 1999, 43% of property was non-private, being either socially owned (belonging to SOEs) or owned by the state (including lands belonging to municipalities and central government for the provision of public facilities such as roads, schools, hospitals, etc.). Private property only comprised 57% (belonging to natural persons, companies and religious entities)<sup>17</sup>.”*

*Residential property fell into two primary categories; private single family homes which were located mainly*

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<sup>15</sup> The Kosovo Property Clarification and Verification Agency (KPCVA) is meant to verify and certify the cadastre by comparing cadastral documents from Serbia with the actual information in the Kosovo cadastre.

<sup>16</sup> According to Transparency International, Kosovo together with Albania ranks 110 out of 174 countries on the TI corruption index. The two countries remain the most corrupt in the Balkans.

<sup>17</sup> There was only a very small number of privately owned apartments, comprising those which had not been nationalized in the 1950s or 1960s, and socially owned apartment that had been privatized before the conflict pursuant to the provisions of the 1992 Law on Housing (Official Gazette of the Republic of Serbia No. 50/92). For a detailed and historical account of social ownership of property see Perritt, H., *Resolving Claims when Countries Disintegrate: The Challenge of Kosovo*, in Vol. 80, *Chicago-Kent Law Review*, 119 (2005).



on the outskirts of towns and in rural areas and socially owned apartments which up to the early 1990s constituted the primary source of residential housing. These apartments were built and administered by either SOEs or Publicly Owned Enterprises (POEs) and were allocated to employees of these enterprises in order to meet their housing needs and were subsidized by obligatory contributions from employees' salaries.

...in 1991 legislation designed to limit real estate transactions was enacted, namely the Law on Changes and Supplements on the Limitations of Real-Estate Transactions. Its provisions required every purchase, lease and sale real estate contract in Kosovo to be approved by the Directorate of Property Rights Affairs of the Ministry of Finance of the Republic of Serbia. The Ministry could refuse to approve a sale if it considered that it would have had an effect on "the national structure of the population" or on the "emigration of members of a particular...nationality". This law intended to restrict the sale of properties from Kosovo Serbs to Kosovo Albanians as a means of ensuring that the Serb population did not decline. Some 98% of transactions presented to the Ministry of Finance were reportedly rejected on this ground. Many citizens sought to circumvent these legislative measures through informal, unregistered property transactions in the cadastre or property records. This practice which continued up to 1999 gradually rendered the cadastre and property registration system unreliable.<sup>18</sup>

Property rights issues continue to play an important role in Kosovo. They provide a source of tax revenues for the government, and they form an important foundation for Kosovo's economic development and foreign investment climate.

Mainly lawyers (of the bar) provided so far services for the contractual management of the real estate market. They drafted related legal acts and the courts had to verify signatures and thereby also testify the free will of the contractual partners. For the courts however, this process was perceived as a secondary obligation and not enough resources were allocated to manage this service properly, as courts were overloaded with contentious cases and executions. Hence, efficient handling of contracts related to real estate including mortgages and other documents, such as simple authorisations or verifications of signatures, were of secondary concern to courts.

In this context it was a logical move first for UNMIK and then for the MoJ to externalise the more service-related aspects of the judiciary in the non-contentious legal sphere from the "core business" of courts to decide over litigation in private, criminal and administrative cases. In fact it has been a trend in the last years among post-soviet and former FRY states to solve the challenges in this sphere by introducing the "private" Notary System. The European Commission for the Efficiency of Justice (CEPEJ) reports in its 2014 Report (FN 39) that 27 out of 46 responding countries and all of the former FRY states as well as Albania have chosen the private Notary System under public authority control<sup>19</sup>.

**Assessment:** Looking at the contextual development of the judiciary and the more or less collapsed notary services of the courts after the 1999 conflict, it was a logical strategic decision for SDC to support the Kosovo Notary Project. The decision was also in line with the support to HPD and later KPA, which had started in 2000.

## 2.2 Relevance

The Notary Project aimed at developing a new juridical profession, the notaries. Its goal was to contribute to:

**"Rule of law and Democracy in Kosovo and its two foci "local governance and decentralisation" and "property rights issues". As transversal themes SDC targeted the rights of minorities and especially their access to services. While a contribution to gender aspects was doubtful SDC noted: It is also to be noted that the establishment of an operational notary system will obviously support women in their access to rights. The improvement of the effectiveness and the efficiency of the legal**

<sup>18</sup> Final Report of the Housing and Property Claims Commission 2007 pp. 11-12

<sup>19</sup> At the time of the data collection in 2012 Serbia and Kosovo were not yet on the „radar“ of the CEPEJ, Kosovo notaries started to open shop in 2012 and the Serbian LoN entered into force in 2014.

*system, the hopefully speedier treatment of cases regarding land tenure, marital affairs, civil status, etc., will also profit women.*<sup>20</sup>

The project was of high relevance and its goals were bold. Apart from providing secondments to UNMIK, the International Civilian Office/EU Special Representative (ICO) and EULEX, Switzerland was not heavily involved in the change process of the Kosovo judiciary. SDC has strongly and strategically supported HPD and KPA, which provided important contributions to humanitarian needs and transitional justice. To project the needs of the country towards a more distant future and towards services relevant for the economic development and a “civilized” interaction between people (natural and legal persons) was a diligent approach. The project was not only relevant to facilitate legal interactions, but also to showcase reform of a whole sector of government services and a strategy to bring together aspects of governance, decentralisation, minority rights and gender mainstreaming.

The overall goal in the Phase II Project Document was defined as:

*The project contributes to the development of the Rule of Law in Kosovo and to the consolidation of the judicial system.*

This goal might have been a bit high reaching. The judicial system in Kosovo is still far from being consolidated and struggles with challenges, which might be overcome in decades. The caseload or the influence of the executive over the judiciary being just examples of obstacles to an independent, impartial and efficient justice system.<sup>21</sup> With this background the relevance and success of the new notary system in Kosovo is to take this service out of the judicial system and bring it within the reachable distance of the people in need of the service. It is questionable, if the project had a visible impact on the wider judiciary system in Kosovo as this service for the people was neglected.

**Assessment:** *The Kosovo Notary Project managed to keep its relevance, because of a strong headed project management and a delivery of the project out of one hand (the I-H-N), the one donor only strategy and a close cooperation with the MoJ through a co-chaired SDC/MoJ steering board with representatives of the Kosovo Judicial Council (KJC) and the NCK as members. The project has been of high relevance for the improvement of notarial services to the people and hence to easing business transactions through a new, decentralized and private but state controlled, service. It had impact on the governance and decentralisation on the notary services. It is however questionable if it had a relevant impact on the wider justice system in Kosovo as the notarial services were grossly neglected by the judiciary and its breaking away may not be relevant for the wider reform process of the judiciary or its effectiveness/efficiency.*

### 2.3 Relevance for Swiss Strategy in Kosovo

Art. 54/2 of the Swiss Constitution says:

***The Confederation shall ensure that the independence of Switzerland and its welfare is safeguarded; it shall in particular assist in the alleviation of need and poverty in the world and promote respect for human rights and democracy, the peaceful co-existence of peoples as well as the conservation of natural resources.***

These constitutional prerogatives on Swiss foreign policy have been set out as guiding principles for the 2013 to 2016 message to the Swiss parliament in international cooperation. The SDC 2013 to 2016 Strategy for Kosovo as well as the 2009 to 2012 SDC Strategy for Kosovo subsume the support to the notary system under the domain of Democratic Governance and Decentralisation or, until 2012, Rule of Law and Democracy<sup>22</sup>. Arguably the Notary System could also be mentioned under the domain of economy and employment as it has relevance for the effectiveness and efficiency of business transactions and the

<sup>20</sup> Short summary from the Support to the Notary System in Kosovo Phase II Project Document item 7.2

<sup>21</sup> This is not a specialty of Kosovo and can be said for many countries of the former FRY and former socialist Eastern Europe.

<sup>22</sup> SDC Country Strategy for Kosovo 2013 to 2016, p. 13 and SDC Cooperation Strategy 2009 to 2012, p. 12

management of inheritance and created a new profession even if in small numbers. The development of the Notary system is also a consequent continuation of the previous support to HPD and KPA.

**Assessment:** *The support to the newly established Notary System in Kosovo has been a consistent instrument to honour the guiding principles of Switzerland's involvement in Kosovo (FN 21). The implementation of a notary system with the MoJ and the support to KPA have remained important activities of SDC in Kosovo from 2009 to 2012 and beyond. The support for property rights, for which the Notary System is a strategic asset, has been a consistent and relevant aspect of Switzerland's involvement in Kosovo since the year 2000 when SDC started its support to the HPD.*

### 3. EFFECTIVENESS AND VALUE ADDED

This section will assess the effectiveness and the value added of the project. It will look at the consistency of planned outcomes and outputs, interventions, methodology and approach, sustainability, the future challenges and achievements.

#### 3.1 Intended/planned outcomes and outputs

##### *Phase I*

In a preliminary phase SDC supported UNMIK's Department of Justice (DoJ) in 2005 to develop a draft legislation on a new notary system in Kosovo with the backing by the I-H-N. Main activities included providing existing legislation from other Eastern European countries and European standards on the services of Notaries, and participating in working groups.

The Phase I proposal from July 2005 to March 2006 envisioned three main outputs:

- To establish a working group on the Notary Regulation<sup>23</sup>;
- To hold a regional workshop on Notary Reform Strategies; and
- To draft relevant secondary legislation:
  - Statute of the NCK
  - Legislation on tariffs and fees
  - Notary code of ethics
  - Disciplinary procedures
  - Legislation on the archive system

SDC also expected from this phase a determination on the different legislations, which should be aligned with the new Notary legislation as well as an approach and time setting on the set up of NCK, the training of the first number of Notaries, modalities for the Notary liability insurance and requirements of the equipment for the first notary offices.

Because of the cumbersome transfer of power between UNMIK and the new Kosovo Government, the Kosovo Parliament approved the law only in October 2008. Another reason for the delay was an initially poor translation of the law into Albanian. The translation had to be re-done in order to prevent misunderstandings or/and contradictions.

**Assessment:** *Logically the first phase in this project addressed the need to develop a new legislation for a notary system in Kosovo. The legislative process had to take into account the European standards as well as the regional environment. To include important stakeholders e.g., the Bar Association and the Judiciary together with the MoJ was also important for keeping legitimacy of the process. While the process included the Bar Association, it is noteworthy that the LoN and the Law on the Kosovo Bar suffer from certain discrepancies, which now seem to lead to conflicts of interest and to a lack of clarity about the different roles of the two legal professions. Nevertheless, the progress of Phase I was strongly dependent on external factors, such as a legislative process and competences of different stakeholders. Finally the activities of the*

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<sup>23</sup> Regulation being the UNMIK term for legislation/law

*project yielded the expected results (outcomes) by bringing about a legislation on notaries in Kosovo through a legitimate process and developing relevant bylaws and by coming up with a plan for the implementation of the law in a second project phase.*

## **Phase II**

The second phase of the project was based on the request of the Kosovo MoJ to support the implementation of the LoN through training, examination and installing first notary offices in Kosovo.

The expected outcome of this phase was:

Development and implementation of an operational notary system
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The following activities (outputs) were planned:

- Technical input on the secondary legislation to the LoN and identifying needs of harmonising other legal provisions;
- A Training system for a first series of notaries is operational;
- A first group of notaries is operational;
- The public administration and the public are aware of the functions of notaries; and
- I-H-N has an operational basis in Kosovo.

**Technical input** to secondary legislation helped the MoJ to complete the legal framework for the notary system. The MoJ endorsed the following Administrative Directives (AD):

- AD 05/2010 on the conditions for the deposit of valuables, documents and other goods to notaries;
- AD 06/2010 on the disciplinary procedure for notaries;
- AD 07/2010 on the notary examination;
- AD 08/2010 on the stamps and identification signs of notary offices;
- AD 08/2011 on the number and location of notary offices as well as premises and equipment required for notaries;
- AD 09/2011 on the procedure of competition and selection of notary offices;
- AD 02/2012 on provisional notary fees;
- AD 03/2012 on the manner of redacting notary acts.

In order to have the NCK up and functioning timely, the project also drafted:

- A Statute of the Chamber of Notaries of the Republic of Kosovo;
- A Code of Ethics and professional conduct of notaries.

In April 2013 the UINL performed an inspection of the notary system in Kosovo by its delegate for Central Europe and the Balkans. The visit aimed to assess the legislative framework governing the notary system in Kosovo. It attested excellent quality of the regulative. The assessment did not take into account the relevance of the development and contextual environment of Kosovo for the new notary system. It also did not make reference to the wider justice system. This assessment, which actually opens the door for the NCK joining the UINL, is important to assure the quality provided by I-H-N to the legislative process for a notary system in Kosovo.

**A Training system** was set up to prepare candidates for the notary exam. The training provided the following 9 modules:

1. The civil law notary in the world and Europe;
2. Notaries in Kosovo: general part and ethics;
3. Notaries in Kosovo: special part;
4. The authentication procedure;
5. Real Estate and notary;

6. Business and notary;
7. Family law and notary;
8. Other notary competences;
9. Organizing and conducting the notary office

The modules were prepared in Albanian and Serbian and were distributed to the candidates. Apart from self-study, the candidates attended a training for nine months (October 2009 to June 2010). They were divided in four groups. Each group participated in the training eight hours per month. In September 2010 the project provided a special exam preparation.

The assessment shortly reviewed Module 7 on notarial aspects of marriage and heritage and Module 9 dealing with the organisation of a notary office. The modules are designed comprehensively and take the Kosovar context into account. The modules are practical and explained with examples. The civil law topics also contain some comparison with other civil law legislation on different models of how to legally organize the assets in a marriage. The module makes a short reference to the “Kanun” as a formerly determining factor for organising matrimonial assets and family heritage and also to the local speciality of the “Family community” in Art. 271 of the Family Law of Kosovo. However, the Module did not have a special reference to the “de facto” discrimination of females in the process of the division of heritage and strategies how to mitigate such discriminations<sup>24</sup>. Module 9 is a management “vademecum” for future notaries. It includes not only the organisation of the office, but also the obligations towards staff.

Credible and transparent **Examinations** for the first notaries in Kosovo were assured by a Memorandum of Understanding (MoU) on 23 September 2010 between the MoJ and the I-H-N. The exams were organized in two shifts on November 20 and 21, 2010. 150 out of 160 candidates failed. A second opportunity for unsuccessful candidates was provided in June 2011 where 38 out of 105 candidates passed the exam<sup>25</sup>.

It is noteworthy that the first correction of the exam by the examination commission led to a disruption of the process and even to a “scandalized” mediatisation. It took a resolute intervention by the SCO on the level of the Minister to bring the process back on track. The challenges arose after the examination commission declared all candidates of the first batch of written examinations as failed and also refused to cooperate with the international experts as provided by law (article 18.4 of AD 07/2010 and by the aforementioned MOU between the MOJ and I-H-N.<sup>26</sup> According to the I-H-N one of the reasons for the challenges around the correction process were some still “living” discrepancies between the new civil law system implemented since 1999, the “customary law” still guiding the understanding of how things are done among the Albanian Population in Kosovo and the still “mentally” present socialist legal system of the former FRY. The formation of the Notaries in Kosovo for solid professional performance is not over with the exam. The NCK in cooperation with the I-H-N developed training capacity inside the NCK through the ToT of six persons for this task.

**Assessment:** *As far as this can be assessed the training modules met the requirements for preparing candidates to pass the notary exam. The generally poor legal education in Kosovo is probably responsible for 150 out of 160 candidates failing the first exam rather than the preparation by the project for the exam. A good basic legal education is, as a rule, a prerequisite for successfully passing an exam to a legal profession demanding the qualification of a notary. SCO and I-H-N have reacted resolutely and successfully to the “crisis” around the first written exams. It is important that the integrity and credibility of the notary exams will be preserved in the future. To this end it will be essential to keep the I-H-N or the UINL as an independent and impartial “holder” of or at least “supporter” to the process on board.*

## **Competition**

<sup>24</sup> One Notary explained to the evaluator that in most Kosovo Albanian cases related to heritage female family members forego their right to have their share according to law.

<sup>25</sup> See p. 4 of I-H-N final operational report on Phase II of the Kosovo Notary Project

<sup>26</sup> SCO memo update on the written notary exam and issues around it of February 11, 2011

After the exam the MoJ organized a competition for the notaries according to Art. 9 of the LoN. According to the LoN it is not sufficient to pass the notary examination for opening an office. The Notary Selection Commission under the MoJ in consultation with the NCK appoints the notaries to a specific municipality. The LoN seeks to determine objective parameters for licensing a notary to open an office in a specific municipality. It also seeks to distribute notary services to all municipalities by limiting the territorial scope of a notary office (LoN Art. 8; 21/1 and 55/1.5). In addition, the LoN limits unhealthy competition by too many notaries by setting a ratio of one notary per 20'000 inhabitants. This gives a limitation to the number of notaries in Kosovo by 90 to 100. Out of a total of 48 notary candidates who passed the first exam or the re-examination, 9 resigned for different reasons and were not licensed. During the preparation for amendments to the LoN, USAID brought in the suggestion to have a ratio of 10'000 to one notary and other stakeholders suggested to drop the territorial limitation of the notary offices. The I-H-N strongly opposes such amendments to the LoN by arguing that notaries fulfil a public function. They are limited in the professional activity to being a notary and cannot work as an advocat and notary as this is the case in some cantons of Switzerland such as Basel-Stadt and Basel-Landschaft.

**Assessment:** *The legal requirements for setting up a licensing system for notaries in Kosovo were designed diligently by taking into account the economic, social and cultural context. The attempt of certain stakeholders to lobby for part or full liberalisation of the notary system threaten an equal distribution of the respective services and the sustainability of existing notary offices especially in rural areas. The economic environment in Kosovo, where many incomes range between 300 and 500 EUR/month, requires for a notary a mix of cases where he or she can determine a fee according to the value of the legal act and simple services such as verification of signatures, which will not make a notary office economically sustainable. Hence, the system in place at the moment does not allow for substantial amendments in the law. Amendments seem only justified to improve the access of the population to notary services in rural areas through granting exceptions for a notary to be active in two or three small municipalities.*

#### **Public outreach**

In order to inform the public and the administration of Kosovo on all levels, the project implemented an awareness campaign containing the production of:

- Posters in Albanian (240), Serbian (30) and English (30);
- Brochures in Albanian (13'000), Serbian (1'000) and English (1'000);
- Video clip
- Advertisement in the information portal "Telegrafi"

The physical materials were distributed to the KJC district and municipal courts, the MoJ, the NCK, municipalities, the Cadastral Agency, banks and other financial institutions, civil society groups and the University of Pristina. The video clip was broadcasted on TV for two months before the opening of the first notary offices.

Roundtable meetings were held with relevant stakeholders and TV/Radio appearances were made by representatives of I-H-N and NCK just before launching the notary services completed the campaign<sup>27</sup>.

According to the President of the NCK, the new notary offices were financially viable from the start. One exception is the office in a very remote area. This office will get financial support by the NCK as provided by law (LoN Art. 64/2.7).

**Assessment:** *The awareness campaign for the new notary services was effective and successful. It is part of an unprecedented package to promote a new profession with just a symbolic (50 EUR exam fees) contribution of those who profit professionally and economically.*

**Study tours** to Switzerland and Estonia for responsible officials of the MoJ completed the activities of the Project's Phase II.

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<sup>27</sup> Roundtables took place in Pristina, Gjiilan, Mitrovica, Prizren, Ferizaj, Peja and Gjakova. TV appearances were organized on Radio Television of Kosovo, Koha Vision, TV Dukagjini, TV Mitrovica, RTV Besa, Radio Kosova, Radio Mitrovica and Radio Dukagjini.

### **Phase III**

This last phase of the project started on 1 March 2012 and ended on 31 December 2014. It has been extended to 30 June 2015.

The outputs were defined as follows:

- Notary services are provided;
- Kosovo notaries are organized efficiently and contribute substantially to their profession;
- Notaries in sufficient numbers are prepared for their profession;
- Conducive framework conditions for the notary system are in place.

The evaluation has taken note that:

- 74 notaries have opened an office and the vast majority of municipalities are served with notary services;
- The Chamber of notaries has been set up and is running its offices (previous I-H-N office);
- 74 notaries might not yet be the optimal number of notaries for Kosovo. It is however almost 75% of the number defined by the LoN (one notary for 20'000 of the population);
- The legal framework for a functioning notary system is set up. The department of legal professions within the MoJ, which is in charge for preparing notary exams, is in place, as well as a selection commission and an Arbitration and Disciplinary Council;
- The I-H-N has advised and even pressured on different occasions the MoJ on urgently needed amendments of the LoN<sup>28</sup>;
- The I-H-N did accompany and monitor the inspections of notary offices by the NCK.

**Assessment:** *Phase III of the project has effectively implemented most of the objectives defined in the Credit Proposal of January 2012. Transparency, credibility and integrity of the system will from now on mainly depend on the NCK and on the MoJ. Given an environment where corruption and nepotism (real or perceived) are wide spread, an independent monitoring system through regular external assessment by a competent Civil Society Organization (CSO) or by the UINL supports the integrity of the system, which is also important for the perception of by the public and potential foreign investors.*

### **3.2 Adequate project design**

**The intervention strategy** intended to achieve the set goals through the following targeted activities:

- Support the legislative process for the LoN (UNMIK/MoJ);
- Support the development of secondary legislation (MoJ/NCK);
- Provide training and prepare candidates for exams (candidates);
- Accompany the examination process and the licensing (MoJ/NCK);
- Provide a public outreach campaign for launching the new notary system (MoJ/NCK/notaries/different levels of the judiciary/population)
- Support notaries in the operational setting and provide on-going professional training (notaries/clients);
- Empower the NCK in the development of its strategy, structure, regulations and tasks (NCK/notaries);
- Ultimately relief courts from the burden of non-contentious cases.

**Assessment:** *The project has followed a well-thought out and step-by-step process from legislation, to capacity building, examination and licensing and ultimately institution building through the support to the NCK and the MoJ. The main stakeholders have been included. A closer inclusion of the bar association might have prevented the actual tension between the notaries and the members of the bar. However, this might have also opened a "Pandora's box" to endless debates. In summary, the intervention strategy was adequate and successful.*

**Approach** wise the project intervened on the levels of:

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<sup>28</sup> 14<sup>th</sup> June 2011, 25<sup>th</sup> June 2013 and 28<sup>th</sup> August 2013

- Individuals (capacity building for notary candidates, notaries and MoJ officials);
- General Public (Information campaign for the wider public and relevant institutions);
- Institutional level (MoJ/Courts/NCK);
- Legal framework.

**Assessment:** *The selected approach is a logical consequence based on the defined intervention strategies. The project has been flexible in timing the different approaches towards an overall goal to set up a functioning notary system in Kosovo.*

The project used **methods and instruments** for:

- **Capacity building/training** and know-how transfer for notaries and future trainers for new notaries including the development of teaching material and the drafting of a training plan for future notaries;
- **Institution Building and Institutional Development** for the NCK as well as for the department of legal professions in the MoJ and the examination commission;
- **Networking/lobbying** with the different stakeholders such as the KJC, the KCA and the MoJ as well as the relevant parliamentary commissions was effective for developing the legislative framework.

**Assessment:** *The project's methods and Instruments were properly designed and useful for a successful implementation of the project. The capacity building efforts and the ToT approach allowed the external experts to slowly exit the project and leave the future to the newly developed institutions. A closer interaction with the bar association might have helped to clarify some of the potential misunderstandings on the different roles of the two professions. Also the Law on the Bar and the LoN might have been better aligned through an open dialogue on the potential challenges in interpretation of these legislations.*

### 3.3 Achievements / Sustainability

The project set up a whole new system with a legal and institutional infrastructure. These are preconditions for a sustainable development of the notary system in Kosovo and, given the context, it is a substantial achievement. The success is supported by evidence as the new notary offices have delivered totally around 395'000 legal acts/documents to clients in 2014 and around 238'000 in 2013<sup>29</sup>.

**Assessment:** *The evaluation gained the impression that the system enjoys a high level of credibility just for the fact that it exists. All information gathered by the evaluation, especially the fact that out of 74 notary offices 73 seem to be economically viable, suggest a high acceptance of the system by the population. So do the number of delivered services to clients. No doubt this acceptance is also based on the professional involvement of the two main I-H-N experts and their engagement as well as on the "Swissness" of the project. To maintain the sustainability of the integrity and the credibility of the system, more is needed. The evaluation maintains firstly to keep an oversight by UINL or I-H-N over the exam for new notaries until the quorum for the actual needed number of notaries is reached; secondly the NCK might keep the I-H-N and/or the UINL in a close advisory function to mitigate difficult situations inside the NCK but also with other stakeholders; and thirdly it is a paramount requirement for sustainability to keep the 20'000/1 population/notary rule in order to prevent ruinous competition, which would bring the NCK in difficult financial challenges if it has to support notaries affected by such potentially ruinous competition, which is its legal obligation (LoN Art. 64/2.7)*

The project intended to contribute to the development of Rule of Law in Kosovo and to the consolidation of the judicial system.

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<sup>29</sup> Numbers received from the NCK



**Assessment:** While the project did contribute to the development of Rule of law in Kosovo writ large, by introducing a new legal service (- profession) to serve the population, it's impact on court system as the main body of the judicial system might not be that visible. It turned out, that the notary sector of the courts was so much neglected that breaking it out of the courts did not lower significantly the caseload of the courts or render them more efficient in reducing it. In the long run, the courts might feel more psychological relief in that they do not anymore need to cause ordeals for the population (i.e., when people had to wait for hours to receive a simple notary service let away for month, if the situation was complex.)

### 3.4 Challenges & Risks

#### **Pending legislative amendments**

The legal framework for the notary system in Kosovo gained high praise by the UINL assessment dated June 6, 2013:

*Lors de mes activités pendant vingt (20) ans (!) comme membre, Vice- Président ou Délégué de la CCNI, j'ai pas vue un ensemble de règles législatives, administratives et approuvées par la Chambre pour la création d'un Notariat plus cohérent, systématique, complet et claire que celles du Kosovo!*

**Assessment:** This is excellent feedback for the framework holding the new system. However, some transitional regulations need to be melded into their final form. The process of acceptance to the examination needs to be clarified. To attract younger candidates it makes sense to implement from now on the requirement of having at least an 18-month training/practice in a notary office as it is suggested by the I-H-N. It is also important to have a final version of the AD on notary fees developed and endorsed by the MoJ.

The idea to have a full amendment of the law and open competition between notaries by allowing a ratio of 10'000/1 population/notary or by fully liberalizing this "market" should be rejected. From a governance point of view it would make more sense to screen the legislation for documents, which require a notary's stamp and seal and to reduce those documents and thereby over-regulation. The actual situation where a simple authorisation to use someone's car needs a document testified by a notary, discredits the value of simple signatures of the people of Kosovo.

#### **Conflict with the bar association**

A simmering conflict on competences between notaries and the lawyers/advocats needs attention in order not to escalate and to provide legal clarity on competences between the two professions.<sup>30</sup>

To protect the right of the people to privacy the lawyer/client privilege (Art. 11 Law on the Bar) is stronger than the obligation of notary to confidentiality, which can be lifted by court order (Art. 13/3.3 LoN). The notary has to protect the constitutional and legal order through impartial services in the interest of all parties (Art. 11 of the LoN). A lawyer of the bar has to protect the interests of his/her client while in general respecting the constitutional and legal order (Art. 6 and Art. 7 of the Law on the Bar). Also it is a natural task of lawyers to draft contracts according to a negotiated agreement. Apart from cases determined by law (e.g., contracts on immovable properties), to have a signature under a contract verified by a notary is not required by law. If the parties wish to have such notary services after they have negotiated the content of the contract, the notary will make sure, that the contract reflects the free will of the parties and does not contain unlawful or illegal agreements. In view of the assessment the notary will however not reinstate the contracting process.

**Assessment:** The two legal professions will need to find ways of cooperation, which serve the wider public interest and the clarification of their different roles. Any publically staged conflict will negatively impact on the trust of the public in both professions and in the legal services as a whole. The value of an individual signature should not be discredited by expanding inappropriately the requirements of signatures verification by notaries beyond the scope of the law or the free will of the parties.

<sup>30</sup> A similar conflict in Serbia led to a strike of the lawyers/advocats and ultimately to a restriction of the notaries' competences.

### **Maintaining credibility and integrity**

As explained elsewhere, the examination process and the process for the amendment of the law need and deserve further support through the UINL or the I-H-N. The NCK as well as the MoJ should both have an interest to maintain and finance such support.

### **Pending cases at the courts & Legislative alignment**

Anecdotal evidence suggests, that courts still pile up some heritage cases<sup>31</sup>. It seems not clear, how long it will take to align the heritage legislation in order to clarify competences. Also the family law will need some amendment to come in line with the notarial acts foreseen for spouses in the LoN.

### **Digitalized access to the cadastre**

It will provide a considerable boost to the efficiency of the notary system once the digital access to the Kosovo cadastre is realized.

## **4. EFFICIENCY**

Under efficiency the evaluation assesses how diligently the project has been using its resources and whether the investment yielded the required results in terms of value for money. The evaluation will also briefly look at management arrangements and reporting procedures.

### **4.1 Cost-benefit analysis**

SDC estimated the costs for the whole project at CHF 2'285'800.00 (Prodoc phase 3). Until June 2014 CHF 1'874'690.00 were spent and accounted for (FN 8). The main costs are those allocated for expertise from the I-H-N. The costs have developed during Phases II and III as follows:

Costs/year	2009	2010	2011 <sup>32</sup>	2012 <sup>33</sup>	2013	2014 <sup>34</sup>	Total
Days/fee <sup>35</sup>	71/85'200	144/172'800	137/164'400	96/115'200	92/110'400	39/46'800	579/694'800
Hours/fee	560/84'000	210/31'500	590/88'500	210/31'500	60/9'000		1630/244'500

The total costs for the I-H-N experts (daily and hourly fees) amounted to CHF 939'300 over a period of five and a half years. These costs make up approximately 50% of the totally billed costs until June 2014. The other 50% of the costs consist of travel expenses, office costs in Kosovo, secretariat in Switzerland, international and national experts as well as a Kosovar project assistant and the costs for the production of training materials and for the examinations. In this contest it is noteworthy that no fees were paid to persons involved in the process from the side of the MoJ, the NCK or the KJC. The Kosovar examination commission was not financed by the project. The NCK did not receive any direct financial contribution<sup>36</sup>. The NCK did however receive office furniture and IT equipment used by the project for 28 months.

Apart from participation of government officials and experts in the project **the MoJ did contribute** to the process by providing the physical infrastructure for the examinations (Police Academy in Vushtri) as well as 15 to 30 Police Officers for each examination to protect the integrity and credibility of the examination. Venues for oral examinations and for the correction of the written tests were also provided by the Ministry. The project assistant had a working space in the MoJ for two years.

**Assessment:** *The fees requested per day/hour by the I-H-N experts are certainly on the lower end of fees for legal services in Switzerland<sup>37</sup> and on average for international consultancy companies. The product delivered is without question good value for money. The contribution in kind by the Ministry was adequate. A small financial participation by the GoK might have provided more Kosovar ownership to the process.*

<sup>31</sup> The President of the lower court of Pristina explained he still had 800 heritage cases pending. While he allegedly tried to convince the „clients“ to adhere to the new notary system, some prefer to stay with the court in fear they have to pay high fees to a notary.

<sup>32</sup> 14 months from 01.01.2011 to 29.02.2012

<sup>33</sup> 10 months from 01.03. to 31.12.2012

<sup>34</sup> 6 months from 01.01 to 30.06.2014

<sup>35</sup> Fee per day is CHF 1'200 and per hour CHF 150

<sup>36</sup> It was supported through capacity building, training and institutional development

<sup>37</sup> <http://www.anwaltshonore.ch/honoreempfehlungen/art-3-ordentliche-stundenansaeetze> gives a range of CHF 180 to CHF 280 per hour. This may just serve as some orientation and cannot be compared 1:1.

## 4.2 Management and steering

The project profited from a lean management structure by the same two persons over the whole process. An office in Kosovo with a project assistant supported the continuity of the access to relevant stakeholders. The Steering Committee (SC) is co-chaired by SDC and MoJ. Other members are the KJC, NCK and USAID<sup>38</sup>. The SC met every six months and if needed more often.

**Assessment:** *A more permanent presence by the experts might have been helpful in critical moments such as the period of the examinations. On the other hand, the experts had introduced themselves to the environment and stakeholders and the gained reputation over time helped them to also have an effective and efficient remote management process from Switzerland. The amount of time, which the team worked out of Switzerland demonstrates a constant relation with the project and a high accessibility of the experts for the need of the project<sup>39</sup>.*

*The protocols of the SC meetings available to the evaluation suggest, that lively discussions took place on strategic issues such as legislation, examination, public outreach or the presence of I-H-N in Kosovo. The SC also provided guidance to the project or pressured different actors on delivery of their tasks (e.g., endorsement of AD's by the MoJ).*

## 4.3 Reporting and Accounting

The I-H-N provided reporting every six months to the SC usually with a power point presentation. The main points were taken into the minutes. The team did not always report on how many missions had taken place during the reporting period. This information is also not available in the end of Phase II reporting. The minutes of the SC meetings mention the number of missions in two out of seven reports which the evaluation had available<sup>40</sup>. Due to delays out of the control of the project and based on project extensions and additional funding in Phase II the financial reporting at times overlap the half yearly reporting period.

**Assessment:** *Overall the efficiency of the project can be assessed as very good. The finances were used for very clearly defined and targeted activities. The narrative reporting lacked at times completeness especially when reporting on how many missions the team had performed in a certain period. This might sound trivial. However, as communication and presence in Kosovo were at times an issue in SC discussions, full and clear information on the presence in Kosovo by the team might have diffused related concerns. It was difficult to find a concise reporting on the crisis around the first examination. The team explained the facts to the evaluator in a small separate paper.*

## 5. SDC policy

SDC maintains governance as a transversal theme. The project contributes to better governance in one field of legal services to the people of Kosovo. This includes better and non-discriminatory access to services for all persons in Kosovo. It might also contribute to curb fraudulent actions and forgery, which is a problem in the real estate market. As a matter of fact **minorities** in Kosovo are either still being discriminated or are afraid of being discriminated. The project can certainly mitigate such discrimination to a certain extent or contribute to a more positive perception. However, in the mid-term future this will need a sound implementation of the code of ethics of the Kosovo notaries and also some external monitoring with this focus.

**Assessment:** *The evaluator visited a Kosovo Albanian notary in Gracanica. The impression was that this notary tries to provide equal services to all people in "his territory" and that he even protects the minorities*

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<sup>38</sup> Allegedly USAID is not interested any more since the beginning of Phase III.

<sup>39</sup> In the 2010 September SC meeting the representative of the MoJ asked for more presence of the I-H-N. He also noted that he had reserved an office for them, which was empty and is now being used by others. At the time SDC asked for better communication about the progress of the project.

<sup>40</sup> In the September 2011 reporting 8 missions were mentioned for the 9 months in 2011 and for the period from January to June 2014 6 missions (two still to be done) were reported during the May 2014 SC meeting.

from being potentially cheated on by members of the majority population<sup>41</sup>. However, it is a set back for the project that only one Serbian notary is so far running an office in Serbian majority or mixed municipalities<sup>42</sup>. It did not become clear to the evaluator, what the reasons were for the absence of Serbian notaries in this phase of the project. Was it a lack of interest from potential Serbian Candidates? Was it pressure to keep away from this new professional and economic opportunity? The evaluation did not have the opportunity to analyse this issue in depth.

**Gender mainstreaming** activities are reflected weekly in the project documents and strategies. However, on the outcome side, out of 74 notaries 18 (or 24%) are women. For Kosovo this is certainly a good result<sup>43</sup>. Also, the President of the NCK is a woman. Allegedly the NCK issued a recommendation to all notaries to keep an eye on selling contracts on immovable property constituting also of a family home. In such cases both spouses have to sign the contract. This 50 year-old Yugoslav rule was allegedly never implemented by the municipal courts<sup>44</sup>.

**Assessment:** *The way towards equal treatment for men and women in Kosovo if it comes to property rights and especially to land rights will however be long and hard<sup>45</sup>. The new and fresh notary system might positively contribute to this. Cooperation between the NCK with SCO's such as NORMA<sup>46</sup> or the gender and property rights activities of the GIZ are highly recommended in this respect.*

## 6. LESSONS LEARNED

This chapter draws on lessons learned from the different perspectives – from the perspective of the donor; from the perspective of stakeholders and from the perspective of the implementing partner.<sup>47</sup>

### 6.1 Select a strategic niche

The problems of the judiciary system in Kosovo are huge and many actors bring additional confusion. Therefore, it has been an excellent choice of SDC together with the stakeholders and the implementers to target the relatively small area of the notary services to contribute to the improvement of the legal services in Kosovo. *SDC together with the MoJ were in full control of the project. Short communication ways facilitated crisis interventions and risk mitigation.*

### 6.2 Select highly specialised practitioners

In contrast to larger governance interventions this project needed a targeted and highly specialised approach as well as seasoned practitioners. The I-H-N team brought experience from their own practice, from legislative work in Switzerland and from interventions and projects in the former socialist and soviet countries in Europe since the middle of the 1990s. *The high professional and human competence and the continuity of the team was a condition sine qua non for this success.*

### 6.3 One donor approach

According to the SC minutes USAID at times intended to finance parts of the project activities. It was however decisive for the project to have one donor only. *The development of legislation and its implementation needs a clear and committing strategy. This is best provided by one donor in consortium with the legitimate institution of the respective state.*

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<sup>41</sup> The notary explained that he had refused to verify a document written in Albanian, because the Serbian part of the contract did obviously not understand the content of the content of the document and no adequate Serbian translation was provided by the Albanian lawyer dealing with the issue.

<sup>42</sup> Also a Muslim Slav (or Bosniac) did allegedly open an office in Pec/Peja

<sup>43</sup> Examples from Switzerland: Canton Bern 20%, Canton Neuchatel 25%, Canton Basel-Stadt 10%

<sup>44</sup> Interview with women NGO leader and notary.

<sup>45</sup> See also NZZ 12 February 2015 p. 9

<sup>46</sup> A human rights NGO with focus on women's rights: [www.norma-ks.org](http://www.norma-ks.org)

<sup>47</sup> The evaluator's assessments are provided in italics within each lesson learned section.

#### 6.4 Strategic commitment of the government

Even though the GoK and the Kosovo parliament are usually not known for swift and strategic legislative work, in this case the initiative by UNMIK and later the taking over by the GoK functioned well. It was also important to have a new Minister of Justice with some vision and understanding in times of crisis and blockage. Certainly at times the MoJ had to be pushed, but in the end, *without a commitment from the Minister the process would have been much more cumbersome and the credibility and integrity of the first notaries in Kosovo might not be present on this level.*

#### 6.5 High impact on governance – doubtful impact on the judiciary

A hypothesis for the project justification was that it might help release the caseload of and thereby the pressure on the courts. This might have been a too bold hypothesis. However, the project contributed to the improvement of the rule of law and of the justice system in Kosovo in a larger sense by focussing on a specific aspect of legal services. Its main impact however is on governance and professional as well as timely delivery of services to the population. *The lesson here is that a really focused area of services and a radical change in the way of service delivery might bring about lasting and measurable success. This will be the case if the control systems of the MoJ and the NCK remain credible and maintain their integrity.*

#### 6.6 From humanitarian need to transitional justice to sustainable legal services

With the notary project SDC comes full circle from supporting post war humanitarian needs (HPD), transitional justice (KPA) and sustainable legal service delivery (Notary project). The logic of all three activities lays in the development and implementation of legal systems for a specific need of certain groups or the whole population and in specific moments in time. The activities have been partly feeding into one another and the KPA came to completion of its mandate when the notary project was ready for full implementation. *It is worthwhile looking strategically for activities, which fit the demand of time and the context to help states facing a humanitarian crisis, to work towards a resolution of conflicts through transitional justice and finally to contribute to state and institution building.*

### 7. CONCLUSIONS

***To re-establish real and perceived justice and the rule of law after a violent conflict and a radical system change requires more than just adopting legal standards known from developed democracies. Changing professional and ethic attitudes is a long-term process and is not finalized with the implementation of new systems.***

The SDC Notary Project in Kosovo has been designed and implemented in a logical step-by-step approach from the development of an adequate legal framework and access system (exam and competition) for notaries to the capacity building of future professionals. The conducting of exams by the project helped to have within an acceptable time frame a sufficient number of trained notaries to serve the population of Kosovo. The strategic and close cooperation with the MoJ and the joined MoJ/SOC steering mechanism helped to provide the project with high legitimacy and donor support beyond mere financing.

To select the notary services out of the plethora of problems in the Kosovo judicial system was strategically highly relevant. It made a one sole donor strategy possible and allowed to work with a highly specialised team from framework development to implementation and institution building. Also the project fit well in the logic of SDC support to the property rights system in Kosovo from the humanitarian crisis (HPD) to transitional justice (KPA) and forward looking sustainable institution building (notaries and institutional framework in MoJ and NCK).

Out of 74 notary offices 73 are profitable and only one might need financial support by the NCK. After assessment of the legal framework by the UINL the NCK has been invited and accepted to the “International Family of Notaries”. The economic viability of the notaries (services are widely used) and the access to the UINL demonstrate the effectiveness and sustainability of the project.

The project successfully addressed a governance problem of the notary services in Kosovo by breaking them out of the justice system and bringing the services effectively and efficiently to the people of Kosovo and potential foreign investors. Thereby it contributed to the improvement of rule of law by bringing more professionalism and transparency to an important sector for doing business in the country. Evidence for the project contributing to the reduction of the caseload in the municipal courts is difficult to be analysed, as statistics of the development of court cases are not differentiated enough. The numbers of services now provided by notaries (see 3.3) suggest however that an important quantity of services previously provided by the courts have been moved to the notary offices and hence did contribute to reducing the burden of the courts and contribute to the overall improvement of rule of law and access to justice in Kosovo.

Notaries also serve the minority population. However, there are still no Serbian notaries running offices in Serbian dominated or “ethnically” mixed municipalities. The municipalities north of the Ibar river are not served with Serbian notary offices or notary offices at all. Either for external reasons not under the control of the project or due to a lack of a proactive minority strategy, *in terms of empowering the main minority group, the Serbs, the project did not fulfil its expectations.*

Although expectations or objectives concerning gender mainstreaming were rather modest, 24% of the notaries at the end of the project are women. The actual board of the NCK, namely the President, seems to have at least some gender mainstreaming awareness if not yet a strategy. The clear message to all notaries by the NCK to comply with the legal requirement that selling family housing needs the signature of both spouses is a systemic success. To improve the situation of women in Kosovo related to property rights and especially on removable property will need further engagement of the NCK and cooperation with other actors in the field.

The project implementation yielded success and provided a sustainable legal infrastructure for notary services. The following challenges lay ahead:

- A potential conflict with the bar association needs to be addressed;
- The credibility and integrity of the notary selection, examination and competition needs to be maintained through the institutionalisation of a continuing role of the UINL or the I-H-N in this processes;
- An amendment of the LoN should concentrate on critical important issues such as Chapter II of the law. The law should continue to prevent ruinous and potentially system damaging competition between notaries through unjustified liberalisation;
- Gender and minority policies should be the focus of the MoJ and the NCK.

In **summary** the evaluation concludes the project an unprecedented success in the context of judicial reform in Kosovo. It is also a good example of efficient and effective cooperation between a sole donor, a committed MoJ and a highly professional and engaging implementing partner.

## **8. RECOMMENDATIONS**

This is a final assessment of a project, which did not yet complete its last phase. In view of the findings the evaluation **recommends the following:**

### ***To SDC and the Swiss Embassy:***

- Continue lobbying for a targeted and moderate amendment of the LoN with the relevant actors in Kosovo;
- Lobby for continued cooperation of the UINL and the I-H-N with the MoJ and the NCK especially related to the amendment of the LoN and an adequate function in the examination process for notaries.

- Continue lobbying for adequate minority policies related to notary services, mainly for providing licenced Serbian lawyers and notaries for Serbian majority municipalities;
- Lobby with the NCK to maintain a minority sensitive and gender mainstreaming policy and provide related recommendations to the members;
- If needed, extend the Phase III contract for targeted strategic involvement of I-H-N for the amendment of the LoN and the next selection process for notaries.

***To the MoJ of Kosovo:***

- Continue the cooperation with I-H-N and/or UNIL for maintaining and protecting the credibility and the integrity of the selection, examination and competition process for notaries and for the amendment of the LoN;
- Prevent unhealthy competition between notaries by going too far with liberalisation of the territorial and population/notary rules of the actual law;
- Support the NCK in its endeavour to develop a close cooperation with the KCA for adequate digital access to cadastral data;
- Support an amendment of the LoN according to the priorities recommended by the I-H-N.

***To the NCK:***

- Find ways to continue the cooperation with the I-H-N for a joint effort to keep the quality of the implemented processes high and protect the credibility and integrity of the selection, examination and competition process for notaries;
- Use the membership with the UINL for regular professional contacts and for involving the UINL to assist with and monitor regularly the selection, examination and competition process for notaries in Kosovo as well as the inspection procedures of the NCK;
- Find a clear understanding with the Kosovo Bar Association for a mutual transparent understanding of roles for each of the two legal professions;
- Define minority protection policies for the Chamber and its members (e.g., language skills for serving Serbian only speaking clients and drafting Serbian notary documents).
- Define a gender mainstreaming policy of the Chamber for legal and practical improvements of the equal property rights for women in Kosovo. Cooperate or continue to cooperate with relevant CSO's (e.g. NORMA) and the relevant government institutions and other actors such as the GIZ.

**To the I-H-N and the UNIL**

- Continue to support the new notary system in Kosovo especially by monitoring and supporting examination, licensing and inspection procedures.

## **Annex: List of Interviewees**

**Interviews were conducted with the following interviewees during the February 1-6, 2015 Mission in Kosovo:**

1. Krystyna Marty, Swiss Ambassador in Kosovo
2. Michel Merlotti, Roland Nikklaus, Bashkim Preteni, IHN
3. Markus Bächler, Saranda Cana, Swiss Cooperation Office
4. Arbena Shehu (President) Erdon Gjinolli (Director), Notary Chamber of Kosovo
5. Baki Gimolli , Head of the Legal Department at MOJ
6. Elbasan Dervishaj and Shpend Lushaku, Staff of the Division for Notary Professions at MOJ
7. Abdulla Aliu, Faculty of Law and Notary Disciplinary Commission
8. Enver Peci, Kosovo Judicial Council
9. Mark Hough USAID/ EROL programme, Chief of Party
10. Güenther Fehlinger, GIZ
11. Ismet Kryeziu, Kosovo Cadastre Agency
12. Valbona Salihu, NGO Norma
13. Hamdi Ibrahim, Head of the Basic Court in Prishtina
14. Kole Ramay, Notary Office in Gracanice
15. Merita Kostanica, Notary Office in Pristina