



## **EULEX: Still in Search of Identity**

2<sup>nd</sup> Follow up Report

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## Executive Summary

Defining its role and improving its image remains a crucial need for EULEX. Although tasked with building a strong and effective rule of law in Kosovo and to fight corruption and organized crime, EULEX continues to face many operational challenges. Communicating its rights and responsibilities to the public, as well as harmonizing efforts with the Government of Kosovo (GoK) remain areas where EULEX must improve to be successful. Several high-profile events since IPOL's first quarterly report have demonstrated EULEX needs to gain confidence from Kosovars and government officials through increasing transparency and delivering tangible results.

From the public's perspective, EULEX and the GoK appear at odds when it comes to fighting high-level corruption. EULEX and GoK officials have each issued divisive statements in regards to the potential arrest of senior government officials, not only on the grounds of non-cooperation between EULEX and Kosovo's governing institutions in fighting corruption, but more troublesome, in terms of EULEX's actual rights to do so. Such mixed signals have only decreased public confidence in EULEX's ability to tackle corruption and further risks creating an environment of impunity in Kosovo.

At a fundamental level, reforming the judicial system is discussed as an urgent challenge by EULEX and the GoK but remains a slow and almost stagnant process. Although all parties cite strong political will as the key to pushing forth with reforms, equally as critical is the need to increase human capacity through appointing more prosecutors and judges. Since April, EULEX reportedly delivered 5 verdicts on long-standing cases (4 criminal and 1 civil), most of which were cases initiated under UNMIK's administration.<sup>1</sup> Without adequate staffing the caseload will simply increase and seeking justice in Kosovo will remain an activity sought outside the bounds of a functioning legal system.

North Mitrovica also remains an unresolved issue. The lack of a functioning Kosovo court in North Mitrovica symbolizes an inadequate political will at international and national levels for providing much needed justice in the north. The need for the EU, the GoK and Serbia to pragmatically cooperate has been strongly echoed at international levels. Unfortunately, EULEX has not prevented Belgrade's appointed judges and prosecutors from operating in questionable, parallel legal structures. EULEX's consultations with Belgrade has

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1 See EULEX website on verdicts since April 2010: <http://www.eulex-kosovo.eu/en/justice>

failed to garner sufficient support for moving forward with appointing judges that are acceptable for all communities, and consequently residents in the north remain in a judicial – and political – limbo.

Lastly, EULEX appears restrained in its ability to manage Border Crossing Points 1 and 31, in terms of customs control and preserving territorial integrity. EULEX border operations have not evolved beyond simply recording custom entries, resulting in a significant loss of customs revenue for Kosovo. Moreover, the illegal entry of Serbs during the June Vidovdan celebrations intensified the discordant rhetoric between EULEX and the GoK regarding which institution is responsible for taking the lead in such incidents.

In December 2009, the Balkan Policy Institute published a report titled, “EULEX: In Search of an Identity”, which assessed the first year of EULEX’s work.<sup>2</sup> EULEX itself only produces annual public evaluations and therefore IPOL felt it imperative to provide more immediate reporting in order facilitate public discourse on EULEX operations. In April of 2010 IPOL published its first follow up quarterly report, presenting its observations on EULEX’s progress.<sup>3</sup> Now in the second quarter, it is clear these reports are critical for disseminating information due to the lack of clarity and progress in EULEX’s work. This report discusses EULEX operations in relation to IPOL’s previous recommendations and in light of recent events, having taken into account the information and opinions provided EULEX and GoK officials. Divided into two parts, the first section briefly introduces recent events involving the EULEX rule of law mission in Kosovo since IPOL’s last report, while the second section presents detailed and updated recommendations for EULEX, the Government, the EU Special Representative (EUSR) and the EU. They are summarized below:

### **To the Government and EULEX**

- The Joint Rule of Law Coordination Board should meet the benchmarks identified in each meeting and hastily make this progress public.
- Strategies and public statements between EULEX and ministries dealing with the rule of law should be better harmonized.
- Urgent attention should be paid to judicial reform to ensure a strong rule of law in Kosovo.

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<sup>2</sup> “EULEX: In Search of an Identity,” Balkan Policy Institute. 27 December 2009. Available at: <http://policyinstitute.eu>

<sup>3</sup> “EULEX: Still In Search of an Identity,” Balkan Policy Institute. 14 April 2010. Available at: <http://policyinstitute.eu>

- Immediate steps should be taken to ensure the full functioning of the court in northern Mitrovica within three months.
- Immediately ensure the full functioning of Customs Gates 1 and 31 and clearly define the areas of responsibility for border management.
- To provide more transparency and public information regarding the Bllaca case.

**For the EU and the EUSR**

- To pressure Kosovo's leadership to undertake the required judicial reforms to meet EU standards.
- To pressure Belgrade not to further hinder the functionalization of Customs Points 1 and 31 or of a court in northern Mitrovica.
- To study the possible use of the High Representative of the EU's new powers in order to facilitate the success of EU missions in Kosovo.

## Contents

Executive Summary .....	3
Contents.....	6
I. Introduction.....	7
II. Recommendations.....	10
Recommendations for the Government and EULEX.....	10
Recommendations for the EU and the EUSR.....	14
About us .....	16

## I. Introduction

EULEX is still in the process of defining its role in Kosovo's complex system of governance. On the one hand it claims only a monitoring, mentoring and advising role (MMA) in full coordination with the GoK and its priorities, while on the other hand initiates actions intentionally without GoK cooperation. EULEX miscommunicating its precise role to Kosovo's citizens, which has resulted in high expectations and false perceptions of responsibilities among Kosovars *and* public officials. While EULEX's ambitious mission of assisting in building an effective rule of law and fighting corruption and organized crime will require time before its effects are fully felt, several developments since IPOL's last report have illustrated the need for EULEX to improve in certain areas.

Since April, EULEX's inability to fulfill its mandate has become evident. In fighting high-level corruption, EULEX has refused to use its executive function to take a single senior public official to court despite high expectations created by statements from EULEX officials. The ongoing investigation of Minister Fatmir Limaj, lead by the Special Prosecutor's Office (SPRK), is a prime example of EULEX's misleading actions and statements. On 28 April, the EULEX Police Executive Department raided several locations in Prishtina, mainly targeting the Ministry of Transport, Post and Telecommunications (MTPT). In a subsequent media interview, EULEX's Acting Chief Prosecutor Johan van Vreeswijk said Minister Limaj and the ministry's Head of Procurement, Nexhat Krasniqi, could potentially serve 55 years in jail on charges of money laundering, organized crime, bribery and public fraud.<sup>4</sup> Mr. Vreeswijk additionally named 6 other ministers under investigation, but as of this report's publication, not a single arrest has been made. Although EULEX officials claim the need for confidentiality and fault the media for inventing and perpetuating assumptions, their own public statements and actions send signals that only decrease local confidence in EULEX's competencies.<sup>5</sup>

Despite noting considerable concerns in the area of judicial reform in its 2010 Programme Report, most notably the substantial backlog of cases, EULEX only delivered five verdicts (4 criminal and 1 civil) between April and June this year. Additionally, the corruption

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4 "EULEX: Limaj Could Face a Long Jail Term," BalkanInsight. 7 May 2010

5 Interview with EULEX staff members.

issue has become the central focus of public discourse. Several recently published civil society reports have criticized EULEX and the GoK for failing to fully implement a comprehensive legal framework that effectively closes loopholes in the public procurement process.<sup>6</sup> The increasing demand for sweeping reforms in public procurement is not only a source of contention among Kosovars, but now underscores Kosovo's international reputation and potential accession into European bodies. The Parliamentary Assembly of the Council of Europe's (PACE) latest draft resolution on Kosovo confirmed this worrisome possibility, referring to Kosovo as having "low standards".<sup>7</sup> The report explicitly recommended that EULEX and the GoK to expediently take "concrete measures" to improve the judiciary.

EULEX's ability to adequately and justly manage Border Crossing Points 1 and 31 appears increasingly compromised. The June 28 incident where 30 Serbs violently and illegally crossed the border for Vidovdan celebrations incited adverse reactionary comments from the Minister of Internal Affairs, Bajram Rexhepi. Adding more tension during the first week of July, EULEX dismissed the investigation of the Milan Ivanovic, accused of alleged performing arson at Border Crossing Points 1 and 31 on top of charges of organizing, supporting and participating in terrorism, and inciting hatred. According to EULEX, it did not find sufficient evidence to confirm allegations against Ivanovic, self-titled President of the Serbian National Council.<sup>8</sup> Both cases are being framed by the local media as EULEX practicing "selective justice" and these reports risk further undermining its reputation.<sup>9</sup>

Finally, EULEX has achieved some positive results since IPOL's last report. On 10 May EULEX helped locate a mass grave in Vushtirri/Vucitirn where eight individuals were exhumed; the investigation had been on-going since 2009.<sup>10</sup> Additionally, EULEX and the Kosovo Police, in conjunction with Albanian authorities and under supervision of the Special Prosecutor's Office, continue to arrest individuals in Albania and Kosovo on alleged war crime which occurred in 1999.<sup>11</sup> Further information on EULEX's work can be found on their website. IPOL has summarized EULEX's public record in the table below:

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6 See IPOL's two latest reports: "Competition: Legal Framework and Practice in Kosovo among European Standards," and "Consumer Protection: Legal Framework, Challenges in Kosovo and EU Standards.," IKS report, "Untying the Knot: The Political Economy of Corruption in Kosovo."

7 "The Situation in Kosovo and the role of the Council of Europe," The Parliament Assembly of the Council of Europe. 21 June 2010. <http://assembly.coe.int/Documents/WorkingDocs/Doc10/EDOC12302.pdf>

8 Telegrafi, Double Standards of EULEX Justice, 8.07.2010. Available at: <http://www.telegrafi.com/?id=2&a=9377>

9 Ibid.

10 "The Remains of Eight Individuals are Exhumed," EULEX 12 May 2010. <http://www.eulex-kosovo.eu/en/pressreleases/>

11 "EULEX and Kosovo Police Make Arrests in Major Organized Crime Case," EULEX. 27 May 2010. <http://www.eulex-kosovo.eu/en/pressreleases/0064.php>

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## **EULEX STATISTICS**

70 verdicts (January 2009-June 2010).

604 hearings with at least one EULEX judge (no time-frame provided).

1,245 cases with at least one EULEX prosecutor (December 2008-June 2010).

4 corruption-related cases passed by EULEX judges.

33 organized crime cases are in trial stage.

3 verdicts have been delivered in organized crime cases.

122 individuals have been exhumed (December 2008-June 2010).

## II. Recommendations

In line with IPOL's first quarter analysis on EULEX, published in April, this section reviews progress made on IPOL's previous recommendations. IPOL's updated recommendations are listed below:

### *Recommendations for the Government and EULEX*

**The Joint Rule of Law Coordination Board should meet the benchmarks identified in each meeting and hastily make this progress public.**

Although the Joint Rule of Law Coordination Board has continued to meet regularly, it has not provided public documentation regarding its work, making it difficult to provide comprehensive analysis. Previously, the Board stressed improvements in the rule of law, economic development and prospects for European integration as priorities while emphasizing the need for a common strategy for EULEX and the GoK to tackle these issues. However, as of this report's publishing a common strategy has not been produced nor has any documentation discussing the development of a potential strategy been made available.

More recently, the Board, co-chaired by Yves de Kermabon, Head of EULEX, and Hajredin Kuçi, Deputy Prime Minister, held its 17th meeting on 19 May 2010. The Board identified two tasks to complete before the next board meeting: Ahmet Shala, the Minister of Finance reported the nine missing members of the Independent Review Board will be appointed by 7 July, while 30 Kosovo Police officers and 5 experts are to be selected for the Anti-Corruption Task Force before the next Board meeting.<sup>12</sup> Strong support was also expressed by Deputy Prime Minister Kuçi for filling the critical Director of Forensic Medicine position.

Following up on whether the Board achieved these benchmarks is nearly impossible. According to EULEX Press Officers, EULEX releases a joint statement with UNMIK following Board meetings. However, these vague statements come nearly two weeks after the Board has met and do not allow the public to monitor the Board's progress. Based on the lack of public information provided by the Board and the uncertainty as to its overall function, IPOL

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<sup>12</sup> EULEX, Joint Press Release – the 17th Joint Rule of Law Coordination Board-Shared Commitment to Strengthen the Rule of Law. 19 May 2010. Available at: <http://www.eulex-kosovo.eu/en/pressreleases/0061.php>

recommends allowing members of civil society to participate as permanent observers in all Joint Rule of Law Coordination Board meetings beginning immediately, in order to provide the public and the Board with much needed evaluations. IPOL has requested to sit in these meetings, but has received a negative reply.

**Strategies and public statements between EULEX and ministries dealing with the rule of law should be better harmonized.**

Kosovo's rule of law institutions need to increase cooperation in policy planning and in fighting organized crime and high-level corruption. Although this need is exhaustively mentioned by EULEX and the GoK, there remains a gap in practice. EULEX consistently communicates its subordinate position to GoK priorities and actions yet acts unilaterally in most instances, creating a perception of mistrust between institutions. More recently, the EULEX-initiated raids on MTPT facilities was done without the cooperation of the Ministry of Internal Affairs.<sup>13</sup> While this move may have occurred in isolation for reasons of sensitivity, the overall impression is EULEX does not trust GoK competencies. This mistrust was further echoed by Prime Minister Hacim Thaçi's comments following the raid that, "Kosovo's institutions were at war with international institutions."<sup>14</sup>

This war of words between EULEX and the GoK has impeded the work of the Special Prosecutor's Anti-Corruption Task Force. Both sides publicly offered support to this Task Force, but then issued contradictory statements each time it attempted to perform its main task.<sup>15</sup> While EULEX's Acting Chief Prosecutor, Johan van Vreeswijk, said Minister Limaj and the Ministry's head of procurement, Nexhat Krasniqi, could potentially serve extensive jail time, senior Kosovo government officials reacted by characterizing the SPRK's work as destabilizing interference in public institutions.<sup>16</sup> These disarrayed statements threaten the independence of judicial institutions and potentially increase public doubt regarding how sincerely committed the GoK is to fighting corruption and how capable EULEX is in fulfilling their mandate.

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13 Interview with Minister of Internal Affairs, Bajram Rexhepi, 6 July 2010.

14 "EULEX: Limaj Could Face a Long Jail Term," BalkanInsight 7 May 2010.

15 *Gazeta Express*, Thaçi promises support for Special prosecution, 23.04.2010. Available at:

<http://www.gazetaexpress.com/web/index.php/artikujt/lexo/29277/C4/C13>. "Head of EULEX, Yves de Kermabonn, welcomes the establishment of the Anti-Corruption Task Force by the Government of Kosovo" (<http://www.eulex-kosovo.eu/alb/?id=8&n=197>).

16 "EULEX: Limaj Could Face a Long Jail Term," BalkanInsight 7 May 2010

**Urgent attention should be paid to judicial reform to ensure a strong rule of law in Kosovo.**

Reforming the judiciary in Kosovo is considered one of the main priorities of the EULEX and the GoK. Both the EU 2009 Progress Report of Kosovo and the EULEX 2010 Programme Report called on the GoK to immediately push forth with adopting the four reform laws: The Law on the Courts, the Judicial Council of Kosovo, the Prosecutor and on the Prosecutorial Council. Slow steps were taken last quarter to implement new laws for achieving judicial reform and increase transparency, such as the adoption of the Law on the Kosovo Judicial Council and the Law on Declaration and Origin of the Property and Gifts of Senior Public Officials. However, since April, not a single reform law has been adopted. EULEX should continue to publicly pressure the GoK to speed up the adoption of the remaining laws required for judicial reform, including adopting amendments necessary for achieving a comprehensive criminal code.

In its 2010 Programme Report, EULEX cites the lack of human resources for addressing the growing backlog of cases.<sup>17</sup> While an unknown number of new judges and prosecutors were reportedly appointed last quarter, EULEX should intensify its recruitment efforts to fill these vacancies and reduce the caseload. The current number of EULEX judges (40) and prosecutors (20) has led to only 5 verdicts for cases involving EULEX officials during the second quarter.<sup>18</sup> In this regard IPOL believes EULEX has two options: Either get serious about wrapping up pending cases and execute a series of high level cases regardless of national or international interference, or transition away from having an executive function and focus on empowering the domestic rule of law institutions.

**Immediate steps should be taken to ensure the full functioning of the court in northern Mitrovica within three months.**

The courts in north Mitrovica, disabled in 2008, remain non-functional. In March of this year, EULEX stated the District Court in north Mitrovica would begin operations, with 6 judges (two Albanians, two Serbs and two international). Having passed the March deadline, EULEX officials continue to correctly frame the court in north Mitrovica as a politicized issue

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<sup>17</sup> EULEX Programme Report 2010. Available at : <http://www.eulex-kosovo.eu/docs/tracking/EULEX%20Programme%20Report%202010%20.pdf>

<sup>18</sup> EULEX, EULEX Kosovo Justice Component. Available at: <http://www.eulex-kosovo.eu/en/justice/>

between Prishtina and Belgrade.<sup>19</sup> The Kosovo Judicial Council has refused to allow those Serbian appointed judges that work in Serbian parallel courts in north Kosovo from working in the north Mitrovica court. EULEX has reverted to its MMA role regarding this matter, claiming its status as a technical mission and not one mandated to resolve the political standoff between Prishtina and Belgrade. While several international components continue working to construct judicial organs in the north, EULEX should play a primary role by garnering support from EU Member States for re-opening the court.

**Ensure the full functioning of Customs Gates 1 and 31 and clearly define the areas of responsibility for border management within three months.**

The outstanding customs issues have yet to be resolved because there is no policy on customs collection or customs revenues distribution. Currently at Gates 1 and 31, EULEX officials do not collect customs taxes, but simply record the entry and exit of goods. EULEX refuses to collect revenue because there is no policy for this process and due to intimidation officers have received when attempting to do so.

Additionally, Border Crossing Points 1 and 31 have become another source of contention and/or miscommunication between EULEX and the GoK. According to EULEX officials, KP commands the gates, EULEX plays an advisory role and in the last resort KFOR steps in.<sup>20</sup> However, the areas of responsibility for border management remain open to interpretation as evident by the 28 June incident, where 30 Serbians violently crossed the Jarinje border of Leposavic for Vidovdan celebrations. Again, claiming its MMA role, EULEX did not intervene during the incident and allowed the Serbian citizens to illegally enter Kosovo. In response, Interior Minister Bajram Rexhepi criticized EULEX officers for failing to fulfill their responsibility.<sup>21</sup> Serbian groups have previously threatened the police at gates in Leposavic and Mitrovica and this looks to be a recurring trend, both entities need to clearly define their areas of responsibility and subsequently develop coordinated policy protocols in order to prevent further incidents.<sup>22</sup> But, EULEX has a clear mandate to exercise its executive

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19 Deutsche Welle, Disagreement on the Court in North Mitrovica, 08.04.2010. Available at: <http://www.dw-world.de/dw/article/0,,5443940,00.html>

20 Interview with EULEX officials. 6 July 2010.

21 Telegrafi, Rexhepi criticizes the police on the events in the northern borders, 25.06.2010. Available at: <http://www.telegrafi.com/?id=2&a=9186>

22 Telegrafi, Rexhepi criticizes the police on the events in the northern borders, 25.06.2010. Available at: <http://www.telegrafi.com/?id=2&a=9186>

powers as laid out in its Concept of Operations, especially in the northern Kosovo and non-majority areas, and where local authorities cannot fulfill their mandate as expected.<sup>23</sup>

**To provide more transparency and public information regarding the Bllaca case.**

Since January, on-goings in the Bllaca case has been quiet. In December 2009, Mr. Nazim Bllaca, currently charged with murder, attempted murder, aggravated murder and organized crime, issued a public statement regarding his involvement in several murders and was put on house arrest by EULEX.<sup>24</sup> Media attention on the case was strong but information regarding progress has been limited. After Mr. Bllaca's statements, several arrests were made in connection with this case including of Driton H., accused of participating in two attempted murders, and of Mr. Shpresim Uka.<sup>25</sup> No other developments have occurred this quarter.

Recommendations for the EU and the EUSR

**To create pressure on Kosovo's leadership to implement the required judicial reforms to meet EU standards.**

A few high-profile visits have been made in Kosovo in the second quarter. Most notably, during his visit Stefan Fule, EU Commissioner on Enlargement and Neighborhood Policy, pledged his support to Kosovo's path towards EU accession. Mr. Fule called upon the GoK to push forward with judicial reforms and to intensify their commitment to fight organized crime and corruption.<sup>26</sup> The successful EU Parliament vote on 8 July adopted a resolution that calls on all EU Member States to recognize Kosovo. A clear step in the right direction, EU leaders should use this momentum to collectively pressure Kosovo's leadership to rapidly implement the judicial reforms required to meet EU standards.

**To pressure Belgrade not to hinder the functionalization of Customs Goints 1 and 31, and the court in northern Mitrovica**

There has been comparatively greater pressure on Belgrade and Prishtina this quarter towards entering into dialogue and achieving regional cooperation. Dialogue between the

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<sup>23</sup> EULEX Concept of Operations.

<sup>24</sup> Press Release: Nazim Bllaca house arrest (<http://www.eulex-kosovo.eu/alb/index.php?id=8&n=165>) (01/12/2009).

<sup>25</sup> One arrest in the Bllaca case (<http://www.eulex-kosovo.eu/alb/index.php?id=8&n=180>) (12/01/2010).

<sup>26</sup> EU Bussines, EU encourages Kosovo, Serbia dialogue, 06.05.2010. Available at: <http://www.eubusiness.com/news-eu/kosovo-serbia.4i6>

two countries was emphasized by Commissioner Fule during his visit in May in Kosovo as a step forward to European integration. During his visit in June, Britain's Minister for European Affairs David Lidington said the EU is preparing for a "constructive dialogue" between Belgrade and Prishtina once the International Court of Justice renders its decision on Kosovo's independence.<sup>27</sup> Following this decision, the EU's consensus should be communicated strongly in order to provide sufficient pressure on Belgrade to adhere with a functioning northern Kosovo border.

**To study the possible use of the High Representative of the EU's new powers in order to facilitate the functioning of EU missions in Kosovo.**

Baroness Ashton should exercise the right to initiate processes for finding technical solutions in order to move forward with problems stuck in political stalemate. She should consider being the primary mediator between Prishtina and Belgrade in future technical talks. Her role should be strengthened by the fact that the European Parliament has adopted a resolution calling for EU unity on the issue of recognizing Kosovo.<sup>28</sup>

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27 EU Business, EU readying for Kosovo, Serbia dialogue: UK official, 24.06.2010. Available at: <http://www.eubusiness.com/news-eu/kosovo-serbia-icj.5bk>

28 Telegrafi. European Parliaments requires from member states to recognize Kosovo. Available at: <http://www.telegrafi.com/?id=2&a=9186>

## About us

The Balkan Policy Institute is an independent and not-for-profit think tank that seeks to initiate and deepen public policy debate at all levels of decision making.

Based in Pristina, Kosovo, the Balkan Policy Institute works to promote sustainable development and good governance through pragmatic policy making that works for the welfare of the citizens.

Our mission is to strengthen the understanding of the impact that public policies have, among Kosovo's citizens, advocacy groups and decision makers. We do this by identifying issues, undertaking research, and generating innovative solutions and strategies aimed at understanding and resolving societal and public policy issues.

The Balkan Policy Institute aims to offer sound analysis to decision makers; provide advocacy tools to citizens and interest groups and support them in their participation in the decision making processes.

The objectives of the Balkan Policy Institute are to ensure that the processes of European integration, decentralization and market reform are utilized to increase citizen participation in decision making; empower local communities to address their own challenges in a sustainable manner; bring welfare to the citizens; increase the accountability of government and secure a healthier environment.

The Balkan Policy Institute works with partners in civil society, government and academic in employing a comprehensive approach towards achieving its goals; it proactively engages with key actors in the policy making process; it continuously studies issues and develops appropriate responses; and it monitors the implementation of policies and the implications.

The areas of focus of the Balkan Policy Institute's work include governance, sustainable development, social affairs, health, education, economic development, local governance, regional and international affairs, rule of law, transparency and civil society.

The Balkan Policy Institute employs permanent staff and research fellows as well as interns. The staff and fellows of the Institute are motivated and dynamic individuals who are committed to Kosovo and the region of south east Europe.