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PROJECT AGAINST CORRUPTION IN ALBANIA (PACA)

TECHNICAL PAPER

**THE DRAFT TEACHERS' CODE OF CONDUCT: SUMMARY OF DISCUSSIONS
AND RECOMMENDATIONS FOR NEXT STEPS**

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1 EXECUTIVE SUMMARY

This ‘next steps’ Technical Report is in connection with the Albanian Teachers’ Code of Conduct and its Regulatory Mechanism (“the Code”) of July 2008 and it should be read in conjunction with the author’s previous Technical Report dated 13 September 2010 (“original report”).

There was much agreement between stakeholders and support for the vast majority of suggestions in the original report. The fundamental point that the Scottish model should be **adapted** as opposed to **adopted** and the two tables contained in Part B is of high importance. The need for compliance with the European Convention on Human Rights (ECHR) especially in regard to a teacher’s right to a private life is another key factor to be reflected in the re-draft from now forward.

In keeping with the ECHR theme, given the fact that any graduate can teach in Albania as a matter of right or ‘possession’, thought further down the road needs to be given teachers’ legal position in terms of Protocol 1 article 1. Some may argue, that in ECHR terms there is already a teaching profession in Albania with teachers enjoying the protection afforded by the ECHR.

2 NEXT STEPS BASED ON FINDINGS OF VISIT 19 – 21 SEPT 2010

The series of meetings as discussions was extremely helpful and informative and from right across there were a number of areas of clear agreement, many of which were raised in the original report.

Areas of agreement between the various stakeholders/parties	Advised next steps in re-drafting the Code of Conduct
1. Glossary to be included.	Consider reflecting in the IDE redraft
2. Scottish model should be adapted and not adopted to meet the needs of Albania. In particular there needs to be provision to address private tutoring and gifts to teachers.	Consider reflecting in the IDE redraft
3. Some thought should be given to what are standards of competence (covered in the basic standards document) versus standard of conduct.	Consider reflecting in the IDE redraft
4. Code is not only about addressing petty corruption (as	Consider reflecting in the IDE redraft

<p>indicated in current introduction to the Draft), and should also contain reference to wider areas of teacher conduct and expectations.</p>	
<p>5. Examine to what extent the re-drafted Code could have a more generic approach to 'the teacher' as opposed to so clearly differentiating between manager and teacher.</p>	<p>Consider reflecting in the IDE redraft</p>
<p>6. Consideration of the Code's format and structure so it is more widely accessible and shorter.</p>	<p>Consider reflecting in the IDE redraft</p>
<p>7. The language of the Code should be more supportive and positive. Language must also allow for the exercise of discretion by those who will have to make judgments (e.g. of a disciplinary nature) based on the Code. Within the jurisprudence of the ECHR, this also allows for proportionality.</p>	<p>Consider reflecting in the IDE redraft</p>
<p>8. Repetition and duplication should be avoided between sections of the Code.</p>	<p>Consider reflecting in the IDE redraft</p>
<p>9. When including provisions in the Code these should always be tested against enforceability and practicality. (eg a teacher teaching his/her own child) Future-proofing (ensuring the Code is not so detailed/prescriptive that it risks becoming outdated) is also an important consideration. Prescriptive lists also limit the important element of discretion in terms of enforcement of the Code</p>	<p>Consider reflecting in the IDE redraft</p>

<p>10. ECHR Article 8 (teacher's right to a private life) must be kept to the fore when considering the content of the re-draft.</p>	<p>Consider reflecting in the IDE redraft with legal input and advice</p>
<p>11. Associated with (10) above consideration must be given to the existing status of teachers in Albania with reference to the ECHR. As any graduate can teach by virtue of having a university degree this would seem in legal terms to grant a right to teach. This is still the case even though there is currently no Albanian 'Order' or Register of teachers. That would bring an Albanian teacher's right to teacher within the definition of 'property' (ECHR Article 1 of Protocol 1). In turn this would have an impact upon the way in which a teachers code could/would be applied/enforced and how a teacher would be restricted or indeed banned from exercising their right to teach.</p>	<p>IDE should take legal advice on this matter and reflect this in the wording and status of the redrafted Code.</p>
<p>12. A clear focus in regard to the jurisdiction of the code, i.e. it is about Teacher conduct, not a code to govern the behaviour of everybody involved in the educational process. For example it was suggested during some of the stakeholder meetings in Tirana that the Code should be capable of acting as a mechanism for teachers to take action against a violent parent [</p>	<p>The redraft must make the teacher/teacher manager the subject of and at the centre of the Code and its jurisdiction. To make it a 'catch all' Code and in some way include standards of behaviour for others, e.g. parents and employers would be totally confusing and raise questions of enforceability.</p>
<p>13.</p>	
<p>14. It may be useful to provide as an annex to the Code how a complaint against a teacher might be made. However this should</p>	<p>Consider reflecting in the IDE redraft</p>

<p>not detract from the positive thrust of the Code or turn the Code into a complaints process itself.</p>	
<p>Views of parents and other stakeholders during re-drafting are important as this will add to the feeling of ownership and credibility of the final document.</p>	<p>IDE to consult with relevant stakeholders to the extent that it is deemed practical and reasonable during re-drafting process.</p>
<p>The Code of 2008 needs to be more explicit as to how it interfaces with the penal code, especially in regard to child related offences. It is accepted that any criminal behaviour by a teacher is not to be condoned. However there is a large number of minor offences, which in themselves would not be relevant to fitness to teach and not call in question the individual's suitability. However the notion of 'relevant offence' should be considered within the Code to address the individual situation and circumstances of the offending. For example a teacher convicted of drunk driving at the weekend should be considered differently to the same teacher convicted of the same offence whilst driving pupils to a sports event. In addition several convictions of drunken driving at the weekend may become relevant as it represents a trend of criminal behaviour, which could call fitness into question.</p>	<p>IDE should seek legal assistance in this regard.</p>

The following areas are where there was not the same level of consensus.

Area lacking consensus	Advised next steps in re-drafting the 2008 Code
Opposition to or lack of clarity about an Albanian 'Order of teachers', without which a Code would have no use or meaning	Frame the Code in such a way that it can operate as an advisory document to enhance good practice and support teachers and protect children. Should a TTC or 'Order of Teachers' come about, the status of the existing could be defined within that new context.
Any concept of teacher professionalism or code of ethics should be negotiated as part of the MoE collective agreement with the Unions	This is a matter for on which the author does not have a clear view, as it is not clear to what extent the Unions represent the teacher community as a whole