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**REPORT SUBMITTED BY THE UNITED NATIONS INTERIM  
ADMINISTRATION MISSION IN KOSOVO TO THE HUMAN RIGHTS  
COMMITTEE ON THE HUMAN RIGHTS SITUATION SINCE JUNE 1999**

**KOSOVO (SERBIA & MONTENEGRO) \* \*\***

[7 February 2006]

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\* This report was requested by the Committee during the 81<sup>st</sup> Session, July 2004.

\*\*The report is issued unedited, in compliance with the wish expressed by the Human Rights Committee at its sixty-sixth session in July 1999.

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**Part I: CORE COMMON DOCUMENT FORMING A PART OF  
THE REPORTS SUBMITTED BY THE UNITED NATIONS  
INTERIM ADMINISTRATION MISSION IN KOSOVO TO  
HUMAN RIGHTS TREATY MONITORING BODIES**

**INTRODUCTION**

1. Acting under the authority granted to it under United Nations Security Council resolution 1244 (1999) (UNSCR 1244), the United Nations Interim Administration in Kosovo (UNMIK) is submitting this Common Core Document (CCD) as the initial part of its reports to the Human Rights Committee (HRC) and the Committee on Economic, Social and Cultural Rights (CESCR). It has been prepared as a pilot case of coordinated human rights reporting with a CCD and treaty-specific documents under the revised Proposed Common Guidelines on Reporting to the International Human Rights Treaty Monitoring Bodies that were agreed to in principle by the 17<sup>th</sup> Meeting of the Chairpersons of Human Rights Treaty Bodies on 23-24 June 2005 (the Guidelines)

2. A draft of the CCD was prepared by the OSCE on the basis of inputs from the Pillars and Offices of UNMIK and the Provisional Institutions of Self-Government (PISG). The draft was subsequently reviewed and revised by the Office of the Special Representative of the Secretary-General.

**A. DEMOGRAPHIC, ECONOMIC, SOCIAL AND CULTURAL  
CHARACTERISTICS OF KOSOVO**

***Geography***

3. Kosovo, which is formally part of the Union of Serbia and Montenegro (S&M), is in the Western Balkans. It is a landlocked entity, which is bordered by Albania, the Former Yugoslav Republic of Macedonia (FYROM) and S&M. Kosovo has a landmass of 10,887 square kilometres. This is roughly one-third of the size of

Belgium. Kosovo is a geographical basin, situated at an altitude of about 500 meters, surrounded by mountains, and divided by a central north/south ridge into two subregions of roughly equal size and population.<sup>1</sup>

4. Embracing about 1.1 million ha, Kosovo is characterized by four main watersheds rising in a westerly and northerly crescent of mountains, from which rivers run south and southeast to intersect elevated (300-1000 m) and relatively fertile plains. Erosion in upland areas and water logging (55,000 ha) are common. The climate is continental in the east with an average 660 mm rainfall and 170-200 frost-free days, but Mediterranean influences in the south-west bring wetter (780 mm) and warmer (196-225 frost-free days) conditions to that area.<sup>2</sup>

5. Approximately 430,000 ha is forested (39 per cent) and 577,000 ha is classified as agricultural land (52 per cent). Of the latter, about 180,000 ha (31 per cent) are pastures and about 400,000 ha (69 per cent) is cultivable. According to 1998 statistics cited by the World Bank, agricultural land -- encompassing arable land, pasture and perennial crops -- was disaggregated as follows:

• Cropped Land	- 291,000 ha
• Wheat	- 110,000 ha
• Maize	- 95,000 ha
• Fodder Crops	- 36,000 ha
• Vegetables	- 28,000 ha
• Spring Barley	16,000 ha
• Industrial Crops	6,000 ha
• Meadows	86,000 ha
• Orchards	12,000 ha
• Vineyards	8,000 ha
• Pastures	180,000 ha
• Total Agricultural Land	577,000 ha. <sup>3</sup>

6. Kosovo has extensive reserves of high-calorific value/low sulphur and ash lignite deposits, which are estimated at over ten billion tons. It has no other fossil fuel

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<sup>1</sup> Towards Stability and Prosperity: A Program for Reconstruction and Recovery in Kosovo, prepared by the European Commission and the World Bank in support of the United Nations Mission in Kosovo, 2 (3 November, 1999) [*hereinafter* Towards Stability and Prosperity].

<sup>2</sup> *Ibid.* 39.

<sup>3</sup> *Ibid.* 42 (quoting statistics from the Official Yearbook of the Federal Republic of Yugoslavia, 1998).

deposits, natural gas import and supply infrastructure, nor oil refinery. Kosovo has only a modest hydro-electric potential.

7. It is well endowed with lead/zinc deposits of modest size and grade, distributed along a geological belt that extends along the Eastern side of Kosovo. In addition, it has two nickel deposits used in the production of ferronickel within a geologic belt that extends beyond its borders into Albania. Other geological resources include bauxite, magnacite and precious metals<sup>4</sup>.

### ***Demographic and Ethnic Structure***

8. Kosovo is characterized by a lack of accurate demographic data that is a consequence of its turbulent recent history and the significant population changes that accompanied it. The last commonly accepted census in Kosovo took place in 1981, when the total population was estimated to be 1,584,000. A census was held in 1991. However, its results are considered to be unreliable due to the low levels of participation from the majority Kosovo Albanian community.<sup>5</sup>

9. The population of Kosovo has been variously guesstimated by the UN Secretary-General and the World Bank as numbering 1.7<sup>6</sup> and 2.2<sup>7</sup> million in 1998. This unclear demographic picture was complicated by the 1998-1999 conflict, which saw a massive movement of population both during and after the hostilities. The conflict itself displaced approximately 800,000 Kosovo Albanians in the main to neighbouring Albania and FYROM. Up to 500,000 people may have been internally displaced.<sup>8</sup> The total number of deaths resulting from the 1998-1999 conflict was put at 4,000-12,000.<sup>9</sup>

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<sup>4</sup> World Bank, Kosovo Economic Memorandum, 49-50 (17 May 2004).

<sup>5</sup> UNICEF, Situation Analysis of Children and Women in Kosovo, 8. (2003) [*hereinafter* Children and Women in Kosovo].

<sup>6</sup> Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, UN. Doc. S/1999/799, para. 8 (12 July 1999) [*hereinafter* First SG Report].

<sup>7</sup> Towards Stability and Prosperity.

<sup>8</sup> First SG Report, at para. 8.

<sup>9</sup> Memorandum of the President of the International Development Association to the Executive Directors on a Transitional Support Strategy of the World Bank Group for Kosovo, 1 (13 April 2004) [*hereinafter* Transitional Support Strategy].

10. Following the NATO intervention and the end of hostilities in June 1999, around 242,000 non-Albanians left Kosovo. However, as of 8 July 1999, more than 650,000 refugees had returned to Kosovo through a combination of spontaneous and Office of the United Nations High Commissioner for Refugees (UNHCR) assisted movement. This left an estimated 150,000 persons in neighbouring regions and countries, 90,000 evacuees in third countries and an unknown number of asylum-seekers.

### ***Economic Indicators***

11. Following the end of the conflict, the economy of Kosovo was in a state of collapse. Over 25 per cent of the housing stock was totally destroyed and agricultural livestock and equipment was decimated (with estimated losses of between US\$700 m and US\$800 m). Kosovo is universally characterized as the poorest area in Europe.

## **B. CONSTITUTIONAL, POLITICAL AND LEGAL STRUCTURE OF KOSOVO**

### ***Brief Historical Overview***

12. *March 1999* The NATO bombing campaign begins following the failure of Rambouillet Peace talks. A massive refugee crisis develops as over 800,000 people flee the conflict.

13. *June 1999* The Yugoslav National Army withdraws from Kosovo. UNSCR 1244 is adopted bringing Kosovo under UN Interim Administration and establishing KFOR as the international security presence. The same resolution reaffirms the commitment of all member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia (FRY). Kosovo Transitional Council (KTC) is formed with the aim of developing self-government in Kosovo.

14. *December 1999* An agreement to share the provisional management of Kosovo with UNMIK established the Joint Interim Administrative Structure (JIAS)

and the Interim Administrative Council (IAC). The JIAS was intended to assist in administering Kosovo until the establishment of genuine Kosovo institutions.

15. *October 2000*            Municipal Elections are held in Kosovo.
  
16. *May 2001*              Promulgation of the Constitutional Framework for Provisional Self-Government in Kosovo. To strengthen its justice and police capabilities, UNMIK establishes a new Police and Justice Pillar.
  
17. *November 2001*        Elections to the Assembly of Kosovo are held with the LDK emerging as the largest party, followed by the PDK.
  
18. *March 2002*            The Provisional Institutions of Self-Government (PISG) are sworn in by the SRSG. Certain key governmental functions are transferred to PISG control.
  
19. *June 2002*             Establishment of the Kosovo Trust Agency “to preserve or enhance the value, viability, and corporate governance of socially owned and public enterprises in Kosovo.”
  
20. *October 2002*         Second round of Municipal Elections are held.
  
21. *December 2003*        “Standards for Kosovo” are adopted.
  
22. *March 2004*            Rioting in Kosovo on 17, 18 and 19 March.
  
23. *October 2004*         Elections to the Assembly of Kosovo.

***United Nations Interim Administration Mission in Kosovo***

24. Under UNSCR 1244, the United Nations Interim Administration Mission in Kosovo (UNMIK) was established as the international civil presence in order to provide an interim administration for Kosovo. In particular, UNSCR 1244 called upon UNMIK to:



- perform basic civilian administrative functions;
- promote the establishment of substantial autonomy and self-government in Kosovo;
- facilitate a political process to determine Kosovo's future status;
- coordinate humanitarian and disaster relief of all international agencies;
- support the reconstruction of key infrastructure;
- maintain civil law and order;
- promote human rights; and
- assure the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo.

25. The actual structure of UNMIK was established in the Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo to the Security Council of 12 July 1999.<sup>10</sup> To implement its mandate, UNMIK consists of four “Pillars”, each headed by a Deputy Special Representative of the Secretary-General (DSRSG).

26. The Head of UNMIK is the Special Representative of the Secretary-General for Kosovo (SRSG). As the most senior international civilian official in Kosovo, he presides over the work of the pillars and facilitates the political process designed to determine Kosovo's future status. The SRSG as the head of UNMIK is the highest international civilian official in Kosovo. He enjoys the maximum civilian executive powers envisaged and vested in him by the Security Council in its resolution 1244 (1999), and is the final authority on their interpretation.<sup>11</sup>

27. The Principal Deputy Special Representative assists the SRSG in directing and managing UNMIK and ensures a coordinated and integrated approach by all of the Mission's four components.<sup>12</sup> The DSRSGs who head the four components report directly to the SRSG on the implementation of their tasks.<sup>13</sup> An Executive Committee, whose membership includes the Principal Deputy Special Representative and the four DSRSGs, is chaired by the SRSG. The Executive Committee assists the SRSG in

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<sup>10</sup> First SG Report.

<sup>11</sup> First SG Report, para 44.

<sup>12</sup> *Id.*, para 45.

<sup>13</sup> *Id.*, para 46.

fulfilling his responsibilities, and is the main instrument through which he controls the implementation of UNMIK's objectives.<sup>14</sup>

28. Originally, Pillar I, which had the mandate to ensure humanitarian assistance, was led by the Office of the United Nations High Commissioner for Refugees (UNHCR). This Pillar was phased out in June 2000. In May 2001, a new Pillar I for Police and Justice was established.

**Pillar I:** Police and Justice, under the direct leadership of the United Nations.

29. The International Police operates under the authority of the SRSG within Pillar I. It is commanded by the Police Commissioner. He exercises all operational, technical and disciplinary authority over all police personnel. The Commissioner reports to the SRSG. The two main goals of the UNMIK police are to provide temporary law enforcement, and to develop a professional and impartial Kosovo Police Service (KPS), trained in democratic police work. All police duties are in the process of being handed over to the KPS and the international officers will remain only to support and monitor their activity.

30. The provision of security on Kosovo was designed to undergo three phases:

- In the first phase, KFOR was responsible for ensuring public safety and order until the international civil presence could take responsibility for this task. Until the transfer of that responsibility, UNMIK's civilian police advised KFOR on policing matters and established liaison with local and international counterparts.
- In the second phase, UNMIK took over responsibility for law and order from KFOR and UNMIK civilian police carried out normal police duties and had executive law enforcement authority.
- In the third phase, which is being implemented currently, UNMIK is in the process of transferring responsibilities for law and order and border policing functions to the Kosovo Police Service. UNMIK civilian and border police are reverting to training, advising and monitoring functions.

31. Within UNMIK Pillar I has responsibility for the establishment and administration of the judicial system and Pillar III is engaged in monitoring of the

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<sup>14</sup> *Id.*, para 47.

legal system for compliance with rule of law standards, and in training and development of the judiciary and legal profession. In July 1999, the Department of Judicial Affairs was established, and shortly afterwards split into two sections, (i) Prosecution Services and Court Administration and (ii) Penal Management. In March 2000, an Administrative Department of Justice (ADJ) was established as part of the JIAS by UNMIK Regulation No. 2000/15<sup>15</sup> and assumed certain responsibilities in those areas. The introduction of international judges and prosecutors had been sanctioned by the SRSG just prior to that through UNMIK Regulation No. 2000/6.<sup>16</sup> The International Judicial Support Division was created and attached to the Department of Judicial Affairs and headed by an international officer but effectively shared the same administrative apparatus as the ADJ. The ADJ and the Department of Judicial Affairs largely overlapped, since they occupied the same premises and shared many of the same supervisors, officers and staff.

32. These arrangements were revised in 2001, when the Department of Judicial Affairs was reconstituted as the Department of Justice (DOJ), with five divisions, (i) Judicial Development; (ii) Penal Management; (iii) International Judicial Support; (iv) Criminal and (v) the Office on Missing Persons and Forensics. The Judicial Development Division is in turn divided into four sections: 1. The Professional Development Section, which serves as secretariat to the Kosovo Judicial and Prosecutorial Council (KJPC) and supports the Professional Development Programme for the judiciary and prosecutors; 2. The Judicial Integration Section, which fosters ethnic representation within the judicial system; 3. The Judicial Inspection Unit charged with investigation of judicial and prosecutorial misconduct and pursuing individual cases of misconduct before the Kosovo Judicial and Prosecutorial Council; and 4. The Victim Assistance and Advocacy Unit.

33. In addition, the DOJ has a Legal Policy Division concerned with the facilitating of judicial cooperation and assistance between the Kosovo courts and

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<sup>15</sup> UNMIK Regulation No. 2000/15 of 21 March 2000 on the Establishment of the Administrative Department of Justice.

<sup>16</sup> UNMIK Regulation No. 2000/6 of 15 February 2000 on the Appointment and Removal from Office of International Judges and International Prosecutors.

courts of other jurisdictions and an Operations Unit, concerned with policy and coordinating security of judicial personnel, buildings and assets.

34. The DOJ maintains a strategic and policy formulation role in relation to the judicial system and prosecution services. Its specific strategic objectives in these areas are:

- Designing and directing an effective and efficient system of courts and prosecutors' offices that promotes the rule of law and respect for the human rights of all persons;
- Integrating ethnic minorities into the Kosovo justice system, facilitating their access to justice, and monitoring the treatment of minorities by the justice system;
- Bringing forensic medicine and pathology services up to internationally acceptable standards to enable them to provide forensic evidence to criminal investigations;
- Monitoring the work of judges and prosecutors, including auditing the functioning of the courts and public prosecutors' offices and investigating allegations of judicial and prosecutorial misconduct; and
- Protecting victims' rights and ensuring their participation in criminal prosecutions.

35. The DOJ, as a Reserved Power Entity of the SRSG, has responsibility for the preparation of the budget for the judicial system. The total expenditure approved for salaries in 2003 was Euro 5.18 million, involving a provision for 1,946 personnel at all levels of the judicial system. Previously, payment to local courts for individual items of expenditure, e.g. small items of equipment and repairs, was distributed by regional court administrators, but this arrangement has now been revised. Courts currently make their requests for funding for equipment and maintenance to the Department of Judicial Administration (DJA) in the PISG Ministry of Public Services. A petty cash "float" is distributed to each local court for this purpose, at a maximum of Euro 2,500 per month, which is replenished once 75% of the previous payment has been exhausted. Utility bills (electricity, phones, etc.) are an exception to this arrangement: these are required to be submitted directly to the DJA for consideration.

**Pillar II:** Civil Administration, under the direct leadership of the United Nations, which has recently been transformed into the Department of Civil Administration to reflect UNMIK's reduced role in this field.

**Pillar III:** Democratization and Institution Building, led by the Organization for Security and Co-operation in Europe (OSCE)

36. The tasks of the institution-building component of the UNMIK mission, which is led by OSCE (Pillar III), include assisting the people of Kosovo in strengthening the capacity of local and central institutions and civil society organisations, as well as promoting democracy, good governance and respect for human rights. Its responsibilities also include the organisation of elections.<sup>17</sup>

**Pillar IV:** Reconstruction and Economic Development, led by the European Union (EU)

37. In order to promote peace and prosperity in Kosovo and to facilitate the development of an economic life that brings better prospects for the future in paragraph 11(g) of UNSCR 1244, the Security Council mandates UNMIK to support the reconstruction of key infrastructure and other economic and social systems. This component of the mission was assigned to the European Union. The main functions of the reconstruction component are to plan and monitor the reconstruction of Kosovo; prepare and evaluate policies in the economic, social and financial fields; and to coordinate between the various donors and international financial institutions in order to ensure that all financial assistance is directed towards the priorities indicated by UNMIK.<sup>18</sup>

***Joint Interim Administrative Structure and Transition to the Provisional Institutions of Self-Government***

38. As of 2000 Kosovo was administered by the Joint Interim Administrative Structure (JIAS). The role and functions of the JIAS and its components bodies were set out in UNMIK Regulation No. 2000/1, of 14 January 2000. It consisted of the Office of the SRSG, the Kosovo-wide oversight and advisory organs representing Kosovo's institutions and political groupings, and the centrally-based administrative

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<sup>17</sup> First SG Report, para. 79.

<sup>18</sup> *Id.*, para 102.

departments responsible for administration, service delivery and revenue collection. At the municipal level, a second level of administrative organs comprised the offices of the UNMIK municipal administrators, administrative councils representing local institutions and parties, and administrative boards with recruited members responsible for local services.

39. The JIAS administrative departments were consolidated into nine Transitional Departments, later became PISG Ministries. Pillar II was assigned to look after seven: Agriculture, Forestry and Rural Development; Culture, Youth and Sports; Education, Science and Technology; Labour and Social Welfare; Health, Environment and Spatial Planning; Transport and Communications; and Public Services. Pillar IV was assigned two: Trade and Industry, and Finance and Economy.

40. In each Ministry, a Principal International Officer was appointed to advise the Minister on policy development and governance, to co-ordinate the international staff within the Ministry and to serve as senior liaison to UNMIK. To ensure a smooth and efficient transition, UNMIK international staff continued to perform some functions for a limited time after the Government was established. The international staff was to hand over their executive functions as soon as possible to local civil servants and gradually limit their involvement to providing advice and to matters of minority integration and protection and liaison with the UN specialized agencies and other donors.

41. In 2001 the Constitutional Framework for Provisional Self-Government in Kosovo (the Constitutional Framework) was promulgated.<sup>19</sup> The Constitutional Framework is a fundamental pillar of governance in Kosovo and having been drawn up after comprehensive negotiation with stakeholders it represents a delicate balance of competing interests with important safeguards for minority Communities.

42. In accordance with the Constitutional Framework, the SRSG retained certain reserved powers. In order to discharge these, the following UNMIK Directorates have been established: Civil Protection, which took over the responsibilities of the UN

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<sup>19</sup> UNMIK Regulation No. 2001/9 of 15 May 2001 on A Constitutional Framework for Provisional Self-Government in Kosovo.

Mine Action Coordination Centre, following the successful completion of its operations in mid-December 2001; Administrative Affairs; Infrastructure Affairs; and Rural Affairs. The SRSG also retained responsibility for the Kosovo Protection Corps, together with the KFOR. Additional reserved powers were the administration and financing of civil security and emergency preparedness; mine clearance; the administration of public, state and socially owned property; the regulation of public and socially owned enterprises; the administration of railways, allocation of radio frequencies, and civil aviation; the civil registry database; the registration of habitual residents; the Housing and Property Directorate, including the Housing and Property Claims Commission; control over cross-border/boundary transit of goods; general powers, such as international relations; and the judiciary and the police (except for court administration, which was transferred to the Department of Judicial Administration in the Ministry of Public Services); and several economic areas, such as the Central Fiscal Authority, which worked alongside the new Ministry of Finance and Economy.

43. UNMIK has been gradually transferring the administration of Kosovo to come to the current division of responsibilities between the international administration and the PISG. UNMIK Regulation No. 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo marked the end of the JIAS and the establishment of local central level executive authorities.

#### ***Provisional Institutions of Self-Government in Kosovo***

44. Chapter 1.4 of the Constitutional Framework stipulates that “Kosovo shall be governed democratically through legislative, executive, and judicial bodies and institutions.” Together these comprise the central PISG. By way of subsidiarity, Section 1.1 of UNMIK Regulation No. 2000/45 on Self-Government of Municipalities in Kosovo “establishe[d] institutions for democratic and autonomous self-government at the municipal level.”

45. Chapter 1.5 of the Constitutional Framework identifies the PISG at the central level as:

- Assembly;
- President of Kosovo;
- Government;
- Courts; and
- Other bodies and institutions set forth in the Constitutional Framework.

46. The PISG are all obligated to promote and respect:

“[T]he principle of the division of powers between the legislature, the executive and the judiciary”,<sup>20</sup> and,  
 “[T]he rule of law, human rights and freedoms, democratic principles and reconciliation”.<sup>21</sup>

47. Under Chapter 5.2(d) of the Constitutional Framework, the central PISG are accorded competences in the field of local administration that include monitoring the quality of municipal services. More generally, the Constitutional Framework transfers responsibilities to the central PISG in the following areas:

- Economic and financial policy;
- Fiscal and budgetary issues;
- Domestic and foreign trade, industry and investments;
- Education, science and technology;
- Youth and sport;
- Culture;
- Health;
- Environmental protection;
- Labour and social welfare;
- Family, gender and minors;
- Transport, post, telecommunications and information technologies;
- Public administration services;
- Agriculture, forestry and rural development;
- Statistics;
- Spatial planning;
- Good governance, human rights and equal opportunity;
- Non-resident affairs;
- Judicial affairs; and,
- Mass media.<sup>22</sup>

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<sup>20</sup> Constitutional Framework, Chapter 2C.

<sup>21</sup> *Ibid.* Chapter 2B.

<sup>22</sup> *Ibid.* Chapter 5.1, 5.3-5.4.



48. It also vests the PISG with limited responsibility in the field of external affairs – namely, relating to international and external cooperation and including the negotiation and finalization of agreements. These activities, however, are to be coordinated with the SRSG.<sup>23</sup>

49. The exercise of these transferred responsibilities by the PISG in no way affects or diminishes the authority of the SRSG to ensure the full implementation of UNSCR 1244, including overseeing the PISG, its officials and its agencies, and taking appropriate measures whenever their actions are inconsistent with UNSCR 1244 or the Constitutional Framework itself.<sup>24</sup>

### ***PISG Legislative Branch***

50. The Constitutional Framework casts the Assembly of Kosovo as “the highest representative and legislative Provisional Institution of Self-Government of Kosovo.”<sup>25</sup>

51. Accordingly, its Chapter 9.1.2 and 9.1.3 ordain the periodic election of the Assembly at three (3) year intervals, by universal and equal suffrage, through proportional representation, with one-fifth of its seats reserved for “non-Albanian Kosovo communities.” Likewise, Paragraph 26 of that same Chapter vests the Assembly with authority to adopt laws and resolutions within the constitutional areas of responsibility of the PISG.

52. Apart from their special parliamentary representation through those reserved seats, non-Albanian Kosovo communities are guaranteed full and effective participation in the legislative process in the form of the functional composition, procedural law-making responsibility and language usage of the Assembly.

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<sup>23</sup> *Ibid.* Chapter 5.6.

<sup>24</sup> *Ibid.* Chapter 12.

<sup>25</sup> *Ibid.* Chapter 9.1.1.

53. The Constitutional Framework establishes an Assembly with one hundred and twenty seats, which are to be filled in Kosovo-wide elections, based on a one-district/closed list proportional model. A constitutional provision is made for two “sets” of seats: ‘open’ seats and ‘reserved’ seats.

54. Out of the total number of the Assembly’s 120 seats, 100 are to be openly “distributed amongst all parties, coalitions, citizens’ initiatives, and independent candidates in proportion to the number of valid votes received by them in the election to the Assembly.”<sup>26</sup> The remaining 20 are reserved for the additional representation of non-Albanian Kosovo Communities. These are apportioned among seven minority communities in accordance with the following formula:

- Ten seats to parties, coalitions, citizens’ initiatives and independent candidates having declared themselves representing the Kosovo Serb Community;
- Ten seats to self-declared political entities<sup>27</sup> representing other Communities, with:
  - Four (4) for the Roma, Ashkali and Egyptian Communities;
  - Three (3) for the Bosniak Community;
  - Two (2) for the Turkish Community; and,
  - One (1) for the Gorani Community.<sup>28</sup>

55. Like the ‘open’ seats, the reserved seats for each such Community or group of Communities are to be distributed to parties, coalitions, citizens’ initiatives and independent candidates having declared themselves representing each such Community in proportion to the number of valid votes received by them in the election to the Assembly.<sup>29</sup>

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<sup>26</sup> *Ibid.* Chapter 9.1.3(a).

<sup>27</sup> See, UNMIK Regulation No. 2004/12 on Elections for the Assembly of Kosovo [*hereinafter* UNMIK Assembly Regulation], Section 1.1(i) (5 May 2004) (defining “political entity” to mean “a Political Party, Coalition of Political Parties, citizens’ Initiative or independent candidate”).

<sup>28</sup> Constitutional Framework, Chapter 9.1.3(b).

<sup>29</sup> *Ibid.* UNMIK Regulation No. 2004/12 regulates the actual distribution of ‘open’ and ‘reserved’ Assembly seats among contesting political entities. It espouses the Saint Lague higher average system under which the number of votes is divided by the odd number of divisors until the number of divisors used corresponds with the total number of seats to be distributed in that set of seats.

56. Section 5.2 of the UNMIK Assembly Regulation provides that seats in the Assembly shall be allocated in the following manner:

(a) the total number of valid votes received by each Political Entity competing for a set of seats shall be divided by 1, 3, 5, 7, 9, 11, 13, 15, et seq. until the number of divisors used corresponds with the total number of seats to be distributed in that set of seats;

(b) the quotients resulting from this series of divisions shall be arranged in descending order. Seats shall be allocated to Political Entities according to the quotients, with the first seat going to the Entity with the largest quotient, the second seat going to the Entity with the next largest quotient, et seq. until all seats in the set of seats have been allocated; ...

(d) any quotient that gains a Political Entity a seat shall be disregarded in any subsequent distribution of seats;

(e) if a Political Entity is allocated seats equal to the number of candidates on its list and there are still seats to be allocated, then the remaining quotients of that Entity shall not be taken into account in allocating any remaining seats; [and,]

(f) the seats allocated to a Political Entity from the sets it has contested shall be added to provide the total number of seats that the Entity has won. That sum shall be the total number of seats allocated to that Entity as a result of the election for distribution to its candidates.

57. Under this process, the set of one hundred 'open' seats is allocated first: the set of twenty 'reserved' seats for the additional representation of non-Albanian Kosovo Communities, only thereafter.<sup>30</sup>

58. The seats allocated to a Political Entity are distributed to the candidates on the Entity's list, in order of their position on it, until the number of seats allocated to the particular Political Entity has been exhausted.<sup>31</sup> The seats thus distributed are held personally by the elected candidate and not by the Political Entity.<sup>32</sup>

59. The Constitutional Framework gives the Assembly a functional structure in order to facilitate the legislative process and guarantee the full and effective participation of members representing non-Albanian Kosovo Communities in law- and decision-making. That structure comprises: the President of the Assembly, a

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<sup>30</sup> Constitutional Framework, Chapter 5.2(c).

<sup>31</sup> *Ibid.* Chapter 5.3.

<sup>32</sup> *Ibid.* Chapter 6.1.

seven-member presidency; two main committees; and, nine (9) functional committees. Within it, the Constitutional Framework both assures Members of the Assembly representing minority communities' membership in the presidency and in the functional committees as well as establishing a special main committee – the Committee on Rights and Interests of Communities – to accommodate minority concerns.

60. The President of the Kosovo Assembly is chosen from the party or coalition, which won the election.<sup>33</sup> Two members of the Presidency of the Assembly are appointed by the same winning party or coalition: two, by the second ranking and one by the third ranking parties/coalitions respectively. The remaining two members are correspondingly selected from among the Members of the Assembly whose parties declared themselves to be representative of the Kosovo Serb community and of a non-Kosovo Albanian/non-Kosovo Serb Community. The entire membership is endorsed by a formal vote of the Assembly.<sup>34</sup>

61. The Assembly may establish as many functional committees as it deems necessary and appropriate to carry out its responsibilities.<sup>35</sup> Its two main committees are the Budget Committee and the Committee on the Rights and Interests of Communities. The former is composed of 12 members, allocated proportionally among the parties and coalitions represented in the Assembly; and the latter, of nine members, with two each from the Serb, Roma, Ashkali and Egyptian, Bosniak and Turkish communities and one from the Gorani Community.<sup>36</sup> The memberships of the Assembly Committees must reflect the political and 'Community' diversity of the Assembly. In particular, the chairmanships of all the committees have to be distributed proportionally among the parties and coalitions represented there. Each

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<sup>33</sup> *Ibid.* Chapter 9.1.9.

<sup>34</sup> *Ibid.* Chapter 9.1.8.

<sup>35</sup> *Ibid.* Chapter 9.1.18.

The Assembly subsequently enlarged this number to eighteen (18) in 2002. It was deemed to be inherently difficult for the representatives of the smaller minority groups to participate adequately in the committee work, a fact which limited their participation in the legislative process in some areas.

*See*, Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, UN Doc. S/2003/113, para. 11 (1 April 2003).

<sup>36</sup> Constitutional Framework, Chapter 9.1.11-12.

Committee should have two vice-chairmen from different parties or coalitions than that of the Chairman, with one also belonging to a different community than s/he.<sup>37</sup>

62. The procedure of adopting laws goes first through the process of one or more Assembly or Government members presenting the draft law to the Assembly for a first reading. The draft law is subsequently considered by the relevant main and functional committees, which propose amendments if needed. After that, the Assembly in a second reading considers the draft together with proposed amendments. At the end of the second reading, the Assembly votes, and the draft law is approved if it receives a majority of the votes of those present. In order for the laws to enter into force they have to be promulgated by the SRSG through an UNMIK Regulation.

63. At the request of any member of the Presidency of the Assembly, any proposed law must be submitted to the Committee on Rights and Interests of Communities. The Committee, by a majority vote of its members, decides whether to make recommendations regarding the proposed. If the Committee decides to do so it shall, within a period of two weeks make recommendations regarding the proposed law with a view to ensuring that Community rights and interests are adequately addressed. The Committee may also on its own initiative propose laws and such other measures within the responsibilities of the Assembly as it deems appropriate to address the concerns of Communities.

64. Within 48 hours from the approval of a law by the Assembly any member of the Assembly, supported by five additional members, may submit a motion to the Presidency claiming that the law or certain of its provisions violate vital interests of the Community to which he belongs. A motion may be made on the grounds that the law or provisions discriminate against a Community, adversely affect the rights of the Community or its members, or otherwise seriously interfere with the ability of the Community to preserve, protect or express its ethnic, cultural, religious or linguistic identity. In such cases the Presidency requests the sponsors of the law to provide within three days reasoned arguments in reply. The Presidency shall attempt to

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<sup>37</sup> *Ibid.*, Chapter 9.1.19, Chapter 9.1.21-22.

submit, within five days following receipt of the reply, a consensus proposal to the Assembly. If a consensus cannot be achieved, a special three-member Panel consisting of representatives of the two sides and one member, who shall preside, designated by the SRSG is seized of the matter. The Panel must within five days issue a decision recommending that the Assembly reject the motion, that the Assembly reject the law or provisions at issue, or that the Assembly adopt the law with amendments that the Panel shall propose. The Panel takes its decisions by a majority of its members.

65. All Assembly laws become effective on the day of their promulgation by the SRSG, unless otherwise specified.

### ***PISG Executive Branch***

66. Chapter 9.3.1 of the Constitutional Framework endows the Government with executive authority and charges it with implementing laws adopted by the Assembly of Kosovo and other laws within the scope of the constitutionally transferred responsibilities to the PISG. The Government is concomitantly mandated to propose draft laws to the Assembly on its own initiative and at the request of the Assembly itself.<sup>38</sup> It then falls to the President to guarantee the democratic functioning of the PISG and to represent the unity of the people of Kosovo.<sup>39</sup>

67. Under Chapter 9.4.3 of the Constitutional Framework and Section 1.1 of UNMIK Regulation No. 2001/19,<sup>40</sup> the Government is made up of the Prime Minister and ministers as well as the ministries under their authority – the Office of the Prime Minister having the status of a ministry. The Government has since been expanded to include a Deputy Prime Minister and Deputy Ministers.

68. Constitutional Framework Chapter 9.3.3 provides for the establishment of “ministries ... as are necessary to carry out functions within the competence of the

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<sup>38</sup> *Ibid.* Chapter 9.3.2.

<sup>39</sup> *Ibid.* Chapter 9.2.1.

<sup>40</sup> UNMIK Regulation No. 2005/15 Amending UNMIK Regulation No. 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo, Section 1.

Government.” UNMIK Regulation No. 2001/19, Section 2.2 provided for the establishment of nine ministries:

- Ministry of Finance and Economy;
- Ministry of Trade and Industry;
- Ministry of Education, Science and Technology;
- Ministry of Culture, Youth and Sports;
- Ministry of Health, Environment and Spatial Planning;
- Ministry of Labour and Social Welfare;
- Ministry of Transport and Communications;
- Ministry of Public Services; and,
- Ministry of Agriculture, Forestry and Rural Development.

69. Section 2.1 of UNMIK Regulation No. 2001/19 provides for the creation of the Advisory Office on Good Governance, Human Rights, Equal Opportunity and Gender (AOGG) and the Advisory Office on Communities (AOC), among other organizational units, within the Office of the Prime Minister. An Administrative Direction implementing UNMIK Regulation No. 2001/19 subsequently set up the post of Inter-Ministerial Coordinator for Returns (Inter-Ministerial Coordinator) holding a ministerial rank, in the Office of the Prime Minister.<sup>41</sup>

70. Pursuant to Constitutional Framework, Chapter 9.3.3, UNMIK Regulation No. 2001/19 was first amended by UNMIK Regulation No. 2002/5 Amending UNMIK Regulation No. 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo, which divided the Ministry of Health, Environment and Spatial Planning into the Ministry of Health (MH) and the Ministry of Environment and Spatial Planning (MESP).<sup>42</sup> It was then revised by UNMIK Regulation No. 2004/50 on the Establishment of New Ministries and Posts of Deputy Prime Minister and Deputy Ministers in the Executive Branch, which created three new ministries – the Ministry of Communities and Returns (MCR), the Ministry of Local Government

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<sup>41</sup> UNMIK Administrative Direction No. 2002/10 Implementing UNMIK Regulation No. 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo, Section 1.1 (31 May 2002).

<sup>42</sup> UNMIK Regulation No. 2002/5 of 4 March 2002 Amending UNMIK Regulation No. 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo, Section 1.

Administration (MLGA) and the Ministry of Energy and Mining.<sup>43</sup> With the creation of the MCR, the AOC was transformed into a department of that ministry.

71. The promulgation of UNMIK Regulation No. 2004/50 marked a transfer of responsibilities,<sup>44</sup> managed by the international civil presence in Kosovo on the basis of UNSCR 1244, from UNMIK to the PISG.<sup>45</sup> This reassignment of powers served to bring the number of government ministries to thirteen with the same complement of ministers and with new portfolios of Deputy Prime Minister and fifteen deputy ministers.

72. On 20 December 2005 the transfer of responsibilities to the PISG was taken a stage further with the promulgation of UNMIK Regulation No. 2005/53 which established new Ministries of Justice and Internal Affairs, together with their initial terms of reference. The ministries have been given legal, technical, financial and administrative responsibilities in relation to police and justice, although no operational control over the KPS or Kosovo Correctional Service has been transferred. It is envisaged that the functions of the two Ministries will be extended in the near future. At the present time the Ministries are still in the process of becoming operational.

73. Ministers may be “qualified persons from outside the membership of the Assembly.”<sup>46</sup> In this eventuality, ministers belonging to an ethnic, linguistic or religious community need the formal endorsement of the members of the Assembly from the Community concerned.<sup>47</sup>

74. As for the Deputy Prime Minister and Deputy Ministers, their “[s]election [is to] be carried out in a manner that duly takes into account the requirement to ensure

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<sup>43</sup> UNMIK Regulation No. 2004/50 of 2 December 2004 on the Establishment of New Ministries and Posts of Deputy Prime Minister and Deputy Ministers, section 1. *But, see*, UNMIK Regulation No. 2005/15, Section 2 (*repealing UNMIK Regulation No. 2004/50*).

<sup>44</sup> *See*, UNMIK Regulation No. 2004/50, Section 1.2 (providing that the new ministries would assume their competences and responsibilities with the promulgation of a subsequent UNMIK regulation amending UNMIK Regulation No. 2001/19 – namely with the promulgation of UNMIK Regulation No. 2005/15).

<sup>45</sup> Report of the Secretary-General on the United Nations Interim Administration in Kosovo, UN. Doc. S/2004/907, para. 11 (17 November, 2004).

<sup>46</sup> Constitutional Framework Chapter 9.3.6.

<sup>47</sup> *Ibid.*



equitable representation of Kosovo Serb and other non-majority Communities, as well as gender representation.”<sup>48</sup>

75. The Ministers are elected as a government slate, which is proposed by the candidate for Prime Minister to the Assembly, by a majority of its members. For his part, the candidate for Prime Minister is put forward to the Assembly by the President of Kosovo -- following consultations with the parties, coalitions and groups represented in the Assembly – and is elected by majority vote together with his government.<sup>49</sup> The ministers are appointed by the Prime Minister upon such an endorsement.

76. The Deputy Prime Minister and Deputy Ministers are similarly appointed. They, however, are “selected and proposed to the Assembly following consultations at the political level and in coordination with the SRSG.”<sup>50</sup>

77. The Inter-Ministerial Co-ordinator, for his part, is appointed under the authority of the SRSG in co-ordination with the Prime Minister.<sup>51</sup>

78. The competences of the Government are delineated in the Constitutional Framework and specified in UNMIK Regulation No. 2001/19, as amended by UNMIK Regulation No. 2005/15.

79. Constitutional Framework, Chapter 9.3.14 empowers the Prime Minister to “represent the Government as appropriate, define the general lines of policy of the Government, and manage its work. His Office (the OPM) liaises with the Assembly and coordinates the work of all other ministries.”<sup>52</sup>

80. In the latter, the Prime Minister is assisted, among others, by the AOGG. Pursuant to UNMIK Regulation No. 2005/15, the mandate of the AOGG includes:

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<sup>48</sup> UNMIK Regulation No. 2005/15, Section 1. This Section amends UNMIK Regulation No. 2001/19 by adding a new Section 1.2.1.

<sup>49</sup> Constitutional Framework, Chapter 9.3.8.

<sup>50</sup> UNMIK Regulation No. 2005/15, section 1.

<sup>51</sup> Administrative Direction No. 2002/10, section 1.2.

<sup>52</sup> UNMIK Regulation No. 2001/19, section 1.2.

- Overseeing and advising the Ministries in the areas of good governance, human rights, equal opportunity and gender;
- Developing policy and issuing guidelines in the areas of good governance, human rights, equal opportunity and gender equality;
- Reviewing draft legislation and policies elaborated by the Executive Branch for consistency with recognized human-rights, good-governance and equal-opportunity standards and advising the Prime Minister and relevant Ministers accordingly;
- Assisting in the development and implementation of public information campaigns to promote public awareness of international human rights standards, gender equality, equal opportunity and other principles basic to democratic governance;
- Consulting with community representatives, and developing consultative bodies as needed, to address good governance, human rights, equal opportunity and gender issues;
- Developing gender sensitive policies and advancing the status of women, in conjunction with civil society;
- Promoting democratic and broad-based decision-making within the government; and
- Encouraging public participation in governance.<sup>53</sup>

81. Under Chapter 9.3.15 of the Constitutional Framework, ministers are responsible for implementing government policy within their respective spheres of competence. In carrying out their duties, ministers are required to ensure that the ministries under their authority not only provide “reliable services ... not discriminating against ethnic or social origin, race, gender, disability, religion, political or other opinion” but also “address the needs of vulnerable groups and other persons within the population who may be at risk.”<sup>54</sup> To pursue such affirmative action, ministers and ministries alike are obligated to “formulate clear priorities for the allocation of resources to be made available from the Budget for the Provisional Institutions of Self-Government.”<sup>55</sup>

82. More generally, Section 1.6 of UNMIK Regulation No. 2001/19 mandates ministries to draft legislative and other acts, make policy recommendations and implement legislation in force within their areas of competence. The specific competences of each of the thirteen ministries are outlined in the Annexes to UNMIK Regulation No. 2005/15.

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<sup>53</sup> UNMIK Regulation No. 2005/15, Annex, Title 1, (i)-(v)-(vii) and (ix)-(x).

<sup>54</sup> UNMIK Regulation No. 2001/19, section 1.7(c), (h).

<sup>55</sup> *Ibid.* Section 1.7(a).

***Judicial Branch***

83. Constitutional Framework, Chapter 9.4.1 provides that the courts are responsible for the administration of justice in Kosovo in accordance with the applicable law, including the European Framework Convention for the Protection of National Minorities, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Racial Discrimination (CERD).

84. According to Chapter 9.4.4 of the Constitutional Framework, the court system comprises: a Supreme Court of Kosovo; District Courts; Municipal Courts; and, Minor Offences Courts. Under the applicable law the Supreme Court has two Special Chambers – one on Constitutional Framework Matters established pursuant to Constitutional Framework, Section 9.4.11; the other on claims and counterclaims relating to the decisions or actions of the Kosovo Trust Agency (KTA) established pursuant to UNMIK Regulation No. 2002/12.

Chapter 9.4.3 of the Constitutional Framework enshrines the entitlement of every person to have “all issues relating to his rights and obligations and to have any criminal charges brought against him decided within a reasonable time by an independent and impartial court.” Under Chapter 9.4.6 of the Constitutional Framework, judges are required to be independent and impartial and are prohibited from holding any other office.

85. The present court structure is essentially what was in place prior to the conflict of 1999. It is comprised of regular courts and minor offences courts. The regular courts include the Supreme Court (exercising both original and appellate jurisdiction); five District Courts (also exercising original and appellate jurisdiction); two Commercial District Courts (though only one is functioning); and, the Municipal Courts (having jurisdiction at first instance only). The Minor Offences Courts are subject to the exclusive appellate jurisdiction of the High Court for Minor Offences.

86. The legal basis for the continuation of this structure derives from the provisions of UNMIK Regulation No. 1999/24 of 12 December 1999 on the Law Applicable in Kosovo (UNMIK Regulation 1999/24)<sup>56</sup>, as amended by UNMIK Regulation No. 2000/59<sup>57</sup>. The principal legislation in effect governing the establishment and competence of the courts consists of:

- (i) The Law on Regular Courts, SAPK Official Gazette 1978/21;
- (ii) The Law on Minor Offences, SAPK Official Gazette 1979/23 (as amended); and
- (iii) The Rules on Internal Activity of the Courts, SAPK Official Gazette 1981/07, promulgated under article 62 of the Law on Regular Courts.

87. The legislation referred to at (i) and (iii) above applies to the Supreme, District, Commercial, and Municipal Courts. That referred to at (ii) relates to the Minor Offences Courts and the High Court of Minor Offences. In addition, Chapter 2 of the Provisional Criminal Procedure Code (PCPCK)<sup>58</sup> prescribes the jurisdictional competence of courts in criminal proceedings as well as regulating criminal procedure.

88. The Ministry of Public Services (MPS), which was established by UNMIK Regulation No. 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government, was given overall responsibility for the administration of the courts, the prosecution services and the prisons service. These responsibilities will be transferred to the Ministry of Justice and the Kosovo Judicial Council when they are operational.

### ***Municipalities***

89. The organisation and functions of Municipalities in Kosovo are established in UNMIK Regulation No. 2000/45 On Self-Government of Municipalities in Kosovo.<sup>59</sup> Municipalities are defined as the basic territorial unit of local self-government in Kosovo, which must “exercise all powers not expressly reserved to the Central

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<sup>56</sup> UNMIK Regulation No. 1999/24 on the Law Applicable in Kosovo.

<sup>57</sup> UNMIK Regulation No. 2000/59 Amending [UNMIK Regulation 1999/24](#) On the Law Applicable in Kosovo.

<sup>58</sup> Promulgated by UNMIK Regulation No. 2003/26, entered into force on 6 April 2004.

<sup>59</sup> UNMIK Regulation No. 2000/45.

Authority.”<sup>60</sup> The Municipalities must regulate and manage public affairs in their territory within the limits established by law and so as to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo.<sup>61</sup> All their organs and bodies have the obligation to ensure that inhabitants of the municipality enjoy all rights and freedoms without distinction of any kind, such as race, ethnicity, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and that they have fair and equal employment opportunities in municipality service at all levels.<sup>62</sup> They also have an obligation to promote coexistence between their inhabitants and to create appropriate conditions enabling all communities to express, preserve and develop their ethnic, cultural, religious and linguistic identities.<sup>63</sup> The Regulation also states that the human rights and freedoms contained in the ECHR and its Protocols must be observed by the municipal administration, as well as all other applicable law.<sup>64</sup>

90. Within its territory under UNMIK Regulation No. 2000/45 each municipality has responsibilities in the following areas:

- (a) Providing basic local conditions for sustainable economic development;
- (b) Urban and rural planning and land use;
- (c) Licensing of building and other development;
- (d) Local environmental protection;
- (e) The implementation of building regulations and building control standards;
- (f) Service provision in relation to local public utilities and infrastructure including water supply, sewers and drains, sewage treatment, waste management, local roads, local transport, and local heating schemes;
- (g) Public services including fire and emergency services;
- (h) Management of municipal property;
- (i) Pre-primary, primary and secondary education;

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<sup>60</sup> *Ibid.* Section 2.1.

<sup>61</sup> *Ibid.* Section 2.2.

<sup>62</sup> *Ibid.* Section 2.3.

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.* Section 3.3.

- (j) Primary health care;
- (k) Social services and housing;
- (l) Consumer protection and public health;
- (m) Licensing of services and facilities, including entertainment, food, markets, street vendors, local public transport and taxis, hunting and fishing and restaurants and hotels;
- (n) Fairs and markets;
- (o) Naming and renaming of roads, streets and other public places;
- (p) The provision and maintenance of public parks and open spaces and cemeteries;
- (q) The implementation of Central Authority Regulations including cadastre records, civil registries, voter registration and business registration.<sup>65</sup>

91. Municipalities may issue local municipal regulations relating to matters within their competencies. They must adopt a Statute which should provide for the adoption of municipal regulations after public consultation and for their publication.

92. The highest representative body of the municipality is the Municipal Assembly, which is elected directly.<sup>66</sup> The number of the members of the Municipal Assembly varies in different municipalities, according to the size of the population and its term of office is four years.

93. The Municipal Assembly elects the President of the municipality who calls and chairs sessions of the Municipal Assembly.<sup>67</sup> In municipalities where one or more non-majority communities live, an additional Deputy President shall be appointed by the Municipal Assembly from these communities.<sup>68</sup> The Municipal Assembly appoints a Chief Executive Officer who has the qualifications prescribed by the Statute and who amongst others is responsible for the appointment, conditions of service and dismissal of all employees of the municipality.<sup>69</sup> The Municipal Assembly also appoints a Board of Directors, which comprises the heads of the municipal

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<sup>65</sup> *Ibid.* Sections 3.2 and 3.3.

<sup>66</sup> *Ibid.* Section 10.

<sup>67</sup> *Ibid.* Section 13.1.

<sup>68</sup> *Ibid.* Section 25.3.

<sup>69</sup> *Ibid.* Section 30.

departments and the Head of the Community Office. The Board of Directors assists the Municipal Assembly and its committees by providing all necessary information and reports for the decision-making process; assists the President and the Chief Executive Officer; and implements all decisions of the municipality.<sup>70</sup>

94. Under section 21 of UNMIK Regulation No. 2000/45, the Municipal Assembly has three mandatory Committees: a Policy and Finance Committee, a Communities Committee and a Mediation Committee. The Municipal Assembly may also appoint other committees and decide on their competency and activities. The membership of the Communities Committee must include both members of the Assembly and representatives of communities; each community residing in the municipality should be represented by at least one member in the Communities Committee; the majority community in the municipality must have less than one half of the membership of the Communities Committee; and the remaining membership of the Communities Committee must fairly reflect the number of other communities in the municipality.<sup>71</sup> The Mediation Committee must consist of equal numbers of members of the Municipal Assembly who are not members of the Communities Committee representatives in a fair proportion of minority communities.<sup>72</sup>

95. The Communities Committee have the mandate to ensure within the territory of the municipality that no person undertaking public duties or holding public office shall discriminate against any person on any ground such as language, religion, ethnic origin, or association with a community; all persons enjoy, on an equal basis, civil, political, economic, social and cultural rights, and fair and equal employment opportunities in municipality service at all levels; and the municipal civil service reflects a fair proportion of qualified representatives of communities at all levels.<sup>73</sup> The Communities Committee must promote the rights and interests of the minority communities living within the municipality, and further promote a diverse society.<sup>74</sup>

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<sup>70</sup> *Ibid.* Section 31.2.

<sup>71</sup> *Ibid.* Sections 23.1 and 23.3.

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.* Section 23.4.

<sup>74</sup> *Ibid.* Section 23.5.

96. A Community Office must be established in those municipalities where a community that is not in the majority forms a substantial part of the population.<sup>75</sup> The Community Office, which must be an integral part of the municipality, is responsible for enhancing the protection of community rights and ensuring equal access for communities to public services at the municipal level.<sup>76</sup>

97. The SRSG has the option to set aside any decision of a municipality, which he considers to be in conflict with UNSCR 1244 or the applicable law or which does not take sufficiently into account the rights and interests of the communities which are not in the majority in the territory of the municipality.<sup>77</sup> He may co-opt additional members to the Municipal Assembly if he considers it necessary in order to ensure representation of all communities.<sup>78</sup> In exceptional cases he may remove from office a member of a Municipal Assembly who seriously misconducts himself or herself in the exercise of his or her duties.<sup>79</sup> If the SRSG considers that a Municipal Assembly is persistently taking action that would fail to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo, contrary to UNSCR 1244, he may dissolve the Assembly and institute new elections.<sup>80</sup>

### ***Other Institutions***

98. On 6 April 2001 the Kosovo Judicial and Prosecutorial Council (KJPC) was established by UNMIK Regulation No. 2001/8.<sup>81</sup> The Council is responsible for advising the SRSG on matters related to the appointment of judges, prosecutors and lay-judges, as required, and hearing complaints, if any, against any judge, prosecutor or lay-judge.<sup>82</sup> The Council is composed of nine members. It must be multi-ethnic and include both local and international members. Members of the KJPC are to be distinguished legal professionals and they must be independent and impartial. They cannot hold any position incompatible with their functions as members of the KJPC.<sup>83</sup>

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<sup>75</sup> *Ibid.* Section 23.11.

<sup>76</sup> *Ibid.* Sections 23.12 and 23.13.

<sup>77</sup> *Ibid.* Section 47.2.

<sup>78</sup> *Ibid.* Section 47.3.

<sup>79</sup> *Ibid.* Section 47.4.

<sup>80</sup> *Ibid.* Section 47.5.

<sup>81</sup> UNMIK Regulation No. 2001/8.

<sup>82</sup> *Ibid.* Section 1.2.

<sup>83</sup> *Ibid.* Section 2.1.



The members are selected and appointed by the SRSG.<sup>84</sup> Their term of office is one year and may be extended for such period(s) as the SRSG may determine.<sup>85</sup>

99. Pursuant to Chapter 9.4.8 of the Constitutional Framework, judges and prosecutors are appointed by the SRSG from lists of candidates proposed by the KJPC and endorsed by the Assembly. Chapter 9.4.7 of the Constitutional Framework provides that the judiciary is to be composed of “distinguished jurists of the highest moral character, with adequate qualifications” and shall reflect the “diversity of the people of Kosovo.” The SRSG is responsible for deciding promotions, transfers and dismissals of judges and prosecutors on the recommendation of the KJPC or, in exceptional cases, on his own initiative. Lay judges sit on panels with professional judges in the municipal courts and higher courts and are also appointed by the SRSG on the recommendation of the KJPC.

100. The KJPC decides upon disciplinary sanctions, other than removal from office, of judges and prosecutors and from the function of lay-judges and upon a request of the SRSG renders advice on other issues related to the judicial system.<sup>86</sup> The KJPC also adopted codes of ethics and conduct for judges, prosecutors and lay-judges which became effective upon the endorsement of the SRSG.<sup>87</sup>

101. On 20 December 2005 UNMIK Regulation No. 2005/52 on the Establishment of the Kosovo Judicial Council was promulgated. This Regulation will have the effect of replacing the KJPC by a new Kosovo Judicial Council (KJC), as an independent professional body responsible for the judiciary and courts. The KJC is composed of seven judges (of whom the President of the Supreme Court is an *ex officio* member) and four other *ex officio* members, namely the Minister of Justice, the President of the Kosovo Chamber of Advocates, the Chairperson of the Assembly Committee on Legislative, Judicial and Constitutional Framework Matters and a professor of law nominated by the Assembly upon the recommendation of the governing board of the University of Pristina. The KJC will have a broader role than the KJPC. Pursuant to section 1.4 of UNMIK Regulation No. 2005/52, the KJC will

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<sup>84</sup> *Ibid.* Section 2.2.

<sup>85</sup> *Ibid.* Section 3.3.

<sup>86</sup> *Ibid.* Section 1.2.

<sup>87</sup> *Ibid.* Section 1.3.

be responsible for setting policy and promulgating rules and guidelines for the judiciary and the courts including in the fields of recruitment, training and appointment, evaluation, promotion, transfer and discipline of both judges and lay judges, judicial, and non-judicial personnel. The KJC has not yet been formally constituted and therefore under sections 1.1 and 13 of UNMIK Regulation No. 2005/52 the KJPC is still operational.

102. The Housing and Property Directorate (HPD) and the Housing and Property Claims Commission (HPCC) <sup>88</sup> were established under UNMIK Regulation No. 1999/23 to regularize housing and property rights in Kosovo and to resolve disputes over residential property.<sup>89</sup> The HPD and the HPCC were specifically set up to create an impartial and independent mechanism for resolving claims using local and international legal expertise.

103. The HPD conducts legal research, prepares claims, mediates and forwards claims to HPCC for adjudication. In addition, it administers abandoned residential properties throughout Kosovo for the purpose of providing for the housing needs of displaced persons. The HPD also serves in part as the secretariat for the HPCC. For this it is staffed with nearly 250 staff, nationals as well as internationals, under the umbrella of UNMIK Department of Civil Administration.

104. The HPCC is the independent body within HPD, currently staffed by one local and two international Commissioners. The HPCC has been given exclusive jurisdiction to adjudicate three distinct categories of non-commercial property claims:

- Claims by individuals who lost property rights as a result of discriminatory laws after 23 March 1989 (category A claims, intended to remedy the lost property rights in the period after the autonomous status of Kosovo was withdrawn);
- Claims by individuals who entered into informal transactions after 23 March 1989 (category B claims, intended to legalise informal property transfers; is also a step to restore the property registration system);

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<sup>88</sup> OSCE Report Property Rights in Kosovo 2002 – 2003 and <http://www.hpdkosovo.org/aboutus.htm>.

<sup>89</sup> UNMIK Regulation No. 1999/23.

- Claims by individuals who were the owners, possessors or occupancy right holders of residential real property prior to 24 March 1999 and have been deprived of their right to enjoy possession and have not voluntarily transferred the property right (category C claims, intended to remedy the interference in refugees' and IDPs' property rights by illegal occupancy).

105. The decisions of HPCC are binding and enforceable and may not be subject to judicial review. UNMIK Regulation 1999/23 provides that the HPCC has exclusive jurisdiction over residential property claims<sup>90</sup> until such time as the SRSG determines that the local courts are able to carry out its functions.<sup>91</sup> The HPCC is competent to determine claims submitted before 1 July 2003.<sup>92</sup>

106. The establishment of HPD and HPCC was regarded as vital to establishing a stable, democratic society and restoring the rule of law. Besides the destruction of thousands of properties during the conflict, the critical issue was the illegal occupation of residential property that was vacated when people sought refuge in neighbouring towns or abroad. The category C claims in particular were intended to remedy the interference in refugees' and Internally Displaced Persons' (IDP) property rights by illegal occupancy. It is believed that most category C claims are filed by IDPs.

107. The administrative authority of the KTA, as set forth in the UNMIK Regulation No. 2002/12<sup>93</sup>, "shall include any action that the Agency considers appropriate to preserve and enhance the value, viability or governance of the enterprises." To achieve this, the agency should:

- Ensure that the enterprises exploit their market opportunities to the fullest;

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<sup>90</sup> Section 1.2 of UNMIK Regulation 1999/23 specifies three categories of residential property claims over which the HPD/HPDCC has jurisdiction.

<sup>91</sup> Section 1.1 of UNMIK Regulation No. 1999/23, states that "[t]he Housing and Property Directorate [...] shall provide overall direction on property rights in Kosovo until the Special Representative of the Secretary-General determines that local governmental institutions are able to carry out the functions entrusted to the Directorate."

<sup>92</sup> The HPD also may still take qualifying properties under its administration. HPD administration, however, is a temporary measure which does not provide legally-binding confirmation of property rights.

<sup>93</sup> UNMIK Regulation No. 2002/12 on the Establishment of the Kosovo Trust Agency.

- Make sure that the enterprises are managed as profitably as possible;
- Make sure that when the enterprise provides a public service, the quality of the service provided is high and reasonable and that it complies with all applicable regulations;
- Seek payments from the public entities mandating the provision of services, when the value of the public service provided cannot be recovered in the market.

108. The publicly owned enterprises are confronting significant problems that stem from many years of lack of investment in technology, equipment and human resources, poor condition of the assets, low rate of revenue collection and inadequate governance and management structures.

109. UNMIK entrusted the Kosovo Trust Agency (KTA) to administer the following publicly owned enterprises:

- Pristina Airport;
- The District Heating Enterprises in Pristina and Gjakovë/Đakovica;
- The Kosovo Electricity Corporation (KEK);
- Post and Telecommunication of Kosovo (PTK);
- UNMIK Railways;
- Water, Waste and Irrigation Enterprises.

### C. ACCEPTANCE OF INTERNATIONAL HUMAN RIGHTS NORMS

110. Acting under Chapter VII of the Charter of the United Nations, the UN Security Council adopted UNSCR 1244, which established UNMIK to provide an interim administration for Kosovo. All legal authority in Kosovo is, therefore, derived from the UNSCR 1244.

111. Pursuant to its provisions and the authority vested in him by them, the SRSG promulgated UNMIK Regulation 1999/1 on the Authority of the Interim Administration in Kosovo. Section 1.1 of this Regulation ordains that:

“All legislative and executive authority with respect to Kosovo, including the administration of the judiciary, is vested in UNMIK and is exercised by the Special Representative of the Secretary-General.”

112. Furthermore, “[i]n the performance of the duties entrusted to the interim administration under United Nations Security Council resolution 1244 (1999), UNMIK will, as necessary, issue legislative acts in the form of regulations.”<sup>94</sup>

113. In paragraph 11(j) of UNSCR 1244 the Security Council decided that the main responsibilities of UNMIK should include “protecting and promoting human rights”. To ensure the[ir] full realization in Kosovo, the SRSG promulgated UNMIK Regulation No. 1999/24 on the Law Applicable in Kosovo, which amended UNMIK Regulation 1999/1 to make specific international human rights instruments directly applicable by “all persons undertaking public duties or holding public office in Kosovo.”<sup>95</sup> Section 1.1 of UNMIK Regulation No. 1999/24 also made “[t]he law in force in Kosovo on 22 March 1989”<sup>96</sup> the law applicable in Kosovo. One such Kosovo legal provision is Article 210 of the 1974 Constitution of the Socialist Federal

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<sup>94</sup> UNMIK Regulation No. 1999/1 of 25 July 1999 on the Authority of the Interim Administration in Kosovo, Section 4.

<sup>95</sup> UNMIK Regulation No. 1999/24.

<sup>96</sup> *Ibid.* Section 1.1(b).

Republic of Yugoslavia (SFRY Constitution), which provides that “[i]nternational treaties, which have been promulgated shall be directly applied by the courts.”<sup>97</sup>

114. On 15 May 2001 the SRSG promulgated the Constitutional Framework for “for the purposes of developing meaningful self-government in Kosovo pending a final settlement”<sup>98</sup>. Like UNMIK Regulation No. 1999/24, as amended, Constitutional Framework Chapter 3.2 incorporates the protections provided under particular international human rights instruments in the applicable law of Kosovo.

115. Section 1.3 of UNMIK Regulation No. 1999/24, as amended, requires all persons undertaking public duties or holding public office in Kosovo [to] observe the human rights standards set forth in the Universal Declaration of Human Rights (UDHR), the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and its Protocols, the International Covenant on Civil and Political Rights (ICCPR) and its Protocols, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Convention on the Rights of the Child (CRC). Section 1.4 of the Regulation provides that “[n]o person undertaking public duties or holding public office in Kosovo shall discriminate against any person on any ground such as sex, race, colour, language, religion, political or other opinion, natural, ethnic or social origin, association with a national community, property, birth or other status.”

116. Chapter 3 of the Constitutional Framework provides further substantial human rights protection. Its Chapter 3.1 guarantees that “[a]ll persons in Kosovo shall enjoy, without discrimination on any ground and in full equality, human rights and fundamental freedoms.” Chapter 3.2 stipulates that the PISG shall observe and ensure internationally recognized human rights and fundamental freedoms, including those rights and freedoms guaranteed by the UDHR, ECHR and its Protocols, ICCPR and

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<sup>97</sup> Decision on Promulgation of the Socialist Federal Republic of Yugoslavia Constitution, Article 210, SFRY Official Gazette No. 9 of 21st February 1974 (1974).

<sup>98</sup> UNMIK Regulation No. 2001/9 on a Constitutional Framework for Provisional Self-Government in Kosovo, Preamble.

its Protocols, CERD, CEDAW, CRC, European Charter for Regional or Minority Languages and Framework Convention. Under Chapter 3.3, “[t]he provisions on rights and freedoms set forth in these instruments shall be directly applicable as part of the Constitutional Framework.”

117. The principles set forth in the Framework Convention receive enhanced protection by the Constitutional Framework through their specific implementation by the latter’s Chapter 4 entitled Communities and Their Members. That Chapter directly translates many Framework Convention provisions into express guarantees for ethnic, linguistic and religious communities and explicit rights and freedoms of persons belonging to them. The discriminatory denial of those and all other human rights laid down by the Constitutional Framework is a criminal offence under Article 158 of the Provisional Criminal Code of Kosovo (PCCK).

118. To ensure the full protection of human rights and fundamental freedoms, without discrimination on any ground, to all persons in Kosovo as guaranteed by Chapter 3.1 of the Constitutional Framework, the Kosovo Assembly adopted the Anti-Discrimination Law (ADL) of 19 February 2004.<sup>99</sup> This Law renders the guarantee of equality before the law in the enjoyment of civil and political rights contained in Article 26 of the ICCPR and of civil, cultural, economic, social and political rights set forth in Article 5 of CERD, a cognizable right to non-discrimination under the internal law of Kosovo.

119. The proscription of discrimination encompasses both direct and indirect discrimination as well as harassment, victimization and segregation.<sup>100</sup> The rights, whose exercise is to be safeguarded against such discrimination and equal protection guaranteed by Article 4 of the ADL, encompass:

- Access to employment, self-employment and occupation;
- Access to vocational guidance and training at all levels;
- Employment and working conditions;

<sup>99</sup> The Anti-Discrimination Law was promulgated by the SRSG through UNMIK Regulation No. 2004/32 of 20 August 2004.

<sup>100</sup> Anti-Discrimination Law (ADL), Article 3, Law 2004/3 adopted by the Assembly of Kosovo, 30 July 2004.

- Membership in trade union and professional organizations;
- Social security and health care;
- Education;
- Housing;
- Moveable and immoveable property;
- Goods and services available to the public;
- Fair treatment before tribunals and all other organs administering justice;
- Personal security;
- Participation in public affairs, including the right to vote and be voted for;
- Access to public places; and,
- Any other rights set forth by applicable law.

120. The ADL applies to “all natural and legal persons as regards both the public and private sectors, including public bodies, in relation to any action or inaction which violates those rights of any natural or legal person or persons.”<sup>101</sup> Any claim of discrimination under the ADL is to be decided or adjudicated upon in accordance with the applicable law by administrative bodies and courts with subject-matter jurisdiction over the case.<sup>102</sup>

121. It should be noted that many of the economic rights protected by the ADL are also the subjects of separate Conventions adopted by the International Labour Organization (ILO). Just as the international instruments listed in Chapter 3.2 of the Constitutional Framework prohibit discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, so these ILO Conventions proscribe any discrimination under the law and guarantee to all persons equal and effective protection against discrimination on any of those grounds.

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<sup>101</sup> *Ibid.* Article 4.

<sup>102</sup> *Ibid.* Article 7.1.



122. Inasmuch as these ILO Conventions are not expressly enumerated in Chapter 3.1 of the Constitutional Framework, they are not directly applicable in Kosovo as part of that Constitutional Framework. However, they are arguably “the law applicable in Kosovo – having been promulgated by the SFRY Assembly prior to 22 March 1989 – especially if Article 1.3 of UNMIK Regulation 1999/24 is read together with Article 210 of the SFRY Constitution. Certainly, UNMIK Regulation No. 2001/27 on the Essential Labour Law in Kosovo is based on the International Labour Organization Declaration on Fundamental Principles and Rights at Work aimed at promoting and realizing their universal application in good faith.<sup>103</sup>

123. More generally, provisions of international human rights treaties, which were a part of the law in force in Kosovo on 22 March 1989 may be a part of the applicable law in accordance with section 1 of UNMIK Regulation No. 1999/24, as amended. It should be stressed here that such provisions are a part of the applicable law of Kosovo as a consequence of UNMIK Regulation No. 1999/24, as amended, rather than because the former SFRY was at the time a party to the treaties and conventions concerned. Moreover, this does not imply that these treaties and conventions are in any way binding on UNMIK.

124. It must be remembered throughout that the situation of Kosovo under interim administration by UNMIK is *sui generis*. Accordingly, it has been the consistent position of UNMIK that treaties and agreements, to which the State Union of Serbia and Montenegro is a party, are not automatically binding on UNMIK. In each case, a specific determination as to the applicability of the principles and provisions must be made. Where necessary and appropriate, UNMIK may develop arrangements with relevant States and international organisations in order to establish a proper legal basis for achieving objectives of mutual interest.

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<sup>103</sup> UNMIK Regulation No. 2001/27 of 8 October 2001 on the Essential Labour Law in Kosovo, Preamble.

## **D: GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED**

### ***General Legal Framework***

125. The position of international human rights norms in the applicable law of Kosovo as outlined in Part C is such that the courts are legally bound to apply international human rights standards directly.<sup>104</sup>

126. Under paragraph 9.4.2 of the Constitutional Framework each person claiming to have been directly and adversely affected by a decision of the Government or an executive agency under the responsibility of the Government shall have the right to judicial review of the legality of that decision after exhausting all avenues for administrative review. Pursuant to Article 7 of the Law on Administrative Lawsuits<sup>105</sup>, an administrative lawsuit may be initiated against an administrative act decided by a second instance authority and it may also be initiated against an administrative act of a first instance authority against which no appeal is allowed in administrative procedure.

### ***The Anti-Discrimination Law***

127. Under the Anti-Discrimination Law (ADL), a person who alleges that he/she was directly or indirectly discriminated against may file a discrimination claim with administrative bodies and courts of competent jurisdiction, which have jurisdiction over the concrete issue covered by the claim. If the claimant is not satisfied with the decision or lack of decision made under the law on general administrative procedures, that person may bring a claim before the court of competent jurisdiction under the applicable law.<sup>106</sup>

128. The burden of proof in discrimination cases is on the respondent, who shall prove that there has been no breach of the principle of equal treatment. However, the

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<sup>104</sup> UNMIK Regulation No. 1999/24, as amended, section 1.3 and the Constitutional Framework paragraph 3.3.

<sup>105</sup> Official Gazette of the Socialist Federal Republic of Yugoslavia, 4/77.

<sup>106</sup> ADL, Article 7.3.

claimant may still present her/his own evidence to defend the case of discrimination.<sup>107</sup>

129. The claimant may also use mediation or conciliation procedures without that precluding his right to file a claim with the appropriate administrative body or court of competent jurisdiction at any time. Furthermore, with the consent of either a claimant or claimants, associations, organisations or other legal entities may support the use of any judicial and/or administrative procedure by acting on their behalf.<sup>108</sup>

130. Under the ADL, a person who alleges that he/she suffered directly or indirectly from employment discrimination by an employer that is a public body may also file a claim with a higher administrative body and/or competent court, which has jurisdiction over the concrete issue covered by the claim. The claim may concern conditions for access to employment, self employment and occupation, working conditions, access to all types and to all levels of vocational guidance, vocational training and retraining.<sup>109</sup>

### ***Plans for the Establishment of a Human Rights Advisory Panel***

131. Since Serbia and Montenegro became a High Contracting Party to the European Convention on Human Rights (ECHR) on 3 March 2004, a resident of Kosovo may file with the European Court of Human Rights (the Strasbourg Court) a petition which alleges a violation of human rights arising from an act or omission of the authorities of Serbia and Montenegro. However, as a consequence of UNSCR 1244, Serbia and Montenegro cannot be held responsible for an alleged violation of human rights arising from an act or omission attributable to UNMIK. UNMIK is, of course, not a High Contracting Party to the ECHR. It therefore follows that people in Kosovo do not have an effective means of seeking redress for an alleged violation of human rights by application to the Strasbourg Court. The establishment of the Human Rights Advisory Panel will address this gap in human rights protection in Kosovo.

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<sup>107</sup> ADL, Articles 8.1-8.2.

<sup>108</sup> ADL, Articles 7.4 -7.6.

<sup>109</sup> ADL Articles 4(a), (b) and (c).

132. The creation of a judicial body that would issue binding decisions on UNMIK would be problematic from the perspective of the privileges and immunities of UNMIK and its personnel, their possible exposure to liability and the importance of not compromising the discretion of the institutions of the United Nations to interpret the mandate of UNMIK under UNSCR 1244. Therefore, following discussions between UNMIK and the Council of Europe, it was decided that a Human Rights Advisory Panel (Advisory Panel) should be established by UNMIK to issue non-binding determinations relating to complaints of violations of human rights by UNMIK. Its main purpose would be to advise the Special Representative of the Secretary-General in regard to such alleged violations. In developing the modalities for the establishment and implementation of the Advisory Panel, UNMIK has collaborated closely with the European Commission for Democracy through Law of the Council of Europe (Venice Commission) and particular attention has been given to guidance provided by UN Headquarters in New York.

133. The Advisory Panel will have three members who would be experts in human rights, particularly the European system, and would be appointed by the Special Representative of the Secretary-General.

134. A draft Regulation on the Establishment of a Human Rights Advisory Panel has been prepared and its promulgation is expected in the near future.

### ***Municipal level***

135. UNMIK Regulation No. 2000/45 and the applicable administrative law provide for the following mechanism when a person alleges that his/her rights have been violated by an administrative body at municipal level:

- A written complaint must be filed to the Chief Executive Officer (CEO) of the Municipality within one month. Municipalities also may have specific procedures; the onus is on the claimant to inquire. The CEO is required to respond within one month.<sup>110</sup>

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<sup>110</sup> UNMIK Regulation No. 2000/45, Section 35.

- If the claimant disagrees with the decision, a complaint then can be filed with the central authority.<sup>111</sup> Currently, all such appeals should be filed with and co-ordinated by the Directorate of Administrative Affairs, which is to distribute the appeal to the appropriate “central authority” for the substantive issue. The central authority must respond within one month.<sup>112</sup>
- An appeal against this second-instance decision can be filed to the Supreme Court.<sup>113</sup> The deadline for initiating an administrative lawsuit is 30 days from the day the administrative act is served or, if the party did not receive the act, 60 days from the day it was served.<sup>114</sup>
- A further appeal or request for extraordinary review of a court decision can be lodged against a decision in an administrative lawsuit.<sup>115</sup> Either must be submitted to the competent court within 30 days of delivery of the disputed decision.<sup>116</sup>

136. Another specific remedy is provided through the Communities and Mediation Committees, established by Section 23 of the UNMIK Regulation No. 2000/45. A person alleging that his/her rights have been violated by an act of the Municipal Assembly may complain to the Community Committee of the Municipality. If the Communities Committee considers that action has been taken, or is proposed to be taken, by or on behalf of the Municipal Assembly, which has violated or may violate the rights of a community or a member of a community or which is or may be prejudicial to the interests of a community, it shall refer the matter immediately to the Mediation Committee.<sup>117</sup>

137. The Mediation Committee must examine all matters referred to it by the Communities Committee. It should carry out such investigations as are necessary to establish whether the rights of a community or a member of a community have been

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<sup>111</sup> *Ibid.*

<sup>112</sup> *Ibid.*

<sup>113</sup> Law on Regular Courts, Article 31.

<sup>114</sup> Law on Administrative Disputes (O.G. 4 (1977)), Article 24.

<sup>115</sup> *Ibid.*, Articles 19-20 and 45-50.

<sup>116</sup> *Ibid.*

<sup>117</sup> UNMIK Regulation No. 2000/45, Section 23.6.

or would be violated or whether action which is or would be prejudicial to the interests of a community has been taken or proposed. It shall seek to resolve the matter by mediation. The Mediation Committee shall within 28 days submit a report on each matter to the Municipal Assembly, with recommendations as to how it considers the matter should be dealt with.<sup>118</sup>

138. The Municipal Assembly shall consider each report submitted to it by the Mediation Committee and shall decide what action, or further action, to take in relation to the matter.<sup>119</sup>

139. If the Municipal Assembly fails to make a decision within 21 days of the submission of the report of the Mediation Committee or if the Communities Committee is dissatisfied with the decision taken by the Municipal Assembly it may refer the matter to the Central Authority for review.<sup>120</sup>

140. Additionally in cases of dismissals, the individuals affected can complain to the Community Committee in writing, setting out its reasons for the dismissal, within one week of the decision.<sup>121</sup> No deadlines for response to the complaint are provided, but if the complainant is dissatisfied with the response of the Committee, he or she may refer the matter to the DSRSG for Civil Administration, who shall review the complaint and recommend appropriate action to the SRSG for consideration. The complaint shall be submitted for an appeal within 30 days upon receiving the dismissal by the Committee.<sup>122</sup> The scheme described above constitutes a mixture of a political mechanism and a legal remedy. It appears that at least in some cases it could be used as a remedy for violations of the rights of members of minority communities.

### ***Independent Oversight Board***

141. If a person claims to be a victim of discriminatory practices in public employment, he/she can seek remedies first through the Independent Oversight Board

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<sup>118</sup> *Ibid.*, Section 23.7.

<sup>119</sup> *Ibid.*, Section 23.8.

<sup>120</sup> UNMIK Regulation No. 2000/45, section 23.9.

<sup>121</sup> Administrative Instruction No. 2003/002, section 5.7.

<sup>122</sup> Administrative Instruction No. 2003/002, section 5.8.

(IOB) established by UNMIK Regulation No. 2001/36 and then through the courts. The IOB shall hear and determine appeals against decisions of employing authorities. Before appealing to the IOB, an aggrieved civil servant or applicant must exhaust the internal appeals procedures of the employing authority concerned, unless the Board excuses this requirement based on evidence of reasonable fear or retaliation, failure by the employing authority to resolve such internal appeal within sixty days, or other good cause.<sup>123</sup>

142. The IOB shall be composed of seven members, appointed by the SRSG in consultation with the Prime Minister. Board members shall be selected on the basis of competence, integrity and their commitment to establishing a politically impartial civil service in Kosovo that is based on merit and reflects the multi-ethnic character of Kosovo. At least three of its members shall be appointed from the Kosovo Albanian Community and at least two members from among the non-Kosovo Albanian communities in Kosovo.<sup>124</sup> A further appeal or request for extraordinary review of a court decision can be lodged against a decision in an administrative lawsuit.

143. Claims by civil servants against a discriminatory decision of a Disciplinary Board may be lodged in front of Appeals Boards that must be established by each employing authority.<sup>125</sup> The Appeals Board has the following functions:

- To decide whether there are *prima facie* grounds to admit an appeal against a decision of a disciplinary board;
- If an appeal is admitted, to decide whether it is justified or not after going through the evidence and hearing the parties concerned;
- In case the appeal is held to be justified, to pass orders for providing appropriate relief to the appellant.<sup>126</sup> The Appeals Board shall complete the hearings of a case within thirty days of its receipt.<sup>127</sup>

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<sup>123</sup> UNMIK Regulation No. 2001/36, Section 11.1, reads:

“A civil servant who is aggrieved by a decision of an employing authority in breach of the principles set out in section 2.1 of the present regulation may appeal such decision to the Board in accordance with the provisions of the present section. Each such appeal shall be heard by a panel of three Board members, who shall act for the Board in connection with the appeal assigned to them.”

<sup>124</sup> *Ibid.*, sections 8 (1) and 8 (2).

<sup>125</sup> UNMIK Administrative Direction No. 2003/2 Implementing UNMIK Regulation No. 2001/36 on the Kosovo Civil Service, section 33 (1).

***Education, social services and health***

144. Claims of discrimination in access to education by education officials may be lodged with the Designated Official of the Staff member.<sup>128</sup> Education staff may be disciplined for neglect of duty or violation of obligation in letter of appointment, terms and conditions of employment, Code of Conduct or local rules issued by the Department of Education and Science (DES).<sup>129</sup> If the complaint is grounded, the DES may take disciplinary and/or administrative action.<sup>130</sup>

145. If a complaint is made against a teacher or if there is evidence of conduct that may require disciplinary action that comes to the school director's personal attention, he/she must investigate the complaint and give the teacher the right to reply to the allegation(s) made.<sup>131</sup> If, after investigation and after having given the teacher the right to reply, the school director decides that there has been conduct that requires disciplinary action, he/she must, prior to the disciplinary action taking effect, notify the teacher in writing of the disciplinary action. Except in the case of an oral warning, the school director must inform the teacher in writing that the teacher may appeal the disciplinary action within 10 days after receipt of such notification. A review panel must conduct the appeal hearing, and within 7 days, issue a written decision to the teacher.<sup>132</sup>

146. If a complaint is made against a school director or if there is evidence of conduct that may require disciplinary action that comes to the CEO's personal attention, a review panel shall be established in order to conduct an investigation.<sup>133</sup>

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<sup>126</sup> *Ibid.*, section 33 (5).

<sup>127</sup> *Ibid.*, section 33 (6).

<sup>128</sup> Department of Education and Science Administrative Instruction 21/2001, Section 3 (1).

<sup>129</sup> *Ibid.* Section 2 (2).

<sup>130</sup> *Ibid.* Section 2 (1).

<sup>131</sup> *Ibid.* Sections 4 (1-2).

<sup>132</sup> *Ibid.* Section 4 (2).

<sup>133</sup> *Ibid.* Section 5 (1).



147. If the complainant is not satisfied with the decision taken under the above-mentioned procedures, he or she may file an appeal with the Supreme Court.

148. An applicant, who contends an official decision made by the Centre for Social Work (CSW), may submit an appeal in writing to the director of the CSW where the application for social assistance was originally filed.<sup>134</sup> Such appeals shall be submitted no later than fourteen days after the appellant receives notification of the decision. The Director shall review the appeal and notify the appellant in writing of their decision no later than twenty-one days after receiving the appeal.

149. An applicant who remains dissatisfied with the official decision made by the director may address a further appeal in writing to an Appeals Commission to be appointed by the Ministry of Labour and Social Welfare, which acts under the authority of the Ministry. Such appeals shall be submitted no later than fourteen days after the appellant receives notification of the appeal decision. The Appeals Commission shall review the appeal and notify the appellant in writing of his/her decision no later than twenty-one days after receiving the appeal.

150. An applicant directly affected by a decision made by the Doctor's Commission (following a review of the medical condition of a family member claiming to be permanently disabled) or the Appeals Commission shall have the right to have such decision reviewed in a competent court. The Administrative Department of the Supreme Court should have jurisdiction over such cases.

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<sup>134</sup> UNMIK Regulation No. 2003/28 on the Promulgation of the Law Adopted by the Assembly of Kosovo on the Social Assistance Scheme in Kosovo, 18 August 2003, reads in pertinent parts:  
"11.1 An applicant who contends that an official decision made by the designated authority is incorrect may submit an appeal [...]  
11.2 An applicant who remains dissatisfied with an official decision made by a designated authority [...] may address a further appeal in writing to an Appeals Commission [...]  
11.3 An applicant directly affected by a decision made by the Doctor's Commission [...] or the Appeals Commission stipulated in sub-section 11.2 shall have the right to have such decision reviewed in a competent court."

151. The Assembly Law on the Rights and Responsibilities of Kosovo Residents in the Health Care System<sup>135</sup> also offers a remedy to persons complaining that their rights as patients have been violated.

152. Under the Law, a complaint against the healthcare institution may be submitted regarding the health care service provided to a Kosovo resident within 60 days after the alleged incident has occurred.<sup>136</sup> The institution shall investigate the complaint and inform the complainant, within 10 working days. An appeal can be lodged against these findings to the supporting entity,<sup>137</sup> which is the municipality for primary healthcare institutions, and for secondary and tertiary healthcare institutions as well as for private sector healthcare institutions, the Ministry of Health.<sup>138</sup> The Law does not provide deadlines for such appeal.

153. A patient may also lodge a request for compensation for the damage caused to his/her health during the medical treatment within one year from the time when he/she first became aware of any damage sustained by him/her.<sup>139</sup> This request shall be submitted to a commission, established by the Ministry of Health,<sup>140</sup> which shall decide on the validity of the claimants' requests regarding damage compensation and shall establish the size of compensation.<sup>141</sup> The request shall be examined within a three-month period (the Law does not define a clear start date) and the decision must be submitted to the complainant in writing.<sup>142</sup>

154. A decision of the commission may be appealed to a competent court, in accordance with the relevant laws.<sup>143</sup>

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<sup>135</sup> [UNMIK Regulation No. 2004/47](#) of 19 November 2004 on the Promulgation of the Law on Rights and Responsibilities of Kosovo Residents in the Health Care System adopted by the Assembly of Kosovo.

<sup>136</sup> *Ibid.* Article 24.1.

<sup>137</sup> *Ibid.* Article 24.3.

<sup>138</sup> *Ibid.* Article 2.1.

<sup>139</sup> *Ibid.* Article 26.

<sup>140</sup> *Ibid.* Article 27.

<sup>141</sup> *Ibid.* Articles 27.5 and 30.

<sup>142</sup> *Ibid.* Article 28.2.

<sup>143</sup> *Ibid.* Article 33.

155. However, the law remains silent concerning the possibility to appeal before a court the supporting entity's decision. According to the general rules of the applicable administrative procedure law such appeal should be possible.

156. It is noteworthy that all remedies foreseen by the Law are exclusively bestowed upon Kosovo residents.<sup>144</sup>

### ***Residential Property***

157. A claim in relation to residential property under UNMIK Regulation No. 1999/23 needed to be submitted to the HPD prior to a deadline of 1 June 2003.<sup>145</sup> The claim must have been submitted by the natural person falling under the claims category, a family member, or a legally authorised representative. All interested parties identified in the claims form should have been notified of the claim and given 14 days to indicate their intention to participate. A responding party should have received a copy of the claim and s/he had 30 days to respond to the claim. The claimant or other relevant parties had 30 days to respond to any matter raised in the reply. If not rejected in writing by the HPD as falling manifestly outside the HPCC's jurisdiction, the HPD attempted to settle claims amicably.<sup>146</sup> If unable to do so, then the HPD referred any such claim to the HPCC.<sup>147</sup> Rejection of a claim by HPD may be appealed to HPCC.<sup>148</sup> If a party disagrees with a HPCC decision, s/he has 30 days from notification of the decision to submit a request for reconsideration.<sup>149</sup> The request must be submitted to the HPD.<sup>150</sup> No further appeal is provided.<sup>151</sup> HPCC retains exclusive jurisdiction over such claims until such time as authority is returned to the regular courts.<sup>152</sup>

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<sup>144</sup> *Ibid.* defined in Article 2.1(a).

<sup>145</sup> See UNMIK Regulation No. 1999/23 and UNMIK Regulation No. 2000/60.

<sup>146</sup> UNMIK Regulation No. 2000/60, Section 10.1.

<sup>147</sup> *Ibid.*, Section 10.4.

<sup>148</sup> *Ibid.*

<sup>149</sup> *Ibid.*, Section 25.

<sup>150</sup> *Ibid.*, Section 14.1.

<sup>151</sup> UNMIK Regulation No. 1999/23, Section 2.7.

<sup>152</sup> *Ibid.*, Section 2.5.

158. Persons who between 23 March 1989 and 13 October 1999, entered into informal transactions of residential property on the basis of free will of the parties but were unlawful under existing law,<sup>153</sup> (also known as “Category B” claims), could enjoy an additional option if the claim is uncontested and the HPD is satisfied there is sufficient evidence that the claimant acquired the property right through an informal transaction.<sup>154</sup> If the HPD is satisfied, it may order the registration of the informal transaction in the appropriate public record.

159. Such an order, however, is not a binding decision on property rights and does not prejudice the right of any person to make a further claim to the HPD under section 1.2, UNMIK Regulation 1999/23. However, any such further claim must be made within 30 days of learning of the HPD’s order but not later than one year from the date of the order.

160. If contract of sale relates to property, which is located in a Specific Geographical Area (SGA),<sup>155</sup> a competent court cannot verify the contract without a proof of registration by the UN Municipal Administrator.<sup>156</sup> If a person claims that his/her property rights have been violated due to refusal to register a sale in a SGA, she/he may file a request in writing to the Municipal Administrator to reconsider his/her decision made under Section 3 UNMIK Regulation No. 2001/17. The request must be made within 30 days of the refusal. Within 30 days of receiving the request for reconsideration, the Municipal Administrator must issue a final decision. If the claimant disagrees with the rendered decision, an appeal against the decision may be lodged with a three judge panel designated by the SRSG for a judicial review (including compliance with formal requirements). The appeal must be submitted in writing within 60 days from the date on which the Municipal Administrator’s decision not to register the contract becomes final. No further appeal or time frames for the response are provided.<sup>157</sup>

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<sup>153</sup> UNMIK Regulation No. 1999/23 and UNMIK Regulation No. 2000/60.

<sup>154</sup> UNMIK Regulation No. 2000/60, Section 11.

<sup>155</sup> As established by UNMIK Regulation No. 2001/17 of 22 August 2001 on the Registration of Contracts for the Sale of Real Property in Specific Geographical Areas of Kosovo.

<sup>156</sup> UNMIK Regulation No. 2001/17, section 4.

<sup>157</sup> *Ibid.* Sections 6-7.

## **E. GENERAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROMOTED IN KOSOVO**

161. The Ombudsperson Institution (OI) in Kosovo was established by UNMIK Regulation No. 2000/38<sup>158</sup> for the purpose of enhancing the protection of human rights in Kosovo. The OI consists of the Ombudsperson, Deputy Ombudspersons, human rights lawyers and supporting administrative staff. Since the very beginning, the staff of the OI has been multiethnic – the majority is Kosovo Albanian, other staff members are of Kosovo Serb, Kosovo Turkish and Kosovo Roma origin. The OI was formally inaugurated on 21 November 2000.

162. The OI accepts complaints from anyone who believes that he or she has been the victim of a human rights violation or an abuse of authority and conducts investigations into these complaints. The official working languages of the OI are Albanian, Serbian and English. It will make an effort to provide a complainant with service in his/her/their language even if it is not one of these three languages.

163. If informed about a situation or action that may involve a human rights violation, the OI may also open investigations in the absence of an individual complaint (so-called *ex-officio* investigations). The OI's competences involve the monitoring of policies and laws adopted by the authorities to ensure that they respect human rights standards and the requirements of good governance. Upon receiving a complaint or if convinced that a certain situation requires immediate action, the Ombudsperson engages in correspondence with the respective public authority that is the object of the complaint. If the problem in question does not warrant mediation or cannot be solved amicably, the Ombudsperson will, following investigations, issue a report, in which he analyses whether or not there has been a violation of the respective persons' human rights. In case this question is answered in the affirmative, the report also contains the Ombudsperson's recommendations to the SRSG as the highest civil authority in Kosovo on how to ensure that there is a compliance with human rights in future. In cases where the Ombudsperson considers that a general practice or situation affecting not only one person or a group of persons, but the public as a whole, is not

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<sup>158</sup> UNMIK Regulation No. 2000/38 of 30 June 2000 on the Establishment of the Ombudsperson Institution in Kosovo.

compatible with international human rights standards, he issues a so-called Special Report, which also includes recommendations to the SRSG.

164. UNMIK/Pillar III established a Human Rights Training Unit (HRTU) in September-October 1999. One month after its creation, the HRTU organized an International Human Rights Conference which took place on 10-11 December 1999. The aim of this conference was to begin the process of raising awareness about the importance of human rights for post-conflict society, and to bring audiences from all sectors and groups of Kosovo back together to discuss topics of common concern. This 2-day conference attracted some 800 local participants from all ethnic groups of Kosovo, and some 30 international experts presented papers on nine separate topics relating to the post-conflict environment of Kosovo. The topics included the protection of minorities, preventing torture, transitional justice, democratic policing, housing and property rights, women's and children's rights, and detainees and missing persons. A conference report containing the papers presented, representing the discussions, and including recommendations for reform was published in English, Albanian and Serbian by UNMIK/Pillar III and disseminated to all participants following the Conference.

165. During 2000 and 2001 this Human Rights Training Unit designed and delivered basic human rights training in general human rights standards to a large variety of audiences. These training programmes covered the basic history of human rights, human rights law and how to identify a human rights violation and practical case-studies to assist participants in applying human rights in their work. The human rights training was provided in the context of professional knowledge and skills training programmes organised by UNMIK/Pillar III's Department of Democratisation for audiences including municipal civil servants, municipal assembly members, municipal election officials, social workers, journalists, human rights NGOs, youth organisations, women's organisations, teachers and law students. All participants at these training sessions received Albanian or Serbian translations of the European Convention on Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. During this same period human rights officers working in UNMIK/Pillar III field offices delivered *ad hoc* human rights talks to primary and secondary school

students. Specific human rights education materials in Albanian and Serbian were distributed through OSCE staff to primary school teachers around Kosovo. The materials were predominantly the product of Amnesty International or the Council of Europe. These materials included simplified versions of the Universal Declaration of Human Rights, the Convention on the Rights of the Child and the European Convention on Human Rights.

166. At the same time, OSCE sought to develop long-term human rights capacity in Kosovo through a number of intensive training courses provided to its own local professional staff. These courses included a year long work-training programme in human rights monitoring and reporting for national human rights monitors, a 40 hour course in human rights law for national legal advisers, and a variety of shorter training courses for the majority of national staff of the substantive Departments of OSCE.

167. In January 2002, coinciding with the establishment of the Provisional Institutions of Self-Government, OSCE established a Human Rights Promotion Section with staff located in all regions of Kosovo, in order to increase the quantity of human rights training and education being provided in Kosovo. This section consisted of 20 persons specialised in human rights and teaching and training. Between 2002 and 2006 this Section developed focused training programmes for a selection of target audiences designed to build on the short introductions to human rights that had been provided in the previous years and develop a more profound understanding among target audiences. This Section targeted municipal civil servants, judicial and legal professionals, and educational programmes in primary, secondary and tertiary education.

168. From 2002, this Section organised Human Rights Youth Clubs in 9 cities of Kosovo. These clubs brought together interested secondary school youth and OSCE provided them with instruction in human rights, facilitated debate on human rights topics and sponsored the implementation of public awareness raising activities by the club members. Such campaigns have included touring drama performances and photo exhibitions, public debates and concerts on a variety of human rights topics, most notably on the rights of disabled persons, the right to education for all and freedom of expression. In addition, OSCE has sponsored these youth clubs in the implementation

of public events to mark International Human Rights Day 10 December, which usually attract significant media attention.

169. In response to the problems identified by the international NGO Mental Disability Rights International in a report published in 2002, specific training in human rights and the human rights principles applicable to persons suffering from a mental disability and for persons in detention was designed and delivered by OSCE to all staff, including support staff, of the social care institutions of the Stimje/Stimlje Special Institute and the Elder Persons Home in Kosovo.

170. At the beginning of 2002, a Section was established in OSCE to deal with support to victims of violent and gender-based crime. As a result of a conference held in December 2001 on international models of victim advocacy and assistance, a Victim Advocacy Manual was produced in English, Albanian and Serbian and widely distributed to Centres for Social Welfare, Woman and Child Support NGOs, lawyers, government officials and the judiciary. This manual was intended to provoke discussion and raise awareness of the value of specific victim assistance services for the development of a professional victim assistance institution. This Section organised specific training programmes in dealing with victims of gender-based crime for social workers and a newly established Victims Advocacy and Assistant Unit within the UNMIK Department of Justice. Several public conferences were organised on anti-trafficking, support to victims of crime and domestic violence which attracted large numbers of participants. In addition, this Section, in cooperation with the Kosovo Police Service, designed and organised Dating- and Domestic Violence training which was provided by community police officers to secondary school pupils throughout Kosovo.

171. In addition, OSCE implemented a number of public awareness campaigns through the media and through outreach training on a variety of human rights topics including civil rights and social rights. Alongside campaigns on generic issues such as illegal property occupation, various campaigns were targeted to providing basic information such as for victim assistance support services, anti-trafficking services, telephone help-lines and so forth. Increasingly such awareness campaigns are co-organised with the Advisory Office on Good Governance, Human Rights, Equal



Opportunity and Gender (AOGG) established within the Office of the Prime Minister of the Provisional Institutions of Self-Government. An example of such a joint campaign is the provision of basic information to the public on the implementation of the newly adopted Anti-Discrimination Law in all official languages.

172. Human Rights training and education is provided through a number of public institutions in Kosovo, including the Kosovo Police Service School. In 2002 a human rights for police training of trainers was conducted with staff of the Kosovo Police Service School which led to a specific human rights course being designed that is provided to all Kosovo Police Service recruits. Specialised courses on specific aspects of human rights relevant to police are also provided, for example on dealing with victims of domestic violence and victims of trafficking in human beings.

173. Since 2000 the Kosovo Judicial Institute has hosted specific human rights law training programmes designed and implemented by the Council of Europe for the benefit of Kosovo and international judges and prosecutors. These programmes focus on fair trial and detention standards as applied by the European Court of Human Rights. The Council of Europe is sponsoring a training of trainers of a selection of Kosovo judges regarding the range of civil and political rights contained in the European Convention on Human Rights (ECHR), and this will lead to a Council of Europe sponsored training programme to be delivered to all judges and prosecutors of Kosovo on all aspects of the ECHR.

174. In addition, the Kosovo Judicial Institute has hosted a variety of specific human rights training programmes for the judiciary including instruction in the implementation of the new Provisional Criminal Procedure Code of Kosovo with its human rights compliant provisions, as well as on dealing with cases of trafficking in human beings and domestic violence. As part of its standard curriculum, the KJI provides courses on judicial ethics to all of its students.

175. Supported by the Rule of Law Section of OSCE the Chamber of Advocates has developed training courses for newly qualified lawyers and civil law lawyers and human rights law has been a feature of all such training courses.

176. The Rule of Law Section of OSCE also organises a Preparatory Bar Examination Training based on a newly published Bar Examination Manual in both Albanian and Serbian for candidates for the Bar exam. The training and manual include a substantial section on international human rights law prepared and delivered by an expert of OSCE.

177. With the establishment of the Kosovo Ombudsperson Institution, OSCE provided comprehensive training to local human rights and other NGOs in Kosovo in the purposes and authorities and responsibilities of this Institution. The objective was to assist NGOs in understanding how to make use of the Ombudsperson on behalf of their constituents. The Ombudsperson Institution itself also publishes its reports in English, Albanian and Serbian, gives frequent statements and interviews to the local media and publishes editorial articles in the local press on human rights topics and the analyses and work of the Ombudsperson.

178. In parallel, the OSCE Human Rights Capacity Building Section designed and delivers in Albanian and Serbian a targeted human rights competencies training programme for senior public officials throughout Kosovo working at municipal level in one of six public institutions, namely Municipal Administration, Public Health, Public Education, Social Welfare, Judiciary and Kosovo Police Service. This programme combines human rights law training, using practical case-studies to develop an understanding of how to identify human rights violations, with cognitive skills training in order to strengthen participants' ability to comply with human rights in their working environment.

179. Specific human rights subjects are taught within the curriculum of the University of Prishtinë/Priština in the Faculty of Law and in the Faculty of Public Administration and Political Science. These courses are only taught in Albanian. Serbian language tertiary education is provided in Kosovo through the Pristina University located in Mitrovicë/Mitrovica, which is managed by the Ministry of Education of the Republic of Serbia.

180. Supported by OSCE, the Finnish Human Rights Support Programme and the University of Graz, Austria, a Human Rights Centre was established at the Faculty of

Law of the University of Prishtinë/Priština. This Centre provides a human rights library, sponsors student papers on human rights topics and arranges training programmes in human rights for, *inter alia*, journalists and non-lawyers at an academic level. It has also organized, published and disseminated translations into Albanian and Serbian of textbooks on human rights and including the UN Compilations of International Human Rights Instruments. English texts and Albanian and Serbian translations of a number of international human rights protection instruments contained in the Constitutional Framework and directly applicable in Kosovo since 2001 are now widely available.<sup>159</sup>

181. The Kosovo Law Centre, an NGO established by OSCE, provides library access to law books including human rights law, to students, academics and practicing lawyers, and organises training courses for a variety of audiences that include human rights topics, including specifically a basic law training programme for young offenders and school age youth similar to Street Law type programmes in other countries.

182. At primary and secondary school level, the Ministry of Education, Science and Technology (MEST) has developed a new curriculum and has introduced the subject of Civic Education into the curriculum for most every year of schooling. The MEST civic education curriculum provides for a range of human rights topics appropriate to different grades. For many of these topics appropriate teaching materials are still to be developed. Specifically for the 6<sup>th</sup> year civic education classes OSCE has developed teaching materials and a teaching methodology, although for the moment it is only available in Albanian. OSCE provides teacher training to 6<sup>th</sup> year civic education teachers on the history of human rights, basic human rights law and instruction in the teaching methodology. A programme of education in International Humanitarian Law sponsored by the International Committee of the Red Cross has been included in the secondary school civic education classes. The development of necessary materials for Bosnian- and Turkish- language schools is being worked on. The curriculum and educational materials for the Serbian language schools operating in Kosovo is under the control of the Ministry of Education of the Republic of Serbia.

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<sup>159</sup> E.g. [www.unmikonline.org](http://www.unmikonline.org).

183. Support to specific target audiences and/or regarding specific sets of human rights have been provided and/or sponsored by some local NGOs, such as the Human Rights Academy programme of the NGO Kosovo Centre for Human Rights for teachers in the Pejë/Peć region, programmes for training of lawyers provided by the women's legal aid NGO NORMA, children's rights training provided through UNICEF and Save the Children to Municipal Child Rights Officers, women's rights training programmes provided by UNIFEM (specifically an intensive Gender and Legislation training programme for public and private lawyers), training and public awareness campaigns on rights of disabled persons provided by the local NGO HANDIKOS, and others including special training to Municipal Gender Officers and Victim Advocates.

184. An office within KFOR provides continuous public awareness campaigns on a wide variety of topics in the local media and on public signs and billboards. Many of these campaigns concern human rights topics including a large-scale campaign in 2005 implemented jointly with the Office of the Prime Minister to promote the right to freedom of movement.

185. In the context of its human rights protection mandate, OSCE has also published in English, Albanian and Serbian analytical reports on a variety of human rights topics accompanied by recommendations to relevant actors and institutions. These reports generally receive wide media coverage. Such reports published over the last six years include ten Minority Assessment reports, comprehensive and topic-specific reports on fair trial and detention standards, comprehensive reviews of the status of property rights protection and a number of other specialised reports including on the response of the criminal justice system to the riots of March 2004.

## **F. ROLE OF THE REPORTING PROCESS IN PROMOTING HUMAN RIGHTS IN KOSOVO**

186. On 23 August 2004, the SRSG and the Secretary-General of the Council of Europe signed the Agreement between the United Nations Interim Administration Mission in Kosovo and the Council of Europe on Technical Arrangements Related to the Framework Convention for the Protection of National Minorities (UNMIK/CoE Agreement). Pursuant to Article 2.2 of that Agreement, UNMIK agreed to “submit to the Committee of Ministers full information on the legislative and other measures taken to give effect to the principles set out in the Framework Convention.” In so doing “UNMIK affirm[ed] on behalf of itself and the Provisional Institutions of Self-Government that their respective responsibilities w[ould] be exercised in compliance with the principles contained in the Framework Convention.”

187. Article 2.2 of the UNMIK/CoE Agreement provides, *inter alia*, that UNMIK shall submit to the Committee of Ministers full information on the legislative and other measures taken to give effect to the principles set out in the Framework Convention for the Protection of National Minorities (Framework Convention). UNMIK submitted this information on 2 June 2005 in the form of a report (UNMIK Report).

188. The UNMIK Report was considered by the Advisory Committee on the Framework Convention for the Protection of National Minorities (Advisory Committee). A delegation of the Advisory Committee visited Kosovo from 11 to 15 October 2005 in order to obtain supplementary information. The Advisory Committee adopted its Opinion on 25 November 2005. Pursuant to Article 2.4 of the UNMIK/CoE Agreement, following receipt of information from UNMIK and an opinion of the Advisory Committee, the Committee of Ministers of the Council of Europe shall consider and adopt its conclusions concerning the adequacy of the measures taken to give effect to the principles of the Framework Convention. The Committee of Ministers will adopt its conclusions following a meeting of the Advisory Committee on 21 February 2006 at which the Opinion will be considered.

189. Earlier, on 22 July 2005, Prime Minister Bajram Kosumi decided to create Human Rights Units (HRUs) in each of the ministries in the executive branch of the PISG. His Administrative Instruction of 11 August 2005 recognized that integrated ministerial monitoring-reporting on the implementation of Kosovo Action Plans and international standards is integral to the promotion and protection of human rights. AOGG was accordingly tasked to coordinate such a process.

190. To date, HRUs have been formed in eight ministries. However, they have not been operationalized partly because of financial resources and partly because of the IMF's call to staff the new Ministries of Justice and Interior Affairs using existing human resources.

## G. NON-DISCRIMINATION AND EQUALITY

### *General*

191. The principle of non-discrimination is rooted in UNMIK Regulations. Part C of this Report outlines the provisions on non-discrimination in UNMIK Regulation No. 1999/24 and the Constitutional Framework. UNMIK Regulation No. 1999/1 of 25 July 1999 on the Authority Of The Interim Administration In Kosovo, which was the first Regulation to be adopted, enshrines these principles in its Section 2 by stating that: “In exercising their functions, all persons undertaking public duties or holding public office in Kosovo shall observe internationally recognized human rights standards and shall not discriminate against any person on any ground such as sex, race, colour, language, religion, political or other opinion, national, ethnic or social origin, association with a national community, property, birth or other status”.

192. The principle of non discrimination is further reaffirmed in Article 2 of the Anti-Discrimination Law (ADL)<sup>160</sup>, as “equal treatment shall mean that there shall be no direct or indirect discrimination against any person or persons, based on sex, gender, age, marital status, language, mental or physical disability, sexual orientation, political affiliation or conviction, ethnic origin, nationality, religion or belief, race, social, origin, property, birth or any other status”.

193. The purpose of the ADL is to provide effective implementation and enforcement mechanisms, proportionate and dissuasive sanctions in the case of violations by either public or private actors. The proscription of discrimination encompasses both direct and indirect discrimination, harassment, instruction to discriminate, victimization and segregation<sup>161</sup>. The ADL applies to “all natural and legal persons as regards both the public and private sectors, including public bodies, in relation to any action or inaction which violates those rights of any natural or legal person or persons” and comprehensively encompasses economic, political, social and cultural areas.<sup>162</sup> Any claim of discrimination under the ADL is to be decided or

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<sup>160</sup> Law No. 2004/03 promulgated by UNMIK Regulation No. 2004/32 of 20 August 2000.

<sup>161</sup> ADL, Article 3.

<sup>162</sup> ADL, Article 4 –a thru –n.

adjudicated upon in accordance with the applicable law by administrative bodies and courts with subject-matter jurisdiction over the case<sup>163</sup>. A fundamental aspect of the ADL, enhancing protection to victims of discrimination in cases against institutions, is shifting the burden of proof to the respondent accused of discriminatory treatment<sup>164</sup>. Alleged victims can be supported by various organisations or legal entities when making the claim<sup>165</sup>. The Law empowers courts not only to grant compensation for damages to the victims of discriminatory treatment but also to impose fines up to 2,000 Euro on any institution violating the ADL<sup>166</sup>. Furthermore, the Law authorises the Ombudsperson of Kosovo to receive and investigate complains concerning discrimination cases<sup>167</sup>. It is important to note that the ADL encourages the use of positive actions to ensure a genuine equality in daily practices<sup>168</sup>. Such actions aim at the prevention of or compensation for disadvantages experienced by individuals belonging to certain groups, such as persons with disabilities, women, IDPs, returnees, etc. Additionally, in the case of violation of the law positive measures can be judicially imposed<sup>169</sup>. While, contracts for public financing or benefits must include provisions for compliance with ADL and shall be revoked by the body awarding it in case of violation of the law. Finally, the ADL provides that all monies collected through the imposition of penalties on those who have violated the Law shall be placed in a fund for the purposes of supplying free legal assistance to any natural or legal person whose right to equal treatment is violated<sup>170</sup>.

194. The Constitutional Framework, the ADL as well as mandate of all of the PISG's Ministries provide for legal protection against discrimination that has significantly improved formal equality of all groups subject to discrimination in Kosovo.

195. Assessing the extent of discrimination towards women, children, minorities, persons with disability and other vulnerable groups in both central and local level is

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<sup>163</sup> ADL, Article 7.1.

<sup>164</sup> ADL, Article 8.

<sup>165</sup> ADL, Article 7.6.

<sup>166</sup> ADL, Article 9.

<sup>167</sup> ADL, Article 10.

<sup>168</sup> ADL, Article 6.1.

<sup>169</sup> ADL, Article 9.3.

<sup>170</sup> ADL, Article 9.4.



difficult to perform due to lack of data. Numbers and statistics on the representation and proportion of minorities, women and IDPs in issues related to returns, re-integration, accessing social services, participation in decision-making procedures etc. is limited. The absence of adequate information is a problem. The statistics that are available show disparity between majority and minority and especially for Roma, Ashkali and Egyptians in respect of education, employment and poverty. Women, especially rural women, are mostly disadvantaged in respect to employment (rural female labour force participation is at 25.54% versus for rural male 74.39%) and education (mean years of schooling 7.94 for women versus 10 for men).

196. During the reporting period no mechanism existed to monitor the implementation of laws in practice. Establishing monitoring mechanisms is being considered as a recommendation by PMO to be established in the Government or in the Assembly of Kosovo as a committee which would monitor and report on implementation of laws.

197. The AOGG, upon promulgation of the ADL, organized a public information campaign to raise awareness of the ADL and of the rights it guarantees. The campaign consisted of a press conference, a workshop for the ministries and UNMIK officials and a two phase promotional campaign where brochures, leaflets and posters were produced (in Albanian, Serbian, Bosniak, Turkish and Romany) and first disseminated to civil servants and then to the general public. The support of Department of Central Administration at Ministry of Public Services, Municipal Gender Officers and NGOs were engaged in making sure that dissemination was Kosovo wide reaching all municipalities. Additionally, AOGG contributed to a number of donor supported initiatives to raise awareness and knowledge within the general public with regard to the content of the law as well as training activities for lawyers and judges. The Permanent Secretary of the Office of the Prime Minister established a working group to draft all sub-legal acts for the implementation of the ADL. Since August 2005 the working group meets regularly and during its second meeting comments were given on the draft Administrative Instruction proposed by the Ministry of Public Office. To address the matter in a comprehensive way, throughout 2005 a co-ordinated plan of action identifying the critical path for the effective implementation of the plan has been developed by the OPM, in cooperation with

OSCE, OHCHR and UNMIK. On 11 October 2005, the Anti Discrimination Law Comprehensive Action Plan was adopted after a public debate was organized by the Prime Minister.

198. UNMIK Regulation No. 2001/19 offers an important example of affirmative action in the sphere of public employment. Permanent Secretaries of the Ministries and Chief Executive Officers of the Executive Agencies are mandated to implement “non-discriminatory personnel policies within the Ministry or Executive Agency, including equitable gender representation, in all areas and levels and ensuring that the composition of the personnel reflects the multi-ethnic character of Kosovo”<sup>171</sup>. The Regulation specifies that “representation in the composition of the Civil Service at all levels shall be closely proportionate to the representation of non majority communities in the Assembly.”<sup>172</sup>

199. To give effect to the principle of “Fair Representation in Civil Service”, intended to correct imbalances effectively excluding minorities, including IDPs and refugees, from access to jobs and resources on the basis of their ethnicity and/or gender, UNMIK Regulation No. 2001/36<sup>173</sup> (the “Civil Service Law”) and, in particular, Administrative Direction No. 2003/2 implementing it establishes that: “All employing authorities [...] may utilize the following affirmative action measures as needed: (a) Active recruitment: making special efforts to identify and solicit job applications from under-represented populations, especially internally displaced persons and refugees; (b) Addressing results of long-term discrimination: developing on-the-job training programs for commonly disadvantaged populations to enhance their ability to apply and compete for promotions; and (c) Addressing discrimination by ensuring that personnel understand antidiscrimination policies and have access to adequate grievance procedures”<sup>174</sup>.

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<sup>171</sup> UNMIK Regulation No. 2001/19, Section 5.4 –e.

<sup>172</sup> UNMIK Regulation No. 2001/19, Section 4.2.

<sup>173</sup> UNMIK Regulation No. 2001/36 of 22 December 2001 on the Kosovo Civil Service.

<sup>174</sup> Administrative Direction No. 2003/2 of 25 January 2003 Implementing UNMIK Regulation No. 2001/36 on The Kosovo Civil Service, Section 10.

200. Another important aspect of this Law is that it provides, through an Administrative Instruction (AI)<sup>175</sup> all employing authorities with guidance to enable them to meet their legal responsibilities for building a multi-ethnic civil service based on the principle of Equal Opportunities. According to the AI, Equal Opportunities Officers shall be appointed in every Ministries, Municipalities and Executive Agencies and tasked to prepare Equal Opportunity Policies (EOP) and their correlated Implementation Strategies, setting out the practical steps to be taken over the next three years to achieve the objectives set out in the EOPs including the active steps to be taken to: “(a) Encourage applications for employment in the Ministry/ Municipality/ Executive agency from under-represented sections of Kosovo society, including members of minority communities, women and people with disabilities; (b) Ensure that minority communities, women and people with disabilities are represented at all levels within the employing authority; (c) Promote understanding of the importance and benefits of a genuinely representative civil service among all employees; (d) Encourage the use of both Kosovo’s official languages by all employees; (e) Ensure that all clients of the Ministry/ Municipality/ Executive Agency’s services are offered the same high quality of service services in accordance with equal opportunities procedures”. Each Permanent Secretary/ Chief Executive Officer within Municipalities, Ministries and Executive Agencies should monitor and report on progress in implementing equal opportunities on a regular basis.

201. However, so far little action has been taken to appoint Equal Opportunities Officers in Ministries, Municipalities and Executive Agencies, nor criteria or to establish procedures for implementing and monitoring Fair Representation in the Civil Service at all levels. Despite recent improvements, mostly as a result of the Standards process several posts reserved for minorities remain unfilled.

202. To enforce the principle of fair representation in Civil Service, UNMIK adopted a decision in June 2002 to establish Proportional Community Representation. The Advisory Board on Communities (ABC) Working Group on Minority Employment (WGME), consisting of representatives from Pillar II/ Office of

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<sup>175</sup>AI Ministry of Public Services (MPS) 2003/12 *On Equal Opportunities Procedures*, of 12 September 2003, implementing AD 2003/2 Implementing UNMIK Regulation No. 2001/36 *On The Kosovo Civil Service*, of 25 January 2003.

Community Affairs, Pillar III/OSCE, Pillar IV/EU, Office of the Prime Minister, Ministry of Labour and Social Welfare, Ministry of Public Services, UNHCR, the Alliance for Rights and Tolerance, and Office of Returns and Communities, developed an effective methodology for establishing proportional community representation in Kosovo civil service. The then-SRSG Mr. Steiner approved the representational goals and plans.<sup>176</sup> The point of departure for the WGME was the results of the Central Assembly election of 17 November 2001. Based on these accepted proportions, the Working Group developed representation ranges for achieving community proportionality in central level civil service employment, which would reflect to the extent possible the representation of communities in the Assembly of Kosovo. Under the concept described above, the representation ranges can reflect one of two non-majority Assembly member totals: (1) the number of set aside seats for minorities, or (2) the total number of minority seat holders. Under such formulations Kosovo Serb representation would range between 8.3 and 18.3 %, while non-Serb minorities would collectively represent between 8.3% and 10.8%. These ranges can assist in the identification of appropriate representational goals. They can also be used as benchmarks for a monitoring mechanism: exceeding the maximum raises questions about favouritism, while failure to reach the minimum threshold should raise concerns about discrimination. Either development would point to the need for intervention.

203. In addition, affirmative action to accompany the representation ranges was proposed: promoting equal opportunity in hiring by “expanding the active recruitment drive for members of minority communities and extend their job application deadline appropriately” if a balance pool of applicants has not been reached by the job application deadline, promoting affirmative preference by offering “hiring and promotion preferences to members of minority communities who meet the required eligibility standards, in order to meet representation range requirements that ensure proportional representation at all levels of civil service”, and, addressing the results of long-term discrimination by developing “job-training programs for commonly disadvantaged populations (i.e. the RAE communities) to enhance their ability to apply and compete for jobs”. Unfortunately, neither the methodology for establishing

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<sup>176</sup> Recommendation for SRSG Approval: Establishment of Proportional Community Representation in the Kosovo Civil Service”, dated 19 June 2002 and approved by SRSG Michael Steiner.

proportional community representation, nor the affirmative action proposals have been implemented to the present date and, particularly at senior level management positions, the recruitment of minorities “has too often been seen as a question of filling a quota than providing meaningful participation”.<sup>177</sup>

### ***Gender***

204. The Law on Gender Equality in Kosovo, Law No. 2004/2 promulgated by UNMIK Regulation No. 2004/18, 7 June 2004 (hereafter LGE) aims to promote and establish gender equality as a fundamental value for the democratic development of the Kosovo society, providing equal opportunities for both female and male participation in the political, economical, cultural and other fields of social life. LGE creates conditions and opportunities for gender equality through policies that support overall development, especially for the improvement of the status of women, so that they are entitled to authority in the family and society. It introduces general and specific measures that need to be undertaken for the provision of equal rights and specifies the responsible authorities and their relevant competencies.

205. LGE calls for the establishment of equal representation of men and women at all levels in executive, legislative and judicial bodies, public institutions, and appointments in central and local government bodies. Equal representation is explicitly defined as a minimum of 40% each of men and women. It mandates the establishment of the inter-ministerial council to be comprised of Gender Affairs Officers of the Ministries<sup>178</sup>, an Office for Gender Equality as a separate governmental institution<sup>179</sup> and Offices of Gender Affairs in local government bodies<sup>180</sup>.

206. The Article 6 provides for “issues of discrimination that relate directly to gender shall be addressed by the Gender Equality Unit within the Ombudsperson Institution established under UNMIK Regulation No. 2000/38, which also has the responsibility for reviewing draft legislation, commenting on the implementation of

<sup>177</sup> Ambassador Kai Eide, “A comprehensive review of the situation in Kosovo”, 7 October 2005, p. 5.

<sup>178</sup> LGE, Article 4.9.

<sup>179</sup> LGE, Article 5.1.

<sup>180</sup> LGE, Article 4.15.

this Law and on existing legislation as it relates to gender issues [...it] is to be funded from the Kosovo Consolidated Budget." However, in accordance with UNMIK Regulation No. 2000/38, the jurisdiction of the Gender Equality Unit of the Ombudsperson Institution is limited to actions and decisions taken by the PISG. Section 3.1 of UNMIK Regulation No. 2000/38 provides that: "The Ombudsperson shall have jurisdiction to receive and investigate complaints from any person or entity in Kosovo concerning human rights violations and actions constituting an abuse of authority by the interim civil administration or any emerging central or local institution".

207. On March 2004, the Prime Minister adopted the National Action Plan for the Achievement of Gender Equality (NAP). NAP was developed as mechanism for ensuring gender equality and its primary goal is to ensure equal participation, representation and benefits for women in all spheres and levels of political, economic, cultural and social life in Kosovo. It presents recommendations to address specific problems and conditions of gender disparities in Kosovo and it serves as a road map for the Government of Kosovo that promotes as its central goal the equal participation of women and men in the development of Kosovo's future. Based on analysis of conditions and problems the NAP assesses six critical areas of concern meaning education, economy, politics, health and social welfare, human rights and violence against women and children culture.

### ***Education***

208. Both the Law on Primary and Secondary Education in Kosovo (Law No. 2002/2) promulgated by UNMIK Regulation No. 2002/19 and the Law on the Higher Education in Kosovo (Law No. 2002/3) promulgated by UNMIK Regulation No. 2003/14 have provisions ensuring access without direct or indirect discrimination on any real or presumed grounds such as sex, race, sexual orientation, physical, or other impairment, marital status, colour, language, religion, political or other opinion, national, ethnic or social origin, association with a national community, property, birth or other status.<sup>181</sup> Sex differentials exist at all ages with net combined enrolment

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<sup>181</sup> Law on Higher Education in Kosovo, Articles 5.1 and 3.1.

rate of boys 89.50 and girls 87.41 not being as wide but the means years of schooling for males 10.40 and for females 8.42 (falling below the mandatory 9 year minimum) highlights a problem of retention rates for girls. This situation is acute especially in rural areas and among REA minorities (10 years of schooling for rural boys and 7.94 for rural girls and 8.04 years for REA boys while only 5.69 years for REA girls). Although there is little qualitative data on why children do not attend school, studies such as the UNICEF “Situation Analysis of Children and Women in Kosovo” (February 2004), MEST and UNICEF’s “Girls’ enrolment and drop-out in Kosovo, A casual analysis of girls’ enrolment and drop-out” (November 2004) as well as anecdotal information from AOGG suggest that the main reasons for school non-attendance are lack of transportation from remote villages, economically influenced decision-making giving preference to boys over girls, culture and tradition as well as issue of security for minorities.

209. Some municipalities are cooperating with the Ministry of Education to provide free or reduced price transportation. Although after KFOR in 2002 discontinued its armed escorts to individual school children or school buses in some ethnically mixed areas, for example Cernic/Cernica (Gjilan/Gnjilane municipality), Obiliq/Obilić municipality, Viti/Vitina municipality, the Ombudsperson helped to ensure that ethnically mixed teams of the Kosovo Police Service continue to provide the children with adequate security protection when going to and from their schools.

### ***Employment***

210. UNMIK Regulation No. 2001/27 on Essential Labour Law in Kosovo provides that an employer shall pay equal remuneration, which includes the basic salary/wage and any additional entitlements and emoluments payable directly or indirectly, in cash or in kind, by the employer to the employee, to women and men for work of equal value. However, there are indications that many women are still not receiving the same amount of pay for the same work. There are cultural obstacles to the type of work that women are allowed to do. While the applicable law in Kosovo is quite explicit about equal opportunities, the cultural norms indicate otherwise. More effort is needed to encourage women to participate in business and the skilled labour force.

Women make up only 30% of the workforce in the cities and barely 20% in the rural areas.

211. UNMIK Administrative Direction No. 2003/2 Implementing UNMIK Regulation No. 2001/36 on the Kosovo Civil Service sets forth special measures related to recruitment to the Civil Service. Section 3.3 provides that “recruitment to the Civil Service shall be done after fair and open competition, on the basis of merit and in conformity with the principle of equitable representation of communities in Kosovo, and equitable gender representation in all areas and levels [...] This should be done in accordance with specific community representational ranges that may apply to different parts of the Civil Service, as promulgated from time to time by the Special Representative of the Secretary-General.” Section 10.1 provides that all employing authorities shall monitor and implement procedures to ensure multi-ethnic representation and gender balance within their ministry, municipality or executive agency, in accordance with section 3.3 and may utilize the following affirmative action measures as needed: (a) Active recruitment: making special efforts to identify and solicit job applications from under-represented populations, especially internally displaced persons and refugees; (b) Addressing results of long-term discrimination: developing on-the-job training programs for commonly disadvantaged populations to enhance their ability to apply and compete for promotions; and (c) Addressing discrimination by ensuring that personnel understand antidiscrimination policies and have access to adequate grievance procedures.

212. The LGE calls for the establishment of equal representations of men and women at all levels in executive, legislative and judicial bodies, public institutions, and appointments in central and local government bodies. Bodies named as responsible for achieving gender equality include the Assembly of Kosovo, the Government and ministries, and local government bodies. The LGE also requires that:

- The Government draft a Kosovo Program for Gender Equality and submit it for approval to the Assembly;



- An inter-ministerial council be established comprised of Gender Affairs Officers to be appointed within each ministry and who will be responsible for the implementation of the gender equality strategy as set out by the Gender Equality Law and in conjunction with the Office for Gender Equality; and
- Gender Affairs Officers be appointed in each municipality and an Office of Gender Affairs created by local government bodies.

213. Section 4 of AI 2005/8 on Determination of Competences and Description of Duties of Officer for Gender Equality in Municipalities mandates the Municipal Gender Office (MGO) to keep and analyze the statistics-database in the field of gender equality. The Administrative Instruction establishing the Office of Gender Equality provides OGE's Directorate for Monitoring and Reporting with responsibility for monitoring and reporting, as well as for the actual institutional implementation mechanisms on ministerial and municipal level. With this mandate a comprehensive monitoring mechanism can be created.

### ***Health and Social Welfare***

214. To ensure equal access and enjoyment of services provided on municipal level several mechanisms have been created by the LGE. On a municipal level such mechanisms consist of: Municipal Gender Officers (in all 30 municipalities) (MGOs), Equal Opportunity Officer (EOO) (in 24 municipalities) and Gender Equality Committees (GEC) (in 20 municipalities).

215. In Prizren/Prizren and Mitrovicë/Mitrovica, several women's NGO projects have been financially supported by the municipality thanks to the lobbying of the GEC. The MGO regularly informs GECs on NGO project proposals, which are then approved or rejected by the GEC members. Projects which have been approved and are being implemented in the Prizren/Prizren include: a public awareness campaign on the promotion of women's rights through local TV broadcasters, the organization of the International Women's Day, training courses for blind people, a shelter for victims of domestic violence, support to mentally handicapped children, debates in secondary

schools on trafficking, lecturing and education on health for women in rural areas, free medical examinations for women and girls in two Albanian, one Bosniak, one Serbian and one Turk village. In the Mitrovicë/Mitrovica an education project for girls in rural areas was started in 2003 and other projects were continued thru 2004 and 2005.

216. According to UNICEF<sup>182</sup> despite receiving over 11 percent of government expenditures, there continue to be serious imbalances with regard to the allocation of funds within the health care system. The largest expenditures, €13.250m (30 per cent), is on the purchases of pharmaceuticals, followed by expenditures on salaries; 11 per cent are spent on capital outlays (infrastructure).<sup>183</sup> According to the same source, of the total, 26 per cent is provided as designated grants to the municipalities for primary health care expenses.<sup>184</sup> UNICEF also reports<sup>185</sup> that though accurate data remains a problem, it is estimated that the current the Infant Mortality Rate (IMR) in Kosovo is 35 per 1,000.

### ***Disability***

217. Mental or physical disability is listed in the ADL as the one of the specifically prohibited grounds for discrimination and reflects Kosovo's commitment to bring about equality for Persons With Disabilities (PWD). The ADL provides a legal basis for the removal of barriers to equal participation and the elimination of discrimination based on disability.

218. Since early 2000, Kosovo has taken steps to promote equality for Persons with Disability (PWD) by designating Handicap International as the international 'lead agency' on disability who in turn supports local NGO's such as Handikos' recommendation to establish an UNMIK Task Force on Disability. A primary task of the Task Force was to develop a comprehensive disability strategy based on UN Standards Rules on the Equalization of Opportunities for People with Disabilities. In December 2003 a Comprehensive Disability Policy Framework was issued identifying

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<sup>182</sup> See *Situation Analysis of Children and Women in Kosovo*, UNICEF, 2003.

<sup>183</sup> *Ibid.*

<sup>184</sup> *Ibid.*

<sup>185</sup> *Ibid.* 2.2, Infant mortality.

14 policy guideline points that cover policy objectives for accessibility, education and employment for PWD as part of a political agenda. The Framework called for the promulgation of the Anti-Discrimination Law that addresses past inequalities by equalizing opportunities and prevents occurrence of discrimination as an initial step complemented by implementation mechanisms. The recommended mechanisms were: a creation of an Office of Disabled People within the Office of the Prime Minister with sufficient access to all governmental departments plus transference of the Task Force on Disability into a permanent consultative structure in a form of Disability Council. Since 2002 a post of an Advisor on Disability Issues was established within the Office of the Prime Minister and a draft proposal for establishment of a National Council on Disability as a permanent advisory body supported by AOGG is being considered by the Prime Minister. The AOGG draft proposal was developed Awareness Raising on PWD issues campaigns and events such as roundtables on driving license availability for PWD, “Nothing about us without us” took place throughout 2005 to ensure that PWD issues are on the agenda and reflected in policies.

219. At the municipal level with the aim of improving involvement of organizations representing the disabled in developing municipal policy, 4 municipalities (Pristina, Prizren/Prizren, Gjakove/Dakovica and Sukareke/Suva Reka) established Commissions on PWD. The Commission in Pristina consists of Municipal Assembly members from mandatory and other Commissions, whereas in the others the membership consists of members of civil administration, municipal assembly members and representatives of civil society. These commissions aim to contribute to and influence the policy and practice in Municipalities responding to the needs of PWD.

220. Additionally all municipalities are working with the NGO Handikos on developing programs for children with disabilities. There are 5 municipalities that have classes for students with disabilities and these classes serve 1081 students with special needs.

### ***Minorities***

221. Part B of this Report describes the arrangements directed at protecting the position of minority Communities in the legislature and executive.

222. UNMIK Regulation No. 2000/45 places the municipal bodies under a positive obligation to “give effect in their policies and practices to the need to promote coexistence between their inhabitants and to create appropriate conditions enabling all communities to express, preserve and develop their ethnic, cultural, religious and linguistic identities while the Constitutional Framework extends this positive obligation to the PISG at all levels.<sup>186</sup>

223. To give effect to this principle, Administrative Instruction (AI 2001/1), On the Management of Municipal Non-Majority Community Finances, 9 November 2001, mandated the municipalities to allocate an a proportionate share of their total Kosovo Consolidated Budget (KCB) financed from Own Source Revenues, General, Education and Health grants to the minority communities residing within their boundaries, in accordance to established proportions based on census data (the so called “Fair Share Financing” mechanism). In 2002, a reporting format to monitor compliance of the municipalities with this provision was established and UNMIK Regulation No. 2002/23 on The Approval of The Kosovo Consolidated Budget And Authorizing Expenditures For The Period 1 January To 31 December 2003, of 31 December 2002 introduced provisions which aimed to ensure that Municipalities allocated adequate resources to the minority communities residing within their boundaries. Similar provisions were contained in all subsequent UNMIK Regulations on the Kosovo Consolidated Budget.

224. Every year the Minister of Finance and Economy (MFE) and the Deputy SRSG issue an Administrative Instruction on the administration of correct financial allocation, which provides instructions on calculating allocations according to the budgetary lines, economic categories, and provides for reporting and penalty measures in cases of unfair financial allocations for non-majority communities.

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<sup>186</sup> UNMIK Regulation No. 2000/45, section 4.3.

225. Every three months of the fiscal year, municipalities submit reports in relation to funds allocated for non-majority communities. The reports are drafted by the financial officers in the municipalities and signed by the President of the Municipal Assembly and the community. The reports are submitted to the MFE which analyses and controls the reported figures.

226. Reviews of Fair Share Financing indicate that it has only partially been met. Reportedly the main impediments at local level to meeting all budgetary lines of Fair Share Financing are the parallel institutions still run by Belgrade and unqualified minority workers/professionals applying for job positions in the education and health sectors. Another reason for concern is the inaccuracy of the image the Fair Share Financing quotas provide about the municipalities performance. In some municipalities, the figures are mathematically correct as the calculations and extrapolated numbers are based on the numbers of minority inhabitants and not on who actually received or benefited from any services provided, or the method of allocations in all categories is not all the time clear.

227. For the purpose of ensuring equal access for communities to municipal services, UNMIK Regulation No. 2000/45 authorizes the establishment of Community Offices “in those municipalities where a community that is not in the majority forms a substantial part of the population”.<sup>187</sup> These offices are financed by the KCB and receive allocations for salaries and allowances, goods and services and capital expenses, according to their requests for the fiscal year. In 2004, EUR 1,300,759 were allocated for these offices and 241 employees were employed within these offices. The MFE’s Department of KCB is in close cooperation with these offices, to which it provides support in drafting the budgets and managing of budgetary means. Municipal Community Offices have been established in all municipalities with a significant number of persons belonging to a minority Community.

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<sup>187</sup> UNMIK Regulation No. 2000/45 section 23.11.

228. UNMIK Regulation No. 2000/45 sets forth the mandatory establishment in each municipality of the Communities and Mediation Committees.<sup>188</sup> Both Committees are designed to act as a protection and grievance handling system for communities of inhabitants belonging to the same ethnic or religious or linguistic group, as defined in section 2.3.

229. Membership of the Communities Committee shall include both members of the Assembly and representatives of communities; each community residing in the municipality should be represented by at least one member in the Communities Committee; the majority community in the municipality must have less than one half of the membership of the Communities Committee; and the remaining membership of the Communities Committee must fairly reflect the number of other communities in the municipality. The Mediation Committee must consist of equal numbers of members of the Municipal Assembly who are not members of the Communities Committee representatives in a fair proportion of non-majority communities.<sup>189</sup>

230. Although the Committees' roles and procedural guidelines have been outlined respectively in UNMIK Administrative Instruction (AI) 2003/002 and AI 2005/001<sup>190</sup>, at the time of writing a number of challenges continue to hamper their efficient functioning. A recent survey jointly conducted by the OSCE and the UNMIK Office of Communities, Returns and Minority Affairs (OCRM) reveals that in only few municipalities (Dragash/Dragas, Ferizaj/Uroševac, Klinë/Klina, Prizren/Prizren and Shtime/Štimlje) Communities Committee meetings are held on a regular basis and that the meetings lack substantive output. In less than one third of the municipalities cases have been forwarded to the Mediation Committee for review (Dragash/Dragas, Ferizaj/Uroševac, Gjilan/Gnjilane, Kaçanik/Kacanik, Prishtinë/Priština, Prizren/Prizren and Viti/Vitina) while these latter, in most municipalities, have never met beyond their inaugural session (Deçan/Deçane, Gjakovë/Đakovica, Klinë/Klina, Skenderaj/Srbica and Suhareke/Suva Reka Deçan/Deçani, Gjakovë/Đakovica, Klinë/Klina, Skenderaj/Srbica and Suhareke/Suva Reka). Importantly, in two

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<sup>188</sup> Ibid., Section 23.

<sup>189</sup> Ibid., section 23.3.

<sup>190</sup> AI 2003/002, On Procedural Guidance for Municipal Communities Committees of 15 September 2003 and AI 2005/001 On Procedural Guidance for Municipal Mediation Committees, of 13 April 2005.

municipalities (Gllgovc/Glogovac and Malishevë/Mališevo) both Committees were never established.

231. The Committee members' lack of participation in meetings, the subsequent lack of quorum and various organizational deficiencies are still recurrent problems in several municipalities. Specifically, the non-attendance of Kosovo-Serb representatives has been a particular issue in many municipalities<sup>191</sup>, where it had quite often obstructed and negatively impacted on the work of the Committees for several months. Root causes of these challenges range from an inadequate selection of members representing the communities (generating a deficit of legitimacy at the grassroots level with a consequent misrepresentation of communities' needs and interests) to the internal power struggles among and between community representatives in the established Committees - too often considered vehicles to promote their political parties' programs. Finally, the situation is further compounded by a general lack of knowledge and expertise on discrimination practices and mediation techniques of Committee members that, despite several trainings provided, still negatively impacts on the performance of the Committees.

232. Indirect discrimination towards members of minority communities is still significant in Kosovo and aggravates their access to key services, as employment, education, health, social protection and municipal services. These factors hinder efforts to create conditions for returns. For example, there are several indications that members of minority communities are indirectly discriminated in accessing public and social services on ethnic and language grounds

233. Access to primary, secondary and higher education for the students of minority communities is still difficult. During the March 2004 events, some of the schools were burned, damaged or occupied by IDPs, which prevented or aggravated physical access to schools. Being dependent on school transport for minority students further limits their physical access to education. As far as equal access to employment

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<sup>191</sup> In Deçan/Deçani, Fushë Kosovë/Kosovo Polje, Istog/Istok, Lipjan/Lipljan, Mitrovicë/Mitrovica, Obiliq/Obilić, Podujevë/Podujevo, Prizren/Prizren, Rahovec/Orahovac, Shtime/Štimlje and Vushtrri/Vučitrn. However, Kosovo-Serbs CC representatives has finally been appointed in Fushë Kosovë/Kosovo Polje and Podujevë/Podujevo.

is concerned, there are cases of vacancies in the public sector mainly being published in Albanian newspapers, while not being published in minority media.

234. Discrimination in accessing social services is in most cases directed towards members of Roma, Ashkali, and Egyptian communities, and in particular to those still living in camps. Not having access to even the most basic social services has, in many cases, resulted in the majority of Roma cases living in harsh poverty, with an extreme dependency on humanitarian aid.

235. Under the applicable Kosovo legislation, the Ministry of Health is obliged to provide public health services to communities “[...] in a transparent and accountable manner not discriminating against ethnic or social origin [...]”.<sup>192</sup> Moreover the Ministry is required to “[d]evelop policies and implement legislation for a non-discriminatory and accountable healthcare system”,<sup>193</sup> to “[m]onitor the health situation and implement appropriate measures to prevent and control healthcare problems”<sup>194</sup> and “[p]romote community participation and the development of community initiatives and activities relating to health [...]”.<sup>195</sup>

236. Municipalities are responsible for providing primary health care,<sup>196</sup> (health houses and smaller centres such as “ambulantas” and family health centres) whereas hospitals providing secondary health care are managed at central level, by the Ministry of Health. There is a parallel health system in Kosovo. Apart from the healthcare system run by the Ministry of Health, there are facilities run by Serbian Ministry of Health (SMH). The SMH supervises them, pays salaries, and covers all other related operational costs. There is little co-operation or information-sharing between the two.

237. The violent events in March 2004 aggravated the mutual mistrust between members of the Kosovo Albanian community and members of minority communities

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<sup>192</sup> UNMIK Regulation No. 2001/19, section 1.7 (c).

<sup>193</sup> UNMIK Regulation No. 2001/19, Annex VI, Ministry of Health, (i).

<sup>194</sup> *Ibid.*, at (v).

<sup>195</sup> *Ibid.*, at (vii).

<sup>196</sup> See Section 3.1, UNMIK Regulation No. 2000/45, which reads “[w]ithin its territory, each municipality shall be responsible for the following activities within the laws regulating each activity: [...] (j) Primary health care”.



(the Kosovo Serb community to a larger extent). The members of the Kosovo Serb community feel more comfortable using the parallel secondary healthcare structures rather than using the PISG ones even though it requires extensive travel. This is mainly due to the few minority staff employed in the existing secondary healthcare facilities and to the fact that those facilities are generally located in majority Kosovo Albanian community areas.

238. Furthermore, the lack of adequate transportation represents the most significant obstacle to accessing healthcare for members of minority communities. The access to secondary healthcare appears to be more affected by the restricted freedom of movement since in general the access to those facilities requires extensive travel whereas primary health care facilities are usually located in a reasonable physical proximity to minority communities' locations. In some cases, the healthcare facilities do not have sufficient ambulance vehicles to transport patients to hospitals in case of emergency situations or to efficiently provide services to the patients. Essentially, the minority communities have to rely on private vehicles or public transport. However, either perceived or genuine security concerns by minority communities' members often dissuade them from travelling privately even in cases of medical emergencies.

239. On the situation of minorities UNICEF reports<sup>197</sup> that currently, there are only two functional maternal and child health care facilities in Kosovo Serbian areas that are freely accessible to the community. One is located in the northern part of Mitrovicë/Mitrovica and the other in Gračanica/Graçanicë, not far from Prishtinë/Priština. The report also state that many RAE families live in dwellings with non-existent or very basic sanitation facilities and lack running water, all of which significantly increase the risk of disease and infections. In contrast, both Kosovo Bosniak and Kosovo Turkish children are reportedly relatively well integrated and do not face overt discrimination within the healthcare system.<sup>198</sup>

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<sup>197</sup> Situation Analysis of Children and Women in Kosovo, UNICEF, 2003, 2.1.3, The Situation of Minorities.

<sup>198</sup> *Ibid.* 5.9.2, Access to Services.

240. In order to be effective access to the courts must be practical and this has been an immediate issue in Kosovo, especially for Kosovo Serbs for whom the issue is based on security. Apart from the availability of Kosovo Serb lawyers to represent them and judges to improve impartiality there is the direct issue of physical security. This affects the operation of courts in areas with Kosovo Serb populations. The level of security for the Kosovo Serb population has acted as a disincentive to travel into some central urban areas where courts are located. Additionally the staffing of courts in ethnic minority areas has meant some courts are understaffed. The riots of March 2004 created a security situation which effectively denied Kosovo Serbs access to the domestic courts. The problem was accentuated by the operation of Serb parallel justice structures.

**PART II: REPORT SUBMITTED BY THE UNITED NATIONS INTERIM  
ADMINISTRATION MISSION IN KOSOVO TO THE HUMAN RIGHTS  
COMMITTEE ON THE HUMAN RIGHTS SITUATION IN KOSOVO SINCE  
JUNE 1999**

**INTRODUCTION**

1. In submitting this report on the human rights situation in Kosovo since June 1999 to the Human Rights Committee (HRC), the United Nations Interim Administration in Kosovo (UNMIK) is acting under the authority granted to it under United Nations Security Council resolution 1244 (1999) (UNSCR 1244). The report has been prepared as a pilot case of coordinated human rights reporting with a Core Common Document and treaty-specific documents under the revised Proposed Common Guidelines on Reporting to the International Human Rights Treaty Monitoring Bodies, that were agreed to in principle by the 17<sup>th</sup> Meeting of the Chairpersons of Human Rights Treaty Bodies on 23-24 June 2005 (the Guidelines)

2. A draft of this report was prepared by the OSCE on the basis of inputs from the Pillars and Offices of UNMIK and the Provisional Institutions of Self-Government (PISG). The draft was subsequently reviewed and revised by the Office of the Special Representative of the Secretary-General.

**ARTICLE 1**

3. In light of UNMIK's mandate under UNSCR 1244, there are no observations to be made in relation to this Article.

**ARTICLE 2**

4. Material in relation to this Article is presented in Part G of the Common Core Document.

Deleted: H

**ARTICLE 3**

5. Material in relation to this Article is presented in Part G of the Common Core Document.

Deleted: H

#### ARTICLE 4

6. The procedure for derogation set forth in Article 4 does not apply to UNMIK because it is not a State Party to the International Covenant on Civil and Political Rights (ICCPR).

#### ARTICLE 5

7. UNMIK has no comments in relation to this Article.

#### ARTICLE 6

##### *The death penalty*

8. Section 1.5 of UNMIK Regulation No. 1999/24 of 12 December 1999, as amended, on the Applicable Law in Kosovo provides that capital punishment is abolished. This has been the position throughout UNMIK's mandate.

##### *Health risks from the environment*

9. A task force has been established within the PISG and UNMIK in response to the issue of Roma, Ashkali and Egyptian (RAE) camps in north Mitrovicë/Mitrovica, whose residents are put at great risk of lead poisoning due to environment pollution.

10. The Ministry of Health (MH), in close co-operation with UNMIK and the Non-Governmental Organization (NGO) Caritas Kosovo has distributed food and clothes to persons that reside in this camp. These structures provide also health services, expendable material and drugs through two medical teams deployed in the camps. The key purpose of these activities is to place these persons in a clean environment in suitable conditions. The WHO has provided necessary screening equipment for blood lead presence among the ranks of vulnerable groups.

11. The MH and National Institute of Public Health (NIPH), which was assisted by Office of Minorities within the PISG, have established direct contacts with experts from Belgrade of the Institute for Mother and Children who have provided hospital treatment for persons who live in these camps.

*Measures to eliminate epidemics*

12. Criminal offences against public health are defined in the Provisional Criminal Code of Kosovo. They include the spreading of contagious diseases under Article 215, the failure to act in accordance with the health provisions during epidemics under Article 216, spreading of venereal diseases including HIV under Article 217 and employment of persons who are ill with contagious diseases under Article 218.

13. The NIPH is responsible for tracking, registration and epidemiological response to contagious and verminous diseases. The NIPH in its 2005 report assesses that the reporting of contagious diseases in Kosovo is not yet satisfactory, especially with regard to the number of reported instances of contagious disease, though the delays in reporting appear to be declining.

14. The MH established a Committee on Tuberculosis (TBC) and HIV/AIDS which monitors TBC and HIV/AIDS for the MH.

15. During the last year the NIPH has implemented a mechanism of oversight of TBC within the system of monitoring contagious diseases and has conducted a series of activities pursuant to the protocol of “hemorrhagic fever”. The NIPH has trained family and hospital doctors in both diagnosing and reporting contagious diseases, especially of those with the high level of contagiousness.

16. At the NIPH, an HIV/AIDS/STD (sexually transmitted diseases) monitoring unit is monitoring all cases in connection with these diseases in health institutions throughout Kosovo. During the period January – November 2005, two cases of HIV/AIDS were reported. At the National Centre of Blood Transfusion 11,723 blood donors were tested and none of them were found to be HIV positive. The MH has provided therapy for five patients affected by HIV/AIDS. Two “testing on call”

centres have been opened that cover HIV, hepatitis B and Syphilis. Although Kosovo has a low level of HIV/AIDS, the NIPH considers that the incidence of HIV/AIDS is rising because of economic and social conditions, the proliferation of the sex industry, and an increase of usage of injected drugs. The reporting system of HIV/AIDS needs further investment in order to meet international standards.

17. In order to prepare a response to future influenza epidemics, the MH has defined the duties of a Committee of Influenza Epidemic Response Planning (hereinafter the CIERP) and has submitted proposals to the OPM regarding the composition of this committee. The MH has also drafted an Action Plan for preparation for and rapid response to influenza epidemics. The MH has drafted an Administrative Instruction which aims to promote measures for the prevention of and rapid response to bird flu. This document also defines the chain of command in case any such cases arise. Based on this Administrative Instruction bird flu management committees have been established both at regional and health institution level and they have already made an assessment of the materials and medicines that are necessary to treat bird flu cases. On 20 October 2005 the MH submitted a request for 2.2 million Euro to the Office of the Prime Minister. It also issued Information Circular on administrative organizational measures that need to be undertaken at all levels.

### *Measures for the Prevention of Arbitrary Deprivation of Life*

18. The Kosovo Police Service (KPS) Policy and Procedure Manual (PPM) states:

“The application of any degree of force is only justified when the officer reasonably believes that it is necessary. The essential principles for the use of force are those of legality, necessity and proportionality. Facts or circumstances unknown to the officer shall not be considered in later determining whether the force was justified. The objective for using force is to overcome the suspect’s resistance to an officer’s lawful purpose. Officers are prohibited from using unnecessary or excessive applications of force.”<sup>199</sup>

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<sup>199</sup> KPS PPM P-4.14 Use of Force/Rules of Engagement.

19. The PPM establishes the procedure to be followed by all KPS officers when the use of force is necessary in performing official duties and clearly defines what level of force is acceptable. Members of the KPS are generally able to handle encounters with suspected law violators without the use of physical force. Whenever possible, they should instead use advice, persuasion and warning to obtain the necessary cooperation of a law violator in making an arrest. Members of the KPS may use physical force only when other methods of control are ineffective and only to the extent that is necessary for the performance of their official duties. Every police officer of the KPS is required to become thoroughly familiar with the procedures and to comply fully with them.

20. With regard to the use of firearms, the KPS PPM states:

- Indiscriminate pointing of weapons in the direction of any person is prohibited.
- Firing of all weapons other than organizing training, and as authorized in this policy is prohibited.
- Police officers will not fire shots at moving vehicles while in a pursuit situation. Police officers will not fire at a moving vehicle unless the vehicle is being used as a weapon to harm the police officer or other persons, or unless it is necessary to prevent serious injury or death from weapons being fired from the moving vehicle at the police officers or others.

21. Trainings are given on the “Use of Force Continuum” whereby the officer must consider a graded response that is proportionate to the threat. For example, the first level of force is the use of a verbal command to the suspect to cease his illegal activity. In determining what level of physical force may be necessary to prevent a criminal offence in progress or affect an arrest several factors need to be taken into consideration by the police officer:

- Age of the suspect
- The gender of the suspect
- The suspect’s physical abilities or skills

- Suspect's degree of expected success (size, strength)
- Weapons/equipment available to suspect (club, knife, gun)
- Alcohol, narcotics, medicine
- Suspect's mental state
- Number of suspects and the number of police officers present

22. The Basic Police Course also contains practical exercises on defensive tactics and physical restraint techniques to make a lawful arrest of a suspect who offers active or passive physical resistance. In these exercises, the students practice the techniques on each other and learn the practical application of the Use of Force Continuum.

## ARTICLE 7

23. Pursuant to section 3 of UNMIK Regulation No. 1999/24 on the Law Applicable in Kosovo, in exercising their functions, all persons undertaking public duties or holding public office in Kosovo shall observe internationally recognized human rights standards, as reflected in a number of international instruments including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 17 December 1984 (Torture Convention).

24. Upon signature by the Special Representative of the Secretary-General and the Secretary General of the Council of Europe on 23 August 2004, the Agreement on Technical Arrangements related to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment entered into force. Its aim is to facilitate the functions of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, including the provision of access to any place within Kosovo where persons are deprived of their liberty by UNMIK.



25. Article 165 of the Provisional Criminal Code of Kosovo sets forth a definition of the criminal offence of torture, which reflects the definition of torture in the Torture Convention.

26. Article 4(1) of UNMIK Regulation No. 2004/46 of 19 November 2004 on the Law on Execution of Penal Sanctions provides that the convicted person shall not be subject to torture or inhuman or degrading treatment or punishment. Article 195(1) of UNMIK Regulation No. 2004/46 provides that the competent public entity in the field of judicial affairs shall conduct an internal inspection of correctional facilities to promote their economical and efficient operation and to ensure that the objectives, policies and principles of the Law are met.

## ARTICLE 8

### *Prohibition of enslavement and the fight against trafficking in human beings*

27. The 1926 Slavery Convention, as amended in 1955, the 1949 Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others, International Labour Organisation (ILO) Convention No. 29 on Forced or Compulsory Labour of 1930, ILO Convention No. 105 on the Abolition of Forced Labour of 1957, ILO Convention No. 182 on the Worst Forms of Child Labour of 1999 were in force in Kosovo on 22 March 1989 and pursuant to section 1.3 of UNMIK Regulation No. 1999/24 are part of the applicable law in Kosovo. Additionally, the definition of trafficking in persons in Article 139 of the Provisional Criminal Code of Kosovo (PCCK) tracks the wording of the Protocol II to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime of 2000.

28. Article 139 of the PCCK criminalizes engaging in trafficking in persons, organizing or negligently facilitating the commission of trafficking and the procurement of services of a known victim of trafficking. Article 137 criminalizes holding, maintaining, placing, purchasing, selling or brokering in buying or selling of another person in[to] slavery, slavery-like conditions of forced labour, which includes

holding a person in ownership, denying a person the fruits of his or her labour or denying the freedom to change his or her status or work conditions in violation of rules of international law. The perpetrator who commits the criminal offence against a child and who is in a domestic relationship with the victim, or an official person in the exercise of his/her duties is subject to augmented punishment. Forced prostitution is criminalized by Article 201 while exploitation of children in pornography by Article 202 of the PCCK. Further, UNMIK Regulation No. 2001/27 of 8 October 2001 on Essential Labour Law in Kosovo provides protection against forced or compulsory labour<sup>200</sup> and prohibits the employment of persons under the age of 15.<sup>201</sup>

29. These provisions are supplemented by UNMIK Regulation No. 2001/4 contains provisions relating to victims and witness protection during investigation and court proceedings. UNMIK Administrative Direction No. 2005/3 addresses the procedures and functions of the Victim Assistance Coordinator responsible for coordinating the implementation of the Regulation, particularly assistance to victims of trafficking in the process of investigation, prosecution and rehabilitation undertaken by law enforcement as well as victims' assistance and shelter agencies. UNMIK Regulation No. 2001/4 provides that a person is not criminally responsible for prostitution or illegal entry, presence or work in Kosovo if that person provides evidence supporting a reasonable belief that he or she was the victim of trafficking and it ensures that the victims' assistance cannot be denied on the basis of any such charges. The Regulation also requires law enforcement officers to advise persons who are suspected victims of trafficking at the earliest available opportunity of their right to request the services and facilities set out in the Regulation and to contact the appropriate persons to arrange the requested assistance. The assistance is coordinated through the Victims Advocacy and Assistance Unit (VAAU) of the Department of Justice, Ministry of Labour and Social Welfare (MLSW), OSCE, IOM and several Kosovo NGOs working on the basis of Standard Operating Procedures (SOPs) for direct assistance to non-Kosovo victims of trafficking. The same procedures are applied informally pending adoption of SOPs to Kosovo victims. To address the victims' needs, Regulation No. 2001/4 details the types of services that shall be provided to a victim of trafficking. These include: a) free interpretation services in the

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<sup>200</sup> UNMIK Regulation No. 2001/27, section 4.

<sup>201</sup> UNMIK Regulation No. 2001/27, section 3.

language of their choice (provided by the VAAU or courts); (b) free legal counsel in relation to trafficking issues (criminal or civil) (funded by VAAU); (c) temporary safe housing, psychological, medical and social welfare assistance as may be necessary to provide for their needs; and (d) such other services as shall be specified in an administrative direction. These additional services are: assistance in reintegration, financial assistance, reparations assistance in arranging return in case of an applicant from outside of Kosovo and contacting the appropriate organization that provides medical, legal, psychological, social and financial assistance in the applicant's country of citizenship or previous habitual residence.<sup>202</sup> Additionally, sections 11 and 12 of UNMIK Regulation No. 2001/4 protect the victim from deportation and allow for evaluation of refugee status.

**30.** The following shelters for victims of trafficking are currently operational in Kosovo: the VAAU's Interim Secure Facility that provides immediate safe accommodation for a reflection period of three days to all presumed victims of trafficking, Kosovo NGO operated shelter for non-Kosovo victims of trafficking who wish to be repatriated, a Ministry of Labour and Social Welfare (MLSW) contracted child protection home that accommodates child victims of trafficking of low and medium risk and a Semi Independent Living Program for former child victims of trafficking, that is operated by an NGO and sponsored by VAAU.

**31.** The Table below indicates the numbers of victims of trafficking assisted to date:

<i>When</i>	<b>Victims Advocate assisted cases</b>	<b>Accommodated in Interim Secure Facility</b>
<b>2005</b>	32	25
<b>2004</b>	23	23
<b>2003</b>	20	12

**32.** Investigation of trafficking in human beings in Kosovo is performed by the Trafficking in Human Being Section (THBS) of the UNMIK Police where currently

<sup>202</sup> UNMIK Administrative Direction No. 2005/3, section 4.

26 officers from Kosovo Police Service (KPS) and 26 UNMIK Civpol officers are working based in 5 field offices in the 5 regions of Kosovo. In 2005 THBS's investigative activities led to 39 arrests and 13 penalty charges. Three UN police officers and four foreign citizens were arrested by UNMIK Civpol and KPS in the last days of August for involvement in trafficking in human beings in Kosovo.<sup>203</sup>

33. The endorsement of the Action Plan to Combat Trafficking in Human Beings in Kosovo (KPA), on 17 May 2005 is an important step in establishing an enduring institutional framework aimed at ensuring permanent and comprehensive coordination among the main actors dealing with counter trafficking in Kosovo. KPA is based on 5 principles: 1) government ownership, 2) civil society participation, 3) human rights based treatment of victims, 4) interdisciplinary coordination at ministerial and local level, and between government, IO's and NGOs and 5) evaluation and sustainability. It addresses 3 strategic objectives, namely prevention, protection and prosecution. The supporting framework for implementation of the KPA envisages an Inter Ministerial Working Group (IM-WG), involving all relevant PISG Ministries, International Agencies and selected NGOs active in combating trafficking in human beings, and its main role consists of developing and implementing the Kosovo anti-trafficking strategy and plan of action, of supporting the monitoring, evaluation and reviewing system of the KPA and of liaising between the IM-WG and their respective agencies, ensuring a regular flow of information among these bodies.

34. As part of an awareness-raising campaign, several large scale media campaigns have been prepared by AOGG, VAAU and IOM and are being implemented throughout Kosovo. They target the general public, officials as well as children, especially girls and young women. MEST and UNICEF have produced a documentary on the trafficking of women, slavery and prostitution. This was part of a wider girls and literacy project. Furthermore, there is an ongoing project that MEST is carrying out in cooperation with IOM regarding the prevention of trafficking of human beings in the Balkans through educational activities and capacity-building in schools. This 3-year project is implemented on a regional South-East European level.

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<sup>203</sup> Data from Advisory Office on Good Government's Quarterly Activity Report on Anti-Discrimination, Anti-Corruption, Anti-Trafficking in Human Beings and Human Rights, July – September 2005.

UNMIK's Victim's Assistance and Advocacy Unit (VAAU), in cooperation with MEST in Prishtinë/Priština and the OSCE is implementing a multi-ethnic 'Not For Sale' Anti-Trafficking Campaign aimed at preventing young persons from becoming victims of trafficking. The campaign includes regional Youth Day Festivals, a Kosovo-wide School Song Contest and other activities devoted to helping youth of all ethnicities learn about human trafficking, their rights and how to protect themselves. The campaign is also advertising the VAAU operated free-of-charge telephone HelpLine for human trafficking that is operational 24 hours a day. Over 5.000 people across Kosovo have participated directly in the campaign which has received extensive media coverage across Kosovo.

#### ARTICLE 9

35. UNMIK has introduced important legislative measures to protect the rights guaranteed under Article 9 of the ICCPR.

36. Under the Law on Criminal Procedure of the Federal Republic of Yugoslavia (LCP) which was applicable under UNMIK Regulation No. 1999/24, there was no definite requirement for the provision of information to an arrested person at the time of arrest. Under section 2.1(a) of UNMIK Regulation No. 2001/28 of 12 October 2001 on the Rights of Persons, an arrested person was given the right to be informed about the reasons for the arrest in a language that he or she understands<sup>204</sup> and to be informed orally of this right immediately after arrest.<sup>205</sup> These provisions were incorporated in Articles 14(1), 212(3) and 214(1) of the Provisional Criminal Procedure Code of Kosovo<sup>206</sup> (PCPCK) which set forth the right to be informed about the reasons for arrest in a language that the arrestee understands.

37. Under Article 212(5) of the PCPCK, as soon as possible after the arrest and no later than six hours from the time of the arrest, the public prosecutor or an authorized senior police officer shall issue to the arrested person a written decision on detention

<sup>204</sup> UNMIK Regulation No. 2001/28, section 2.1(a).

<sup>205</sup> UNMIK Regulation No. 2001/28, section 2.2.

<sup>206</sup> UNMIK Regulation No. 2003/26 of 6 July 2003 on the Provisional Criminal Procedure Code of Kosovo.

which shall include the first and last name of the arrested person, the place, date, and exact time of the arrest, the criminal offence of which he or she is suspected, the legal basis for the arrest and an instruction on the right of appeal. Under the previously applicable Article 192(3) of the LCP, the decision on detention could be handed over to the arrested person up to 24 hours from the arrest.

38. The PCPCK did not alter the maximum period of time within which a person deprived of his or her liberty under the suspicion of having committed a criminal offence should be brought before a judge<sup>207</sup>. Under Article 14(2) of the PCPCK such a person shall be brought before a judge promptly and at the latest within 72 hours of the arrest and shall be entitled to a trial within a reasonable time or to release pending trial.

39. Under Article 281(1) a court may order detention on remand against a person if:

- (a) There is a grounded suspicion that such person has committed a criminal offence;
- (b) One of the following conditions is met:
  - (i) He or she is in hiding, his or her identity cannot be established or other circumstances indicate that there is a danger of flight;
  - (ii) There are grounds to believe that he or she will destroy, hide, change or forge evidence of a criminal offence or specific circumstances indicate that he or she will obstruct the progress of the criminal proceedings by influencing witnesses, injured parties or accomplices; or
  - (iii) The seriousness of the criminal offence, or the manner or circumstances in which it was committed and his or her personal characteristics, past conduct, the environment and conditions in which he or she lives or other personal circumstances indicate a risk that he or she will repeat the criminal offence, complete an attempted criminal offence or commit a criminal offence which he or she has threatened to commit; and

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<sup>207</sup> LCP Article 196(3).

(c) A summons, an order for arrest, the promise of the defendant not to leave his or her place of current residence, prohibition on approaching a specific place or person, attendance at a police station, bail or house detention would be insufficient to ensure the presence of such person, to prevent re-offending and to ensure the successful conduct of the criminal proceedings.

40. Under Article 191 of the previously applicable LCP, the insufficiency of alternatives to detention on remand to ensure the presence of such person, to prevent re-offending and to ensure the successful conduct of the criminal proceedings was not a requirement for an order for detention on remand. It should also be noted that the prohibition on approaching a specific place or person, attendance at a police station and house detention were introduced as alternatives to detention on remand by the PCPCK.

41. Articles 286(2) and 286(3) of the PCPCK set forth a *habeas corpus* procedure, which was not available under the previously applicable LCP. Under Article 286(2) of the PCPCK, the detainee or his or her defence counsel may petition any pre-trial judge or presiding judge to determine the lawfulness of detention. If the petition establishes a *prima facie* case that the grounds for detention on remand in Article 281 of the PCPCK no longer exist due to changed circumstances or the discovery of new facts since the last court order on detention on remand or that detention is unlawful for some other reason, the pre-trial judge or the presiding judge may conduct a hearing at which the public prosecutor and the defence counsel shall be present.<sup>208</sup> At the hearing the pre-trial judge or the presiding judge shall order the immediate release of the detainee if the grounds for detention on remand in Article 281 of the present Code no longer exist, the period of detention on remand ordered by the court has expired, the period of detention on remand ordered by the court exceeds the specified time-limits, or detention is unlawful for some other reason.<sup>209</sup>

42. The provisions of the PCPCK on compensation for unlawful arrest or detention are very similar to the provisions of the previously applicable LCP<sup>210</sup>.

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<sup>208</sup> PCPCK, Article 286(3).

<sup>209</sup> PCPCK, Article 286(4).

<sup>210</sup> LCP Article 545.

Article 538(1) provides, *inter alia*, that the right to compensation shall be enjoyed by a person who by reason of an error or unlawful act of an authority was arrested without any grounds or held for some time in detention on remand or in an institution for serving a punishment or a measure and a person who was held in detention on remand for longer than the term of imprisonment imposed on him or her. Article 538(2) provides that a person who has been arrested by the police without legal justification shall be entitled to compensation if detention on remand was not ordered against him or her or the time he or she spent under arrest was not counted in the punishment imposed on him or her for a criminal offence or a minor offence.

## ARTICLE 10

43. UNMIK Regulation No. 2004/46 on the Law on the Execution of Penal Sanctions, Standard Operating Procedures of the Penal Management Division (PMD), UNMIK Regulation No. 2004/8 on the Juvenile Justice Code and the PCKK all provide the legal framework to ensure that the applicable laws are followed and that the operations of each facility in which persons are deprived of their liberty ensure the dignity and human rights of all detainees and prisoners.

### *Treatment of persons deprived of liberty*

44. UNMIK Regulation No. 2004/46 prescribes the type of treatment acceptable for convicted persons. On the basis of this Regulation, Standard Operating Procedures (SOPs) have been developed. The SOPs are located in all prisons and available to all staff. Prisoner routines are developed from the SOPs and a copy of these routines is located in all cells in the prisons.

45. A regime process has been established for sentenced prisoners. This uses continual prisoner behaviour assessments and length and type of sentence to determine the degree of privileges afforded the prisoner. Comprehensive risk assessments are completed to ensure the good order of the prison is maintained when prisoners are placed on specific regimes. Prisoner routines are the blueprint for the



activities of the prisoners. Staff and prisoners each have a copy of the routines to ensure that prisoners receive appropriate treatment.

46. Prisoners and detainees may access their files if a request is made to the Director. This gives prisoners and detainees access to their legal documents. Prisoners are not allowed to bring this information into their cells for reasons of confidentiality.

47. All prisons are equipped with a prisoner grievance system that insures confidentiality from line officers and from time to time the prison management. A secure complaints box is located in every landing where prisoners can write a letter of complaint and address it to any individual or organization of their choice. This box is emptied once per week by a dedicated grievance officer who records the complaint in an official log book and forwards it to the appropriate person or organization.

48. The conditions of prisons are continuously measured against European Standards found in a variety of documents and publications such as the UN prison rules. The requirement of the conduct an internal inspection of correctional facilities under Article 195 of UNMIK Regulation No. 2004/46 has been discussed under Article 7 above.

49. Medical teams, social workers, the Ombudsperson and the ICRC evaluate the conditions of the prisons on a regular basis and report back to the Head of PMD, to ensure a safe and secure facility for prisoners and staff. Independent agencies also report on conditions of the prisons to ensure that the standards employed are acceptable within the European framework. There is an approved list of approximately 12 organizations and NGOs who have access to the prisons. All other official visitors can be granted access to the prisons with approval of the Commissioner.

50. If a prisoner requires medical services that cannot be provided within the Kosovo Correctional Service (KCS), arrangements are made for the prisoner to attend the local hospital for examinations and treatment. All prisons have a social work team

that is assigned to specific blocks within the prison. These social workers have scheduled visits with prisoners and conduct visits upon prisoner requests.

***Segregation of accused persons from convicted persons***

**51.** Kosovo has two prisons (Dubrava and Lipjan) and six Detention Centres (Prizren, Peja/Pec, Gjilan, Pristina, Mitrovica and Lipjan). As far as possible, detainees are housed in separate facilities from sentenced prisoners. However, due to operational requirements for the safety of prisoners and staff, some sentenced prisoners may be placed in a detention facility and some detainees in a prison. If this is the case, sentenced prisoners are not accommodated with detainees nor do they associate with detainees according to their regimes and routines.

**52.** Several sentenced prisoners are being housed in Detention Centres (DCs). There are several reasons for this. Firstly, for special cases, sentenced prisoners are housed in a DC if they make a request to be closer to their family for a particular concern. This type of placement is not common. However it will be considered if the concerns are real. Secondly, several sentenced prisoners are placed voluntarily in DCs to engage in vocational training. This combines prison employment with vocational training typically in the facility's kitchen. It is nevertheless very difficult to place detainees in employment positions due to the applicable law pertaining to detainees. The final decision for detainee employment rests with the courts. All prisoners located in DCs are treated according to the standards applicable in prisons. Thirdly, sentenced prisoners can be relocated to a different facility in order to preserve order in the prison. This protects both the staff and the prisoner from conflict and ensures a level of stability within the prisons.

***Reform and social rehabilitation***

**53.** The framework for prisoner re-socialization and rehabilitation rests in UNMIK Regulation No. 2004/46. The KCS has written the importance of prisoner programs into their corporate vision.

Prisoner employment is used for 2 purposes. The first is that prisoners have opportunity to earn money and the second is that it offers opportunity for prisoners to develop employment skills.

54. There is vocational training for prisoners in Dubrava and Lipjan Prisons in the areas of agriculture, auto mechanics, plumbing, electrical, metal work, carpentry and dressmaking. Each of these fields is being further developed in partnership with external donors. PMD/KCS is continually looking for methods and resources to continue developing the Vocational Training program.

#### ARTICLE 11

55. Under the applicable law in Kosovo, there is no legal basis for imprisonment merely on the ground of an inability to fulfil a contractual obligation. A sentence of imprisonment may only be imposed by a court if the defendant is found guilty in criminal law cases and in cases in which a minor offence judge finds the defendant guilty in a minor offence procedure, but not in other procedures or on the grounds of inability to fulfil contractual obligations.

#### ARTICLE 12

56. Between March and June 1999 forces of the FRY and Serbia forcibly expelled some 863,000 Kosovo Albanians from Kosovo. Of these, 783,000 - the vast majority - stayed in the region - in Albania, The former Yugoslav Republic of Macedonia (FYROM), Montenegro or Bosnia-Herzegovina. As of 9 June 80,000 refugees were evacuated to 40 other countries participating in a Humanitarian Evacuation Programme (HEP), organized by the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM).

57. In addition, several hundred thousand other Kosovo Albanians were displaced within Kosovo and remained in Kosovo throughout the conflict. Figures for the numbers of internally displaced are less reliable than those for refugees. The UNHCR

estimated that as of 13 May 1999 there were 590,000 IDPs in Kosovo, although the lack of international personnel on the ground makes these figures difficult to verify.<sup>211</sup>

**58.** The vast majority of ethnic Albanians who had fled internally or abroad returned to their places of origin within weeks of the adoption of UNSCR 1244 on 10 June 1999, despite warnings that their safety could not yet be guaranteed. By the end of June, some 500,000 people had returned, sometimes as many as 50,000 per day. By mid-November, 810,000 Kosovo refugees had returned, including about 60 percent of the UNHCR evacuees to third countries. However, because some 100,000 homes remained uninhabitable, many returnees became displaced within Kosovo. About 350,000 returnees remained displaced at year's end.<sup>212</sup>

***Displacement and returns between June 1999 and first half of 2000***

**59.** In the immediate post-conflict period until the first half of 2000, a second wave of departures resulted from an increasing number of incidents committed by Kosovo Albanians against Kosovo Serbs and Roma. In particular, high profile killings and abductions, as well as looting, arsons and forced expropriation of apartments prompted departures<sup>213</sup>.

**60.** Of some 841,000 Kosovo Albanian refugees who returned to Kosovo, more than 147,000 have returned in an organized manner, mostly with the assistance of UNHCR and IOM. As at 29 May 2000, the total number of internally displaced persons from Kosovo who had registered for humanitarian assistance in the Federal Republic of Yugoslavia stood at some 211,000, with 180,000 in Serbia and 31,000 in Montenegro<sup>214</sup>.

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<sup>211</sup> OSCE, 1999, Human Rights in Kosovo, As Seen, As Told, Ch. 4.

<http://web.archive.org/web/20000930104944/www.osce.org/kosovo/reports/hr/index.htm>

<sup>212</sup> U.S. Committee for Refugees, 31 December 2000, World Refugee Survey 2000, Yugoslavia Country Report <http://www.refugees.org/world/countryrpt/europe/2000/yugoslavia.htm>

<sup>213</sup> United Nations Security Council, 12 July 1999, Report of the Secretary General on the United Nations Interim Administration Mission in Kosovo.

<sup>214</sup> United Nations Security Council, 6 June 2000, Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2000/538; paras. 70-71.

**61.** While voluntary return movements from Western Europe and other countries have been ongoing, forced returns started at the end of March, with an anticipated number of between 100,000 and 150,000 people that were expected to return to Kosovo during 2000. UNMIK, including UNHCR, urged host Governments to ensure orderly, humane and phased returns and to establish a clear priority for returns on a voluntary basis.

***Displacement and returns between second half of 2000 and first half of 2001***

**62.** Throughout 2000, repeated violent flare-ups in Mitrovicë/Mitrovica provoked renewed ethnic tension and led to additional departures of Kosovo Albanian families from the northern side of the city. For example, in July 2000 alone, more than 20 ethnic Albanian families from northern Mitrovicë/Mitrovica fled on the southern side of the city and, while accommodated either with host families or in a temporary transit centre by UNHCR, remained in adverse socio-economic conditions dependent on the support of humanitarian organisations. Some families reported being verbally or physically threatened, having their homes attacked or entered by force, receiving phone calls warning them to leave, or being summarily "evicted" from their homes.<sup>215</sup> Although since March 2001 no significant new flights of Kosovo Albanians from the north side of the river Ibar were registered, the situation of Kosovo Albanians in minority areas (for example, Štrpce/Shtërpçë) remained extremely precarious and freedom of movement very limited.<sup>216</sup>

**63.** Ethnic Serbs and Roma who did not leave Kosovo when Yugoslav forces withdrew lived primarily in enclaves. Kosovo Serbs and Roma largely remained in the northern municipalities of Leposavic/ Leposaviq, Zubin Potok, and Zvecan, and in the northern part of Mitrovicë/Mitrovica as well as in scattered enclaves under KFOR protection elsewhere. KFOR and UNMIK provided security to these enclaves, settlements, and camps, and escorted minority members who left their residence areas as well as convoys of private Serb vehicles. The UNHCR provided buses to transport

<sup>215</sup> United Nations Security Council, 15 September 2000, Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2000/878, para 34.

<sup>216</sup> United Nations High Commissioner for Refugees/Organization for Security and Co-Operation in Europe, 31 October 2001, Assessment of the Situation of Ethnic Minorities in Kosovo (Period covering March 2001 through August 2001):

[http://www.osce.org/kosovo/documents/reports/minorities/min\\_rep\\_08\\_eng.pdf](http://www.osce.org/kosovo/documents/reports/minorities/min_rep_08_eng.pdf)

Serbs in larger numbers between enclaves and into Serbia proper to take care of personal business.

**64.** Security continued to be an issue of overriding concern for Serbs and other minority communities and attacks, particularly against Serbs, remained high. For example, a bomb attack on a bus convoy that was carrying more than 250 Serbs to a religious ceremony in Kosovo, resulted in seven people dead and more than 40 injured. UNMIK police sources indicate that during the period 2 January-28 October 2000, 122 Albanians (58 per cent of the total) and 78 Serb or other ethnic minorities (37 per cent) were reportedly murdered (in the remaining cases the ethnicity was not recorded), despite the fact that, overall, ethnic minorities constitute just some 10 per cent of the total population in Kosovo<sup>217</sup>. However, levels of security fluctuated in light of local circumstances. The picture from municipality to municipality, and community to community, was diverse. Some communities saw an easing in the level of violence while others continued to be subjected to unrelenting violent attacks<sup>218</sup>.

**65.** Roma, Ashkali and Egyptian communities faced - to a greater or lesser extent - limits to their freedom of movement adversely affecting their ability to exercise social and economic rights especially with regard to full access to employment opportunities, education, health, social services and utilities. Hundreds of displaced Roma, Ashkali and Egyptians living in enclaves, collective centres or IDP camps such as those located in Plemetin/Plemetina, Mitrovicë/Mitrovica, Zhitkoc/Zitkovac and Leposavic/Leposaviq or being hosted by their communities from their own neighbourhoods/villages, remained unable to return to their own neighbourhoods, damaged or destroyed or illegally occupied houses.

**66.** Often, key obstacles to return included the unsustainable living conditions in the potential locations for return, the lack of significant enough Kosovo-wide improvements in security and freedom of movement as well as lack of reconstruction assistance. A joint OSCE/UNHCR report cites the example of the Albanian-speaking

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<sup>217</sup> United Nations High Commissioner for Refugees, 31 January 2004, *Minority Returns to Kosovo*, para. 116)

<sup>218</sup> United Nations High Commissioner for Refugees/Organization for Security and Co-Operation in Europe, October 2000, *Assessment of the Situation of Ethnic Minorities in Kosovo (period covering June through September 2000)*, paras 1-2,

[http://www.osce.org/kosovo/documents/reports/minorities/min\\_rep\\_06\\_eng.PDF](http://www.osce.org/kosovo/documents/reports/minorities/min_rep_06_eng.PDF)

Egyptian communities of western Kosovo that “enjoyed a gradual but significant reduction of insecurity, steady improvements of freedom of movement, and increased dialogue and interaction with the majority Albanian community, yet this region did not receive significant numbers of new returns. This can be partially attributed to the fact that material conditions (particularly reconstruction and income generation opportunities) were not widely available, and existing Egyptian communities had exhausted their absorption capacity given already over-burdened host family arrangements”<sup>219</sup>.

67. Although Ashkali and Egyptians enjoyed more advances in their general situation as compared to Kosovo Serbs and Serbian-speaking Roma, very few spontaneous returns were noted during this period. Return of Roma, Ashkali and Egyptians (RAE) was largely limited to UNHCR-facilitated movements from FYROM, which continued with very low numbers, with 327 RAE refugees returning during 2001 to Kosovo. It should be noted that these returns took place mostly to six municipalities only, and that the majority (70%) of the total returns to Kosovo during the year took place during the period April-July, coinciding with the most critical periods of internal armed conflict in FYROM.

68. Among the other minorities, Bosniaks, Croats and Gorani were also - to a greater or a lesser extent - limited in their freedom of movement. Individuals belonging to these communities experienced different levels of harassment and discriminatory practices in accessing economic opportunities and social services on account of their ethnic background and the associated issue of the language limitations, and to the misperceptions associated to their speaking a Slavic language. These factors compelled many individuals of these communities to leave Kosovo<sup>220</sup>.

69. The pattern of ongoing displacement of minority populations leaving Kosovo continued to be small scale and low key, yet unremitting. According to a joint report

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<sup>219</sup> United Nations High Commissioner for Refugees/Organization for Security and Co-Operation in Europe, 31 May 2002, Ninth Assessment of the Situation of Ethnic Minorities in Kosovo (Period covering September 2001 to April 2002).

[http://www.osce.org/kosovo/documents/reports/minorities/min\\_rep\\_09\\_eng.pdf](http://www.osce.org/kosovo/documents/reports/minorities/min_rep_09_eng.pdf), Paras 207-209

<sup>220</sup> Ibidem, paras 218-220.

OSCE/UNHCR<sup>221</sup>, “the primary motivation for such departures is security related. Security concerns manifest themselves not only in fear for physical safety but also in more complex ways including freedom of movement restrictions and limited access to basic services and employment prospects. On this basis recent departures may be attributed as much to the occurrence of individual incidents of violence as to resignation after prolonged periods of lesser forms of intimidation and harassment. Lack of optimism for a longer-term future in Kosovo is a major contributing factor in the decision to leave”.

70. Due to the lack of systematic registration of the IDPs in Kosovo and to the boycott of the UNMIK Civil Registration, reliable estimates of the numbers of IDPs within Kosovo became available only in April 2001. In addition to the 10,800 Kosovo Albanian IDPs from Southern Serbia proper, UNHCR estimated 10,000 ethnic Serb IDPs (originating from municipalities south of the river Ibar) in North Mitrovicë/Mitrovica, Zubin Potok, Zvecan and Leposavic/ Leposaviq municipalities; 2,000 ethnic Serb IDPs in Štrpce/Shtërpçë municipality (mainly originating from Prizren and Ferizaj/Urosevac municipality); 2,500 ethnic Serb/Roma IDPs in collective accommodation in various parts of Kosovo; 8,000 ethnic Albanian IDPs mainly in south Mitrovicë/Mitrovica municipality; 2,500 ethnic Serb and Roma IDPs dispersed in various municipalities.

71. However, despite continuous challenges to the security of minority communities, during June and September, some small-scale spontaneous returns took place, including 35 Kosovo Serb IDPS to Slivovo (Prishtinë/Priština region) and some 100 to the village of Grace in Vushtrri/Vucitrn (Mitrovicë/Mitrovica)<sup>222</sup>. Over the course of 2000, as many as 2,000 Kosovo Serbs returned and about 104,000 Kosovo Albanians. Of these latter, although the vast majority (over 80,000) came back

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<sup>221</sup> United Nations High Commissioner for Refugees/Organization for Security and Cooperation in Europe, 31 March 2001, Assessment of the Situation of Ethnic Minorities in Kosovo (period covering October 2000 through February 2001), para 12  
[http://web.archive.org/web/20020822064748/www.osce.org/kosovo/documents/reports/minorities/min\\_rep\\_07\\_eng.pdf](http://web.archive.org/web/20020822064748/www.osce.org/kosovo/documents/reports/minorities/min_rep_07_eng.pdf)

<sup>222</sup> United Nations Security Council, 18 September 2000, Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2000/878,  
<http://www.un.org/Docs/sc/reports/2000>, para 58.



voluntarily, over 12,500 were forcibly returned<sup>223</sup>. In October 2000 UNMIK released a revised version of the policy paper on the repatriation of Kosovo Albanians. In this paper, UNMIK appealed for a moratorium on forced and induced repatriation during the winter months and encouraged asylum States to continue concentrating on supporting efforts to develop sustainable conditions for returns<sup>224</sup>. In January 2001 IOM assisted with the voluntary return of some 430 persons and the UNMIK border police reported that some 530 persons were forcibly returned to Kosovo during the month of January.<sup>225</sup> From January to April 2001, IOM assisted in the voluntary return of 2,759 Kosovo Albanians while, for the same period, the figures for forced returns rose to 2,300<sup>226</sup>.

***Displacement and returns between second half of 2001 and first half of 2002***

**72.** During September 2001 and April 2002, despite the decrease in ethnic murder, arson, looting and other crimes, the main challenge for minorities in Kosovo continued to be the threat of physical violence.<sup>227</sup> This overriding concern influencing individual perceptions of security, and therefore the exercise of freedom of movement undermined the ability of a large number of members of minority communities to secure the means by which they could be self-supporting, inducing ongoing displacement as well as impeding sustainable returns<sup>228</sup>. However, overall estimated numbers of minority communities in Kosovo remained fairly constant. Continued

<sup>223</sup> United Nations Security Council, 13 March 2001, Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2001/218, <http://www.un.org/Docs/sc/reports/2000>, para 17.

<sup>224</sup> United Nations Security Council, 15 December 2000, Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2000/1196, <http://www.un.org/Docs/sc/reports/2000>, para 52, 54.

<sup>225</sup> United Nations Security Council, 13 March 2001, Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2001/218, <http://www.un.org/Docs/sc/reports/2000>, para 17.

<sup>226</sup> United Nations Security Council, 7 June 2001, Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2001/565, <http://www.un.org/Docs/sc/reports/2000>, para 13.

<sup>227</sup> United Nations Security Council, 22 April 2002, Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2002/436, <http://www.un.org/Docs/sc/reports/2002/sgrep02.htm>, para. 21.

<sup>228</sup> United Nations High Commissioner for Refugees/Organization for Security and Co- Operation in Europe, 31 May 2002, Ninth Assessment of the Situation of Ethnic Minorities in Kosovo (Period covering September 2001 to April 2002), [http://www.osce.org/kosovo/documents/reports/minorities/min\\_rep\\_09\\_eng.pdf](http://www.osce.org/kosovo/documents/reports/minorities/min_rep_09_eng.pdf), para 5.

fears about security mean that few minorities have returned to Kosovo. At the same time the numbers of minorities leaving tapered off<sup>229</sup>.

73. This period marked the first organised returns of Kosovo Serbs to Kosovo. ~~Four small-scale organised returns to Kosovo were facilitated by UNHCR, UNMIK, KFOR and other partners during the second half of 2001, resulting in the actual return of over 175 persons<sup>230</sup>.~~

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74. Besides occupied properties and security concerns, one of the reasons affecting displacement in this period was the limited absorption capacity and the shattered infrastructure of Kosovo municipalities, with very few shelter possibilities. An estimated 98,000 homes destroyed or damaged in 1999 remained uninhabitable in 2001. Assuming an average family size of six per household, this would mean that as many as 600,000 could still be displaced from their original homes. This rough estimate would be qualified by the possibility that some uprooted persons may have found other durable solutions and others could remain displaced because of fear of persecution but have intact homes<sup>231</sup>. As a result, as of April 2001, about 3,500 persons remained hosted in temporary collective shelters<sup>232</sup>.

75. According to UNHCR, 997 minority IDPs returned home to Kosovo during the first months of 2002, 439 of whom were Kosovo Serbs. The outflow figures of minority community members were approximately 268<sup>233</sup>.

<sup>229</sup> United Nations High Commissioner for Refugees/Organization for Security and Co-Operation in Europe, 31 October 2001, Assessment of the Situation of Ethnic Minorities in Kosovo (Period covering March 2001 through August 2001)

[http://www.osce.org/kosovo/documents/reports/minorities/min\\_rep\\_08\\_eng.pdf](http://www.osce.org/kosovo/documents/reports/minorities/min_rep_08_eng.pdf) para 1-2.

<sup>230</sup> United Nations High Commissioner for Refugees/Organization for Security and Co-Operation in Europe, 31 May 2002, Ninth Assessment of the Situation of Ethnic Minorities in Kosovo (Period covering September 2001 to April 2002)

[http://www.osce.org/kosovo/documents/reports/minorities/min\\_rep\\_09\\_eng.pdf](http://www.osce.org/kosovo/documents/reports/minorities/min_rep_09_eng.pdf)

<sup>231</sup> U.S. Committee for Refugees, 31 December 2002, World Refugee Survey 2002, Yugoslavia (including Kosovo) <http://www.refugees.org/world/countryrpt/europe/yugoslavia.htm>, p.258

<sup>232</sup> Council of Europe (COE), Commissioner for Human Rights, 16 October 2002, Kosovo: The Human Rights Situation and the Fate of Persons Displaced from their Homes, Comm DH (2002) 11.

[http://www.commissioner.coe.int/docs/CommDH\(2002\)11\\_E.pdf](http://www.commissioner.coe.int/docs/CommDH(2002)11_E.pdf) para 19.

<sup>233</sup> United Nations Security Council, 17 July 2002, Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2002/779, <http://www.un.org/Docs/sc/reports/2002/sgrep02.htm>, para 34.

**76.** In May 2002, the SRSB briefed donors on the financial requirements for the return process, amounting to over 16 million Euros and launched the “Concept Paper on the Right to Sustainable Returns”, based on the individual right to return to the place of origin.

***Displacement and returns between second half of 2002 and first half of 2003***

**77.** Security, freedom of movement and access to basic services continued to improve for members of minority communities. However, the situation varied considerably among the various communities, from one location to another, with very limited movement in much of the Pejë/Pec region, and substantial limitations in the Prishtinë/Priština and Mitrovicë/Mitrovica regions. In contrast, minority community members were able to travel without substantial restrictions in the Gjiilan/Gnjilane region, while freedom of movement in the Prizren region continued to improve. Nonetheless, given continuing harassment faced by minority community members in Kosovo, the possibility of violence and the fear it engendered remained a significant barrier to free movement throughout Kosovo. The failure of the authorities of Serbia and Montenegro to recognize Kosovo license plates continued to impact negatively on the freedom of movement of the Kosovo Serb community.<sup>234</sup>

**78.** During this period, KFOR continued its “unfixing” strategy whereby the number of KFOR personnel assigned to “fixed” tasks – such as guarding threatened patrimonial sites or providing static vehicle check-points – has been reduced. The “unfixing” strategy also applies to reducing permanent protection for vehicle convoys. Although KFOR bus or convoy escorts continue in certain areas, such as in the Pejë/Pec and Prizren regions respectively, the general trend is for KFOR to reduce its close protection for vehicle convoys, and to provide route security only. UNMIK Police started to gradually reduce its escort service, with the Kosovo Police Service taking over where escorts were still deemed necessary. A number of dedicated transportation services for minority community residents remained in place. The civil service bus line, the UNMIK “freedom of movement” train and the humanitarian bus

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<sup>234</sup> United Nations Interim Administration Mission in Kosovo (UNMIK), 15 December 2003, 2004 Strategy for Sustainable Returns

service networks all continued to operate. An estimated 15 per cent of minorities continue to require special transport arrangements to reach their workplace<sup>235</sup>.

**79.** Kosovo Serb political leaders voiced strong opposition to the removal of KFOR fixed security measures. However, amongst many members of the minority communities themselves, there appeared to be a general understanding of the rationale behind the revised security measures, and a developing acceptance that their security was not being compromised by the new approach.<sup>236</sup> However, the demands of Kosovo Serbs for greater and more efficient security measures prompted both KFOR and UNMIK to reassess and enhance security in several locations. The escorts of the buses of the humanitarian bus service, which had been lowered to 15 per cent, again increased to 26 per cent<sup>237</sup>.

**80.** UNHCR estimated an overall figure of 22,000 "minority IDPs", i.e. members of a "community that lives in a situation where they are a numeric minority relative to the communities surrounding them." However, this figure was an estimate and not based on any registration or census<sup>238</sup>. According to official statistics, as of November 2002, at least 1,744 IDPS members of non-Albanian minorities remained hosted in Temporary Collectives Shelters, including 796 ethnic Serbs and 651 Roma as well as about 2,450 ethnic Albanians.

**81.** An analysis of the UNHCR minority return statistics showed that the level of physical security and freedom of movement varied depending on the minority concerned and the location of the minority and were key factors affecting the pace of return. The 2,741 recorded minority returns to place of origin in 2002 exceeded the yearly returns reported thus far. In contrast to the year 2000 when 1,906 persons

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<sup>235</sup> United Nations Security Council, 15 October 2003, Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo <http://ods-ddsny.un.org/doc/UNDOC/GEN/N03/562/93/IMG/N0356293.pdf?OpenElement>, para 7-8

<sup>236</sup> United Nations High Commissioner for Refugees/Organization for Security and Co-Operation in Europe, March 2003, Tenth Assessment of the Situation of Ethnic Minorities in Kosovo (Period covering May 2002 to December 2002) [http://www.osce.org/kosovo/documents/reports/minorities/min\\_rep\\_10\\_eng.pdf](http://www.osce.org/kosovo/documents/reports/minorities/min_rep_10_eng.pdf)

<sup>237</sup> United Nations Security Council, 15 October 2003, Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo <http://ods-ddsny.un.org/doc/UNDOC/GEN/N03/562/93/IMG/N0356293.pdf?OpenElement> para 7-8

<sup>238</sup> United Nations High Commissioner for Refugees (UNHCR), Map: Estimate of refugees and displaced persons still seeking solutions in South Eastern Europe, 1st July 2005)

returned to their place of origin, nearly all of them Kosovo Serbs returning to mono-ethnic enclaves, the returns in 2002 were more diversified in terms of ethnicity and regions. However, the statistical data may have been somewhat misleading in that they suggested greater improvements in the environment than had actually taken place. The increase in returns for 2002 must be seen within the context of an overall downward trend in returns, most significantly amongst Kosovo Serbs, witnessed in the previous year. Many factors contributed to this decrease, including violent attacks against the minority communities in 2000 and 2001 and the instability created in the region by the conflicts in FYROM and southern Serbia. Another determining factor was the saturation of the mono-ethnic enclaves, where large numbers of IDPs had sought refuge, over and above returnees going back home. Kosovo Serb families displaced from these locations have continued to return. These returns were encouraged by the security provided by such concentrations of Kosovo Serbs. It should be noted that these Kosovo Serb mono-ethnic communities of return were mono-ethnic villages or separate Kosovo Serb parts of ethnically mixed villages or towns in the pre-conflict. Thus, continued and justified concerns about security, the preference to return to areas with a concentration of Serb families, and the felt need for security surveillance by KFOR, UNMIK Police or KPS explain why the majority of Kosovo Serb returns took place in mono-ethnic areas rather than mixed ones. Security conditions therefore can safely be said to determine the location and the pace of return<sup>239</sup>.

82. Such a pattern was seen in the Pejë/Pec region, where the pre-conflict demographic distribution was one in which most Kosovo Serb communities were relatively separate both physically and in terms of interaction with other ethnic communities. As returns occurred in the region, the returning Serb population reproduced the pre-conflict pattern of Serb settlement, by returning to mono-ethnic enclaves or villages. In the well-known return to the Osojan/Osojane valley in Istog/Istok municipality, the returnees remained isolated, replicating the pre-conflict

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<sup>239</sup> United Nations High Commissioner for Refugees/Organization for Security and Co-Operation in Europe, March 2003, Tenth Assessment of the Situation of Ethnic Minorities in Kosovo (Period covering May 2002 to December 2002) page 26.

situation. This isolation also resulted in heavy reliance on KFOR security and escorts. Such security arrangements limited the returnees' freedom of movement and access to basic services, as well as employment opportunities outside the village. Security concerns of the returnees were reinforced when pensioners from the village were attacked in Pejë/Pec town in October 2002. This can be contrasted with the return to the two nearby mono-ethnic villages of Bica/Biqë and Grapç/Grabac in Klinë/Klina municipality. Immediately after the return, the returnees' determination to establish contacts with neighbouring Albanian villages was facilitated by KFOR's less stringent security controls. The initial positive interaction tended to deteriorate. Not only did contact diminish, but also security-related situations occurred.

83. With regard to non-Serb returns, Kosovo Roma, Ashkali and Egyptians returns were been mostly to mixed communities throughout Kosovo. Examples include the Kosovo Ashkali returns to Magura, Mala Dobraja and Prishtinë/Priština town within the Prishtinë/Priština region. Non-Serb returns to ethnically distinct areas within mixed communities also took place, for instance in all five municipalities of the Pejë/Pec region. Returns to ethnically mixed areas required intensified policing by KPS and UNMIK police. Despite lengthy and intensive preparations, as well as the encouraging involvement of local officials, the returns faced security incidents targeting both the residing minority community as well as the returnees. A good example of this is the return of Ashkali to Vushtrri/Vucitrn town, where a series of serious incidents took place in 2002.

84. The continued security challenges present in all returns highlighted the need to prioritise confidence-building and inter-ethnic dialogue in

order to create minimum levels of stability before returns take place. In the absence of such dialogue the security conditions and freedom of movement remain problematic. Heavy reliance on KFOR and UNMIK Police is then necessary, as occurred in Osojan/Osojane. Such returns, unless followed by intense reconciliation efforts, leave the community vulnerable to violence or harassment as soon as the international military or police forces are reduced below a certain level.

85. When security issues remain unresolved, then the return movements have little chance of being sustainable. In another example, the spontaneous return of the first group of 26 Kosovo Albanians to their mono-ethnic but deserted village Donja Bitinja/Bitanja e Ultë in the Kosovo Serb majority Štrpce/Shtërpçë municipality met with initially strong opposition by the inhabitants of the neighbouring Serb village of the same name. Concerns for the security of both communities led the Polish-Ukrainian KFOR to temporarily impose restrictions on movements in and around the village. The international organisations intervened to allow the Kosovo Albanian IDPs to exercise their right to return. As a result KFOR agreed to maintain security arrangements that were effective but less restrictive. Simultaneously the returnees took the initiative to engage in dialogue with the Kosovo Serbs.

86. In November 2002, in a donor coordination meeting in Brussels, UNMIK introduced its 2003 Manual for Sustainable Returns, a programme emphasizing the need for a grassroots approach and focuses on multisectoral projects that engage the community as a whole. In the same month, the Task Force on Returns, comprising UNMIK, KFOR, UNHCR and the PISG to ensure an effective and consistent

implementation of returns policies among key institutions as well as to provide high-level support and oversight for the returns process<sup>240</sup>.

*Displacement and returns between second half of 2003 and first half of 2004*

87. The second half of 2003 was characterized by a number of violent attacks, including shootings, in which the victims were members of the Kosovo Serb community, as well as UNMIK law enforcement authorities. UNMIK police and KFOR increased security in these areas following the incidents and continued to investigate the crimes. While it cannot be assumed that all these crimes were inter-ethnic in nature, they nevertheless had a significant effect on feelings of insecurity among Kosovo Serbs and led other minorities to keep a low profile. Although protests against the incidents in Kosovo Serb communities were largely peaceful, there were instances of intimidation and harassment in Kosovo Albanian, Kosovo Serb and other communities. The increased feeling of insecurity following the violent incidents took a toll on the confidence of the minorities. Many demanded the reinstatement of security escorts in places where, because of improvements in security, they had been previously discontinued. KFOR and UNMIK police also received increased demands for school escorts. In some locations, parents refused to send their children to school without escorts. The heightened tension and the related demands by Kosovo Serbs for greater and more efficient security measures prompted both KFOR and UNMIK to reassess and enhance security in several locations. A number of dedicated transportation services for minority residents continued to operate, including the civil service bus line, the UNMIK “Freedom of Movement” train and the humanitarian bus service networks.<sup>241</sup>

88. While the heightened level of fear within the Kosovo Serb and other minority communities led to numerous postponements of returns activities, it did not result in the outright cancellation of any projects, an optimistic sign in an otherwise discouraging period. Similarly, anecdotal evidence regarding individual returns pointed to the fact that many may have delayed deciding whether to return to Kosovo,

<sup>240</sup> United Nations Security Council, 29 January 2003, Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo (S/2003/113) <http://ods-ddsny.un.org/doc/>

<sup>241</sup> United Nations Security Council, 15 October 2003, (S/2003/996) Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo <http://ods-ddsny.un.org/doc/>



but few reached an outright negative decision in the wake of the August crime wave. However, given the late stage in the year during which these crimes occurred, delayed decisions ultimately meant that many who were considering returning in 2003 postponed their decisions.

89. During 2003, a total of 3,629 persons returned to communities where they were in the minority, including 1,487 Kosovo Serbs, 1,387 Roma, Ashkali and Egyptians, 377 Bosniaks, 133 Gorani and 245 Kosovo Albanians<sup>242</sup>.

90. The March 2004 eruption of mass demonstrations led to inter-ethnic violence and civil unrest of a scale not witnessed since 1999. The violence rapidly spread to all regions of Kosovo resulting in displacement among all minority communities. Notably, the violence systematically targeted mainly members of minority communities who had not been displaced over the past five years, although returnees also came under direct attack. The Kosovo Serbs were the primary target of this inter-ethnic violence, with 3,400 displaced who sought refuge in KFOR camps, public buildings or private accommodation. Equally, various serious security incidents affected Roma, Ashkali and Egyptian communities. This particularly concerned Vushtrri/Vucitrn town, where the entire Ashkali neighbourhood was systematically attacked, houses burned and looted. Likewise, some Albanian communities and families in a minority situation in the northern municipalities suffered security incidents. Finally, whereas Bosniaks and Gorani were not directly targeted, some felt sufficiently at risk to opt for precautionary self-evacuation, or were evacuated by police to safer places. The law enforcement authorities and political leadership did not manage to stop the violence early on and the three days of violence left according to initial information 19 civilians killed and more than 950 civilians injured – both killed and injured were of various ethnicities. Approximately 730 houses belonging to minorities were damaged or destroyed, as well as 36 churches, monasteries, religious sites and public buildings catering to minorities. By 23 March, a total of

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<sup>242</sup> United Nations Security Council, 26 January 2004, (S/2004/71) Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo <http://ods-ddsny.un.org/doc/>, para 31.

more than 4,100 Serb, Roma, Ashkali, Egyptian and Albanian minority community members had been displaced as result of the unrest.<sup>243</sup>

***Displacement and returns between second half of 2004 and first half of 2005***

**91.** While the day-to-day security situation stabilized after the March violence, Kosovo Serbs and members of other minority communities continued to face serious threats to their well-being and security, based on ethnicity. In some regions, Kosovo Serbs were travelling through areas in which there was a Kosovo Albanian majority only with escorts or through special transport services, while in other areas they used vehicles with KS license plates to undertake routine travel, while requesting escorts for more high-profile trips.

**92.** The rate of returns following the March events significantly reduced, and the safety and sustainability of these returns remained fragile. As at 24 September 2004, 2,288 people who had been displaced in the March violence had not yet returned to their homes. Up to 31 August, the number of minority returns to Kosovo in 2004 was 1,300. The pace of returns for 2004 is substantially slower than in 2003, with the number of returns at the end of August amounting to only 40 per cent of last year's total for the same period. The March violence had a particularly negative impact on urban returns: the only significant urban returns projects now under way involved the return of Kosovo Roma and Egyptians. Returns projects in urbanized areas were also under way in both the Pejë/Pec and Klinë/Klina municipalities. Returns projects proceeded in two municipalities that had not seen significant organized returns prior to 2004 (Ferizaj/Urosevac and Gjakovë/Djakovica)<sup>244</sup>.

**93.** Six years after the end of the conflict and out of a total of some 250,000 IDPs, only 12,700 minority returns were registered by April 2005, i.e. returns of IDPs to areas where their ethnic group constitutes a minority or to settlements where they

<sup>243</sup> United Nations High Commissioner for Refugees (UNHCR), 13 August 2004, UNHCR Position on the Continued International Protection Needs of Individuals from Kosovo <http://www.unhcr.ch/cgi-bin/texis/vtx/rsd/rsddocview.pdf?tbl=RSDLEGAL&id=41249d484> para 12-13

<sup>244</sup> United Nations Security Council, 17 November 2004, Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo <http://www.un.org/Docs/sc/sgrep04.html>

belong to the majority but are faced with particular protection concerns.<sup>245</sup> Although the security situation and efficiency of administration in protecting minority rights had improved since 1999, this only allowed for the return of a small number of displaced persons. The main reasons for this low return figure range from the volatile security situation, whether real or perceived, the limited freedom of movement and access to social services, to the lack of economic prospects and the occupation of houses and land usurpation. Also, the uncertainty over the final status for Kosovo had a negative impact on displacement and return. Members of ethnic minorities and Kosovo Serbs in particular, could hardly be expected to make an informed and definite decision about return to Kosovo. It is a widely held view that no substantial returns can be expected before a decision on the status of Kosovo is taken and IDPs have a chance to monitor the political, economic and security developments in the months following the decision.

94. Most returns took place to rural areas where the majority of the remaining ethnic Serbs are located. This emphasizes the need to facilitate access to and repossession of land in order to ensure self-reliance of IDPs. The fact that the first Serb return to a town, Klinë/Klina municipality, took place only in March 2005, and was considered a significant achievement illustrates the obstacles to urban return. UNHCR notes that the overwhelming majority of Serb returns have been to all-Serb communities and minority inhabitant areas with minimal interaction with ethnic Albanians. This shows that not only are the return figures low but they do not indicate real progress towards a multi-ethnic Kosovo, since most returnees live almost separately from the rest of Kosovo's society and institutional framework. Substantial further improvements are necessary to enable return of displaced persons, irrespective of their place of origin and their ethnicity. The prospects for returns vary considerably according to region, even within each region, and among different ethnic groups. In some locations IDPs/refugees with a strong desire to return did do so through establishing contacts with the Municipalities and receiving communities. In other locations, such re-establishment of dialogue and obtaining support of receiving communities requires greater efforts and time<sup>246</sup>.

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<sup>245</sup> United Nations High Commissioner for Refugees (UNHCR), Kosovo, 30 April 2005, Minority returns from internal and external displacement by region, table 1

<sup>246</sup> *Ibidem*

### *UNMIK Policy on Returns*

**95.** In late 2001, UNMIK established the Office of Returns and Communities to respond to the growing focus on and opportunities for minority returns in Kosovo. In August 2005, ORC merged with Office of Community Affairs (OCA) and created the Office of Communities, Returns, and Minority Affairs (OCRM). OCRM helps ensuring a consistent and comprehensive approach to returns and provides a contact point for donors to facilitate access to information and returns structures, and for information on returns projects priorities. Also, the office provides a more direct link to relevant authorities and stakeholders (such as the IDP community) in Serbia proper through the support of UNMIK's Belgrade Liaison Office.

**96.** In March 2003, UNMIK and UNHCR published the "Manual for Sustainable Returns," a step-by-step guide to both the policies and structures of the returns process. The Manual has been widely distributed across Kosovo, and has provided support to all those involved in the returns process. In July 2005, SRSG Søren Jessen-Petersen and Prime Minister Bajram Kosumi launched the 2005 Strategic Framework on Communities and Returns during the first meeting of the High Level Task Force on Returns. The Strategic Framework on Communities and Returns is meant to outline "the way ahead for the returns process, and is articulated around three main priority areas: the promotion of safety and freedom of movement; the creation of sustainable conditions for returns and the enhancement of institutional support for returns".<sup>247</sup>

**97.** The "Manual for Sustainable Returns" outlines the objectives, the principles and the process for the return of persons displaced out of Kosovo. The central idea is to emphasize the individual in the process, to promote a rights-based approach and, ultimately, to enforce the individual's right to sustainable return.

**98.** To avoid massive, unprepared or ill-prepared return, exposing returnees to hardships and potential risks, UNMIK and UNHCR propose a two-pronged approach consisting of: 1) reaching out to the IDPs and refugees with appropriate and realistic

<sup>247</sup> United Nations Interim Administration Mission in Kosovo (UNMIK), 19 July 2005, SRSG and the Prime Minister launch the 2005 Strategic Framework on Communities and Returns [http://www.unmikonline.org/DPI/PressRelease.nsf/0/DCA259D92AFC9F4AC12570440028073F/\\$FILE/pr1394.pdf](http://www.unmikonline.org/DPI/PressRelease.nsf/0/DCA259D92AFC9F4AC12570440028073F/$FILE/pr1394.pdf)

information about the conditions in Kosovo while improving these conditions in order to enable the IDPs to return and 2) working to ensure that the conditions on the ground for returnees are sustainable, including by promoting their integration into Kosovo society.

99. In accordance to its mandate under UNSCR 1244<sup>248</sup>, UNMIK focuses on organised return to the place of origin as an optimal durable solution to displacement. Resources therefore are concentrated on the conditions at the location of origin. An UNMIK Concept Paper explains that: “the role of UNMIK or any governmental authority is neither to mandate return locations nor to dictate to IDPs and refugees how and when they may return, but to facilitate the improvement of conditions so that IDPs and refugees have the opportunity to exercise their individual decision to return. [...] Returns are not a politically driven process but depend primarily upon the choice of the individual to come back; [...] [the] selection of return locations must be based on the expressed wishes of IDPs to return to their places of origin, rather than on political considerations. [...]”<sup>249</sup> However, although UNMIK understands the possibility that displaced persons might not prefer to return to the same place in Kosovo from where they were compelled to leave, in order to sustain the long-term goal of promoting a multi-ethnic society in Kosovo and to avoid politicising the plight of thousands of displaced persons, the priority remains to support returns to the place of origin.

100. The Manual establishes a number of structures at both the local and the central level. The Task Force on Returns plays a crucial role in ensuring coordination and support for returns efforts among UNMIK, the PISG, UNHCR and KFOR. The Task Force provides an important forum for discussion and endorsement of returns policy and processes. Given the many challenges facing minority returns, the Task Force remains essential in ensuring that the returns process receives priority and political support.

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<sup>248</sup> UNSCR 1244, Preamble, Paragraphs 9 (c), 11 (k), Annex 2 item 4. Constitutional Framework: Preamble, Chapter 3, Section 3.4

<sup>249</sup> UNMIK Concept Paper, 1-4.

101. As outlined in the Manual, the returns process begins with the identification of a genuine, informed, and voluntary wish to return of IDPs/Refugees. This may arise from a variety of sources namely through remainees and IDPs who are displaced close to their original home; through IDPs/Refugees Associations and through the media.

102. A particularly effective way to identify the wish to return is through both the UNHCR-coordinated “Go and Inform Visits” (GIVs), which are intended to brief displaced residents, in their locations of displacement, on the current situation in their place of origin, enabling them to make a more informed choice on the possibility of returning, and the “Go and See Visits” (GSVs), which are intended to provide the displaced with an opportunity to assess their possibilities in light of the current situation in their municipality. Displaced persons are invited to visit their pre-conflict homes as part of an organized tour where security and transport are provided, briefings are conducted and informal meetings with former neighbours occur. Both GIVs and GSVs are essential tools to open dialogue among IDPs/refugees and the receiving communities, including municipal institutions.

103. Contacts between IDPs/refugees and their municipalities of origin are achieved especially throughout the participation of IDPs/refugees in Municipal Working Groups (MWGs). MWGs were established as municipal bodies responsible for the generation and coordination of the returns process and they continue to be comprised of the local authorities, representatives of the IDPs, as well as all international and local organizations supporting this process.

104. As the local coordination fora for returns projects, MWGs provide an opportunity for all those involved in the return process (IDPs/refugees, receiving communities, municipal actors, UNHCR, UNMIK, KFOR, CivPol/KPS and NGOs) to: a) interact and share information regarding returns needs; b) identify any obstacle to the sustainability of the return, namely material obstacles (e.g. unresolved property issues, poor opportunities for economic livelihood, etc.) and situational challenges (e.g. lack of freedom of movement, of access to public services due to a discriminating environment, etc.) and c) strategically address these obstacles through the development of concept papers for identified return needs.

105. The concept papers that NGOs and municipalities develop as a result of the MWGs' discussions should address various needs to be met by returns projects, including: a) housing/reconstruction/repossession assistance; b) infrastructure; c) employment and income generation; d) access to public and community services and e) inter-ethnic dialogue and community integration. Until 2004 concept papers endorsed by MWGs were submitted to the central level for review by a board composed of key partners including UNMIK, UNHCR, OSCE and NGOs. The international community and donors especially have been increasingly encouraging and supporting the IDPs' and IDP Associations' greater involvement in the work of local returns mechanisms. However, there still is considerable room for improvement as regards reception of IDPs participation in returns process by local structures.

106. At the time of writing, the chairmanship of almost all MWGs have been handed to PISG Municipal Assembly Presidents, which clearly exemplifies a much stronger central role that the municipalities have in the return process. The function of the Municipal Assembly Presidents has already been firmly established in the Municipal Working Groups. Especially over the past year the role of the municipality has been shifting from political support to operational engagement, the latter without significant quantifiable results thus far.

107. With the establishment at the beginning of 2005 of the Ministry of Communities and Returns (MCR), the process of central level review was revised to include a more direct PISG involvement. The ensuing restructuring caused a significant delay in reviewing as many as 27 concept papers prepared by NGOs, municipalities and IDP associations. The general disapproval of the returns process up to date by all stakeholders is particularly directed against the long time-span between the identification of the demand for return, the development of the concept paper and the concrete realisation of the return project. As a result of the ongoing development of the Strategic Framework on Communities it is envisaged that the returns process will be shortened and simplified.

108. The development of Municipal Returns Strategies (MRSs) and the appointment of Municipal Returns Officers (MROs) further aimed at strengthening

participation of municipalities in the returns process and to evolve towards community development at large. Under the Kosovo Standards Implementation Plan, each municipality is expected to appoint one MRO, to develop (and effectively implement) an MRS and eventually assume responsibility for returns and for the creation of a tolerant and secure environment for all communities. MRS – which are to be endorsed by MWGs - are thus expected to provide a framework for returns activities for the MWG, including both broad municipal objectives and specific activities with regard to returns. The rationale is to ensure MRS transparency and consistency in returns-related work, coordination of returns efforts among the stakeholders as well as the identification of needs, resources and technical assistance for community integration. As of November 2005, MRSs were endorsed in 26 municipalities and out of those quite a few were also (or instead) adopted by the Municipal Assembly while MROs were appointed in 28 municipalities.

109. As far as quality and substance of the strategies are concerned, the need for considerable improvement was identified in quite a few areas. Particularly at the beginning, in many instances MRSs were general in substance. The rights and principles regarding returns were explicitly expressed and very broad and long-term objectives were presented but an implementation plan with a specific timeframe and with a reference to accurate data on demand and resources were missing. That made some strategies municipal declarations in support of returns rather than concrete operational plans. One concern, frequently raised by the IDPs and IDPs associations, was that they were not involved in the development of MRS. In many cases lack of accurate quantitative and qualitative data on the displaced, resulted in misjudgements regarding potential demand for return and, for example, returns to urban areas were largely ignored. Politicized language and hate speech used in some of municipal returns strategies further corrupted the value of these documents, which were supposed to “be part of an overall approach to building a tolerant and secure environment for all communities”.<sup>250</sup> Finally, most municipalities developed strategies without taking into consideration available resources and capacities to actually implement the projects and without identifying a donor first.

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<sup>250</sup> UNMIK Municipal Returns Strategy Policy Paper.



**110.** In 2005, protection of communities and minority returns moved up on the domestic political agenda and led to the creation of a new Ministry for Communities and Returns.<sup>251</sup> The Government and most municipalities have significantly increased official support for returns and have undertaken a wide ranging outreach programme designed to strengthen and support freedom of movement, returns, dialogue and tolerance building. Data is incomplete but in 2005, at least 14 municipalities participated in visits to returns sites, visits of internally displaced persons to cemeteries, go-and-see visits or go-and-inform visits.

**111.** The Prime Minister, Ministers and many municipal leaders actively engaged with internally displaced persons. For the first time, Ministers visited internally displaced persons and refugees in Kosovo, Montenegro and FYROM, including joint visits by the Minister of Communities and Returns (a Kosovo Serb) and the Minister for Local Government Administration (a Kosovo Albanian). The Prime Minister and 23 municipalities (all Kosovo Albanian majority) adopted on 25 February 2005 a joint declaration urging the displaced to return, the majority population to accept and implement its special responsibilities towards minority communities, and the protection of property rights and release of illegally occupied property. The first urban return by Kosovo Serbs in Klinë/Klina took place with the support of the Prime Minister and the Municipal Assembly President.<sup>252</sup> While the level of municipal engagement in the returns process has visibly increased, most municipalities still lack both the capacity and political will to assume full responsibility for minority returns.<sup>253</sup>

### ***Forced Returns***

**112.** The majority of those that had left Kosovo in the earlier part of the 1990s opted to remain in the host countries pending further developments. Host countries, however, soon concluded that those Kosovars that had not attained a secure legal right

<sup>251</sup> United Nations High Commissioner for Refugees (UNHCR), 1 June 2005, Global Report 2004: Serbia and Montenegro <http://www.unhcr.ch/cgi-bin/texis/vtx/home/openssl.pdf?tbl=PUBL&id=42ad4dbe0&page=home>

<sup>252</sup> United Nations Security Council, 23 May 2005, Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2005/335 <http://daccessdds.un.org/doc/UNDOC/GEN/N05/339/18/PDF/N0533918.pdf?OpenElement>

<sup>253</sup> United Nations Security Council, 17 November 2004, Report of the Secretary General on the United Nations Interim Administration Mission in Kosovo, <http://www.un.org/Docs/sc/sgrep04.html>

to remain in these countries should return to Kosovo, given that there would no longer be a danger of political persecution and, given the enormous efforts of the international community to rebuild Kosovo, little reason to remain in the host countries for humanitarian reasons. It was then that some Kosovars claimed to belong to minority groups who could not safely return or raised medical grounds as obstacles to return.

113. Some host countries, notably those harbouring large numbers of Kosovars, such as Germany and Switzerland, started forced returns to Kosovo on a small scale as early as late 1999 and early 2000. In order to manage this process in an orderly way and avoid the forced return of individuals still in need of international protection, UNMIK in 1999 and 2000 entered into a separate Memorandum of Understanding (MoU) with both countries. A MoU with Sweden followed in November 2004. There is also an MOU with Germany dating back to March 2003 specifically on the modalities for the return of a limited number of Ashkali and Egyptians, which guided the return of members of these communities until March 2004, when UNMIK suspended all such return immediately following the outburst of violence directed against Kosovo minorities. Based on an 'Agreed Note' dated April 2005, Germany started again in May 2005 to submit to UNMIK limited numbers of Ashkali and Egyptians for forced return.

114. UNMIK policy on forced returns equally applies to all countries regardless of whether or not an MOU has been concluded, and UNMIK expects that countries wishing to return persons to Kosovo do so only in line with established UNMIK policy and procedures. While UNMIK policy developed and changed over the years, UNMIK has been consistent in not accepting the forced return of persons whose safety or well being would be jeopardized by their return. In developing and adjusting policy, UNMIK takes guidance from UNHCR and its position papers on the continued international protection needs of individuals originating from Kosovo, the latest version published in March 2005.

115. At present, UNMIK does not accept the forced return of Kosovo Serbs or Roma, or those Kosovo Albanians/Bosniaks that originate from areas where they constitute a minority, particularly in the northern municipalities, including Mitrovica

(North). The forced return of members of the Ashkali or Egyptian communities will only be accepted in limited numbers and to certain identified locations and after a thorough screening process conducted by UNMIK. In addition, UNMIK does not accept the forced return of chronically or otherwise severely ill persons, whose condition requires specialized medical intervention of a type not currently available in Kosovo, severely handicapped persons or unaccompanied elderly persons without social support. It is also UNMIK policy, in accordance with the Convention on the Rights of the Child and the European Convention on Human Rights, to prevent separation of families, except when this is in the best interest of the child. In order to assess whether any reservation or request for additional information needs to be placed UNMIK asks to be informed by host countries a minimum of 7 days in advance of any planned forced return. UNMIK also endeavours to ensure that international safeguards and standards relating to forced returns are met by host countries, including but not limited to the question of separation of immediate families.

116. In keeping with the objective to ensure that Kosovo will become a truly multiethnic society, UNMIK attempts to avoid secondary displacement in Kosovo through forced returns. It remains UNMIK policy to encourage return to the place of origin rather than pure-minority settlements. UNMIK therefore does not accept the forced return of Kosovo Albanians / Bosniaks originating from areas where they constitute a minority, particularly in the northern municipalities of Kosovo, including Mitrovica (North). This is for a variety of reasons, but foremost security and in order to avoid internal displacement in Kosovo.

117. In 2004, some 4,000 individuals were forcibly returned to Kosovo, roughly half of them from Germany alone (followed by Switzerland and Sweden). The vast majority of them were Kosovo Albanians, but some were members of the smaller communities, such as Bosniak, Gorani, Turks, etc. Immediately after the violence in March 2004, UNMIK suspended forced returns of these minorities until June 2004, when it was established that they would not have to fear being targets of systematic violence. The forced return of Kosovo Serbs, as well as Roma, Ashkali and Egyptians remained suspended throughout 2004.

118. Social assistance and absorption capacity in Kosovo is still very limited. A lack of available housing and access to basic social services is often a concern in particular for minority forced returnees. Return projects are generally geared towards sustainable voluntary planned returns, while forced returnees have often not prepared their return, and neither has the community they are returning to. In addition, there is no international assistance available for these individuals upon return. Problems minority forced returnees face are often compounded by the lack of functioning family network structures. While the ultimate responsibility to socially assist and integrate returnees lies with the PISG central and local administration, much more needs to be done – with the assistance of UNMIK and the international community – to develop this capacity.

### ARTICLE 13

119. With regard to the expulsion of aliens from Kosovo UNMIK Regulation No. 2005/16 of 8 April 2005, as amended, on the Movement of Persons in and out of Kosovo introduced clarity to the legal position of three categories of foreigners:

- (a) Those foreigners who applied for authorisation to enter and remain in Kosovo;
- (b) Those foreigners claiming refugee status; and
- (c) Those foreigners whose refugee status has been terminated

120. Pursuant to section 18.1 those claiming refugee status or whose refugee status has been terminated may be granted permission to stay temporarily in Kosovo pending a decision in their cases. Pursuant to section 5.3, the duly authorised official of the UNMIK Border Police shall provide a foreigner whose application to enter and remain in Kosovo has been denied with a reasoned decision in writing which shall include notification of the right to have the decision reviewed and the time limit for applying for a review. The decision shall also include an order requiring such person to leave Kosovo, which shall be enforced immediately.

121. Under section 12.4, an application for refugee status shall be determined at first instance by “competent authority”, which is the body within the Police and Justice Pillar responsible for making determinations at first instance on applications for refugee status and related applications and decisions on the termination of refugee status. Section 12.5 provides:

When deciding on an application, the competent authority shall summon the applicant and his or her legal counsel to a hearing to present evidence. The competent authority shall also request representatives from UNHCR and other competent international organizations to make submissions as *amicus curiae* and present evidence. Such hearings shall be conducted within fifteen (15) days of the receipt of the application for refugee status. A record of the hearing shall be taken, translated into the language chosen by the applicant and be signed by the applicant.

122. Under section 12.6, the decision of the competent authority shall include notification of the right to have it reviewed and the time limits for applying for review, shall be provided to the applicant and his or her legal counsel, as well as to representatives of UNHCR or another competent international organization. Under section 15.2, the decision of the competent authority to terminate refugee status shall be made in writing and shall include notification of the right to have it reviewed and the time limits for applying for review. Section 15.2 also provides that such decisions also include an order to leave Kosovo, which is suspended pending proceedings for review of the decision to terminate the refugee status.

123. Under Section 22.1, a person who is the subject of a decision to deny entry or authorization to enter and remain in Kosovo, to deny refugee status, to terminate refugee status may apply in writing to a three (3) judge panel of the District Court of competent territorial jurisdiction for a review of the decision within seven (7) days of the receipt of the decision. Under section 22.5 the court shall issue a reasoned decision in writing on an application for review within five days of the conclusion of the hearing.

124. Procedures for making determinations and decisions upon refugee status under UNMIK Regulation No. 2005/16 are still in the process of being made operational. A draft Administrative Direction is under preparation.

## ARTICLE 14

### *Equality before the law*

125. The right to equal standing before the courts is protected in both the currently applicable civil procedure<sup>254</sup> and criminal procedure<sup>255</sup>.

126. The PCPCK expands on the bare right and provides that the courts, prosecution and police in the investigation have a duty to make available to the defence all the facts and pieces of evidence, which are in favour of the defendant, before the beginning of and during proceedings.<sup>256</sup> The PCPCK allows the defence to request the collection of specific evidence that may either be lost or justifies the release of the defendant who is on remand, by the prosecution during the investigation.<sup>257</sup> If the prosecutor refuses he must give reasons and this can be appealed to the pre-trial judge.<sup>258</sup>

127. In order to be effective, access to the courts must be practical and this has been an immediate issue in Kosovo, especially for the Kosovo Serbs. Security has been a major impediment. This affects the operation of courts in areas with Kosovo Serb populations. The level of security for the Kosovo Serb population has acted as a disincentive to travel into some central urban areas where courts are located. Additionally courts in ethnic minority areas have been understaffed. In response to these difficulties, the Department of Justice has created Court Liaison Offices in Graçanicë/Gračanica, Novobërdë/Novo Brdo, Gorazhdevc/Goraždevac, Vrbovc/Verbovac, Hoça e Madhe/Velika Hoča, Priluzhë/Priluzhje, Shillovë/Šilovo and Mitrovicë/Mitrovica.

<sup>254</sup> Law on Contested Procedure, Article 5.

<sup>255</sup> PCPCK, Article 10(1).

<sup>256</sup> PCPCK, Article 7(2).

<sup>257</sup> PCPCK, Articles 239 (1) and (2).

<sup>258</sup> PCPCK Article 239(2).

***The right to be presumed innocent until provide guilty according to law***

**128.** The principle set forth in Article 14(2) of the ICCPR is reflected in Article 3(1) of the PCPCK, which provides that any person suspected or charged with a criminal offence shall be deemed innocent until his or her guilt has been established by a final judgment of the court.

***The right to be informed promptly and in detail in a language which the accused understands of the nature and cause of the charge against him***

**129.** The principle set forth in Article 14(3)(a) of the ICCPR is reflected in Article 11(1) of the PCPCK, which provides:

At the first examination the defendant shall be promptly informed, in a language that he or she understands and in detail, of the nature of and reasons for the charge against him or her.

**130.** In addition, under Article 14(1) of the PCPCK any person deprived of liberty shall be informed promptly, in a language which he or she understands, of, *inter alia*, the reasons for his or her arrest.<sup>259</sup>

**Adequate time and facilities for the preparation of one's defence and to communicate with counsel of one's choosing**

**131.** With the introduction of UNMIK Regulation No.2001/28 on the rights of persons arrested by law enforcement authorities on 11 October 2001, standards of rights for the suspect in police detention before the preliminary examination were established. These have been consolidated in the PCPCK under Articles 214-219 and include access to legal assistance via a duty roster established by the Kosovo Advocates Chamber (KCA), provision of facilities, and the right to have prompt

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<sup>259</sup> cf. PCPCK, Article 214(1)(1) and Article 212(3)(1).

access to legal assistance on arrival and assistance during interrogations,<sup>260</sup> although access to legal assistance can be restricted in terrorism cases and if the legal assistance sought by the suspect is considered unsuitable or is unavailable within a short time period an alternative can be arranged. There is sometimes a lack of adequate facilities in police stations for the communication of detainees with defence counsel.

132. Article 12(2) of the PCPCK provides that the defendant shall have the right to defend himself or herself in person or through legal assistance by a member of the bar of his or her own choice.

133. Under the previously applicable LCP there were a number of restrictions placed on the ability of defence counsel communicating privately with the defendant. Article 74 of the LCP only allowed counsel to speak to a defendant who was in custody, after the defendant had been examined and until the indictment was brought or information gained without examination. Until then the judge could review any correspondence between the accused and his counsel or be present in person or by proxy at the legal consultations.<sup>261</sup>

134. The LCP also placed communication restrictions on defendants under indictment detained in custody<sup>262</sup> so that legal visits had to be requested by the defendant and approved by the court and all visits and communications could be monitored by officials. Thus preventing any means of private communication with their legal representative. The PCPCK clearly establishes the defence counsel's right to communicate freely and privately with a defendant under guaranteed conditions.<sup>263</sup>

135. When the court is considering accepting a guilty plea of a defendant during a confirmation of the indictment hearing, the judge will actively consider whether the defendant has had an opportunity to have defence representation and had sufficient access to defence representation to consider the guilty plea voluntary.<sup>264</sup>

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<sup>260</sup> Also see Administrative Direction No. 2001/15.

<sup>261</sup> LCP, Article 74(2).

<sup>262</sup> LCP, Articles 203(1) and (2).

<sup>263</sup> PCPCK, Article 77(2).

<sup>264</sup> PCPCK, Article 315(1)(2).



### ***The right to be tried without undue delay***

**136.** The PCPCK provides that a person detained in custody has the right to a trial within a reasonable time and without undue delay.<sup>265</sup> In practice some courts do not have the resources to meet this requirement. In 2004 the majority of municipal courts were experiencing backlogs in criminal cases. Out of 2,894 criminal cases in the first six months of 2003, from the date the presiding judge was assigned, 56 per cent were completed within six months and 27 per cent took over a year. Delays were also noted in rendering a verdict. OSCE collected data on the delivery of written verdicts in two District Courts, namely Mitrovicë/Mitrovica and Gjilan/Gnijlane. In 25 out of the 36 cases monitored in Mitrovicë/Mitrovica in 2000, the verdicts had been delivered with delays varying from 1 to 8 months. Delays of up to 5 months have been noted in cases handled during 2001. In Gjilan/Gnijlane District Court, from the cases handled by the court in 2000, in 49 out of 72 cases the verdicts had been delivered with delays ranging from 1 up to 7 months. On a positive note, the same court improved its record in 2001 when only 6 verdicts out of 67 were delivered with a delay of 1 month. In two cases from Prizren District Court, OCSE documented delays of more than 14 months in delivering the written verdict.

### ***Trial in one's presence, defence and legal assistance***

**137.** A defendant can be tried *in absentia* only in summary proceedings (criminal offences which carry a maximum three years imprisonment). Article 472(1) of the PCPCK provides:

If the accused fails to appear at the main trial although he or she was duly summoned, the judge may decide that the main trial be conducted in his or her absence, provided that his or her presence is not necessary and that he or she has already been examined and that his or her defence counsel is present.

Article 70(1) provides:

Only a member of the bar may be engaged as defence counsel, but an attorney in training may replace the member of the bar. If proceedings are being

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<sup>265</sup> PCPCK, Article 5(1) and (3).

conducted for a criminal offence punishable by imprisonment of at least five years, an attorney in training may replace a member of the bar only if he or she has passed the judicial examination. Only a member of the bar can represent a defendant before the Supreme Court of Kosovo.

**138.** The PCPCK retains the use of mandatory counsel if the defendant cannot effectively defend him/herself due to a disability or signs of mental disorder from the first examination<sup>266</sup> or in proceedings under extraordinary legal remedies; if the indictment contains charges which carry a penalty exceeding eight years' imprisonment.<sup>267</sup> With the abolition of the death penalty mandatory counsel are still required if long-term imprisonment can be imposed<sup>268</sup> and the additional criteria of remand hearings applies.<sup>269</sup> If no counsel is chosen by the defendant or other persons (e.g. close family)<sup>270</sup> a publicly funded defence counsel will be provided. It is seen as the last resort for an unrepresented defendant. In these cases the right to legal assistance cannot be consensually waived.<sup>271</sup>

**139.** The court or other competent authority is obliged to inform the defendant of the right to defence representation before any examination<sup>272</sup>, for example at the first examination.<sup>273</sup> Under Article 74 the defendant has to be informed of the right to publicly funded legal assistance before the first examination in cases where defence assistance is mandatory. Under article 469(2) the defendant will be informed of his or her right to defence representation in the summons to summary proceedings.

### *Attendance and examination of witnesses*

**140.** Attendance and examination of witnesses is expressly provided for under article 10(2) of the PCPCK. There was no similar provision under the previously

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<sup>266</sup> PCPCK, Article 73(1).

<sup>267</sup> PCPCK, Article 73(3).

<sup>268</sup> PCPCK, Article 73(4).

<sup>269</sup> PCPCK, Article 73(2).

<sup>270</sup> PCPCK, Article 69(6).

<sup>271</sup> PCPCK, Article 69(2).

<sup>272</sup> PCPCK, Article 69(2).

<sup>273</sup> PCPCK, Article 12(5).

applicable LCP. The PCPCK firmly establishes the right of the defence to call witnesses and cross-examine prosecution witnesses.<sup>274</sup>

141. The defence and defence legal representative do not have a right to attend the investigatory questioning of a witness. It is within the prosecutor's discretion to invite the defence.<sup>275</sup> Any witness statements given to the police or prosecution can only be admissible if the defendant has been able to challenge them at some point in the proceedings.<sup>276</sup> A defendant can apply under Article 154 for evidence to be inadmissible and shall be given a reasoned decision by the court.

142. In certain circumstances the testimony of a witness given during the investigation stage may be used in the main trial if the witness cannot attend due to death, illness (including mental illness), or it is otherwise impossible for them to appear; or if the witness refuses without justification; or with the parties agreement.<sup>277</sup>

143. On an "exceptional basis" the pre-trial judge can be requested by the defence or prosecution to collect evidence from a witness or expert witness to be used in the main proceedings. This must be a "unique opportunity" to collect important evidence which is in "significant danger" of being unavailable at the trial.<sup>278</sup> If the judge agrees, the defendant's rights must be protected and this has to be reflected in the proceedings, including the defence being present to hear the testimony.<sup>279</sup>

144. Article 157 does not allow a conviction to be based solely or "decisively" on statements given by the defendant to the police or public prosecutor; testimony of a co-operative or an anonymous witness; or any evidence which the defence did not have an opportunity to challenge by questions at some stage in the criminal proceedings.

145. Protective measures in Chapter XX of the PCPCK are available to help prosecution and defence witnesses testify in a secure environment if there is a risk to

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<sup>274</sup> PCPCK, Article 165(1).

<sup>275</sup> PCPCK, Article 237(4).

<sup>276</sup> PCPCK, Article 156.

<sup>277</sup> PCPCK, Article 368(1)(1) to (3).

<sup>278</sup> PCPCK, Article 238(1).

<sup>279</sup> PCPCK, Article 238(2).

the witness or their family, or a potential risk.<sup>280</sup> Such measures can be requested by all parties including the defence. Measures can include: omitting details that can identify a witness; use of screens, closed circuit TV (CCTV), video taped examinations or other means to disguise the witness; assignment of a pseudonym; temporary removal of the defendant from the courtroom to allow the witness to testify; in camera hearings; ordering the defence counsel not to disclose the identity of the witness or material that could lead to identification; or non-disclosure of material that would identify the witness.<sup>281</sup>

### *Free assistance of an interpreter*

**146.** The PCPCK provides that the defendant has the right to an interpreter so as to be able to understand the proceedings and effectively participate in them.<sup>282</sup> The PCPCK does provide the defendant with an “independent” interpreter, a factor which had not been spelt out in the previously applicable LCP.<sup>283</sup> An interpreter can include a sign language interpreter although this can be a person known to the defendant rather than a qualified interpreter.<sup>284</sup>

**147.** The denial of the right to an interpreter may be a ground for appeal.<sup>285</sup> Also, if during the first examination the defendant is not notified of this right, the PCPCK considers the evidence inadmissible.<sup>286</sup>

### *The right not to be compelled to testify against oneself or to confess guilt*

**148.** The PCPCK provides that there is a right to silence but it is qualified by the obligation to give information identity. If during the first examination the defendant

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<sup>280</sup> PCPCK, Article 169.

<sup>281</sup> PCPCK, Article 170(1).

<sup>282</sup> PCPCK, Articles 15(2) and 231(2)(3).

<sup>283</sup> PCPCK, Article 7(4).

<sup>284</sup> PCPCK, Article 232(2).

<sup>285</sup> PCPCK, Article 403(3).

<sup>286</sup> PCPCK, Article 235.

is not notified of this right the PCPCK considers the evidence inadmissible.<sup>287</sup> The same applies during the main trial.

*The procedure in regard to juveniles*

149. Under the Juvenile Justice Code of Kosovo (JJCK)<sup>288</sup>, the age of criminal responsibility begins at 14<sup>289</sup> and the Code applies to anyone who has committed an offence between the ages of 14 and 18.<sup>290</sup> An adult aged between 18 and 21 years old can still be prosecuted as a minor for an offence committed when he or she was under 16 years old and if the offence carries a sentence in excess of five years.<sup>291</sup>

150. A principle of the juvenile justice system is to “emphasize the well being of the juvenile and ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the criminal offence”.<sup>292</sup>

151. The measures that may be imposed on minors are diversion and educational measures and the punishments are fines, community orders and juvenile imprisonment.<sup>293</sup> In assessing any punishment to be imposed, a report on the social status and conditions of the minor can be requested by the prosecution or juvenile judge.

152. The JJCK provides for the use of an expert to assess the state of a minor’s mental health and his or her competency to stand trial.<sup>294</sup> The juvenile judge can also request the Probation Service to prepare a report on the minor’s social background.<sup>295</sup> In proceedings the minor can be accompanied by a parent, adoptive parent or guardian as well as his or her defence counsel.<sup>296</sup> At the main trial representatives of the

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<sup>287</sup> PCPCK, Article 235.

<sup>288</sup> UNMIK Regulation No. 2004/8 of 20 April 2004 on the Juvenile Justice Code of Kosovo.

<sup>289</sup> JJCK, Article 38.

<sup>290</sup> JJCK, Article 3(1).

<sup>291</sup> JJCK, Article 8(2).

<sup>292</sup> JJCK, Article 1(1).

<sup>293</sup> JJCK, Article 6(1) and 6(2).

<sup>294</sup> JJCK, Article 56(1).

<sup>295</sup> JJCK, Article 56(2).

<sup>296</sup> JJCK, Articles 57(2) and 68(2).

Guardianship Authority and Probation Service will also be represented.<sup>297</sup> Other child experts can be allowed to attend by the court.<sup>298</sup> A minor can be questioned with the aid of a child guidance counsellor or any other qualified professional, if necessary.<sup>299</sup>

**153.** The court will appoint mandatory defence counsel from the first examination; the ruling on the commencement of preparatory proceedings if the offence is punishable by a term of imprisonment in excess of three years; and from the commencement of preparatory proceedings if the interests of justice require.<sup>300</sup>

**154.** As to publicity for the trial, the JJCK is explicit: “All proceedings involving minors shall be confidential.”<sup>301</sup> That the authorities will proceed expeditiously and without delay is expressly provided for and the child cannot be tried *in absentia*.<sup>302</sup>

**155.** The authorities participating in proceedings must consider the impact of proceedings on the child and seek to avoid any adverse effects.<sup>303</sup>

**156.** Before the first examination the minor will be informed of the right to have legal assistance by the court.<sup>304</sup> In certain cases legal assistance will be mandatory from the first examination; from the commencement of proceedings for offences with a certain tariff level, reducing the old imprisonment level from over five to over three years; and adding a further ground to include other offences when the juvenile judge considers it is necessary<sup>305</sup>. The JJCK does introduce the ability for the child to request free legal assistance but this will only be provided if the child is unable to pay.<sup>306</sup> Any legal representative has to be a member of the Bar.<sup>307</sup> The child can also be accompanied by a parent or guardian. A minor can only waive the right to legal assistance with the consent of their parent, carer or a social worker.

<sup>297</sup> JJCK article 68(2).

<sup>298</sup> JJCK article 69(2).

<sup>299</sup> JJCK, Article 57(3).

<sup>300</sup> JJCK, Article 40(1)-40(3).

<sup>301</sup> JJCK, Article 47(1).

<sup>302</sup> JJCK, Articles 37(1) and 39(1).

<sup>303</sup> JJCK, Article 39(2).

<sup>304</sup> JJCK, Article 40(5).

<sup>305</sup> JJCK, Article 40(1).

<sup>306</sup> JJCK, Article 40(4).

<sup>307</sup> JJCK, Article 40(6).

**157.** The JJCK introduces a time limit which compels the prosecution to apply for an extension of preparatory proceedings after six months, thereby facilitating the trial of the child within a reasonable time.<sup>308</sup> In addition, the prosecution must notify the defence 15 days before preparatory proceedings are due to finish to allow the defence counsel an opportunity to request new evidence to be considered.<sup>309</sup>

***The right to review of conviction and sentence by a higher tribunal according to law***

**158.** A defendant will be notified of their right to appeal in the written judgment provided to them.<sup>310</sup> In criminal proceedings, an appeal must be filed within 15 days of receipt of the verdict transcript.<sup>311</sup>

**159.** A first instance verdict can be contested on the following grounds: an essential violation of the criminal procedure; violation of the criminal law; erroneous or incomplete facts.<sup>312</sup>

**160.** Article 420(1) of the PCPCK provides:

The court of second instance may in a session of the panel or on the basis of a hearing:

- 1) Dismiss an appeal as belated or inadmissible;
- 2) Reject an appeal as unfounded and affirm the judgment of the court of first instance;
- 3) Annul the judgment and return the case to the court of first instance for retrial and decision; or
- 4) Modify the judgment of the court of first instance.

**161.** Article 430(1) of the PCPCK provides:

An appeal against a judgment of a court of second instance may be filed with the Supreme Court of Kosovo in the following instances:

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<sup>308</sup> JJCK, Article 59.

<sup>309</sup> JJCK, Article 60.

<sup>310</sup> PCPCK, Article 395(4).

<sup>311</sup> PCPCK, Article 398(1).

<sup>312</sup> PCPCK, Article 402 (1)-(4).

- 1) If a court of second instance has imposed a punishment of long-term imprisonment or has affirmed the judgment of a court of first instance by which such punishment was imposed;
- 2) If a court of second instance after conducting a hearing has made a different determination of the factual situation from the court of first instance and based its judgment on such factual determination; or
- 3) If a court of second instance has modified a judgment of acquittal by the court of first instance and rendered instead a judgment of conviction.

### ***Compensation***

**162.** Persons who qualify for compensation include those wrongly charged, indicted or convicted. The ability to claim compensation expires after three years from the first instance or appeal decision.<sup>313</sup> Before a claim for compensation can be filed, the injured party has to approach the competent public entity responsible to see whether an out of court agreement can be reached on the level of compensation.<sup>314</sup> The three year limit will be suspended whilst an injured party is negotiating a possible settlement.<sup>315</sup> If an agreement has not been reached, or only partly, the injured party can still begin a claim with the competent court. Heirs inherit the right to compensation.<sup>316</sup>

### ***Ne bis in idem***

**163.** The principle of *ne bis in idem* is fully set forth in the PCPCK. Article 4 provides:

- (1) No one can be prosecuted and punished for a criminal offence, if he or she has been acquitted or convicted of it by a final decision of a court, if criminal proceedings against him or her were terminated by a final decision of a court or if the indictment against him or her was dismissed by a final decision of a court.

<sup>313</sup> PCPCK, Article 535(1).

<sup>314</sup> PCPCK, Article 535(2).

<sup>315</sup> PCPCK, Article 536(2)

<sup>316</sup> PCPCK, Article 537.



(2) A final decision of a court may be reversed through extraordinary legal remedies only in favour of the convicted person, except when otherwise provided by the present Code (Article 442 paragraph 2 of the present Code).

164. Article 442(2) provides that criminal proceedings terminated by a final judgment may be reopened only in favour of the defendant, except that if it is proven that the circumstances under Article 442(1)(1) or 442(1)(2) have been a result of a criminal offence committed by the defendant or his or her agent against a witness, expert witness, interpreter, public prosecutor, judge or lay judge or those close to such persons, criminal proceedings terminated by a final judgment may be reopened against the defendant. The circumstances under Article 442(1)(1) or 442(1)(2) are that it is proven that the judgment rests on a forged document or a false statement of a witness, expert witness or interpreter or that the judgment ensued from a criminal offence committed by a judge, a lay judge or a person who undertook investigative actions.

## ARTICLE 15

165. Article 1(2) of the PCCK provides:

No criminal sanction or measure of mandatory treatment may be imposed on a person for an act, if prior to the commission of the act, the law did not define the act as a criminal offence and did not provide a criminal sanction or measure of mandatory treatment for the act.

166. Articles 2(1) and 2(2) of the PCCK reflect the principle set forth in Article 15(1) of the ICCPR that if “subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby”:

(1) The law in effect at the time a criminal offence was committed shall be applied to the perpetrator.

(2) In the event of a change in the law applicable to a given case prior to a final decision, the law more favourable to the perpetrator shall apply.

**ARTICLE 16**

167. Information in relation to Article 16 is given in the Common Core Document.

**ARTICLE 17**

168. In order to fulfil its mandate most effectively UNMIK has introduced legislation which requires the collection of information on members of the public. In so doing it has provided extensive protections against arbitrary or unlawful interference with a person's privacy, family, home or correspondence.

169. The Law on Criminal Procedure of the Federal Republic of Yugoslavia, which was applicable until 18 March 2002, had not changed substantially since 1977 and provided little legal basis for the use of modern methods of surveillance and investigation. UNMIK Regulation No. 2002/6 of 18 March 2002 on Covert and Technical Measures of Surveillance and Investigation addressed this deficiency. During the drafting of this regulation, reference was made to the UK Regulation of Investigatory Powers Act, US wiretapping legislation<sup>317</sup>, the Australian Telecommunications (Interception) Act 1979 and the criminal procedure codes of Germany, France and Slovenia. The case law of the European Court of Human Rights relating to Articles 6, 8 and 13 and US courts relating to 18 U.S.C. 2518(11)<sup>318</sup> were also reviewed. UNMIK Regulation No. 2002/6 was incorporated in the PCPCK as Chapter XXIX.

170. Section 16 of UNMIK Administrative Direction No. 2000/8 provides extensive protection for personal data held in the Central Civil Registry and in Municipal Civil Registration Centres.

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<sup>317</sup> 18 U.S.C.2510, et. seq.

<sup>318</sup> U.S.v.Silberman, 732 F. Supp. 1057 (S.D. Ca., 1990).

171. UNMIK Administrative Direction No. 2002/16 was promulgated on 19 July 2002 to allow the disclosure of information in the Central Civil Registry to law enforcement authorities and the judiciary in order to assist with the maintenance of civil law and order and the proper administration of justice. Under this Administrative Direction, the Central Civil Registry may disclose personal data when a request is submitted by the SRSG, UNMIK Police, KFOR or UNMIK judicial authorities, in connection with a request for legal assistance, an ongoing criminal investigation or an ongoing criminal or civil judicial proceeding. The request for disclosure of personal data is addressed to the Director of the Directorate of Administrative Affairs who is in charge of the Central Civil Registry and the personal data are disclosed only for the purposes set forth in the request. Furthermore the personal data of persons not named in the request are not disclosed.

172. In addition, there exists a series of rules and procedures which, in line with Administration Direction 2002/16, aim at ensuring the protection of personal data contained in the Central Registry Database.

173. Protections against unlawful attacks on honour and reputation are referred to under Article 19.

## ARTICLE 18

174. Paragraph 4.4 of the Constitutional Framework provides that Communities and their members shall have the right to preserve sites of religious, historical, or cultural importance to the Community in cooperation with relevant public authorities and to operate religious institutions.

175. The applicable Law on the Legal Status of Religious Communities<sup>319</sup> protects the freedom of membership in religious community<sup>320</sup>, the freedom to organise and perform religious activities<sup>321</sup>, the right to build or reconstruct objects which serve the

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<sup>319</sup> Official Gazette of SAP of Kosovo No. 5/77.

<sup>320</sup> Law on the Legal Status of Religious Communities, Article 2.

<sup>321</sup> Law on the Legal Status of Religious Communities, Article 5.

performing of religious activities and ceremonies<sup>322</sup>, the right to govern independently religious schools including programmes, curricula and teachers<sup>323</sup> and the freedom to collect contributions for religious needs<sup>324</sup>. The right to establish dormitories or similar institutions<sup>325</sup>, carry out the functions of religious schools<sup>326</sup> and edit religious publications<sup>327</sup> can be exercised after an application with municipal authorities has been filed and approved.

176. The SAP Law proscribes any manifestation of religion, which amounts to advocacy of racial or religious hatred that constitutes incitement to hostility or violence.<sup>328</sup> Such actions have been criminalised by Article 115 of the Provisional Criminal Code of Kosovo (PCCK).

177. The SAP Law also provides for the imposition of restrictions on the public manifestation of religion by public authorities:

Within overall measures undertaken by municipal authorities competent for public communication or peace and order, or for other needs in the field of peoples protection (civil protection), such an authority can cease holding religious assembling during the time while circumstances exist based on which such measures have been undertaken. (Article 7)

Religious ceremonies in assemblies, including other religious activities, besides clergy members and persons with Yugoslav citizenship, can be held by foreign citizens and/or persons without citizenship, provided that religious community has obtained a permit for such activity from the municipal administrative authority for internal affairs. (Article 10)

178. The rules that govern the establishment of organisations and associations also govern the establishment of religious communities as legal persons.<sup>329</sup> Currently no

<sup>322</sup> Law on the Legal Status of Religious Communities, Article 12.

<sup>323</sup> Law on the Legal Status of Religious Communities, Article 14.

<sup>324</sup> Law on the Legal Status of Religious Communities, Article 22.

<sup>325</sup> Law on the Legal Status of Religious Communities, Article 18.

<sup>326</sup> Law on the Legal Status of Religious Communities, Article 16.

<sup>327</sup> Law on the Legal Status of Religious Communities, Article 11.

<sup>328</sup> Law on the Legal Status of Religious Communities, Article 3.

<sup>329</sup> UNMIK Regulation No. 1999/22 On the Registration and Operation of Non-Governmental Organizations in Kosovo of 15 November 1999 regulates the nature, registration and status of all NGOs operating in Kosovo. The UNMIK Administrative Direction 2000/10 Implementing UNMIK Regulation 1999/22 On The Registration and Operation of Non-Governmental Organizations in Kosovo of 9 May 2000 lists the registration requirements as: "Section 1 - Registration

religious institutions, organisations or associations are receiving funding from the Kosovo Consolidated Budget or financial support from the authorities in Kosovo.

179. There has recently been progress in the development of legislation on religious freedom and the legal status of religious communities. A draft Law has been under consideration in the Assembly of Kosovo. The Austrian Ministry of Foreign Affairs and the University of Vienna organized a very productive meeting in Austria from 4 to 6 December 2005 on the draft Law. Representatives of the principal religious communities in Kosovo, including the Serbian Orthodox Church participated and engaged in substantive discussions with representatives of the PISG and UNMIK. All appropriate efforts are being made to urge the Government and the Assembly of Kosovo to incorporate in the draft Assembly Law that is under consideration all the very important proposals agreed to by the participants in the meeting.

180. In June and July 1999, the monastery Zociste from 14<sup>th</sup> century was burned and then mined, and the monks expelled. The Convent of Holy Trinity near the village of Musutiste, Suhareke/Suva Reka Municipality, was attacked in June 1999, after the arrival of NATO in Kosovo, mined and overthrown completely, and the nuns expelled. These are two of the many instances in which churches and monasteries were burned, mined or damaged. During the March riots of 2004, in attacks on the cultural and religious heritage of Kosovo, 36 Orthodox churches, monasteries and other religious and cultural sites were damaged or destroyed. The places of worship that were attacked date as far back as the fourteenth century. Two of them are listed by UNESCO as major sites of universal significance and a third is listed as a site of regional significance.

181. In June 2004, a Memorandum of Understanding was reached between the MCYS and the Serbian Orthodox Church (SOC) on urgent intervention measures on the churches and other Serbian Orthodox religious sites and buildings in Kosovo

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1.1 In accordance with section 4 of UNMIK Regulation No. 1999/22 of 15 November 1999, an NGO shall apply for registration with UNMIK in order to operate as a legal person in Kosovo. NGOs not seeking to operate as a legal person need not register.

1.2 In accordance with section 4.3 of UNMIK Regulation No. 1999/22, an NGO shall designate an authorized representative in Kosovo, who shall be of legal age. All applications for registration must be signed by the NGO's authorized representative.

1.3 Applications for the registration of NGOs shall be submitted to and accepted by the UNMIK NGO Liaison Unit at its offices located at designated UNMIK headquarters. Registration decisions shall be made by the UNMIK NGO Liaison Unit. Registration numbers shall be assigned by the UNMIK NGO Liaison Unit."

damaged during the riots in March 2004. In continuation of the same effort, on 24- 25 March 2005, a Memorandum of Understanding (MoU) on Agreed General Principles for the Reconstruction of Serbian Orthodox Religious Sites was signed between the Patriarch of the Serbian Orthodox Church and the Ministry of Culture Youth and Sports (MCYS). The latter provides for the establishment of a five-member commission, which should implement the recommendations of the Council of Europe (CoE) and UNESCO for intervention, restoration and reconstruction of the damaged churches, monasteries and other religious sites. The commission would consist of one international expert to be nominated by the CoE or the European Commission or another international agency, one representative of the SOC, one representative of IPM Belgrade, one of IPM Kosovo and a representative of the MCYS. UNMIK shall facilitate the work of the commission by coordinating security issues and providing technical assistance. The SOC and the MCYS may suggest changes to the recommendations made by the CoE and UNESCO which will be reviewed by the Commission. The Commission will also have the competencies to prepare tender papers, issue tenders for the reparation works and select the companies to implement the works. The SOC may ask the Commission to reconsider the companies selected, but the final decision shall rest with the Commission. However if the SOC does not approve the selected company, the reconstruction will not be funded with PISG funds. If the selected company is approved, the MCYS should ensure that funds are committed and released. The MoU states that the 4.2 million Euro already committed by the PISG shall be used for this purpose. Additional funds may also be allocated by the PISG. The Commission also would have the responsibility to supervise the works. The MoU specifies also that the use of PISG funds shall not affect the “ownership identity and original function” of the religious sites. The 4.2 million Euro was allocated from KCB for the initial reconstruction of Serbian Orthodox sites damaged in 2004.

182. In 2004, the Division for Cultural Heritage, out of the total budget of 4.800.000 €, spent 4.202.000 € or 87 % of it for minorities or for the repair of damages caused to cultural monuments during the March events. The restoration of the lodging-house in the Monastery of Deçan/Dečani cost 350.000€.

## ARTICLE 19

### *Access to public/government information*

183. The Law on Access to Official Documents<sup>330</sup> is in force. However, this law has not been generally implemented. The Ministry of Public Services has proposed draft administrative directives for its implementation.

184. The formalities, conditions, restrictions and sanctions, to which the exercise of the freedom of expression is subject, are set forth in UNMIK Regulations governing the broadcast and print media and the Provisional Criminal Code of Kosovo. The six priority actions contained in the returns and rights of communities' standard of the KSIP, as revised following the violence in March 2004, can be said to reflect UNMIK's policy on necessary restrictions on the exercise of the freedom of expression in a democratic society. These priority actions require *inter alia* that Provisional Institutions and party leaders publicly condemned the media reports, which contributed to ethnic violence, and investigate the public authorities, who either contributed to or failed to exercise due diligence to prevent the violence in March 2004.<sup>331</sup> The investigation of the Temporary Media Commissioner (TMC) into the role of local print and broadcast media during the March 2004 violence charged a number of local broadcasters with incitement to violence and hate speech that, at the time, was decried by them as an infringement of the freedom of the press. Subsequently, some of them – in lieu of a fine – acknowledged that proclamations had been aired “which might be considered as hate speech.”<sup>332</sup>

### *The right to freedom of expression in the media*

185. UNMIK Regulation No. 2000/36 On The Licensing And Regulation of the Broadcast Media in Kosovo and its associated Code of Conduct for the Broadcast

<sup>330</sup> Law No. 2003/12, promulgated by UNMIK Regulation No. 2003/32.

<sup>331</sup> Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, UN. Doc. S/2004/907, para. 7 (17 November 2004).

<sup>332</sup> Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, UN. Doc. S/2005/88, Annex I, Technical assessment of progress in the implementation of the standards for Kosovo, para. 8 (14 February 2005).

Media in Kosovo (Broadcast Code of Conduct) as well as UNMIK Regulation No. 2000/37 on the Conduct of the Print Media in Kosovo and its associated Temporary Code of Conduct for the Print Media in Kosovo (Press Code of Conduct) translate the general ECHR and ICCPR validations for restrictions on the freedom of expression into identical special provisions proscribing the broadcast and publication of information, which endangers the reputation or rights of others, and reserving the powers of the SRSG to impose restrictions, which serve the interests of public safety and the prevention of disorder or crime.

186. For the purpose of comparison, the applicable provisions of UNMIK Regulation No.

2000/36 On Broadcast Media and UNMIK Regulation No. 2000/37 on Print Media are quoted in full below.

187. Section 5 of UNMIK Regulation No. 2000/36 on The Licensing and Regulation of the Broadcast Media in Kosovo provides:

5.1 Radio and television operators shall refrain from broadcasting personal details of any person, including name, address or place of work, if the broadcast of such details would pose a serious threat to the life, safety or security of any such person through vigilante violence or otherwise.

5.2 Nothing in the present regulation shall in any way limit or restrict the authority of the Special Representative of the Secretary-General to take such action as he may deem necessary for security reasons, to protect life, or to maintain civil law and order.

188. Section 4 of UNMIK Regulation No. 2000/37 on the Conduct of the Print Media in Kosovo provides:

4.1 Owners, operators, publishers and editors shall refrain from publishing personal details of any person, including name, address or place of work, if the publication of such details would pose a serious threat to the life, safety or security of any such person through vigilante violence or otherwise.

4.2 Nothing in the present regulation in any way limits or restricts the authority of the Special Representative of the Secretary-General to take such



action, as he may deem necessary for security reasons, to protect life, or to maintain civil law and order.

189. The preambles to the two Codes of Conduct associated with the above UNMIK Regulations recite the text of Article 10(2) of the ECHR in full. Its general restrictions then inform the operative paragraphs proscribing “provocative statements” that are contained in the Broadcast Code of Conduct and the Press Code of Conduct alike.

190. The verbatim language of the requisite paragraphs of the Code of Conduct for the Broadcast Media in Kosovo<sup>333</sup> is as follows:

2.2. Broadcasters will not broadcast any material that encourages crime or criminal activities or which carries imminent risk of causing harm, such harm being defined as death, or injury, or damage to property or other violence.

2.3. Broadcasters will not broadcast any material that denigrates an ethnic or religious group or implies that an ethnic or religious group is responsible for criminal activity.

191. UNMIK Administrative Direction 2000/22 on A Temporary Code of Conduct for the Print Media provides:

2.1. Publishers will not write, print, publish or distribute any material that encourages crime or criminal activities or which carries imminent risk of causing harm, such harm being defined as death, or injury, or damage to property or other violence.

2.2. Publishers will not write, print, publish or distribute any material that denigrates an ethnic or religious group or implies that an ethnic or religious group is responsible for criminal activity.

192. Both UNMIK Regulation No. 2000/36 on Broadcast Media and its associated Broadcast Code of Conduct predicate the grant of broadcast licenses in compliance with the latter Code.<sup>334</sup>

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<sup>333</sup> The code of conduct for the broadcast media was issued by the TMC and was not promulgated in the form of an Administrative Direction by the SRSG. The latter notwithstanding, UNMIK Regulation No. 2000/36, section 2.2 (alinea 2) provides that:  
 “Applicants for a broadcast license shall agree to abide by the Broadcast Code of Conduct issued by the TMC and attached to the Application and Registration Form.”

193. Section 1 – Application: “All owners, station managers, editors-in-chief and/or those with ultimate and final editorial control of programmes on radio or television stations in Kosovo (hereafter “broadcasters”) agree to abide by this Code as a condition of receiving a license to broadcast from the Temporary Media Commissioner.”

194. Inasmuch as UNMIK Regulation No. 2000/36 sanctions non-compliance with the Broadcast Code of Conduct, compliance with its provisions is a requirement for holding a broadcast license. Section 3 of UNMIK Regulation No. 2000/36 sets forth provisions governing the imposition of administrative sanctions for failure to comply with the Broadcast Code of Conduct. Section 2 of UNMIK Regulation No. 2000/37 on the Conduct of the Print Media contains similar provisions. Both UNMIK Regulation No. 2000/37 and UNMIK Regulation No. 2000/36 provide that the imposition of those administrative sanctions is without prejudice to any applicable criminal sanctions or civil causes of action.<sup>335</sup>

195. The legal and institutional framework for media regulation is undergoing a reorganisation with the implementation of the Law on the Independent Media Commission and Broadcasting<sup>336</sup>.

196. The following criminal offences are of relevance to Article 19:

- Article 28 of the PCCK which establishes special criminal liability for criminal offences committed through the media.
- Article 115 of the PCCK which criminalises the proscriptions of “provocative statements” contained in the Broadcast Code of Conduct, Section 2.2-2.3 and the Print Code of Conduct, Section 2.1-2.2.
- Articles 187 and 188 of the PCC which penalize the criminal exercise of the freedom of expression against the honour and reputation of others.

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<sup>334</sup> UNMIK Regulation No. 2000/36, Section 2.2.

<sup>335</sup> UNMIK Regulation No. 2000/37, section 2.2 and UNMIK Regulation No. 2000/36, section 3.3.

<sup>336</sup> UNMIK Regulation No. 2005/34 of 8 July 2005 on the Promulgation of the Law on the Independent Media Commission and Broadcasting adopted by the Assembly of Kosovo.

**ARTICLE 20**

197. Article 115 of the PCCK defines a criminal offence of Inciting Racial, Religious or Ethnic Hatred, Discord or Intolerance.

198. The “standards before status” policy, which was jointly endorsed by UNMIK and the PISG, requires hate speech or any form of incitement to be condemned by political leaders, the media regulatory authority and media commentators. The Kosovo Standards Implementation Plan, which was developed to give effect to this policy and was likewise approved by UNMIK and the PISG, posits that action needs to be taken to ensure professional, responsible, and non-discriminatory media that caters to all ethnic communities. “The violence of 17-20 March 2004 and the irresponsible role played by some in the media underline this need.”<sup>337</sup> Such action entails the creation of a multi-ethnic press council, to provide print media with a necessary self-regulatory system, including a system for eliminating hate speech. That system should require the media to criticise any form of hate speech and refrain from broadcasting or printing it. The media should encourage tolerance among the communities and report in an unbiased way, especially when dealing with situations of inter-ethnic tension.

199. The violence in March 2004, which appears to have been sparked by the death of three Kosovo Albanian children by drowning in the River Ibar near the town of Zubin Potok (Mitrovica region) on 16 March 2004, was judged to have been made worse by inflammatory and biased media reporting.<sup>338</sup>

200. In the wake of that violence, assessments were conducted to analyse the malfunctions in media performance and to tailor further assistance accordingly. On 23 April 2004, the TMC issued a report with his preliminary findings on the conduct of the most influential media in Kosovo – the Kosovo-wide public broadcaster Radio Television Kosovo (RTK), the private television station Kosovo Television (KTV)

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<sup>337</sup> Kosovo Standards Implementation Plan, Functioning Democratic Institutions, Media/Civil Society, p.7

<sup>338</sup> Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, UN Doc. S/2004/378, para. 5 (30 April, 2004).

and the private television broadcaster TV21 – during the three days of riots.<sup>339</sup> He found that all three had violated the TMC Code of Conduct for Broadcast Media, proposed the imposition of sanctions and made certain remedial recommendations.

201. With regard to RTK, the report concluded that while a number of RTK journalists and camera crews had shown commendable courage and poise in reporting from violent situations across Kosovo, some regional correspondents, ranged in style from calm and factual to inappropriately emotional. The TMC also concluded that the news judgment of the RTK management was marked by reckless disregard for the risk of inciting and exacerbating civil disorder and that the character of RTK news coverage appeared to have been driven by an appetite for drama and sensation and with no moderating sense of responsibility for the effects its broadcasts might have had in a volatile political climate.

202. In conclusion, the assessment also found:

Much of RTK reporting on the evening of 16 March, with its references to “Serb bandits” and “Chetnik hordes” and the casual use of the term “attack” to describe what had happened to the children—in addition to other material broadcast on 17 March—appears to conflict with RTK’s own Editorial Code of Conduct in regard to the use of “emotive” or “provocative” language.<sup>340</sup>

203. It also stated the RTK’s coverage arguably constituted a “violation of Article 2.2 of the TMC Broadcast Code of Conduct prohibiting the broadcast of material with a clear and immediate risk of inciting violence, and will be treated as such.”<sup>341</sup>

204. The TMC report made various recommendations to address the problems identified.<sup>342</sup>

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<sup>339</sup> The TMC report is available at [http://www.osce.org/documents/mik/2004/04/2765\\_en.pdf](http://www.osce.org/documents/mik/2004/04/2765_en.pdf).

<sup>340</sup> *Ibid.* at Conclusions with Regard to Radio-Television Kosovo, para 14.

<sup>341</sup> *Ibid.* at Conclusions with Regard to Radio-Television Kosovo, para 15. For the proscriptions imposed by the TMC Code of Conduct for Broadcast Media, see the text of its Article 2.2 as quoted in full above.

<sup>342</sup> *Ibid.* at Recommendations with Regard to Radio-Television Kosovo, paras. 21-22.

With Regard to KTV, the TMC report came to the conclusions<sup>343</sup> that the KTV's reporting of the drowning of the three boys gave unwarranted credence to the surviving boy's story and that in doing so KTV failed to adequately represent the uncertainty of what had happened. The report further concluded that despite the fact that the interview with the surviving boy showed that the children fled from a dog, and not people, KTV did nothing to draw attention to this important revelation, and thus missed an important opportunity to alter public perceptions of the event before violence broke out the next day. The report further found that, while some KTV correspondents displayed poise and courage in reporting from scenes of violence, other KTV correspondents filed grossly biased reports that were not challenged or corrected.

205. The TMC compared KTV to the two other major stations and stated that while KTV displayed a stronger preference for drama and sensation in its reporting than TV 21, on the other hand it did nothing to "politicize the deaths of the three boys or to create the kind of patriotic hysteria around the story that marked the coverage of RTK."

206. With regard to TV 21,<sup>344</sup> the TMC concluded that the initial news report of the incident by TV21 attached unwarranted credence to the story of the surviving boy; did not accurately represent what he was telling interviewers; and failed to include the crucial perspective that there was no independent evidence to support the boy's story. The TMC stated that this failure could be interpreted as a violation of Article 7.2 of the TMC Broadcast Code of Conduct.<sup>345</sup>

207. The TMC assessed that TV 21 presenters approached the story in a calm manner and made commendable efforts to include rational comment and analysis and did nothing to politicize the story or sensationalize its reporting. The report also assessed that TV 21 took commendable steps to learn what actually had happened to the four boys, reported on the violence in a calm and factual manner, and on balance

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<sup>343</sup> *Ibid.* at Conclusions with Regard to KTV, page 29.

<sup>344</sup> *Ibid.* at Conclusions with Regard to TV21, page 31.

<sup>345</sup> Article 7.2 of the TMC Broadcast Code of Conduct reads: "Broadcasters will not broadcast material unless they have undertaken a prudent and reasonable inquiry to ensure the veracity of the material."

sought to reduce the emotional aspect of its news coverage while fully informing its audience.

208. The report recommended with regard to TV 21 that specific training for correspondents and editors in the technique and ethics of conflict reporting should be conducted.<sup>346</sup>

209. Initially, the media – in particular RTK – did not acknowledge that their reporting – as summarized above – displayed a serious lack of professionalism that fanned rather than contained the violence.<sup>347</sup> Indeed, RTK responded with claims that freedom of the press had been infringed by the TMC’s investigation, preliminary findings and proposed fines and remedial recommendations.

210. The TMC has since reached settlements with RTK, KTV and TV21 on the complaints over their coverage of the March 2004 violence. RTK in particular acknowledged that it had aired “proclamations that could be considered as hate speech” since they “implied that a specific ethnic category of people were responsible for criminal activity”. A minimum level of funding was agreed on for training editorial staff during 2005.<sup>348</sup>

## ARTICLE 21

### *Legal background*

211. The exercise of the right to freedom of assembly by persons is governed by the 1981 SAP Kosovo Law on Public Peace and Order and the 1981 SAP Kosovo Law on Public Gatherings. The former regulates the behaviour of people in public places: the latter, the organization of public gatherings. Both laws contain general

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<sup>346</sup> TMC report.

<sup>347</sup> Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, UN. Doc. S/2004/613, para. 22 (30 June, 2004).

<sup>348</sup> S/2005/88, *supra* note, para. The full texts of the settlements are available respectively at: [http://www.imc-ko.org/IMG/pdf/RTK\\_Settlement\\_15\\_Dec\\_04\\_ENG.pdf](http://www.imc-ko.org/IMG/pdf/RTK_Settlement_15_Dec_04_ENG.pdf), [http://www.imc-ko.org/IMG/pdf/KTV\\_Settlement\\_09\\_Dec\\_04\\_ENG.pdf](http://www.imc-ko.org/IMG/pdf/KTV_Settlement_09_Dec_04_ENG.pdf) and [http://www.imc-ko.org/IMG/pdf/TV\\_21\\_Settlement\\_09\\_Dec\\_04\\_ENG.pdf](http://www.imc-ko.org/IMG/pdf/TV_21_Settlement_09_Dec_04_ENG.pdf).

provisions in respect of the formalities, conditions, restrictions and sanctions to which the exercise of the freedom of assembly is subject.

**212.** The 1981 Law on Public Gatherings<sup>349</sup> obligates the organizers of a public gathering to notify the municipal law enforcement agencies of such an event and requires those law enforcement agencies to ensure that the public gathering takes place without any breach of public order.<sup>350</sup> Articles 2, 7 and 8 of the Law on Public Gatherings contain provisions restricting the freedom of assembly in terms similar to those in Article 22(2) of the ICCPR. The law also imposes obligations upon the conveners and organisers of public gatherings to maintain public order and to disband the gathering should the safety of people and property be otherwise endangered.<sup>351</sup>

**213.** Article 4 of the Law on Public Peace and Order<sup>352</sup> imposes similar obligations on the organisers of public performances. In addition, it provides for the intervention of law enforcement authorities if the organisers are unable to meet these obligations. Just as the Law on Public Peace and Order obligates the organisers of public performances to safeguard public safety and public order, so it requires individual participants in such public gatherings to do the same as well as to respect the rights and freedoms of others.<sup>353</sup>

**214.** Article 173 of the PCCK criminalizes the unlawful restriction of the exercise of the right to freedom of assembly.

### ***Practice***

**215.** There are no statistics regarding refusal of permits for public gatherings organized by persons belonging to minority communities. However the police have refused permission for a demonstration in the following cases:

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<sup>349</sup> Official Gazette of the SAP of Kosovo, no. 8/81.

<sup>350</sup> Law on Public Gatherings, Article 3 and 6.

<sup>351</sup> Law on Public Gatherings, Article 5.

<sup>352</sup> Official Gazette of the SAP of Kosovo, no. 13/81.

<sup>353</sup> Law on Public Peace and Order, Article 2.

- Two requests to hold a demonstration regarding a war memorial to be erected in the Shatervan Area were not granted. The reason for the denial was that there was the possibility of violence and the location requested was not appropriate.
- The Family Association for Kidnapped Persons and War Victims wished to organise a protest involving between 50-150 participants on 30 August 2004. The organisers of the protest intended to block two major streets in the central part of Prishtinë/Priština and to present a slide show in front of the National Theatre. Their request was rejected, because UNMIK police considered that if this part of town was blocked off, it would cause disruption in all essential services -- including emergency ambulance and police services. During negotiations, UNMIK police proposed an alternative venue for the demonstration to the organisers. This was refused. The protest apparently took place without permission.<sup>354</sup>
- The political party “Lëvizja Popullore e Kosovës” (LPK) applied for permission to organise a peaceful protest in front of the Kosovo Assembly between 13 and 28 November 2003. This request was rejected in a memo issued by the Operations Officer of the Prishtinë/Priština Regional Headquarters of UNMIK Police and upheld by the Prishtinë/Priština Regional UNMIK Commander on 6 November 2003. The latter stated that the protest would have required the police to cordon off the area and so to block off the road for several days. The resultant disruption of pedestrian and vehicular traffic would have been disproportionate to the interest of LPK to hold a peaceful protest.<sup>355</sup>

## ARTICLE 22

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<sup>354</sup> The above factual inputs were provided by the Office of the UNMIK Police Commissioner.

<sup>355</sup> See correspondence between UNMIK and the Ombudsperson on [www.ombudsperson.org](http://www.ombudsperson.org).



216. The Constitutional Framework guarantees the right to freedom of association in general, with special provisions governing that right for persons belonging to minority communities. Of the 2,800 registered non-governmental organizations, 300 represent Kosovo Serbs, 55 Roma, and smaller numbers of the Bosniak, Turkish, Gorani and Croatian communities. They operate relatively freely throughout Kosovo.

217. Paragraph 4.4 of the Constitutional Framework provides, *inter alia*, that Communities and their members shall have the right to:

- (g) Establish associations to promote the interests of their Community; [and,]
- (h) Enjoy unhindered contacts with, and participate in, local, regional and international non-governmental organizations in accordance with the procedures of such organizations....”

218. UNMIK Regulation No. 1999/22 On the Registration and Operation of Non-Governmental Organizations in Kosovo of 15 November 1999 regulates the nature, registration and status of all NGOs operating in Kosovo. Section 4 of UNMIK Regulation No. 1999/22 reads, in pertinent part:

4.1 An NGO shall apply for registration with UNMIK in order to operate as a legal entity in Kosovo.

4.2 A foundation or association registers by filing with UNMIK an application form, founding instrument, and its statutes.

[...]

4.6 UNMIK shall issue to an NGO a registration certificate or a written decision denying registration within sixty (60) business days of receiving an application to register, unless UNMIK requests in writing further information or clarification. If registration is denied, UNMIK shall include an explanation of the grounds upon which registration was denied.

10.3 An NGO may apply for public benefit status upon initial registration by the NGO or thereafter. UNMIK shall grant public benefit status if the registration documents of the NGO demonstrate that the purposes and activities of the NGO satisfy the requirements of section 10.1. To retain public benefit status, the NGO shall prepare activity and financial reports pursuant to

administrative directions issued by the Special Representative of the Secretary-General.

219. Section 5.1 of UNMIK Regulation No. 1999/22 provides that UNMIK may deny an application for registration if the statutes of the NGO would violate the provisions of the United Nations Security Council Resolution 1244 (1999), or of any UNMIK regulation.

220. Section 2 of UNMIK Regulation No. 2004/11 On the Registration and Operation of Political Parties in Kosovo of 5 May 2004 provides:

2.1 The Office shall maintain a Register of Political Parties identifying the name, addresses and telephone numbers of all offices of each registered Political Party, and the names and addresses of the President and the members of the highest executive body of each registered Political Party.

2.2 A Political Party that is entered in the Register of Political Parties thereby acquires the status of a legal person with the capacity to own property, enter into contracts and sue and be sued in its own name.

221. Section 4 of UNMIK Regulation No. 2004/11 on the Registration and Operation of Political Parties provides that an application for registration shall be denied if the registration documents, including the Party Statute, do not comply with the requirements of the Regulation or are contrary to the applicable law of if the Party is applying for registration under a name, acronym, or symbol that is likely to incite inter-communal, ethnic or religious hatred or violence.

222. The right to associate in trade unions is both guaranteed and regulated by UNMIK Regulation No. 2001/27 On Essential Labour Law in Kosovo, entered into force on 8 October 2001. Section 5 of UNMIK Regulation No. 2001/27 reads, in pertinent part:

5.1 Employees and employers shall be entitled to establish and, subject only to the rules of the organization(s) concerned, join organization(s) of their own choosing without previous authorization. Employees' organizations shall include unions.

5.2 Employees' and employers' organization(s) shall be entitled to establish and join federation(s) and confederation(s). Such organization(s), federation(s) or confederation(s) shall be entitled to affiliate with international organization(s) of employees and employers.

5.3 Employees' and employers' organization(s), and their respective federation(s) and confederation(s), shall be entitled to draft their constitution and rules, elect their representatives, organize their administration and activities, and formulate their programs.

5.4 The public authorities shall refrain from any interference that would restrict employees' and employers' rights, as set out in section 5.1, and their respective organization(s), federation(s) and confederation(s) rights, as set out in section 5.2.

5.5 Employees' and employers' organization(s), and their respective federation(s) and confederation(s), may not be dissolved or suspended by the Administrative Department of Labour and Employment (hereinafter "the Department"), or the authority that will succeed it.

5.6 The acquisition of legal personality by employees' and employers' organization(s), and their respective federation(s) and confederation(s), shall not be made subject to conditions of such a character as to restrict the application of sections 5.1, 5.3, 5.4 and 5.5.

5.7 Unions shall register and submit a copy of their constitution and a list of the names, surnames, dates of birth, and addresses of the persons responsible for the management and administration of the union, with the Department, or the authority that will succeed it.

5.8 Employees and employers, and their respective organization(s), federation(s) and confederation(s), shall exercise their rights under this regulation in accordance with the applicable law in Kosovo.

223. The same law also proscribes discrimination on the basis of union membership. The UNMIK Non-Governmental Organizations Registration and Liaison Unit reports that no NGOs have been denied registration in Kosovo since 1999. Nor have any NGOs had had their registration suspended or revoked.

**ARTICLE 23**

**224.** The legal framework for the family and marriage remains essentially what is set forth in the Law on Marriage and Family Relations<sup>356</sup> which entered into force more than 20 years ago. New legislation in this area has been under preparation by the Provisional Institutions of Self-Government.

**225.** Article 2 provides that under the Law the family is the lifelong union of parents children and other relatives.

**226.** Article 24 provides that a marriage is deemed to be entered into at the moment when the couple give together a declaration of will to form a union before the competent organ in accordance with the conditions set forth in the Law. Article 25 provides that the marriage is not considered valid when there is no free will on the part of a future spouse, but the will is imposed by force or is a result of deceit.

**227.** Article 26 provides that the marriage shall not be valid if there are conditions determined by law which invalidate the marital union. These conditions are the continuing existence of a previous marriage<sup>357</sup>, the inability of one of the parties to judge due to mental illness<sup>358</sup>, the existence of various types of blood or marital relationship between the parties<sup>359</sup> and the fact that one of the parties is aged under 18, though in some circumstances persons who are aged over 16 but under 18 may marry.<sup>360</sup>

**228.** Article 6(2) provides that marriage is based on the free decision of the husband and wife to enter into a marriage on terms of equality, reciprocal sympathy and love, respect, understanding and good faith. Property relations in the family are based on principles of equality, reciprocity, solidarity and on the protection of the interests of minor children.<sup>361</sup> The partners to a marriage are equal in all personal and wealth

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<sup>356</sup> Official Gazette of the Socialist Autonomous Province of Kosovo, 28 March 1984.

<sup>357</sup> Law on Marriage and Family Relations, Article 27.

<sup>358</sup> Law on Marriage and Family Relations, Article 28.

<sup>359</sup> Law on Marriage and Family Relations, Articles 29, 31 and 32.

<sup>360</sup> Law on Marriage and Family Relations, Article 33.

<sup>361</sup> Law on Marriage and Family Relations, Article 12(1).

relations<sup>362</sup> and they are obliged to be loyal to one another and to help and respect one another.<sup>363</sup>

229. When the competent court in a marital dispute renders a judgment by which the marriage is dissolved or annulled or a request for a determination that the marriage exists is rejected, the court shall in the same judgment shall decide on the care and education of the minor children of the parties.<sup>364</sup>

#### ARTICLE 24

230. The registration of children born in Kosovo is based on UNMIK Regulation No. 2000/45 on Self-Government of Municipalities in Kosovo and UNMIK Regulation No. 2005/21 on the Promulgation of the Law No. 2004/46 on Civil Status Registers adopted by the Assembly of Kosovo.

231. Hospitals are required to report the birth of a child and registration of the child has to be carried out within 30 days.

232. Schools do play a special role in preventing domestic violence and protecting children from it. The teacher trainings in Human Rights also include parts on the role of the teachers in preventing and reporting domestic violence. However, in practice it has become known that teachers in some cases have also covered up the issue and protected the perpetrators. This Human Rights training also has elements geared towards enabling children to exercise their right to freedom of opinion.

233. There seems to be a real discrepancy between rural and urban areas – with traditional (authoritarian, top-down) forms of education prevailing in rural areas, whereas 6 years of educational reform are showing some fruits in urban areas.

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<sup>362</sup> Law on Marriage and Family Relations, Article 51.

<sup>363</sup> Law on Marriage and Family Relations, Article 52.

<sup>364</sup> Law on Marriage and Family Relations, Article 111(1).

**ARTICLE 25*****The right and opportunity to vote***

234. To exercise the right to vote a person must be at least 18 years of age on the date set for the election and be a habitual resident of Kosovo, as set forth in section 3 of UNMIK Regulation No. 2000/13 on the Central Civil Registry, which provides:

The Civil Registrar shall register the following persons as habitual residents of Kosovo:

- (a) Persons born in Kosovo or who have at least one parent born in Kosovo;
- (b) Persons who can prove that they have resided in Kosovo for at least a continuous period of five years;
- (c) Such other persons who, in the opinion of the Civil Registrar, were forced to leave Kosovo and for that reason were unable to meet the residency requirement in paragraph (b) of this section; or
- (d) Otherwise ineligible dependent children of persons registered pursuant to subparagraphs (a), (b) and/or (c) of this section, such children being under the age of 18 years, or under the age of 23 years but proved to be in full-time attendance at a recognized educational institution.

235. Before each election, Voter Service Periods and Appeals and Complaints Commissions provide voters with the possibility to verify their information in the Voter Register (e.g. their polling centre assignment) and obtain legal support in case of complaints. Before each election, voters who are newly registered, newly eligible or have changed address since previous elections, are notified by mail about their new polling centre assignment. In 2004, a total of 116,962 mail notifications were sent out. 9521 (8,14%) of these remained undelivered, probably due to missing address details.

236. In 2000 the International Organization for Migration (IOM) carried out a voter registration period in Serbia and Montenegro (SaM) and registered around 100,000 IDPs. In 2002, a second voter registration period was carried out in SaM by OSCE and an additional 10,000 IDPs could be registered for the voter list. Difficulties were encountered during these registration processes especially due to missing legal documents proving identity (especially for Roma registrants).

237. No additional registration in person has taken place prior to the 2004 elections. Notifications for ballot application were sent out by mail to the IDPs in SaM, but 60,000 of these letters sent to Serbia were returned undelivered. This was one of the factors that eventually led to the decision to carry out in-person voting 2004 in SaM again. 100 Polling Centres were opened in Serbia and each of them included also a voter registration desk where not yet registered eligible voters could register on Election Day and cast a conditional ballot.<sup>365</sup>

238. For every election held in Kosovo since 2000, there was an Electoral Rule that included provisions for illiterate voters, people with disabilities and persons subject to impediments to freedom of movement to either vote with assistance or at an earlier time. There has been a By-Mail operation in each election to allow IDPs and refugees to vote for the Kosovo elections, and there were also polling centres located in Serbia and Montenegro in each election for IDPs. For the 2004 Kosovo Assembly Election, polling in Serbia and Montenegro was not part of the original operational plan, but the last minute decision of the Serbs not to continue with their boycott of the Kosovo elections and the lack of registration for the By-Mail Operation led the SRSG to issue Administrative Direction No. 2004/25 which called for polling centres in Serbia and Montenegro on election day. As this Administrative Direction gave the right to vote to individuals who did not meet the eligibility requirement of being civilly registered or a successful applicant of the By-Mail Operation under the existing deadlines, the SRSG issued Administrative Direction No. 2004/27 which gave the right to vote to former IDPs from Serbia and Montenegro who returned to Kosovo after the deadline for eligibility set out in the legislation. The reason for this was that if a former IDP had remained in Serbia and Montenegro, he/she would have been eligible to vote under the provisions of Administrative Direction No. 2004/25.

239. Prior to organized elections in Kosovo, manuals, brochures, leaflets, posters, flyers, had been compiled in English, Albanian and Serbian and distributed to each community accordingly. Voter materials have also been available in Turkish.

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<sup>365</sup> (UNMIK Administrative Direction No. 2004/25 and UNMIK Administrative Direction No.2004/25.

240. OSCE organized elections in special institutions/locations as well as programs for illiterate voters who resided in the mental institution in Shtime/Štimlje. For the Kosovo Elections organized in 2001, 2002, 2004, an Early Voting Programme (EVP)/Special Need Voting (SNV) was established. It aimed at enfranchising those Kosovo voters who, for clear and convincing reasons beyond their control, could not cast a ballot in a regular Polling Centre. It would accommodate voters in Kosovo, Serbia proper and Montenegro who were homebound due to disability or fear or who were incarcerated or were residing in the Prishtinë/Priština Home for the Elderly and the Shtime/Štimlje Institution for the Mentally Disabled.

241. There have been many improvements in the electoral climate and election operations from 2000 Municipal elections till present. One of the biggest issues still remains the accuracy of the registration process.

- An accurate voter registration process is not one in which there are no errors, but one in which there is sufficient opportunity for detection and speedy correction of errors. Common errors include misspelled names, incorrect details, deceased, absent voters, and missing names in previous voter's data base. The vast majority of these could be corrected with a new census or if the scrutiny of the registers would be undertaken well. This also means a proper widespread notification of voters as well accessibility of the registers.
- Distance from Polling Centres is another factor that has impeded voters from exercising their right to vote. Steps have been taken to address this issue. During the last elections new centres were set up near some remote villages. Although this remedy addresses the problem of distance (lack of transport), it does not completely resolve the problem. The element of bad weather and harsh road depressed turnout. Additional recourses were required. OMIK staff has invested time and effort by dissemination posters, pamphlets, meetings with village leaders and discussion with people house by house in order of identifying the problem of low turnout in some remote villages. In order to facilitate their travelling and increase the turnout the CECS based on circumstances should decided to send a Mobile team or open a new Polling Centre.



- Establishment of New Polling Centres helped a lot to overcome few problems on E-day. With big number of Voters assigned in Mega Centres in 2000 the long queues could be noticed inside and outside PC on E-day. This of course demotivated Voters to wait and cast their Vote. From 2001 the number of Polling Centres was increased considerably to address this problem.

242. The Instructions in all election manuals and in voter information booklets were very clear on the secrecy of the vote. All PSC members and Polling Centre Supervisors (later Chairpersons) were in charge to monitor the Polling Centre and prevent any voter intimidation that might occur throughout the voting process. The Polling Centres were supplied with four voting screens that allowed voters to mark their ballots in secret. Voting screens could not be placed so close together that the secrecy of the ballot could be compromised. However, they were positioned in a way that ensured that no one can see how the voter marks his or her ballot. The area behind the voter screen had to be private. It could not be visible through a window. Still, in some cases, especially in the countryside, a lot of “multiple voting” and “assistance to the family members” took place.

243. The security of voting and the materials before and after the day of election are given special attention at each election. Security of the electoral process ensured the credibility of the results. It has been a joint effort of OSCE, UNMIK Police and the KPS and KFOR. Their main task was to provide security assistance to material distribution (sensitive materials), monitor the transport of election materials and secure the Polling Centres on E-Day by assigning a sufficient number of police officers. In cases where a voter could not go to the respective assigned Polling Centre, he/she was given a chance to exercise his/her right to vote by casting a Conditional Ballot in the closest to his/her home Polling Centre. According to the Rules and Procedures, when a voter voted by Conditional Ballot, he/she personally placed the ballot-paper into a blue Secrecy Envelope, which was then sealed by the Polling Centre Commission inside a completed with voters details Conditional Ballot Envelope before it was cast into the Ballot Box. After the eligibility of the voter was confirmed in the Counting Centre under domestic and International supervision, the blue Secrecy envelope was taken out from the white envelop and placed into respective box for the certain municipality with all other blue envelopes.

Deleted:

244. The above procedures guaranteed secrecy, validity and security of the voting process.

All elections in Kosovo so far have been supervised and monitored by Political Parties and NGOs and international observers.

245. Until 2004 elections were organized by the OSCE Department for Election Organization and the Polling Centres staff was trained by OSCE trainers. During the 2000, 2001 and 2002 elections, some 2000 international Polling Centre Supervisors were in charge of the Polling Centres. The international Supervisors were responsible for the conduct of polling and counting at the polling centres and some even in central counting centre. In addition to the International Supervisors, some of the 12,000 domestic observers and more than 200 international observers from Council of Europe and other international organizations in each election observed the polling activities. The international supervisors and the presence of observers prevented irregularities and increased the credibility of the election results. The international supervisors prepared the ground for handover of responsibilities in 2004 to the Polling Centre committee.

246. In preparation for the 2004 elections the OSCE staff worked in close cooperation with the newly established CEC Secretariat which was responsible for the election organization– advising, coaching and monitoring the every step of the process. The voting and counting process were also closely monitored by domestic and international observers who validated the results.

247. The Election Complaints and Appeals Commission (ECAC) dealt with complaints and appeals filed by the voters, Political Party observers and others involved. It has full access to the necessary materials. An improvement in the professionalism of this commission was noted in 2004.

***The right and opportunity to be elected***

248. For the past four elections the candidate eligibility was defined in the Constitutional Framework, the UNMIK Regulations on elections in Kosovo and CEC Electoral Rules. Under the Constitutional Framework<sup>366</sup> and sections 1 and 4 of Electoral Rule 8/2002 on the Candidate Registration requirements for candidate eligibility standing as a candidate in Kosovo Assembly Elections and Municipal Elections are:

- a person must fulfil the voter eligibility requirements in order to participate in municipal or assembly elections
- for municipal elections, a candidate shall be a registered voter in the municipality for which the candidate is standing for office
- a person is not eligible to stand as a candidate if he/she is: (i) a member of the Central Elections Commission, ECAC, an Assembly Election Commission or Polling Centre Committee; (ii) a member of KPC and KPS; (iii) serving as a judge or prosecutor; (iv) serving a sentence imposed by the ICTY or under indictment by the Tribunal and has failed to comply with an order to appear before the tribunal or (v) deprived of legal capacity by a final court decision,
- A member of a municipal assembly may not simultaneously be a member of the Assembly of Kosovo. UNMIK Regulation No. 2002/11, Section 3 Terms of Office (3.1)

249. However additional requirements according to the same CEC Electoral Rule are:

- (a)(iii) The Central Election Commission shall not register a candidate on a candidate list if he/she is prohibited from standing as a candidate by any UNMIK Regulation or any CEC Electoral Rule.
- (e)(i) (ii) A candidate may not at the same time stand for office on more than one candidate list of a political party, coalition or citizens' initiative or stand as an independent candidate.

***Access on general terms of equality to public service***

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<sup>366</sup> Paragraph 9.1.6.

250. UNMIK Regulation No. 2001/36 on the Kosovo Civil Service and Administrative Direction No. 2003/2 implementing this Regulation provide the legal basis for the Kosovo Civil Service and the basic conditions governing it. The issues of equality, merit and non-discrimination are stipulated in the following sub-sections of Section 2.1 of the Regulation:

The Civil Service shall be governed by the following principles:

- (a) Equity: fair and equitable treatment of civil servants and others, in accordance with the law;....
- (f) Merit: entry, promotion and assignment within the Civil Service shall be only by means of fair, open and competitive procedures, based on objective, job-related criteria;
- (g) Non-Discrimination: no discrimination, direct or indirect, based on sex, race, colour, language, religion, political opinion, national, ethnic or social origin, association with a national community, property, birth, disability, family status, pregnancy, sexual orientation, or age; and
- (h) Inclusiveness: recruitment at all levels in the Civil Service shall reflect the multi-ethnic character of Kosovo and the need for equitable representation of all the communities in Kosovo.

251. Provisions of the Administrative Direction No. 2003/2 mandate the setting up of multi-ethnic gender-balanced panels not only for the selection of civil servants but also for the panels dealing with disciplinary measures and appeals relating to civil servants grievances.

## **ARTICLE 26**

252. This is covered in the Core Common Document.

## **ARTICLE 27**

*General principles in regard to use of language by minority Communities*

253. The right to use one's own language in the private and public sphere and in contacts with administrative and judicial bodies; the right to use one's own name in a minority language and the right to official recognition thereof, the right to display, in a minority language, signs of a private nature and to display topographical signs in a minority language and the right to learn and receive instruction in a minority language are regulated by a composite legal framework comprising SFRY, UNMIK and Provisional Institutions of Self-Government (PISG) legislation.

254. The 1977 SFRY Law on Implementation of the Equality of the Languages and the Alphabets in the Socialist Autonomous Province of Kosovo<sup>367</sup> established the equality of Albanian and Serbo-Croatian and, in areas "where members of Turkish nationality live", of Turkish.

255. The Constitutional Framework sets forth the rights of communities and their members in its Chapter IV. These include, among others, the right to "(a) Use their language and alphabets freely, including before the courts, agencies, and other public bodies in Kosovo; (c) Enjoy access to information in their own language; ... (i) Provide information in the language and alphabet of their Community ... (m) Receive and provide public health and social services, on a non-discriminatory basis".

### *Use of languages at Assembly and Government levels*

256. The Constitutional Framework requires all the meetings of the Assembly of Kosovo and its committees to be conducted in both Albanian and Serbian. It also allows non-Albanian, non-Serb Assembly members to address the Assembly or its committees and to submit documents in their own languages. In such cases, interpretation or translation into Albanian and Serbian must be provided. All official Assembly documents are to be printed in Albanian and Serbian. However, where such documents concern a specific community, the Assembly should make them publicly

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<sup>367</sup> See the "Law on Implementation of the Equality of the Languages and Alphabets in the Socialist Autonomous Province of Kosovo" (SAPK Official Gazette n. 48/1977), as amended by the "Law on Amendments to the Law on Realisation of the Languages and Alphabets in the Socialistic Autonomous Province of Kosovo (SAPK Official Gazette n. 11/85).

available in that community's own minority language. The relevant provisions of the Constitutional Framework are:

9.1.49 Meetings of the Assembly and its Committees shall be conducted in both the Albanian and Serbian languages. All official documents of the Assembly shall be printed in both the Albanian and Serbian languages. The Assembly shall endeavour to make official documents which concern a specific Community available in the language of that Community.

9.1.50 Assembly members from Communities other than the Kosovo Albanian and Kosovo Serb Communities shall be permitted to address the Assembly or its Committees in their own language and to submit documents for consideration by the Assembly in their own language. In such cases, interpretation or translation into the Albanian and Serbian languages shall be provided for the other members of the Assembly or Committee.

9.1.51 All promulgated laws shall be published in the Albanian, Bosniak, English, Serbian and Turkish languages and

9.3.17 Meetings of the Government and its bodies shall be conducted in both the Albanian and Serbian languages. All official documents of the Government shall be printed in both the Albanian and Serbian languages.

9.3.18 Members of the Government from Communities other than the Kosovo Albanian and Kosovo Serb Communities shall be permitted to use their own language.

### *Use of languages at Municipal level*

**257.** Section 2.3 of UNMIK Regulation No. 2000/45<sup>368</sup> establishes that all organs and bodies of a municipality shall ensure that inhabitants of the municipality enjoy all rights and freedoms without distinction of any kind, such as language. Under section 9 of the Regulation minority members have the right to communicate in their own language with all municipal bodies and all municipal civil servants.

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<sup>368</sup> UNMIK Regulation No. 2000/45 of 11 August 2000 on Self-Government of Municipalities in Kosovo.

258. The meetings of the Municipal Assembly and its committees and public meetings shall be conducted in both Albanian and Serbian and, in municipalities where a community lives whose language is neither Albanian nor Serbian, the proceedings must be translated, into the language of that community.

259. All official documents of a municipality must be printed in Albanian and Serbian and, in municipalities where a community lives and whose language is neither Albanian nor Serbian, all official documents of the municipality must also be made available in the language of that community. The same is valid for official signs indicating or including the names of cities, towns, villages, roads, streets and other public places. The relevant provisions in UNMIK Regulation No. 2000/45 are:

9.1 Members of communities shall have the right to communicate in their own language with all municipal bodies and all municipal civil servants.

9.2 Meetings of the Municipal Assembly and its committees and public meetings shall be conducted in both the Albanian and Serbian languages. In municipalities where a community lives whose language is neither Albanian nor Serbian, the proceedings shall also be translated, when necessary, into the language of that community.

9.3 All official documents of a municipality shall be printed in both the Albanian and Serbian languages. In municipalities where a community lives whose language is neither Albanian nor Serbian, all official documents of the municipality shall also be made available in the language of that community.

9.4 Official signs indicating or including the names of cities, towns, villages, roads, streets and other public places shall give those names in both the Albanian and Serbian languages. In municipalities where a community lives whose language is neither Albanian nor Serbian, those names shall also be given in the language of that community.

9.5 The Statute of the municipality shall make detailed provisions for the use of languages of communities as set out in this section, taking into consideration the composition of communities in the municipality.

### ***Registration of personal names***

**260.** Names and surnames in identity cards, travel documents and driving licenses should be displayed in the form of the original name transliterated into the Latin alphabet. Procedures for accessing civil registration are regulated by UNMIK Regulation No. 2001/13 on the Central Registry and its subsequent Administrative Directions<sup>369</sup> establishing the Civil Registrar, the Appeals Commission and the basic criteria for registration. SRSG Executive Decision 2005/15 transferred managerial and operational responsibilities in the area of civil registration from UNMIK to PISG.

**261.** Civil documents and certificates such as birth, marriage and death certificates should be made available by municipal offices in the original language of the person requesting the registration of such data, pursuant to the spelling rules of such person, in accordance with the applicable law<sup>370</sup>.

### ***Use of languages in education***

**262.** The Ministry of Education, Science and Technology (MEST) is obliged to promote quality of opportunity in access to primary and secondary education and to respect and promote the rights of communities and their members established in Chapter IV of the Constitutional Framework<sup>371</sup>.

**263.** The right of education in one's mother tongue (i.e. the right to receive instruction in some or all subjects in the minority language), is secured by UNMIK Regulation No. 2002/19<sup>372</sup> (the "Education Law") which provides that "Communities and their members shall have the right to..(b) Receive education in their own

<sup>369</sup> AD n. 2000/5, n. 2000/8, n. 2000/8, n. 2001/12, n. 2000/25, n. 2001/18. See also UNMIK Regulation No. 2001/18 of 29 March 2000 on Travel Documents, and AI JIAS/AI/2001/3 and AD 2002/6.

<sup>370</sup> UNMIK Regulation No. 2005/21 of 7 May 2005 on the Promulgation of the Law on Civil Status Registers adopted by the Assembly of Kosovo, section 8.4.

<sup>371</sup> See Sections 10.1 (A), (b); 17.1 (a) and (b) of the Education Law.

<sup>372</sup> UNMIK Regulation No. 2002/19 on the Promulgation of a Law Adopted by the Assembly of Kosovo on Primary and Secondary Education in Kosovo, Article 3.2.



language; ...”<sup>373</sup> and also that “no child shall be denied the right to education”, and that “in furtherance of this right, the following principles apply ... (c) Every child has the right to education in his/her language in elementary and secondary schools.”

**264.** The Education Law requires that “access and progression through all levels of primary and secondary education in Kosovo shall be without direct or indirect discrimination on any real or presumed ground, such as race, colour, language or ethnic origin”<sup>374</sup>. Under the Education Law, MEST is responsible for supporting and supervising the implementation of the Law and instructions made under it, by municipalities and schools.<sup>375</sup>

**265.** To implement Article 12.3, providing that MEST “shall issue guidelines not later than 31 December 2003, regarding the learning of the Albanian language by pupils whose mother tongue is different from Albanian, and the learning of other regional and international languages”<sup>376</sup>, MEST issued AI 8/2004, of 5 February 2004<sup>377</sup> and 51/2004, of 16 September 2004.

**266.** For the purpose of establishing a higher education facility providing instruction in Slavic languages, Administrative Direction No. 2002/2<sup>378</sup> granted the “North Kosovo University” in Mitrovicë/Mitrovica the status of an autonomous component within the Kosovo Higher Education System. The Business School in Pejë/Peć and the Faculty of Pedagogy of the University of Prizren were opened throughout 2003 and 2004 as dislocated facilities from the University of Prishtinë/Priština.

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<sup>373</sup> UNMIK Regulation No 2001/9 on a Constitutional Framework for Provisional Self-Government in Kosovo, paragraph 4.4(b).

<sup>374</sup> See Section 5.1

<sup>375</sup> See Section 13

<sup>376</sup> UNMIK Regulation No. 2002/19, Article 12.3.

<sup>377</sup> See:

<http://www.mashtgov.net/English/Legal%20Infrastructures/Administrative%20Instructions.html>

<sup>378</sup> AD No. 2002/2, Implementing UNMIK Reg. No. 2000/11, of 3 March 2002, on the Establishment of the Administrative Department of Education and Science.

UNMIK Regulation No. 2003/14<sup>379</sup> provides that higher education carried out by licensed providers in Kosovo “shall be accessible to all persons in the territory of Kosovo (...) without direct or indirect discrimination on any actual or presumed ground such as national, ethnic (...) origin, association with a national community”.

***Private and public use of minority languages***

**267.** The overwhelming majority of Kosovans speak Albanian, while the other languages utilized in Kosovo include Serbian, other Slavic languages<sup>380</sup> and Turkish. Generally, the use in public of Turkish is less problematic than the use of Slavic languages.

**268.** The ability to speak Albanian strongly influences the sense of security of Slavic speaking minorities and limits their capacity to freely circulate in the territory of Kosovo<sup>381</sup>. Although serious incidents closely related to the use of Serbian language in public have not been reported recently, when outside the limits of their own communities Slavic speaking minorities continue concealing their languages, fearing for their security. However, while refraining from speaking their language in public, they are often able to use their own language when conducting informal dealings with members of the ethnic majority – at different degrees conversant in Serbo-Croatian.

***Signs, inscriptions and other information of a private nature***

**269.** The feeling of insecurity contributes to the reluctance of many Slavic-speaking people to display signs, inscriptions and other information of a private nature in their own languages in ethnically mixed areas. Efforts to lessen the nationalistic pressure and cultural ban on the use of Slavic languages in public are rare. For example, Kosovo Albanian political leaders, with some sporadic exceptions, generally refrain from using these languages in public.

<sup>379</sup> UNMIK Regulation No. 2003/14, of 12 May 2003, on the Promulgation of a Law adopted by the Assembly of Kosovo on Higher Education in Kosovo.

<sup>380</sup> These include Bosnian, Croatian and Gorani languages.

<sup>381</sup> The same is applicable to Albanian-speakers, in those areas where they constitute linguistic minorities.

***Public signs and other topographical signs in minority languages***

270. Within their own respective competencies, municipalities and the Ministry of Transport and Communications (MOTC)<sup>382</sup> share responsibilities as to the installation and maintenance of location and direction signs indicating names of cities, towns, villages, roads, streets and other public places. Accordingly, municipal Chief Executive Officers and the MOTC should ensure that these signs comply with the official list of names of municipalities and cadastral zones included in UNMIK Regulation No. 2000/43, as amended and replaced by Schedule A of UNMIK Regulation No. 2004/36.

271. However, although increasing compliance with the applicable law has been observed throughout the period 2003-2005, local authorities fail to systematically monitor road signs and take timely remedial action when required. As a result, not all road, town, village and street signs bear the names in more than one language while, on the existing town signs, the Serbian version (or the Albanian version, in Serb majority areas) is not always in its correct spelling and in many cases it is scratched or crossed out. In addition, there has been a tendency in the media, in public transportation and in administrative practices of a number of municipalities towards the use of unofficial Albanian names of towns, villages and settlements<sup>383</sup>. As a whole, compliance with the requirements on official signs remains inconsistent.

***Documents in official and minority languages***

272. There have been instances of Kosovans complaining, for example to the Ombudsperson, about documents issued by municipalities in languages different from

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<sup>382</sup> Kosovo Assembly Law on Roads No.2003/11 promulgated by UNMIK Regulation No. 2003/24 states that MOTC is the Public Road Authority for main and regional roads. MOTC is responsible for their management, maintenance and construction of traffic signs, including traffic signs on intersections of main and regional roads with railway lines. The municipality is the Public Road Authority for local roads and residential roads. Municipality should ask an advice from the MOTC regarding their management, maintenance and construction. The municipality is also responsible for maintaining the traffic signs on local roads and of traffic signs on intersections of local road with railway lines.

<sup>383</sup> Examples include: Dardanë (Kamenicë/ Kamenica), Besjanë (Podujevë/ Podujevo), Drenas (Gillogoc/ Glogovac), Albanik (Leposavić/ Leposaviq), Kastriot (Obiliq/ Obilić), Theranda (Suharekë / Suva Reka), Sharr (Dragash/Dragaš), Artanë (Novobërdë/Novo Brdo) and Burim (Istog/Istok).

those of the addressees. The same applies to bills and notices issued by agencies, such as KEK and PTK, exclusively in Albanian language.

***Use of minority languages in central and local level administration***

273. A major review of PISG compliance with the applicable provisions concerning local and central level capacity for translation and interpretation from/into minority languages was undertaken in January 2004 by the UNMIK-led Task Force on Language Standards Compliance, comprising representatives from UNMIK, OSCE and the PISG. As the Task Force concluded, “the free use and respect of the legal requirements of languages continue to be at best lukewarm and at worst ignored”.

274. According to the Task Force findings, out of 30 municipalities, 12 did not have a single language assistant/interpreter. Most of the municipalities that provided language services limited themselves to hiring only a single language assistant/interpreter. Even in municipalities, where there have been earnest efforts to recruit greater numbers of language assistants, the translation/interpretation services were not fully adequate. At the central level, out of six ministries, only one employed six language services staff, two employed five, one had one and the two remaining availed themselves of the services of UNMIK languages assistants. Aside from these technical *lacunae*, simultaneous translation was not systematically arranged, documents were not routinely translated, their delivery was not timely and the quality of the translation was often poor. As a result, inaccuracies have been reported in the translation of laws in Albanian and Serbian with a direct consequence on the limited number of laws translated into other languages of communities.

275. The Task Force attributed the paucity of Kosovo language services to various factors. Overriding among them were the unattractive salary levels and the absence of the category of translators/interpreters in the scale of professions of the Kosovo Civil Service. Indeed, the low salaries offered to Kosovo civil servants and the lack/absence of budget for language/translation needs in the municipalities, an over-reliance on UNMIK staff and the low priority given to the issue of hiring interpreters/translators all contributed to make this profession highly unattractive.

276. A further problem highlighted by the Task Force was the lack of uniform understanding of the applicable law, with the various provisions differently interpreted and applied, particularly at the local level. This may result from the fragmented legal framework, generating confusion, for example, regarding the status of official language of Serbo-Croatian. It should be noted that UNMIK Regulation No. 2000/45 does not specify the minimum level of service a municipality should provide in the language of a community.

### ***The draft law on languages***

277. To comprehensively address these challenges, the Task Force recommended the adoption of an AD to serve as an “interim instrument until such time a special Law on Language Use, based on the AD, would be drafted and approved by the Kosovo Assembly”. As a result, the Government prioritised the enactment of a Law on Official Languages in its 2005 Legislative Strategy and requested the Ministry of Public Services (MPS) to prepare an initial draft by the end of February 2005.

### ***Education in one’s mother tongue***

278. The current *de facto* existence of two education systems has a direct consequence on Kosovo students’ ability to exercise their right to learn their mother tongue, to be educated in certain subjects in their mother tongue, and to study the history and culture of their ethnic group. The presence of “parallel schools”, financed by the Serbian Ministry of Education and Sports (SMES)<sup>384</sup> and following the Serbian curriculum represents both the cause and the effect of the lack of a unified education system for Kosovo.

279. On the one hand, Kosovo Serb (and other minorities, for example, Roma, Croats and Gorani) reliance on parallel educational facilities<sup>385</sup> reflects their security

<sup>384</sup> The SMES provides these schools with textbooks, diplomas and stamps. Both teachers and support staff are supervised by the SMES and receive salaries both from the latter and from the PISG/Ministry of MEST.

<sup>385</sup> In Mitrovicë/Mitrovica region, all primary and secondary schools located in the municipalities of Zubin Potok, Leposavić/Leposaviq, Zvečan/Zveçan and in northern part of Mitrovicë/Mitrovica are under direct authority of the SMES. The same applies to primary and secondary schools located in Banja/Banjë (Skenderaj/Srbica municipality), Gracë/Grace, Gojbulë/Gojbulja and Prilluzhë/Priluzhje (Vushtrri/Vučitern municipality). In Prishtinë/Priština region primary and secondary parallel schools

concerns and the deep mistrust towards MEST structures, perceived as unsafe and unsuitable for their children. The widespread feeling of insecurity, aggravated by March 2004 events, has a direct impact on the possibility of Kosovo Serb children to attend mixed classes and to interact with Kosovo Albanian peers, thus defeating the purpose of promoting inter-ethnic dialogue and mutual understanding.

280. On the other hand, MEST has yet to fulfil its obligation to “provide adequate opportunities for being taught minority languages and to promote the conditions necessary for Slavic speaking communities to maintain, develop and preserve their language as an essential element of their identity”.<sup>386</sup> For example, MEST has yet to prepare and implement a comprehensive plan providing for the integration of members of minority communities in general, and members of Slavic speaking community in particular, into the MEST educational system. Such a plan, while removing the existing barriers between Albanian and Slavic-speaking pupils, would offer an alternative to structures that, although often substandard and run by not fully qualified teachers, are the only ones that many Slavic-speaking minorities, particularly the displaced, can access.

### ***The right of minority Communities to enjoy their own culture***

281. Regulation No. 2000/45 On Self-Government of Municipalities in Kosovo provides that among other committees, the Municipal Assembly establishes a Communities Committee and a Mediation Committee as standing committees. The Communities Committee promotes the rights and interests of the communities living within the municipality and further promote a society where a diversity of cultural,

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have been identified in the municipalities of Fushë Kosovë/Kosovo Polje, Prishtinë/Priština (only in rural north and south areas), Lipjan/Lipljan and Obiliq/Obilič. In Gjilan/Gnjilane region the following primary and secondary schools under parallel structures have been identified: seven primary and six secondary schools in Gjilan/Gnjilane municipality; four primary and one secondary schools in Viti/Vitina municipality; one primary school in Novobërdë/Novo Brdo; 11 primary and two secondary schools in Kamenicë/Kamenica municipality. In Štrpce/Shtërpçë municipality all primary schools (apart from the one attended by the Kosovo Albanian community) and the high school are under direct supervision of the SMES. In Prizren region the only municipality in the region that has an existing parallel structure is Rahovec/Orahovac, with two primary schools and one secondary school. In Pejë/Peć region the primary school located in Osojane/Osojan (Istog/Istok municipality) and the primary and secondary school in Gorazhdevc/Gorazdevac (Pejë/Peć municipality) are all supervised by the SMES. See OSCE Mission in Kosovo, “Parallel Structures in Kosovo”, October 2003, page 30.

<sup>386</sup> See Article 12.3 of the Education Law

social and religious traditions is not only tolerated but also encouraged. The Communities Committee takes care within the territory of the municipality that:

- (a) No person undertaking public duties or holding public office shall discriminate against any person on any ground such as language, religion, ethnic origin or association with a community;
- (b) All persons enjoy, on an equal basis, civil, political, economic, social and cultural rights, and fair and equal employment opportunities in municipality service at all levels; and
- (c) The municipal civil service reflects a fair proportion of qualified representatives of communities at all levels.

282. The Mediation Committee examines all matters referred to it by the Communities Committee. It carries out such investigations as are necessary to establish whether the rights of a community or a member of a community have been or would be violated or whether action which is or would be prejudicial to the interests of a community has been taken or proposed. It seeks to resolve the matter by mediation.

283. Under the same UNMIK Regulation No. 2000/45, a Community Office shall be established in those municipalities where a community that is not in the majority and forms a substantial part of the population exists, a Community Office is established that is responsible for enhancing the protection of community rights and ensuring equal access for communities to public services at the municipal level.

284. Apart from the provisions mentioned above related to Communities Committee, Mediation Committee and Communities Office, UNMIK Regulation No. 2000/45 contains other specific provisions related to human rights in general as well as specific rights such as the right to petition and use one's own language by the communities. Section 2.3 of the UNMIK Regulation No. 2000/45 gives an human rights dimension to the municipalities by providing that "All organs and bodies of a municipality shall ensure that inhabitants of the municipality enjoy all rights and freedoms without distinction of any kind, such as race, ethnicity, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and that they have fair and equal employment opportunities in

municipality service at all levels. Municipalities shall give effect in their policies and practices to the need to promote coexistence between their inhabitants and to create appropriate conditions enabling all communities to express, preserve and develop their ethnic, cultural, religious and linguistic identities. In the present regulation, the term “communities” means communities of inhabitants belonging to the same ethnic or religious or linguistic group.”