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HUMAN RIGHTS COMMITTEE

Eighty-seventh session

SUMMARY RECORD OF THE 2384th MEETING

Held at the Palais Wilson, Geneva,  
on Thursday, 20 July 2006, at 10 a.m.

Chairperson: Ms. CHANET

later: Ms. PALM  
(Vice-Chairperson)

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The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS UNDER ARTICLE 40 OF THE COVENANT

(agenda item 6) (continued)

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 (continued) (CCPR/C/UNK/1; CCPR/C/UNK/Q/1)

1. At the invitation of the Chairperson, the members of the delegation of the United Nations Interim Administration Mission in Kosovo and the members of the delegation of Serbia resumed their places at the Committee table.
2. Mr. WIERUSZEWSKI said it was particularly disappointing that human rights had been used as a bargaining tool in discussions on the future statute for Kosovo. Disputes on the issue should be resolved politically, with due respect for human rights. According to many of the Committee's sources, gender-based discrimination was particularly serious in Kosovo, and the male-dominant culture in the region was hampering efforts to tackle the problem. Women had been excluded from organizational decision-making, the peace process, and staff positions in the United Nations Interim Administration Mission in Kosovo (UNMIK) and the Provisional Institutions of Self-Government (PISGs). And there were wide implementation gaps in policies and laws that should protect women's rights. He asked whether UNMIK and the PISGs had policies to promote women's participation in their activities. He had been surprised to learn that no cases had been filed pursuant to the Anti-Discrimination Law, and wished to know whether that Law, which had been in force for two years, was not being implemented or whether it was simply ineffective. Were measures being taken to evaluate the effectiveness of that Law?
3. Although he welcomed the establishment of the Kosovo Action Plan for the Achievement of Gender Equality, which contained a number of initiatives and proposals for legislation, he was concerned that the basic knowledge and resources were not in place for their implementation. There was a considerable difference in the levels of discrimination in urban and rural areas, and he wondered how best that could be rectified and how the deep-rooted causes of discrimination could be addressed. He asked how domestic violence could be reduced, how the number of domestic violence cases reported to the authorities could be increased, and how the participation of NGOs in anti-domestic violence campaigns could be stepped up. Did the authorities intend to conduct an evaluation of measures taken to prevent domestic violence?
4. Ms. WEDGWOOD said that although she had been in favour of NATO intervention in Kosovo for humanitarian reasons, the international community must be morally consistent in its administration of the region. She asked whether there had been any prosecutions for ethnically motivated hate crimes. Human Rights Watch had reported that attempts to discourage racially motivated violence had been jeopardized by the non-appearance of UNMIK police officers at scheduled trials, often as a result of their having been relocated to other countries. Witness protection should be increased in order to encourage members of the public to come forward as witnesses to racially motivated crimes. She asked whether police officers who had witnessed racially motivated crimes and had either not intervened to prevent them or had actively participated in them, had been prosecuted. She requested the delegation's comments on the

concerns expressed by the Chief Prosecutor of the International Criminal Tribunal for the Former Yugoslavia (ICTY), Carla Del Ponte, regarding the lack of cooperation between UNMIK and the ICTY.

5. She expressed concern about the planned suspension of 14 criminal cases against the police during the period when the Ombudsperson's powers were being transferred to local institutions, and asked what alternative arrangements could be made to avoid the suspension of those cases. She was surprised that the UNMIK report to the Committee had stated that no data were available on police violence, since the Committee had received reports from other sources and had considered an individual communication on the excessive use of force by UNMIK police. The lack of information in the report suggested that UNMIK did not have an adequate system of internal scrutiny. She wished to know what efforts were being made to change the culture of vendetta violence and inter-community violence, which had the effect of prolonging ethnic conflicts.

6. Turning to question 15 of the list of issues, she wished to know under which law persons had been detained by the NATO Kosovo Force (KFOR) without warrants. She wondered whether the detainees had been given any assistance in preparing their statements for review. She requested further information on the circumstances in which KFOR commanders could expel individuals from Kosovo. The Committee had received information on poor prison conditions in Kosovo, where persons were held for long periods without adequate ventilation or sanitation. She wished to know why UNMIK did not improve those conditions in a timely manner, and ensure that persons were not detained for unnecessarily long periods in extremely poor conditions.

7. Mr. KÄLIN said that on the question of legal certainty the delegation had stated that UNMIK planned to inform the population of Kosovo which laws were applicable. That would be insufficient, however, owing to the complex nature of the legal situation in Kosovo, which had several layers of law, including Yugoslav law and new laws of the former Yugoslav republics. That made it difficult to establish which laws applied to which people and under which circumstances. Furthermore, Kosovo was subject to UNMIK regulations, applicable international law and international provisions such as Security Council resolutions. It was the duty of the transitional authority to ensure legal certainty in a practical manner. Assuming that new laws simply superseded old ones was not effective. Local institutions needed to be developed in order to establish governance based on the rule of law.

8. International administrations were justifiably expected to provide greater human rights protection than any other type of administration. Unfortunately, protection standards in Kosovo were lower than in any other former Yugoslav republic because UNMIK personnel were immune from legal process. It was almost impossible to bring cases from Kosovo before international courts or legal bodies, such as the Human Rights Committee. Although efforts had been made to fill the protection gap by establishing the Office of the Ombudsperson, the lack of UNMIK cooperation with that Office had considerably hampered its work. Further information on how UNMIK intended to increase cooperation with the Ombudsperson would therefore be welcome.

9. He noted that the delegation had failed to answer certain questions on the list of issues, such as question 10 concerning claims that KFOR and UNMIK had used undue force. If persons submitting complaints to the Ombudsperson received no response, there was clearly no information available, and that was attributable to weak implementation of a system which, though imperfect, could be made to perform better.

10. With regard to question 11 of the list of issues concerning lead-contaminated settlements in northern Mitrovica, he quoted from the report that he had submitted recently to the General Assembly in his capacity as Representative of the Secretary-General on the human rights of internally displaced persons (E/CN.4/2006/71/Add.5). The camps were located close to the tailings dams of a former lead mining and smelting complex that had been closed in 2000 because of a general awareness that the internally displaced persons were affected by high levels of lead in their blood. Over the years, it had become clear that lead poisoning, especially of the children in the camps, had reached levels that were much higher than those of the non-displaced population. The World Health Organization had found that many children in the camps were suffering from unprecedented levels of lead poisoning constituting an acute medical emergency. During his own visit, he had appealed to the international authority responsible to immediately evacuate the internally displaced persons to non-contaminated areas and to provide the necessary resources for the evacuation without delay. He had stressed that failure to act immediately was tantamount to a violation of the right of the affected children to have their health and physical integrity protected. Several other special procedures of the former Commission on Human Rights had made similar appeals.

11. There was an enormous difference in his conclusions and UNMIK's statement to the effect that, according to available evidence, the pollution was caused by illegal smelting of car batteries in the houses of some families and was not affecting the entire population of internally displaced persons. The UNMIK response had been to provide for a higher intake of calcium foodstuffs, fruit and vegetables and for the distribution of soap, toothpaste and cleaning materials. What evidence had UNMIK that the pollution had been caused solely by car-battery smelting and why had it concluded that an immediate threat to the right to health and physical integrity was sufficiently addressed by distributing humanitarian aid? He also wondered why it had taken so long to act. Although there had been bad weather in January and February 2006, the situation had been known to exist since October 2004. It was only after his visit that the UNMIK Special Representative of the Secretary-General had decided that evacuation was necessary. He asked how long UNMIK intended to use a former KFOR camp as a temporary relocation site, since it was close to the tailings dams that were the source of the pollution. According to UNMIK, the measures being taken to protect the life of internally displaced persons included progress in the reconstruction programme for the neighbourhood. He asked the delegation to specify which neighbourhood was meant.

12. Turning to question 12 concerning missing persons, he referred to figures provided at the end of 2005 by the UNMIK Office of Missing Persons and Forensics, according to which 2,464 persons, including 690 non-Albanians, were still missing. International NGOs such as Amnesty International had concluded that the UNMIK police had failed to conduct thorough and impartial investigations into abductions and disappearances of members of minority communities and had given low priority to such cases. Until as late as 2003, abductions had been considered to fall outside the mandate of the Central Criminal Investigative Unit charged

with investigating crimes committed prior to the entry of KFOR into Kosovo in July 1999. The majority of abductions of Serbs and Roma had occurred, however, after the arrival of KFOR. In 2003 responsibility for the investigation of such cases had been transferred from the UNMIK police Missing Persons Unit to the Central Criminal Investigative Unit, which had still made little progress. Amnesty International had been informed of a decision not to open criminal proceedings in the case of Vesel Rama, a Romani from Pristina who had allegedly been abducted by the Kosovo Liberation Army and whose body had been exhumed at a cemetery in Pristina in 2005. In April 2004 the then UNMIK police Deputy Commissioner for Crime had assured Amnesty International that a number of cases were being reviewed. However, according to information received later in 2004, no disappearance or abduction cases had been referred for prosecution. Moreover, in April 2006 the UNMIK police Director of Criminal Investigations had informed Amnesty that it was unlikely that many investigations would be opened into the remaining cases.

13. UNMIK was undoubtedly aware of the obligation to investigate disappearances under international human rights law. Failure to investigate, especially where it could be described as widespread and systematic, constituted a violation of articles 2 (3), 6 and 7 of the Covenant. He wished to know why so many cases had remained unclarified and why the authorities' response had been so weak.

14. Mr. SHEARER said it was very disturbing that so many problems should arise in a territory under temporary international administration.

15. He requested clarification of the potentially instructive figures in the written replies to the list of issues regarding staff gender balance and ethnic structure in the ministries and institutions of Kosovo. For instance, the level of education of ministerial staff was divided into primary school, secondary school and "higher and superior" education. Only a small proportion of staff, 3.6 per cent, fell into the higher education category but a far larger proportion were in the superior education category.

16. Sir Nigel RODLEY agreed with Ms. Wedgwood and Mr. Kälin that the right to life and the right to freedom from torture and cruel, inhuman or degrading treatment or punishment were core Covenant rights and enjoyed non-derogable status. He found it hard to think of any State party that had provided such cavalier responses to the Committee's questions relating to those rights, typical examples of UNMIK's answers being that requested statistics were not available, that the information was classified or that no data were currently available.

17. Turning to question 15 of the list of issues, he said that he had difficulty, owing to the rapidly evolving situation, in ascertaining what rights a person could invoke on arrest - with or without a court order - and how long he or she could be held without being brought before a judge. It was also unclear at what point a person arrested with or without a warrant was guaranteed actual and not mere formal access to a lawyer.

18. Mr. BORG-OLIVIER (UNMIK) said that his delegation was appearing before the Committee not because of the status of Serbia as a party to the Covenant but because UNMIK, as an interim administration, felt it had a duty to assist all human rights treaty bodies in assessing the situation in Kosovo, a unique situation governed by Security Council resolution 1244 (1999)

adopted under Chapter VII of the Charter. He had taken note of the Committee's justifiable dissatisfaction at the failure to provide data on important issues, and undertook to obtain the necessary information from the specialized UNMIK departments as soon as possible and communicate it to the Committee in the form of written annexes to the report.

The meeting was suspended at 11 a.m. and resumed at 11.30 a.m.

19. Mr. BORG-OLIVIER (UNMIK) said that UNMIK, acting in accordance with its mandate under Security Council resolution 1244 (1999), was doing its best to transfer competencies to local institutions. The Ombudsperson Institution under the authority of the Special Representative of the Secretary-General was therefore being replaced by a reformed institution under the authority of the Assembly of Kosovo. Although that inevitably created jurisdictional problems, UNMIK was conscious of the need for continuing oversight of its own action in areas for which it was still responsible. Under the transitional arrangements, the acting Ombudsperson was empowered to examine complaints against UNMIK. However, a gap might arise if the Assembly moved rapidly to appoint a new Ombudsperson under the revised Ombudsperson Regulation before the Human Rights Advisory Panel assumed relevant responsibilities. However, every effort would be made to address the problem.

20. As far as he could recall, the UNMIK recommendation that had been rejected by the Ombudsperson concerned the regulation of sales of immovable property. Before leaving, a former Special Representative of the Secretary-General had asked UNMIK to introduce a review mechanism through legislation to ensure that inter-ethnic sales were carefully reviewed before being validated by the courts in Kosovo. It had been a controversial intervention but one made in good faith in order to ensure that minority communities, especially Serbs, were not forced to sell property by intimidation and in order to prevent the use of illicit funding for such transactions or the exertion of political pressure. The Ombudsperson, who had perhaps not fully understood the motives for the administrative directive, had opposed it on the ground that it interfered with property rights. UNMIK had disagreed and the review procedure had in fact helped minority communities to exercise their property rights.

21. The legislation in force made it clear that the Ombudsperson Institution and the Human Rights Advisory Panel had complementary and not conflicting responsibilities. There was nothing to prevent the Ombudsperson from taking action on all complaints submitted to the Institution. If similar complaints were submitted to the Human Rights Advisory Panel, it had the authority to request the Ombudsperson Institution to communicate to the Panel any observations that might assist it in assessing a complaint.

22. With regard to mechanisms for reviewing police custody, UNMIK could fortunately rely on constant assistance from the Organisation for Security and Co-operation in Europe (OSCE), the Office of the United Nations High Commissioner for Human Rights, the Council of Europe and numerous NGOs, and would do its best to supplement the data provided to them.

23. On the question of legal certainty and the laws applicable in Kosovo, he was unable to add to the information he had supplied at the previous meeting. UNMIK provided assistance to any authority, including the courts, that needed to apply a particular law. It was certainly a very complex situation with layers of legislation inherited from the former Yugoslavia, international

treaties, UNMIK regulations and laws of the Assembly of Kosovo. Every effort was being made to produce more clarity by means of commentaries, explanations and the travaux préparatoires of legislation.

24. With regard to the human rights situation in northern Kosovo, there were unfortunately certain circumstances that UNMIK was unable to change. It had very limited capacity to exert effective control in northern municipalities, which had recently sought to challenge UNMIK's institutional authority and assume certain responsibilities that were outside the legal framework that the United Nations had put in place. The assistance of the international community was required to make people realize that the situation was having an adverse impact on the enjoyment of human rights in northern Kosovo.

25. Mr. GASHI (UNMIK) said that the situation in northern Mitrovica was being addressed in the current final status talks in Vienna under the heading of decentralization. He trusted that appropriate arrangements would emerge from those discussions.

26. Ms. ELIASZ (UNMIK) said that there were serious gender-related problems in Kosovo. UNMIK's formal position was that it wished to institute the Secretary-General's directives regarding the mainstreaming of gender issues throughout the United Nations, including field missions. OSCE, in its capacity-building role, together with the United Nations Development Fund for Women, had provided training courses for the PISGs and assisted in the development of national action plans and strategies based on the Beijing Platform for Action. It would take some time to establish an effective mechanism in Kosovo for protecting the victims of domestic violence, who were not only women but also children and in some cases men. The situation of women in rural communities was far worse than in urban areas, inter alia on account of the difficulty of reaching a police station, and there was a higher incidence of domestic violence in those communities. The Kosovo Police Service had begun to address the problem by instituting mixed-gender community patrols and developing an outreach programme to village communities.

27. The level of unemployment among women in rural communities was 25 to 50 per cent higher than in urban communities, and minority women tended to suffer double discrimination. The situation should perhaps be addressed by means of credit schemes.

28. The lack of studies on measures taken to protect victims of domestic violence, especially interim protection orders, was disconcerting. Urgent action was required to assess the effectiveness of such measures. The Victims Advocacy and Assistance Unit within the UNMIK Department of Justice had reported on the number of protection orders and the nature of the cases; the scope of the Department's mandate did not comprise evaluation of those measures. The Unit's imminent transfer to the newly created Ministry of Justice might further exacerbate the problem. The Ministry would require assistance to build its monitoring capacity, develop further strategies to protect victims of domestic violence, and ensure prosecution of the perpetrators. Provision had been made for a civil and human rights unit within the Ministry to monitor the implementation of the Anti-Discrimination Law and the Law on Gender Equality.

29. Mr. GASHI (UNMIK) said that the PISGs were currently developing an action plan for the protection and promotion of human rights and to mainstream human rights in all ministries,

municipal governments and civil society organizations. All manuals on national plans and programmes and the implementation of human rights were being translated into Albanian and Serbian. The delegation looked to the Committee for further guidance on the development of national human rights action plans.

30. Mr. BORG-OLIVIER (UNMIK) said that the introduction of mechanisms such as the “standards process” and the Kosovo Standards Implementation Plan had gradually reduced the need for regular meetings of the Independent Oversight Board; at present, meetings were held when the need arose.

31. In the course of restructuring, the number of “pillars” of the UNMIK Inter-Pillar Working Group on Human Rights had been reduced, but the Working Group remained operational and played an active role in legislative processes as an adviser on human rights-related issues.

32. Efforts to improve the living conditions of the Roma population had been hampered by the unavailability of resources and a lack of consensus among the international organizations involved. Several resettlement and relocation programmes had been implemented, but they had unfortunately yielded few tangible results. He had taken note of the Committee’s concerns, which would be communicated to UNMIK.

33. Training in the rights of detainees, albeit limited, had been provided for law enforcement officials and the judiciary; the standards applicable to the treatment of detainees in Kosovo were consistent with international instruments. Persons held in police custody had access to counsel as soon as criminal investigations of their case were opened.

34. Ms. ELIASZ (UNMIK), responding to Mr. Shearer’s concern about the confusing nature of statistics relating to education categories contained in the written replies, said that the data had been provided by the Ministry of Education and the Office of Gender Equality within the PISGs. She would seek clarification and keep the Committee informed.

35. Mr. McGOWEN (UNMIK) said that the Mission expended considerable effort in building the human rights capacity of the PISGs. A human rights expert programme was being conducted at the municipal level and involved senior human rights advisers working with local government officials. Teams of senior advisers provided guidance to the newly established human rights units within the central ministries and the Office of the Prime Minister, which would assume institutional oversight functions at the end of UNMIK’s mandate. International human rights advisers assisted the Assembly of Kosovo in the drafting of legislation. The programmes were part of an overall effort to transfer human rights-related functions to the PISGs.

36. The Committee had expressed concern about the infrequent reference to the Covenant in domestic court proceedings. Kosovo courts often encountered difficulties in accessing the Committee’s Views and were thus more likely to invoke the European Convention on Human Rights and accompanying jurisprudence. The Council of Europe had conducted extensive training for local judges in the use of the Convention.

37. Mr. BORG-OLIVIER (UNMIK) said that administrative detentions based on executive orders had been carried out under the mandate of Security Council resolution 1244 (1999), which gave extensive powers to the administering authority. The security situation in the early days of UNMIK had been extremely fraught, and the detentions had been necessary to protect other members of the communities concerned. The situation had changed considerably since and it was no longer necessary to resort to such measures. In present-day Kosovo, the deprivation of freedom of movement was subject to judicial review and civilian law enforcement functions had been transferred to the local police.

38. Mr. O'FLAHERTY said that UNMIK's obligation to promote and protect human rights derived not only from Security Council resolution 1244 (1999), but also from the provisions of the Charter and other bodies of international law. United Nations missions fulfilling transitional government functions over territories had an obligation to implement the obligations applicable to that territory, including those flowing from the Covenant.

39. He requested information on the preparation of the report and the involvement of the various stakeholders. The delegation should explain why the recommendations of the Ombudsperson had apparently been disregarded.

40. The delegation seemed to suggest the Independent Oversight Board and the Inter-Pillar Working Group had mainly been concerned with legislation or issues pertaining to earlier periods and were thus increasingly obsolete. However, mainstreaming human rights could not be limited to crisis situations or the legislative process; rather, it must be applied to all aspects of governance, policy-making, law enforcement and military operations. The Inter-Pillar Working Group, in addition to reviewing legislation, was responsible for ensuring implementation of all human rights treaties to which Kosovo was a party.

41. While the transfer of responsibilities to local institutions was commendable, the transfer of human rights oversight functions from an independent Ombudsperson Institution to a dependent committee raised concerns regarding scrutiny of UNMIK's action. As a guardian of best practice reflected in the Principles relating to the status and functioning of national institutions for protection and promotion of human rights (Paris Principles), it was unacceptable that a United Nations field mission should set up a structure that was considerably weaker than the best practice promoted for Governments. Furthermore, it appeared that neither UNMIK nor the Provisional Institutions had developed strategies or taken concrete action to ensure the protection of human rights in the north of the country.

42. Relocation strategies to protect victims and witnesses of ethnically motivated crimes were preferable to the current system of detention. The delegation should describe efforts to identify suitable relocation sites and make relocation the core of its victim and witness protection scheme. The protection of victims and witnesses of trafficking should be based on the Recommended Principles and Guidelines on Human Rights and Human Trafficking.

43. Mr. AMOR said that, while he recognized the problems posed by a lack of resources, the 500 or more displaced families living in the lead-contaminated settlements in northern Mitrovica must be given priority. The authorities had long been aware of the situation and respected international organizations had prepared reports publicizing the risks, particularly

for children. He enquired what efforts had been made to relocate the families affected. He also wished to know whether they received adequate medical care and whether UNMIK intended to compensate the victims who had been knowingly exposed to such grave danger.

44. Ms. WEDGWOOD said that human rights monitoring could not be outsourced to private organizations that had no influence on policy-making. Rather than pointing to NGOs such as Amnesty International or the OSCE, the interim administration was under the obligation to ensure oversight of its own actions.

45. The lack of data on questions 9 and 10 of the list of issues illustrated UNMIK's failure to assimilate relevant information. Chapter VII of the Charter did not provide absolution and should not be misused to justify inappropriate action on the part of the authorities. Also, the fact that an event had occurred in the past did not make scrutiny redundant. Rather, dealing with past irregularities inspired confidence among the population concerned and was likely to give credibility to transitional administrations in the future. UNMIK's treatment of detainees certainly needed addressing.

46. Mr. BORG-OLIVIER (UNMIK) said that UNMIK had established a commission to review administrative detentions effected on the basis of executive orders. Detainees had been granted at least nominal access to legal counsel. The commission had recommended that the authorities should either lay formal charges against the accused on the basis of existing intelligence or ensure their release. UNMIK had opted for release.

47. UNMIK recognized its responsibility for the families living in the lead-contaminated camps and had taken action, albeit belatedly, when the extent of the risks had become apparent. Despite resource constraints, efforts were being made to relocate the families to safer areas. However, such action required the involvement of the community and the families often refused to move unless they were guaranteed permanent solutions, which incurred far greater costs than temporary relocation. The most severely contaminated camps had been closed, and the families had been moved to a camp nearby. Much remained to be done to improve the situation of the Roma community, and UNMIK had received additional funds for reconstruction of homes and relocation.

48. Persons with serious health problems resulting from lead exposure had access to medical care, but the Roma were often uncooperative and distrusted services provided by the authorities. In cases where serious health impediments were clearly attributable to action - or inaction - on the part of UNMIK, the persons affected would be compensated.

49. The CHAIRPERSON invited the delegation to reply to questions 17 et seq. of the list of issues.

50. Ms. Palm (Vice-Chairperson) took the Chair.

51. Mr. McGOWEN (UNMIK), responding to question 17, said that high unemployment and the lack of economic opportunities had prevented many people from returning to Kosovo. While security and freedom of movement had improved, perceptions to the contrary remained prevalent. Moreover, the effects of the riots of March 2004 were still being felt. Much

reconstruction had yet to be completed, and residential property restitution and payment of start-up assistance had not been concluded. The situation was compounded by the uncertainty surrounding the final status of Kosovo.

52. Central and municipal structures had, however, pledged their commitment to the return process. Most municipalities had adopted return strategies, some of which had been successful. The majority of municipal working groups and task forces on returns had been effective and municipal return offices had been established in most municipalities. In 2003, UNMIK and UNDP had set up two programmes: Government Assistance to Returns and a Rapid Response Return Facility. The Sustainable Partnership for Assistance to Minority Returns to Kosovo programme had been introduced in 2005, bringing all the assistance available for organized and individual returns under one umbrella programme. Measures to ensure returns were sustainable had included housing reconstruction assistance, income generation grants and training programmes for members of minority communities. The Ministry of Communities and Returns had allocated 2.3 million euros for individual returns.

53. The incidence of ethnically motivated crimes had continued to decline in 2006. Legislation had been adopted on police protection for minority communities. The initial results of the transition of community policing from international police forces to the Kosovo Police Service (KPS) in 2006 had been positive. The KPS had also taken over responsibility for monitoring the movement of minority groups within Kosovo.

54. Access to public services was available through the PISGs. However, Serb communities had asserted that poor security and language services impeded their access to health care. Efforts had therefore been made to establish public services that were available to all ethnic communities.

55. Turning to question 18, he said that temporary occupants could not be removed from the homes or lands of displaced persons before claims were processed and adjudicated. Establishing ownership of property had proved difficult, particularly as many records had been lost, destroyed or had never existed. In order to address the significant backlog of property claims filed with the court system, the Kosovo Property Agency had been established. An independent body, it received and registered private immovable property claims and assisted the courts in resolving conflicts related to those claims. Its officers in Serbia and Montenegro processed claims from displaced persons, thus giving those people access to the courts without need to return to Kosovo. Since the Agency had begun work only in April 2006, it was too early to judge how effective it was.

56. Training courses on displaced persons' property claims were being held for members of the judiciary in order to further increase the courts' efficiency and to build capacity. The Kosovo Property Agency had also signed a memorandum of understanding with the police outlining their respective responsibilities in enforcing eviction orders. In 2005 a Kosovo-wide information campaign had successfully raised awareness among the public and government officials of the unacceptability of illegal occupation.

57. In response to question 19, he said that after consulting international organizations, local government institutions, NGOs and other relevant actors, the UNMIK Office of Communities, Returns and Minority Affairs had produced draft policy recommendations which had been

adopted by the PISGs in May 2006. They sought to increase internally displaced persons' access to assistance to return to Kosovo and to simplify procedures to ensure they had proper access to social services.

58. The Central Review Mechanism had approved many of the concept papers formulated by municipal working groups. Funds from the Sustainable Partnership for Assistance to Minority Returns to Kosovo programme and other government resources were being used to implement the measures detailed in the papers. Almost all municipalities had taken over the chairmanship of the municipal working groups.

59. Turning to question 20, he said that increasing the independence of the judiciary had been a top priority. To that end, several oversight bodies had been established since the beginning of the Mission, including the Kosovo Judicial and Prosecutorial Council and the Kosovo Judicial Council. While they had all been involved in the appointment of judges and prosecutors, unlike the other bodies, at least half the members of the Kosovo Judicial Council were holders of key judicial posts or temporary international or local judges nominated directly by the judiciary. In future, the Special Representative of the Secretary-General for Kosovo (SRSG) would nominate all national judges. The Kosovo Judicial and Prosecutorial Council had been the first body to exercise all disciplinary powers except dismissal, without need to refer to the SRSG. While there was no independent oversight body for international judges and prosecutors, their conduct was regulated by existing United Nations staff structures.

60. Qualification standards introduced in 1999 had provided transparent criteria requiring that all judges, including lay judges, should be of high moral character, not have a criminal record and have no history of involvement in political parties or discriminatory practices. The urgent need for a functioning judiciary after 1999 had, however, resulted in varying degrees of competence and professionalism among judges. Three judges had not had their contracts renewed in December 2000 after the OSCE had discovered that they were not qualified to hold office.

61. The independence and impartiality of the judiciary had been expressly stated in the Constitutional Framework for Provisional Self-Government in Kosovo and a judicial code of ethics had been introduced. Individuals had the right to file a complaint against a judge, and there were plans to enable legal persons to file complaints against judges in future. The professional regulatory bodies, which had become increasingly independent, initiated disciplinary proceedings at their discretion.

62. Several measures had been taken to encourage Kosovo Serbs and members of minorities to apply for posts as judges and prosecutors. Further action would include positive discrimination in favour of such candidates, reserving posts for minority candidates and temporary exemption from the need to have passed the judicial exam. UNMIK would welcome the Committee's advice on how best to address that issue further. While steps had been taken to increase the salaries of members of the judiciary in order to discourage corruption, low resources prevented further increases.

63. Replying to question 21, he said that access to the justice system was restricted for members of all communities in Kosovo owing to the number of judges allocated to some areas. Steps were being taken to increase the efficiency of the courts by allocating more judges to areas

with a large backlog of cases. The Department of Justice had established Court Liaison Offices, which helped members of minority groups, in the main, to access the courts. Shuttle services to take Kosovo Serbs from minority areas to domestic courts had been suspended during the riots in March 2004. They had now been reinstated with UNMIK police escorts.

64. While the Serb parallel court structure gave the Serb community physical access to the courts, it had no legitimacy in Kosovo's jurisdiction. The Kosovo courts also lacked legitimacy in Serbia. All communities used the parallel court structure, therefore, to address issues within Serb jurisdiction. In practice, the parallel system undermined equal access to courts and competed with the mainstream structures for personnel.

65. Pretrial testimony could be used or given out of court if witnesses were unable to attend a hearing for health or personal reasons, or on other grounds assessed by the courts. Since June 2001 international panels had travelled to Belgrade in order to hear defence witnesses. Specialist witness protection, introduced in 2001, was available to both prosecution and defence if there was a risk to witnesses or their families. Measures included not identifying a witness, using a pseudonym, using screens, closed-circuit television and videotaped examinations. Greater assistance with witness protection from the international community was required, as such protection was problematic in a small territory like Kosovo and other countries had been reluctant to relocate witnesses from Kosovo.

66. Courts now funded cases for individuals who could not afford to pay for proceedings and for communities considered to be at risk. The EU had provided legal aid for civil and administrative cases between April 2001 and August 2005. An UNMIK regulation had been passed to provide legal aid and assistance in all civil, criminal and administrative matters without discrimination. Steps would be taken to ensure that vulnerable legal-aid clients received fair, high-quality representation.

67. All parties had the right to use their own language in the courts. The official languages of the courts in Kosovo were Albanian, English, Serbian and Turkish where appropriate. Court interpreters were provided where necessary, and documentation was translated into the official languages at the court's expense.

The meeting rose at 1 p.m.