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Introduction

1. Acting under the authority granted to it under Security Council resolution 1244 (1999) of 10 June 1999, the United Nations Interim Administration in Kosovo (UNMIK) is submitting the present common core document 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 core 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 Seventeenth Meeting of the Chairpersons of Human Rights Treaty Bodies on 23-24 June 2005 (the Guidelines).

2. A draft of the core document was prepared by the Organization for Security and Cooperation in Europe (OSCE) on the basis of inputs from the Pillars and Offices of UNMIK and the Provisional Institutions of Self-Government (PISG). The Government of Kosovo, through the recently established Human Rights Units in the Ministries, played a significant role in preparing inputs for the report and in commenting on the draft. The draft was subsequently reviewed and revised by the Office of the Special Representative of the Secretary-General for Kosovo.

I. DEMOGRAPHIC, ECONOMIC, SOCIAL AND CULTURAL CHARACTERISTICS OF KOSOVO

A. Geography

3. Kosovo is in the Western Balkans. A landlocked entity it is bordered by Albania, The former Yugoslav Republic of Macedonia, Montenegro and Serbia. 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 metres, surrounded by mountains, and divided by a central north/south ridge into two subregions of roughly equal size and population.¹

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 south-east to intersect elevated (300-1,000 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.²

¹ 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, p. 2 (3 November 1999) [*hereinafter* Towards Stability and Prosperity].

² *Ibid.*, p. 39.

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 ³

6. Kosovo has extensive reserves of high-calorific value/low sulphur and ash lignite deposits, which are estimated at over 10 billion tons. It has no other fossil fuel deposits, natural gas import and supply infrastructure, nor oil refinery. Kosovo has only a modest hydroelectric 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.⁴

³ Ibid., p. 42 (quoting statistics from the Official Yearbook of the Federal Republic of Yugoslavia, 1998).

⁴ World Bank, Kosovo Economic Memorandum, pp. 49-50 (17 May 2004).

B. 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.⁵

9. The population of Kosovo has been variously estimated by the United Nations and the World Bank as numbering 1.7⁶ and 2.2⁷ 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 The former Yugoslav Republic of Macedonia. Up to 500,000 people may have been internally displaced.⁸ The total number of deaths resulting from the 1998-1999 conflict was put at 4,000-12,000.⁹

10. Following the North Atlantic Treaty Organization (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.

C. Public services and administration

11. During the 1990s, due to a combination of factors including public policies and legislation, as well as popular responses to those policies, the majority of positions in public administration, publicly owned enterprises and utilities, and socially owned enterprises were taken up by Kosovo Serbs. The majority Kosovo Albanian population established a parallel public sector, particularly comprised of education, social welfare and health-care services, predominantly financed out of voluntary contributions from the Kosovo-Albanian diaspora.

⁵ UNICEF, Situation Analysis of Children and Women in Kosovo, p. 8. (2003) [*hereinafter* Children and Women I Kosovo].

⁶ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/1999/779, para. 8 (12 July 1999).

⁷ Towards Stability and Prosperity.

⁸ S/1999/779, para. 8.

⁹ 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].

12. Following the withdrawal of Yugoslav and Serbian military and police forces¹⁰ immediately after the signing of the “Kumanovo Agreement”¹¹ of 9 June 1999 concluding hostilities, due to fears for their security, large numbers of Kosovo Serbs departed from their places of residence either to Serbian dominated areas of Kosovo or to Serbia proper. This departure included large numbers of public sector administrators and employees, who also removed significant numbers of public sector documents and subsequently established so-called municipalities and courts in exile inside Serbia proper. This included the removal of cadastral documents from Kosovo. Despite repeated requests to the Government of Serbia by the Special Representative of the Secretary-General for Kosovo as the head of UNMIK for the return of cadastral documents these have remained in Serbia proper.

13. Immediately following the conflict, the public service structures of Kosovo were largely inoperative due to a combination of neglect, war damage and the departure of trained staff. This included the two power generation stations of Kosovo, water distribution in some municipalities, refuse disposal, schools, judiciary and municipal administrations. Most hospitals were functioning, but patient care was compromised by serious political disputes regarding future management structures and staffing. A severe shortage of skilled staff was evident in all public service sectors.¹²

D. Economic indicators

14. 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.

¹⁰ According to the Military Technical Agreement, article 1 (3) (c) concluded on 9 June 1999, Yugoslav forces include:

“Federal Republic of Yugoslavia Forces” includes all of the Federal Republic of Yugoslavia and Republic of Serbia personnel and organizations with a military capability. This includes regular army and naval forces, armed civilian groups, associated paramilitary groups, air forces, national guards, border police, army reserves, military police, intelligence services, federal and Serbian Ministry of Internal Affairs local, special, riot and anti-terrorist police, and any other groups or individuals so designated by the international security force (“KFOR”) commander.

¹¹ The Military Technical Agreement between the International Security Force (KFOR) and the Governments of the Federal Republic of Yugoslavia and the Republic of Serbia of June 1999.

¹² S/1999/779, paras. 11-15.

II. CONSTITUTIONAL, POLITICAL AND LEGAL STRUCTURE OF KOSOVO

A. Brief historical overview

15. *March 1999*: The NATO air campaign begins following the failure of Rambouillet Peace talks. A massive refugee crisis develops as over 800,000 people flee the conflict.
16. *June 1999*: The Yugoslav National Army withdraws from Kosovo. Resolution 1244 (1999) is adopted bringing Kosovo under United Nations Interim Administration and establishing the international security presence known as KFOR. The same resolution reaffirms the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia. The Kosovo Transitional Council is formed with the aim of developing self-government in Kosovo.
17. *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.
18. *October 2000*: Municipal elections are held in Kosovo.
19. *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.
20. *November 2001*: Elections to the Assembly of Kosovo are held with the Democratic League of Kosovo (LDK) emerging as the largest party, followed by the Democratic Party of Kosovo (PDK).
21. *March 2002*: The Provisional Institutions of Self-Government (PISG) are sworn in by the Special Representative of the Secretary-General. Certain key governmental functions are transferred to PISG control.
22. *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”.
23. *October 2002*: Second municipal elections are held.
24. *December 2003*: “Standards for Kosovo” are adopted.
25. *March 2004*: Rioting in Kosovo on 17, 18 and 19 March.
26. *October 2004*: Elections to the Assembly of Kosovo.

B. United Nations Interim Administration Mission in Kosovo

27. Under Security Council resolution 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, the Council called upon UNMIK to:

- Perform basic civilian administrative functions
- Promote the establishment of substantial autonomy and self-government in Kosovo
- Facilitate a political process designed 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
- Assure the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo.

28. 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 (S/1999/779). To implement its mandate, UNMIK consists of four "Pillars", each headed by a Deputy Special Representative of the Secretary-General (DSRSG).

29. The Special Representative of the Secretary-General for Kosovo as the head of UNMIK is the highest international civilian official in Kosovo. He exercises civilian executive and legislative authority vested in him by the Security Council in its resolution 1244 (1999), and is also the final authority on the interpretation of the provisions of the resolution (S/1999/779, para. 44).

30. The Principal Deputy Special Representative assists the Special Representative in directing and managing UNMIK and ensures a coordinated and integrated approach by all of the Mission's four components. The deputy special representatives who head each of the four components report directly to the Special Representative on the implementation of their tasks. An Executive Committee, whose membership includes the Principal Deputy Special Representative and the four deputy special representatives, is chaired by the Special Representative. The Executive Committee assists the Special Representative in fulfilling his responsibilities, and is the main instrument through which he controls the implementation of UNMIK's objectives (S/1999/779, paras. 45-47).

31. Originally, Pillar I, which had the mandate to ensure humanitarian assistance, was led by UNHCR. This Pillar was phased out in June 2000. In May 2001, a new Pillar I for Police and Justice was established.

The four Pillars

1. Pillar I: Police and justice, under the direct leadership of the United Nations

32. The International Police operates under the authority of the Special Representative within the Pillar. It is commanded by the Police Commissioner. He exercises all operational, technical and disciplinary authority over all police personnel. The Commissioner reports to the Special Representative. The two main goals of the UNMIK 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.

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

(a) 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;

(b) 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;

(c) In the third phase, which is being implemented currently, UNMIK is in the process of transferring responsibilities for policing functions to the KPS. UNMIK police are focusing on training, advising and monitoring functions.

34. Within UNMIK, Pillar I has responsibility for the establishment and administration of the judicial system and Pillar III is engaged in monitoring of the legal system for compliance with rule of law standards, training and development of the judiciary and legal profession, and training of the police. In July 1999, the Department of Judicial Affairs was established, and shortly afterwards split into two sections, Prosecution Services and Court Administration, and Penal Management. In March 2000, an Administrative Department of Justice was established as part of the JIAS by UNMIK Regulation No. 2000/15¹³ and assumed certain responsibilities in those areas. The introduction of international judges and prosecutors had been sanctioned by the Special Representative just prior to that through UNMIK Regulation No. 2000/6.¹⁴

¹³ UNMIK Regulation No. 2000/15 of 21 March 2000 on the Establishment of the Administrative Department of Justice.

¹⁴ UNMIK Regulation No. 2000/6 of 15 February 2000 on the Appointment and Removal from Office of International Judges and International Prosecutors.

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 Administrative Department of Justice. The latter and the Department of Judicial Affairs largely overlapped, since they occupied the same premises and shared many of the same supervisors, officers and staff.

35. These arrangements were revised in 2001, when the Department of Judicial Affairs was reconstituted as the Department of Justice, with five divisions, Judicial Development, Penal Management, International Judicial Support, Criminal and the Office on Missing Persons and Forensics. The Judicial Development Division is in turn divided into four sections: (a) the Professional Development Section, which serves as secretariat to the Kosovo Judicial and Prosecutorial Council and supports the professional development programme for the judiciary and prosecutors; (b) the Judicial Integration Section, which fosters ethnic representation within the judicial system; (c) 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 (d) the Victim Assistance and Advocacy Unit.

36. In addition, the Department of Justice has a Legal Policy Division concerned with the facilitating of judicial cooperation and assistance between the Kosovo courts and courts of other jurisdictions and an Operations Unit, concerned with policy and coordinating security of judicial personnel, buildings and assets.

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

(a) 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;

(b) Integrating ethnic minorities into the Kosovo justice system, facilitating their access to justice, and monitoring the treatment of minorities by the justice system;

(c) Bringing forensic medicine and pathology services up to internationally acceptable standards to enable them to provide forensic evidence to criminal investigations;

(d) 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

(e) Protecting victims' rights and ensuring their participation in criminal prosecutions.

38. The Department of Justice, as a Reserved Power entity of the Special Representative of the Secretary-General, 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 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 per cent 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 Department of Judicial Administration for consideration.

2. *Pillar II: Civil administration*

39. Under the direct leadership of the United Nations, civil administration has recently been transformed into the Department of Civil Administration to reflect UNMIK’s reduced role in this field.

3. *Pillar III: Democratization and institution-building*

40. This component is led by the Organization for Security and Co-operation in Europe (OSCE). Institution-building includes assisting the people of Kosovo in strengthening the capacity of local and central institutions and civil society organizations, as well as promoting democracy, good governance and respect for human rights. Its responsibilities also include the organization of elections and responsibility for police training (S/1999/779, para. 79).

4. *Pillar IV: Reconstruction and economic development*

41. This component is led by the European Union (EU). 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, the Security Council, in its resolution 1244 (1999), mandated UNMIK *inter alia* to support the reconstruction of key infrastructure and other economic and social systems. 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 (S/1999/779, para. 102).

C. The Joint Interim Administrative Structure and transition to the provisional institutions of self-government

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

43. The JIAS administrative departments were consolidated into nine transitional departments which later became PISG Ministries. Pillar II was assigned to look after seven ministries: 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.

44. In each Ministry, a Principal International Officer was appointed to advise the Minister on policy development and governance, to coordinate the international staff within the Ministry and to serve as senior liaison for 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 were 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 United Nations specialized agencies and other donors.

D. The Constitutional Framework for Provisional Self-Government in Kosovo

45. In 2001 the Constitutional Framework for Provisional Self-Government in Kosovo (the Constitutional Framework) was promulgated.¹⁵ The Constitutional Framework is a fundamental instrument of governance in Kosovo: having been drawn up after comprehensive negotiation with stakeholders, it represents a delicate balance of competing interests with important safeguards for minority communities. 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.

46. In accordance with Chapter VIII of the Constitutional Framework, the Special Representative 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 United Nations Mine Action Coordination Centre, following the successful completion of its operations in mid-December 2001; Administrative Affairs; Infrastructure Affairs; and Rural Affairs. The Special Representative also retained responsibility for the Kosovo Protection Corps (KPC) together with 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

¹⁵ UNMIK Regulation No. 2001/9 of 15 May 2001 on a Constitutional Framework for Provisional Self-Government in Kosovo [*hereinafter* Constitutional Framework].

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. UNMIK has been gradually transferring the administration of Kosovo to come to the current division of responsibilities between the international administration and the PISG.

E. Provisional institutions of Self-Government in Kosovo

47. 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. 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”.

48. 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.

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

“The principle of the division of powers between the legislature, the executive and the judiciary”;¹⁶ and,

“The rule of law, human rights and freedoms, democratic principles and reconciliation.”¹⁷

50. 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, Chapter V of the Constitutional Framework provides that the PISG shall exercise responsibilities 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

¹⁶ Constitutional Framework, Chapter 2C.

¹⁷ Ibid., Chapter 2B.

- 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 media¹⁸

51. Chapter V 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 Special Representative of the Secretary-General.¹⁹

52. The exercise of these transferred responsibilities by the PISG in no way affects or diminishes the authority of the Special Representative to ensure the full implementation of Security Council resolution 1244 (1999), 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.²⁰

¹⁸ Ibid., Chapter 5.1, 5.3-5.4.

¹⁹ Ibid., Chapter 5.6.

²⁰ Ibid., Chapter 12.

F. The legislative branch of the provisional institutions of Self-Government in Kosovo

53. The Constitutional Framework casts the Assembly of Kosovo as “the highest representative and legislative Provisional Institution of Self-Government of Kosovo”.²¹

54. Accordingly, Chapter 9.1.2 and 9.1.3 of the Constitutional Framework ordain the periodic election of the Assembly at three-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.

55. 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.

56. 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.

57. 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”.²² 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 entities²³ representing other communities, with four for the Roma, Ashkali and Egyptian communities, three for the Bosniak community, two for the Turkish community and one for the Gorani community²⁴

²¹ Ibid., Chapter 9.1.1.

²² Ibid., Chapter 9.1.3 (a).

²³ 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, Citizen’s Initiative or independent candidate”).

²⁴ Constitutional Framework, Chapter 9.1.3 (b).

58. 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.²⁵

59. Section 5.2 of the UNMIK Regulation No. 2004/12, on Elections for the Assembly of Kosovo, 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;

(c) Seats shall be first allocated to the set of one hundred seats specified in section 9.1.3 (a) of the Constitutional Framework and thereafter to the sets of seats reserved for the additional representation of non-Albanian Kosovo communities specified in section 9.1.3 (b) of the Constitutional Framework;

(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;

(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.

60. 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.²⁶

²⁵ 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.

²⁶ Constitutional Framework, Chapter 5.2 (c).

61. 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.²⁷ The seats thus distributed are held personally by the elected candidate and not by the political entity.²⁸

62. 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 seven-member Presidency; two main committees; and, nine 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.

63. The President of the Kosovo Assembly is chosen from the party or coalition, which forms a majority in the Assembly.²⁹ Two members of the Presidency of the Assembly are appointed by the same majority 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.³⁰

64. The Assembly may establish as many functional committees as it deems necessary and appropriate to carry out its responsibilities.³¹ Its two main committees are the Budget Committee and the Committee on the Rights and Interests of Communities. The former is composed of twelve 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.³² The memberships of the Assembly Committees must reflect the political and

²⁷ Ibid., Chapter 5.3.

²⁸ Ibid., Chapter 6.1.

²⁹ Ibid., Chapter 9.1.9.

³⁰ Ibid., Chapter 9.1.8.

³¹ Ibid., Chapter 9.1.18. The Assembly subsequently enlarged this number to eighteen 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, S/2003/113, para. 11 (1 April 2003).

³² Constitutional Framework, Chapter 9.1.11-12.

“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 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 he/she.³³

65. 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 Special Representative of the Secretary-General through an UNMIK Regulation.

66. At the request of any member of the Presidency of the Assembly, any proposed law has to 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 law. If the Committee so decides, it shall make recommendations within two weeks regarding the proposed law with a view to ensuring that community rights and interests are properly 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.

67. 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/she 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 reasoned arguments in reply within three days. The Presidency shall attempt to 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 presiding member designated by the Special Representative is seized of the matter. The Panel is required to issue a decision within five days recommending either 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.

68. All Assembly laws become effective on the day of their promulgation by the Special Representative, unless otherwise specified.

³³ Ibid., Chapter 9.1.19, Chapter 9.1.21-22.

G. The executive branch of the provisional institutions of Self-Government in Kosovo

69. 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 responsibilities of 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.³⁴ It then falls to the President to guarantee the democratic functioning of the PISG and to represent the unity of the people of Kosovo.³⁵

70. Under Chapter 9.4.3 of the Constitutional Framework and section 1.1 of UNMIK Regulation No. 2001/19,³⁶ 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.

71. Constitutional Framework Chapter 9.3.3 provides for the establishment of “ministries ... as are necessary to carry out functions within the competence of the Government”. UNMIK Regulation No. 2001/19, section 2.2 initially 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.

72. 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 and the Advisory Office on Communities, 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.³⁷

73. 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

³⁴ Ibid., Chapter 9.3.2.

³⁵ Ibid., Chapter 9.2.1.

³⁶ 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.

³⁷ 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).

Kosovo, which divided the Ministry of Health, Environment and Spatial Planning into the Ministry of Health and the Ministry of Environment and Spatial Planning.³⁸ 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, the Ministry of Local Government Administration and the Ministry of Energy and Mining.³⁹ With the creation of the Ministry of Communities and Returns, the Advisory Office on Communities was transformed into a department of that ministry.

74. The promulgation of UNMIK Regulation No. 2004/50 marked a transfer of responsibilities,⁴⁰ managed by the international civil presence in Kosovo on the basis of Security Council resolution 1244 (1999), from UNMIK to the PISG.⁴¹ This reassignment of powers served to bring the number of government ministries to 13 with the same complement of ministers and with new portfolios of Deputy Prime Minister and 15 deputy ministers.

75. 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. A further transfer of competencies to these two ministries was made on 27 April 2006 by the promulgation of UNMIK Regulation No. 2006/26. The ministries have been given legal, technical, financial and administrative responsibilities in relation to police and justice, and executive authority over forensic medicine,⁴² investigation into the fate of missing persons, providing assistance to

³⁸ 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.

³⁹ 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).

⁴⁰ See UNMIK Regulation No. 2004/50, section 1.2 (providing that the new Ministries would assume their competencies 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).

⁴¹ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, UN Doc. S/2004/907, para. 11 (17 November 2004).

⁴² The exercise of ministerial responsibilities over matters pertaining to forensic medicine including administration of the Medical Examiner's Office, remains subject to UNMIK's supervision over the required certification and training of the Medical Examiner's Office personnel and their compliance with international standards. See annex XV to UNMIK Regulation No. 2006/26 of 27 April 2006.

victims of crime, and over the Kosovo Correctional and Probation Services.⁴³ The Kosovo Police Service (KPS) continues to function under the authority of the Special Representative and the control and supervision of the UNMIK Police Commissioner.⁴⁴

76. Ministers may be “qualified persons from outside the membership of the Assembly”.⁴⁵ 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.⁴⁶

77. 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 equitable representation of Kosovo Serb and other non-majority Communities, as well as gender representation”.⁴⁷

78. 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. 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 the Government.⁴⁸ The ministers are appointed by the Prime Minister upon such an endorsement.

79. 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”.⁴⁹

80. The Inter-Ministerial Coordinator, for his part, is appointed under the authority of the Special Representative in coordination with the Prime Minister.⁵⁰

⁴³ For the executive authority over the correctional facility at Dubrava, UNMIK retains a measure of executive control in emergency situations, to be determined at UNMIK’s discretion.

⁴⁴ UNMIK Regulation No. 2005/54, section 2.1.

⁴⁵ Constitutional Framework, Chapter 9.3.6.

⁴⁶ Ibid.

⁴⁷ UNMIK Regulation No. 2005/15, section 1. This section amends UNMIK Regulation No. 2001/19 by adding a new section 1.2.1.

⁴⁸ Constitutional Framework, Chapter 9.3.8.

⁴⁹ UNMIK Regulation No. 2005/15, section 1.

⁵⁰ UNMIK Administration Direction No. 2002/10, section 1.2.

81. 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.

82. The 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. The Office of the Prime Minister liaises with the Assembly and coordinates the work of all other ministries.⁵¹

83. In the latter, the Prime Minister is assisted, among others, by the Advisory Office on Good Governance, Human Rights, Equal Opportunity and Gender. Pursuant to UNMIK Regulation No. 2005/15, the mandate of the Advisory Office includes:

- 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 governance⁵²

84. 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,

⁵¹ UNMIK Regulation No. 2001/19, section 1.2.

⁵² UNMIK Regulation No. 2005/15, annex, Title 1, (i)-(v)-(vii) and (ix)-(x).

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”.⁵³ 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”.⁵⁴

85. 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 13 ministries are outlined in the annexes to UNMIK Regulation No. 2005/15.

H. The judicial branch of the provisional institutions of Self-Government in Kosovo

86. 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, the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Racial Discrimination.

87. 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.

88. 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.

89. 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.

⁵³ UNMIK Regulation No. 2001/19, section 1.7 (c), (h).

⁵⁴ UNMIK Regulation No. 2001/19, section 1.7 (a).

90. 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),⁵⁵ as amended by UNMIK Regulation No. 2000/59.⁵⁶ The principal legislation in effect governing the establishment and competence of the courts consists of:

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

91. The legislation referred to at (a) and (c) above applies to the Supreme, District, Commercial, and Municipal Courts. That referred to at (b) relates to the Minor Offences Courts and the High Court of Minor Offences. In addition, Chapter 2 of the Provisional Criminal Procedure Code (PCPCK)⁵⁷ prescribes the jurisdictional competence of courts in criminal proceedings as well as regulating criminal procedure.

I. Municipalities

92. The organization and functions of municipalities in Kosovo are established in UNMIK Regulation No. 2000/45 On Self-Government of Municipalities in Kosovo.⁵⁸ 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 Authority”.⁵⁹ 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.⁶⁰ 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.⁶¹

⁵⁵ UNMIK Regulation No. 1999/24 on the Law Applicable in Kosovo.

⁵⁶ UNMIK Regulation No. 2000/59 Amending UNMIK Regulation No. 1999/25 on the Law Applicable in Kosovo.

⁵⁷ Promulgated by UNMIK Regulation No. 2003/26, entered into force on 6 April 2004.

⁵⁸ UNMIK Regulation No. 2000/45.

⁵⁹ *Ibid.*, section 2.1.

⁶⁰ *Ibid.*, section 2.2.

⁶¹ *Ibid.*, section 2.3.

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.⁶² The Regulation also states that the human rights and freedoms contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols must be observed by the municipal administration, as well as all other applicable law.⁶³

93. 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;
- (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;

⁶² Ibid.

⁶³ Ibid., section 3.3.

- (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.⁶⁴

94. 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.

95. The highest representative body of the municipality is the Municipal Assembly, which is elected directly.⁶⁵ 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.

96. The Municipal Assembly elects the President of the municipality who calls and chairs sessions of the Assembly.⁶⁶ In municipalities where one or more non-majority communities live, an additional Deputy President shall be appointed by the Municipal Assembly from these communities.⁶⁷ The 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.⁶⁸ The Assembly also appoints a Board of Directors, which comprises the heads of the municipal 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.⁶⁹

97. 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 has to 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

⁶⁴ Ibid., sections 3.2 and 3.3.

⁶⁵ Ibid., section 10.

⁶⁶ Ibid., section 13.1.

⁶⁷ Ibid., section 25.3.

⁶⁸ Ibid., section 30.

⁶⁹ Ibid., section 31.2.

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 has to fairly reflect the number of other communities in the municipality.⁷⁰ The Mediation Committee has to 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.⁷¹

98. The Communities Committees 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.⁷² The Communities Committees have to promote the rights and interests of the minority communities living within the municipality, and further promote a diverse society.⁷³

99. A Community Office is to be established in those municipalities where a community that is not in the majority forms a substantial part of the population.⁷⁴ The Community Office, which is 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.⁷⁵

100. The Special Representative has the option to set aside any decision of a municipality, which he considers to be in conflict with resolution 1244 (1999) 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.⁷⁶ The Special Representative may also co-opt additional members to the Municipal Assembly if he considers it necessary in order to ensure representation of all communities.⁷⁷ In exceptional cases, the Special Representative may remove from office a member of a Municipal Assembly who seriously misconducts himself or herself

⁷⁰ Ibid., sections 23.1 and 23.3.

⁷¹ Ibid.

⁷² Ibid., section 23.4.

⁷³ Ibid., section 23.5.

⁷⁴ Ibid., section 23.11.

⁷⁵ Ibid., sections 23.12 and 23.13.

⁷⁶ Ibid., section 47.2.

⁷⁷ Ibid., section 47.3.

in the exercise of his or her duties.⁷⁸ If he 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 resolution 1244 (1999), he may dissolve the Assembly and institute new elections.⁷⁹

J. Other institutions

101. On 6 April 2001 the Kosovo Judicial and Prosecutorial Council (KJPC) was established by UNMIK Regulation No. 2001/8.⁸⁰ The Council is responsible for advising the Special Representative 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.⁸¹ Composed of nine members, it must be multi-ethnic and include both local and international members. Members 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.⁸² The members are selected and appointed by the Special Representative.⁸³ Their term of office is one year and may be extended for such period(s) as the Special Representative may determine.⁸⁴

102. Pursuant to Chapter 9.4.8 of the Constitutional Framework, judges and prosecutors are appointed by the Special Representative 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 Special Representative 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 Special Representative on the recommendation of the KJPC.

⁷⁸ Ibid., section 47.4.

⁷⁹ Ibid., section 47.5.

⁸⁰ UNMIK Regulation No. 2001/8 on the Establishment of the Kosovo Judicial and Prosecutorial Council of 6 April 2001.

⁸¹ Ibid., section 1.2.

⁸² Ibid., section 2.1.

⁸³ Ibid., section 2.2.

⁸⁴ Ibid., section 3.3.

103. The Kosovo Judicial and Prosecutorial Council 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.⁸⁵ It also adopted codes of ethics and conduct for judges, prosecutors and lay judges which became effective upon the endorsement of the SRSG.⁸⁶

104. On 20 December 2005 UNMIK Regulation No. 2005/52 on the Establishment of the Kosovo Judicial Council was promulgated. This Regulation has 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 has a broader role than the KJPC. Pursuant to section 1.4 of UNMIK Regulation No. 2005/52, the KJC is responsible for court administration, including setting policy and promulgating rules and guidelines for the judiciary and the courts. In addition, its responsibilities extend to the fields of recruitment, training and appointment, evaluation, promotion, transfer and discipline of both judges and lay judges, judicial, and non-judicial personnel.

105. The Housing and Property Directorate (HPD) and the Housing and Property Claims Commission (HPCC)⁸⁷ were established under UNMIK Regulation No. 1999/23 to regularize housing and property rights in Kosovo and to resolve disputes over residential property.⁸⁸ 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.

106. 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 has nearly 250 staff, nationals as well as internationals.

⁸⁵ Ibid., section 1.2.

⁸⁶ Ibid., section 1.3.

⁸⁷ OSCE Report Property Rights in Kosovo 2002-2003 and <http://www.hpdkosovo.org/aboutus.htm>.

⁸⁸ UNMIK Regulation No. 1999/23 of 15 November 1999 on the Establishment of the Housing and Property Directorate and the Housing and Property Claims Commission.

107. 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 legalize informal property transfers; is also a step to restore the property registration system)
- 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)

108. 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 claims⁸⁹ until such time as the Special Representative determines that the local courts are able to carry out its functions.⁹⁰ The HPCC is competent to determine claims submitted before 1 July 2003.⁹¹

109. 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.

⁸⁹ Section 1.2 of UNMIK Regulation No. 1999/23 specifies three categories of residential property claims over which the HPD/HPCC has jurisdiction.

⁹⁰ 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 government institutions are able to carry out the functions entrusted to the Directorate”.

⁹¹ The HPD also may take qualifying properties under its administration. HPD administration, however, is a temporary measure which does not provide legally binding confirmation of property rights.

110. In 2006, the HPD/HPCC was succeeded by the Kosovo Property Agency (KPA), established by UNMIK Regulation No. 2006/10⁹² as amended by UNMIK Regulation No. 2006/50. The HPD's personnel, assets and entire organization were carried over into the new agency. The KPA assumed responsibility for the workload of the HPD, to include the implementation of pending HPCC decisions and the management of property under HPD administration. However, the core work of the new Agency is to ensure the effective and efficient resolution of property disputes concerning private immovable property, including agricultural and commercial property.

111. The KPA functions independently of the PISG as an independent body pursuant to Chapter 11.2 of the Constitutional Framework, under the auspices of a Supervisory Board. The Supervisory Board is composed of one representative of UNMIK (the Principal Deputy Special Representative), two representatives of international donors, and one representative each of the Kosovo-Albanian and the Kosovo-Serbian communities.

112. The Kosovo Trust Agency (KTA) was established as an independent body to exercise administrative authority over socially-owned and publicly-owned enterprises by UNMIK Regulation No. 2002/12.⁹³ The administrative authority of the KTA "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
- 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

113. 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.

⁹² UNMIK Regulation No. 2006/10 of 4 March 2006 on the Resolution of Claims Relating to Private Immovable Property, Including Agricultural and Commercial Property.

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

114. The KTA has administrative authority over the following publicly-owned enterprises: Pristina Airport, the district heating enterprises in Pristina and Gjakove/Dakovica, the Kosovo Electricity Corporation (KEK), Post and Telecommunication of Kosovo (PTK), UNMIK Railways and water, waste and irrigation enterprises.

115. On 7 June 2006, UNMIK adopted a Regulation on Legal Aid⁹⁴ “for the purpose of establishing an integrated legal aid system for criminal, civil and administrative matters which ensures that the rights and interests of Communities are fully protected” (Preamble). The Regulation foresees the establishment of an institutional framework administered and monitored by an independent Legal Aid Commission, supported by a Legal Aid Coordination Office and implemented by at least five District Legal Aid Bureaux. The Legal Aid Coordination Office would be appointing advocates to the district legal aid service rosters from lists to be provided by the Kosovo Chamber of Advocates. These lists are to include advocates belonging to vulnerable groups, eventually leading to a number of advocates belonging to vulnerable groups proportionate to the percentage of recipients of legal aid belonging to vulnerable groups.⁹⁵

116. The Regulation provides that legal aid may be provided in two classes of cases categorized according to financial eligibility, and referred to as primary legal aid and secondary legal aid. Legal aid may be provided to habitual residents of Kosovo and temporary residents of Kosovo from jurisdictions that provide reciprocal legal aid to habitual residents of Kosovo.⁹⁶ Primary legal aid may be provided to qualified persons receiving or entitled to social assistance. Secondary legal aid may be provided basically to qualified persons whose total household income is less than the mean household income.⁹⁷ Free and immediate legal aid shall be provided for all arrested and detained persons in policy custody regardless of financial or other qualification criteria.⁹⁸ The same shall apply to cases requiring the appointment of mandatory defence counsel under article 73 of the Provisional Criminal Procedure Code of Kosovo, as well as for cases that comply with the requirements for defence counsel at public expense under article 74 of this code.⁹⁹ The Legal Aid Commission may also provide legal aid beyond the scope of primary and secondary legal aid through partnership agreements.¹⁰⁰

⁹⁴ UNMIK Regulation No. 2006/36 on Legal Aid.

⁹⁵ *Ibid.*, section 9, paras. 5.4 and 5.5.

⁹⁶ *Ibid.*, section 10.

⁹⁷ *Ibid.*, section 11.

⁹⁸ Where free legal aid is not provided in these cases under Regulation No. 2006/36 the general provisions on the appointment of defence counsel of the Provisional Criminal Procedure Code of Kosovo, the Juvenile Justice Code and UNMIK Regulation No. 2004/34 on Criminal Proceedings involving perpetrators with a mental disorder shall apply.

⁹⁹ UNMIK Regulation No. 2006/36, section 16 on Court-appointed Counsel.

¹⁰⁰ *Ibid.*, para. 9.3.

117. As of January 2007, the implementation of this institutional arrangement for legal aid provision was pending. Nominations for positions on the Legal Aid Commission were under consideration at that time.

III. ACCEPTANCE OF INTERNATIONAL HUMAN RIGHTS NORMS

118. Acting under Chapter VII of the Charter of the United Nations, the Security Council adopted resolution 1244 (1999) by which established UNMIK to provide an interim administration for Kosovo; all legal authority in Kosovo is, therefore, derived from that resolution.

119. Pursuant to its provisions and the authority vested in him by them, the Special Representative of the Secretary-General promulgated UNMIK Regulation No. 1999/1 on the Authority of the Interim Administration in Kosovo. section 1.1 of this Regulation provides 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”.

120. Furthermore, “in 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”.¹⁰¹

121. In paragraph 11 (j) of resolution 1244 (1999) the Security Council decided that the main responsibilities of UNMIK should include “protecting and promoting human rights”. To ensure their full realization in Kosovo, the Special Representative promulgated UNMIK Regulation No. 1999/24 on the Law Applicable in Kosovo, which amended UNMIK Regulation 1999/1 to require that “all persons undertaking public duties or holding public office in Kosovo shall observe internationally recognized human rights standards”.¹⁰² Section 1.1 of UNMIK Regulation No. 1999/24 also made “the law in force in Kosovo on 22 March 1989”¹⁰³ the law applicable in Kosovo. One such Kosovo legal provision is article 210 of the 1974 Constitution of the Socialist Federal Republic of Yugoslavia, which provides that “international treaties, which have been promulgated shall be directly applied by the courts”.¹⁰⁴

¹⁰¹ UNMIK Regulation No. 1999/1 of 25 July 1999 on the Authority of the Interim Administration in Kosovo, section 4.

¹⁰² UNMIK Regulation No. 1999/24.

¹⁰³ Ibid., section 1.1 (b).

¹⁰⁴ Decision on Promulgation of the Socialist Federal Republic of Yugoslavia Constitution, article 210, SFRY Official Gazette No. 9 of 21 February 1974 (1974).

122. On 15 May 2001 the Special Representative promulgated the Constitutional Framework for “for the purposes of developing meaningful self-government in Kosovo pending a final settlement”.¹⁰⁵ 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.

123. 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 “no 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”.

124. Chapter 3 of the Constitutional Framework provides further substantial human rights protection. Its Chapter 3.1 guarantees that “all 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 its Protocols, CERD, CEDAW, CRC, European Charter for Regional or Minority Languages and Framework Convention. Under Chapter 3.3, “the provisions on rights and freedoms set forth in these instruments shall be directly applicable as part of the Constitutional Framework”.

125. 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.

¹⁰⁵ UNMIK Regulation No. 2001/9 on a Constitutional Framework for Provisional Self-Government in Kosovo, Preamble.

126. 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 of 19 February 2004.¹⁰⁶ 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.

127. The proscription of discrimination encompasses both direct and indirect discrimination as well as harassment, victimization and segregation.¹⁰⁷ The rights, whose exercise is to be safeguarded against such discrimination and equal protection guaranteed by article 4 of the Anti-Discrimination Law, encompass:

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

¹⁰⁶ The Anti-Discrimination Law was promulgated by the Special Representative through UNMIK Regulation No. 2004/32 of 20 August 2004.

¹⁰⁷ Anti-Discrimination Law, article 3, Law 2004/3 adopted by the Assembly of Kosovo, 30 July 2004.

128. The Anti-Discrimination Law 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” (art. 4). Any claim of discrimination under the Law 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 (art. 7.1).

129. It should be noted that many of the economic rights protected by the Law 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.

130. 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 Socialist Federal Republic of Yugoslavia Assembly prior to 22 March 1989 - especially if article 1.3 of UNMIK Regulation 1999/24 is read together with article 210 of the 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.¹⁰⁸

131. 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 Socialist Federal Republic of Yugoslavia 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.

132. 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, now the Republic of Serbia, 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 organizations in order to establish a proper legal basis for achieving objectives of mutual interest.

¹⁰⁸ UNMIK Regulation No. 2001/27 of 8 October 2001 on the Essential Labour Law in Kosovo, Preamble.

IV. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

A. General legal framework

133. The position of international human rights norms in the applicable law of Kosovo as outlined in Chapter III is such that the courts are legally bound to apply international human rights standards directly.¹⁰⁹

134. 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,¹¹⁰ 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.

B. The Anti-Discrimination Law

135. Under the Anti-Discrimination Law, 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 (art. 7.3).

136. 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 claimant may still present her/his own evidence to defend the case of discrimination (art. 8.1-8.2). 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, organizations or other legal entities may support the use of any judicial and/or administrative procedure by acting on their behalf (art. 7.4-7.6).

137. Under the Law, 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

¹⁰⁹ UNMIK Regulation No. 1999/24, as amended, section 1.3 and the Constitutional Framework para. 3.3.

¹¹⁰ Official Gazette of the Socialist Federal Republic of Yugoslavia, 4/77.

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 (art. 4 (a), (b) and (c)).

C. Plans for the establishment of a human rights advisory panel

138. Since Serbia and Montenegro, now the Republic of Serbia, became a High Contracting Party to the European Convention on Human Rights on 3 March 2004, a resident of Kosovo may file with the European Court of Human Rights in Strasbourg a petition which alleges a violation of human rights arising from an act or omission of the authorities of Serbia. However, as a consequence of resolution 1244 (1999), Serbia 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 European Convention. 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 European Court. The establishment of the human rights advisory panel will address this gap in human rights protection in Kosovo.

139. 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 resolution 1244. Therefore, following discussions between UNMIK and the Council of Europe, it was decided that a Human Rights 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 United Nations Headquarters in New York.

140. 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.

141. Following the promulgation of UNMIK Regulation 2006/12 establishing the Human Rights Advisory Panel, the Special Representative appointed, based on the recommendation of the President of the European Court of Human Rights, three members to the advisory panel in early January 2007. The establishment of the Advisory Panel was announced by UNMIK at a press conference on 10 May 2006 and widely covered in the local media. In addition, UNMIK has created a web link (in May 2006) to the Advisory Panel on UNMIK's public website. The Panel is expected to commence its work soon.

D. Municipal level

142. 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 of the municipality within one month. Municipalities also may have specific procedures; the onus is on the claimant to inquire. The chief executive officer is required to respond within one month¹¹¹
- If the claimant disagrees with the decision, a complaint then can be filed with the central authority. Currently, all such appeals should be filed with and coordinated 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 month¹¹²
- An appeal against this second-instance decision can be filed to the Supreme Court.¹¹³ 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 served¹¹⁴
- A further appeal or request for extraordinary review of a court decision can be lodged against a decision in an administrative lawsuit. Either must be submitted to the competent court within 30 days of delivery of the disputed decision¹¹⁵

143. 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.¹¹⁶

¹¹¹ UNMIK Regulation No. 2000/45, section 35.

¹¹² Ibid.

¹¹³ Law on Regular Courts, article 31.

¹¹⁴ Law on Administrative Disputes (O.G. 4 (1977)), article 24.

¹¹⁵ Ibid., articles 19-20 and 45-50.

¹¹⁶ UNMIK Regulation No. 2000/45, section 23.6.

144. 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 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 resolved.¹¹⁷

145. 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.¹¹⁸ 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.¹¹⁹

146. Additionally in cases of dismissals, the individuals affected can complain to the Communities Committee in writing, setting out its reasons for the dismissal, within one week of the decision.¹²⁰ 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 Deputy Special Representative for Civil Administration, who shall review the complaint and recommend appropriate action to the Special Representative for consideration. The complaint shall be submitted for an appeal within 30 days upon receiving the dismissal by the Committee.¹²¹ 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.

E. Independent Oversight Board

147. 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 (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 has to exhaust the internal appeals procedures of the employing authority

¹¹⁷ Ibid., section 23.7.

¹¹⁸ Ibid., section 23.8.

¹¹⁹ UNMIK Regulation No. 2000/45, section 23.9.

¹²⁰ Administrative Instruction No. 2003/002, section 5.7.

¹²¹ Administrative Instruction No. 2003/002, section 5.8.

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 60 days, or other good cause.¹²²

148. The IOB shall be composed of seven members, appointed by the Special Representative of the Secretary-General 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 Kosovo non-Albanian communities in Kosovo.¹²³ A further appeal or request for extraordinary review of a court decision can be lodged against a decision in an administrative lawsuit.

149. 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.¹²⁴ 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.¹²⁵ The Appeals Board shall complete the hearings of a case within 30 days of its receipt¹²⁶

F. Education, social services and health

150. Claims of discrimination in access to education by education officials may be lodged with the designated official of the staff member.¹²⁷ Education staff may be disciplined for neglect of

¹²² 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”.

¹²³ Ibid., sections 8 (1) and 8 (2).

¹²⁴ UNMIK Administrative Direction No. 2003/2 Implementing UNMIK Regulation No. 2001/36 on the Kosovo Civil Service, section 33 (1).

¹²⁵ Ibid., section 33 (5).

¹²⁶ Ibid., section 33 (6).

¹²⁷ Department of Education and Science Administrative Instruction No. 21/2001, section 3 (1).

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.¹²⁸ If the complaint is grounded, the Department may take disciplinary and/or administrative action.¹²⁹

151. 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 allegations made.¹³⁰ 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 seven days, issue a written decision to the teacher.¹³¹

152. 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 chief executive officer of a municipality's personal attention, a review panel shall be established in order to conduct an investigation.¹³² 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.

153. An applicant, who contends an official decision made by the Centre for Social Work, may submit an appeal in writing to the Director of the Centre where the application for social assistance was originally filed.¹³³ Such appeals shall be submitted no later than 14 days after

¹²⁸ Ibid., section 2 (2).

¹²⁹ Ibid., section 2 (1).

¹³⁰ Ibid., sections 4 (1-2).

¹³¹ Ibid., section 4 (2).

¹³² Ibid., section 5 (1).

¹³³ 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".

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 21 days after receiving the appeal.

154. 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 14 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 21 days after receiving the appeal.

155. 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.

156. The Assembly Law on the Rights and Responsibilities of Kosovo Residents in the Health Care System¹³⁴ also offers a remedy to persons complaining that their rights as patients have been violated. Under the Law, a complaint against the health-care institution may be submitted regarding the health-care service provided to a Kosovo resident within 60 days after the alleged incident has occurred.¹³⁵ 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,¹³⁶ which is the municipality for primary health-care institutions, and for secondary and tertiary health-care institutions as well as for private sector health-care institutions, the Ministry of Health.¹³⁷ The Law does not provide deadlines for such appeal.

157. 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.¹³⁸ This request shall be submitted to a commission, established by the Ministry of Health,¹³⁹ which shall decide on the validity of the claimants'

¹³⁴ 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.

¹³⁵ Ibid., article 24.1.

¹³⁶ Ibid., article 24.3.

¹³⁷ Ibid., article 2.1.

¹³⁸ Ibid., article 26.

¹³⁹ Ibid., article 27.

requests regarding damage compensation and shall establish the amount of compensation.¹⁴⁰ 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.¹⁴¹

158. A decision of the commission may be appealed to a competent court, in accordance with the relevant laws.¹⁴² 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.

159. All benefits and privileges foreseen by the Law are exclusively accorded to Kosovo residents.¹⁴³

G. Residential property

160. A claim in relation to residential property under UNMIK Regulation No. 1999/23 needed to be submitted to the Housing and Property Directorate (HPD) prior to a deadline of 1 June 2003.¹⁴⁴ The claim must have been submitted by the natural person falling under the claims category, a family member, or a legally authorized 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 he/she 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 Housing and Property Claims Commission's (HPCC) jurisdiction, the HPD attempted to settle claims amicably.¹⁴⁵ If unable to do so, then the HPD referred any such claim to the HPCC.¹⁴⁶ Rejection of a claim by HPD may be appealed to HPCC.¹⁴⁷ If a party disagrees with a HPCC decision, he/she has 30 days from notification of the decision

¹⁴⁰ Ibid., articles 27.5 and 30.

¹⁴¹ Ibid., article 28.2.

¹⁴² Ibid., article 33.

¹⁴³ Ibid., defined in article 2.1 (a).

¹⁴⁴ See UNMIK Regulation No. 1999/23 and UNMIK Regulation No. 2000/60.

¹⁴⁵ UNMIK Regulation No. 2000/60, section 10.1.

¹⁴⁶ Ibid., section 10.4.

¹⁴⁷ Ibid.

to submit a request for reconsideration.¹⁴⁸ The request must be submitted to the HPD.¹⁴⁹ No further appeal is provided.¹⁵⁰ HPCC retains exclusive jurisdiction over such claims until such time as authority is returned to the regular courts.¹⁵¹

161. 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,¹⁵² (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.¹⁵³ If the HPD is satisfied, it may order the registration of the informal transaction in the appropriate public record.

162 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 has to be made within 30 days of learning of the HPD’s order but not later than one year from the date of the order.

163. If contract of sale relates to property, which is located in a specific geographical area,¹⁵⁴ a competent court cannot verify the contract without a proof of registration by the United Nations Municipal Administrator.¹⁵⁵ If a person claims that his/her property rights have been violated due to refusal to register a sale in a specific area, he/she 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 Special Representative of the Secretary-General 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.¹⁵⁶

¹⁴⁸ Ibid., section 25.

¹⁴⁹ Ibid., section 14.1.

¹⁵⁰ UNMIK Regulation No. 1999/23, section 2.7.

¹⁵¹ Ibid., section 2.5.

¹⁵² UNMIK Regulation No. 1999/23 and UNMIK Regulation No. 2000/60.

¹⁵³ UNMIK Regulation No. 2000/60, section 11.

¹⁵⁴ 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.

¹⁵⁵ UNMIK Regulation No. 2001/17, section 4.

¹⁵⁶ Ibid., sections 6-7.

V. GENERAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROMOTED

164. The Ombudsperson Institution (OI) in Kosovo was established by UNMIK Regulation No. 2000/38¹⁵⁷ 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 multi-ethnic - 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.

165. 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; efforts are made to provide a complainant with service in his/her language even if it is not one of these three languages.

166. 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 Special Representative of the Secretary-General 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 compatible with international human rights standards, he issues a so-called Special Report, which also includes recommendations to the Special Representative.

167. In 2006, the Ombudsperson Institution was further developed and transferred through the establishment of a Kosovo institution by UNMIK Regulation No. 2006/6.¹⁵⁸ The Ombudsperson Institution of Kosovo (OIK) will now consist of an Ombudsperson, a Principal Deputy Ombudsperson and three Deputy Ombudspersons. Each of these posts are to be appointed by the Assembly of Kosovo from candidates of high moral character, with a demonstrated commitment to human rights and who are habitual residents of Kosovo.¹⁵⁹ The OIK accepts complaints from

¹⁵⁷ UNMIK Regulation No. 2000/38 of 30 June 2000 on the Establishment of the Ombudsperson Institution in Kosovo.

¹⁵⁸ UNMIK Regulation No. 2006/6 of 16 February 2006 on the Ombudsperson Institution in Kosovo.

¹⁵⁹ *Ibid.*, sections 6.1 and 6.4.

anyone who it considers to have been the victim of a human rights violation or an abuse of authority by Kosovo institutions; it conducts investigations into these complaints. The OIK operates in two official working languages of Albanian and Serbian, and shall seek to provide service in other languages where the complainant's language is not one of these two. Once fully constituted, under UNMIK Regulation No. 2006/6, the OIK will no longer have jurisdiction to investigate claims involving UNMIK, although it may seek cooperation from UNMIK in certain matters.

168. The OIK's competencies also involve advising the Government, the Assembly of Kosovo and any other competent Kosovo institution in any matters concerning the promotion and protection of human rights, including the monitoring of policies, programmes and laws for compliance with human rights standards. Reports of the OIK, including Special Reports, and any recommendations are to be submitted to the Assembly of Kosovo and are to be made public.¹⁶⁰

169. As of August 2007, the appointment of the Ombudsperson and the Deputy Ombudspersons is pending before the Assembly of Kosovo. The OIK is operating under the authority of an Acting Ombudsperson selected from one of the previously existing Deputy Ombudspersons.

170. UNMIK/Pillar III established a Human Rights Training Unit in September-October 1999. One month after its creation, the Unit 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. The conference attracted some 800 local participants from all ethnic groups of Kosovo; 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.

171. During 2000 and 2001 the 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 training was provided in the context of professional knowledge and skills training programmes organized 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 organizations, women's organizations, teachers and law students. All participants at the 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

¹⁶⁰ Ibid., section 16.

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 Pillar III/OSCE staff to primary schoolteachers 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.

172. At the same time, Pillar III/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.

173. In January 2002, coinciding with the establishment of the Provisional Institutions of Self-Government, Pillar III/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: the section consisted of 20 persons specialized in human rights and teaching and training. Between 2002 and 2006 it 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. The section targeted municipal civil servants, judicial and legal professionals, and educational programmes in primary, secondary and tertiary education.

174. From 2002, the section organized human rights youth clubs in nine 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.

175. 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.

176. 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: the 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 organized 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 organized 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 organized dating and domestic violence training which was provided by community police officers to secondary school pupils throughout Kosovo.

177. 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 at providing basic information such as for victim assistance support services, anti-trafficking services, telephone helplines and so forth. Increasingly such awareness campaigns are co-organized with the Advisory Office on Good Governance, Human Rights, Equal Opportunity and Gender established within the Office of the Prime Minister of the PISG. 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.

178. 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. Specialized 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.

179. 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.

180. 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 Institute provides courses on judicial ethics to all of its students.

181. 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.

182. The Rule of Law Section of OSCE also organizes 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.

183. 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.

184. 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.

185. Specific human rights subjects are taught within the curriculum of the University of Prishtine/Pristina 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 Mitrovice/Mitrovica, which is managed by the Ministry of Education of the Republic of Serbia.

186. 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 Prishtine/Pristina. 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 United Nations 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.¹⁶¹

187. The Kosovo Law Centre, an NGO established by OSCE, provides library access to law books including human rights law, to students, academics and practising lawyers, and organizes 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.

188. At primary and secondary school level, the Ministry of Education, Science and Technology has developed a new curriculum and has introduced the subject of civic education into the curriculum for every year of schooling: the civic education curriculum provides for a range of human rights topics appropriate to different grades; for many of these topics appropriate teaching

¹⁶¹ E.g. at <http://www.unmikonline.org> under UNMIK Official Gazette.

materials are still to be developed. Specifically for the sixth 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 sixth 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.

189. 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 Peje/Pec 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.

190. 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.

191. 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; published over the last six years they include 10 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 specialized reports including on the response of the criminal justice system to the riots of March 2004.

VI. ROLE OF THE REPORTING PROCESS IN PROMOTING HUMAN RIGHTS

192. On 23 August 2004, the Special Representative 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".

193. 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).

194. The UNMIK Report was considered by the Advisory Committee on the Framework Convention for the Protection of National Minorities. A delegation of the Advisory Committee visited Kosovo from 11 to 15 October 2005 in order to obtain supplementary information. The 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.

195. Earlier, on 22 July 2005, Prime Minister Bajram Kosumi decided to create Human Rights Units 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. The Advisory Office on Good Governance was accordingly tasked to coordinate such a process.

196. By the end of 2006, Human Rights Units have become operational in all ministries, although their full ability needs further improvement. In order to continuously create sustainable governmental mechanisms for human rights, the Advisory Office on Good Governance sustained and increased capacities of the Human Rights Unit. The capacity-building effort has resulted in examination of the implementation of international standards, review of legislation, monitoring and reporting. In particular, the work of the Units has been concentrated in categories such as: non-discrimination, children's rights, rights of persons with disabilities, minority rights, the rights of the woman, international treaty body reporting, and preparing the Action Plan on Human Rights Strategy for Kosovo.

197. In the context of preparation of a report on progress in Kosovo with the implementation of rights contained in the International Covenant on Economic, Social and Cultural Rights, a specific training programme over five months was provided by the OSCE/Pillar III to selected members of Human Rights Units from each ministry in order to familiarize them with the substance of economic, social and cultural rights and provide them with the analytical tools necessary for the reporting exercise.

VII. NON-DISCRIMINATION AND EQUALITY

A. General

198. The principle of non-discrimination is rooted in UNMIK Regulations. Chapter III 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.”

199. The principle of non-discrimination is further reaffirmed in article 2 of the Anti-Discrimination Law,¹⁶² 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”.

200. The purpose of the Law 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 (art. 3). The Law 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 (art. 4 (a)-(n)). Any claim of discrimination under the Law 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 (art. 7.1). A fundamental aspect of the Law, enhancing protection to victims of discrimination in cases against institutions, is shifting the burden of proof to the respondent accused of discriminatory treatment (art. 8). Alleged victims can be supported by various organizations or legal entities when making the claim (art. 7.6). 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 Euros on any institution violating the Law (art. 9). Furthermore, the Law authorizes the Ombudsperson of Kosovo to receive and investigate complaints concerning discrimination cases (art. 10). It is important to note that the Law encourages the use of positive actions to ensure a genuine equality in daily practices (art. 6.1). 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 (art. 9.3). Contracts for public financing or benefits have to include provisions for compliance with the Law and shall be revoked by the body awarding it in case of violation of the Law. Finally, the Law 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 (art. 9.4).

201. The Constitutional Framework, the Law 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.

¹⁶² Assembly Law No. 2004/03 promulgated by UNMIK Regulation No. 2004/32 of 20 August 2004. [*hereinafter* ADL].

202. Assessing the extent of discrimination towards women, children, minorities, persons with disability and other vulnerable groups in both central and local level is 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, reintegration, 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 per cent versus for rural male 74.39 per cent) and education (mean years of schooling 7.94 for women versus 10 for men).

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

204. The Advisory Office on Good Governance, upon promulgation of the Anti-Discrimination Law, organized a public information campaign to raise awareness of the Law 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, the Advisory Office 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 Law. 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 coordinated plan of action identifying the critical path for the effective implementation of the plan has been developed by the Office of the Prime Minister, 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.

205. 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”.¹⁶³ 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”.¹⁶⁴

206. 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. 2001/36¹⁶⁵ (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.”¹⁶⁶

207. Another important aspect of this Law is that it provides, through an administrative instruction¹⁶⁷ 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 administrative instruction, Equal Opportunities Officers shall be appointed in every Ministries, Municipalities and Executive Agencies and tasked to prepare equal opportunity policies 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 policies 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

¹⁶³ UNMIK Regulation No. 2001/19, section 5.4 (e).

¹⁶⁴ UNMIK Regulation No. 2001/19, section 4.2.

¹⁶⁵ UNMIK Regulation No. 2001/36 of 22 December 2001 on the Kosovo Civil Service.

¹⁶⁶ Administrative Direction No. 2003/2 of 25 January 2003 Implementing UNMIK Regulation No. 2001/36 On the Kosovo Civil Service, section 10.

¹⁶⁷ Administrative Instruction of the Ministry of Public Services (MPS) 2003/12 *on Equal Opportunities Procedures*, of 12 September 2003, implementing Administrative Direction 2003/2 Implementing UNMIK Regulation No. 2001/36 on the Kosovo Civil Service.

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.

208. However, so far little action has been taken to appoint equal opportunities officers in Ministries, Municipalities and Executive Agencies, nor criteria 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.

209. 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 Working Group on Minority Employment, consisting of representatives from Pillar II/Office of 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 Special Representative of the Secretary-General approved the representational goals and plans.¹⁶⁸ The point of departure for the Working Group 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 per cent and 18.3 per cent, while non-Serb minorities would collectively represent between 8.3 per cent and 10.8 per cent. 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.

210. 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 balanced 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

¹⁶⁸ Recommendation for Special Representative to the Secretary-General Approval: Establishment of a Proportional Community Representation in the Kosovo Civil Service, dated 19 June 2002 and approved by the Special Representative of the Secretary-General, Michael Steiner.

of long-term discrimination by developing “job-training programmes for commonly disadvantaged populations (i.e. the Roma, Ashkali and Egyptian communities) to enhance their ability to apply and compete for jobs”. Unfortunately, neither the methodology for establishing 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”.¹⁶⁹

B. Gender

211. The Law on Gender Equality in Kosovo, Law No. 2004/2 promulgated by UNMIK Regulation No. 2004/18, 7 June 2004 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. It 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.

212. The Law 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 per cent each of men and women. It mandates the establishment of the inter-ministerial council to be comprised of Gender Affairs Officers of the Ministries (art. 4.9), an Office for Gender Equality as a separate governmental institution (art. 5.1) and Offices of Gender Affairs in local government bodies (art. 4.15).

213. 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 this Law and on existing legislation as it relates to gender issues [...it] is to be funded from the Kosovo Consolidated Budget”. 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.”

214. In March 2004, the Prime Minister adopted the National Action Plan for the Achievement of Gender Equality. The Plan was developed as a mechanism for ensuring gender equality and its primary goal is to ensure equal participation, representation and benefits for women in all

¹⁶⁹ Ambassador Kai Eide, “A comprehensive review of the situation in Kosovo”, 7 October 2005, p. 5.

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 Plan assesses six critical areas of concern meaning education, economy, politics, health and social welfare, human rights and violence against women and children culture.

C. Education

215. 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.¹⁷⁰ Sex differentials exist at all ages with net combined enrolment 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 (10 years of schooling for boys and 7.94 for girls) and among Roma, Ashkali and Egyptian minorities (8.04 years for boys while only 5.69 years for 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 the Advisory Office on Good Governance 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.

216. 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 schoolchildren or school buses in some ethnically mixed areas, for example Cernic/Cernica (Gjilan/Gnjilane municipality), Obiliq/Obilic 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.

D. Employment

217. 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

¹⁷⁰ Law on Higher Education in Kosovo, articles 3.1 and 5.1.

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 per cent of the workforce in the cities and barely 20 per cent in the rural areas.

218. 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 underrepresented populations, especially internally displaced persons and refugees; (b) Addressing results of long-term discrimination: developing on-the-job training programmes 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.

219. The Law on Gender Equality 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 Law also requires that:

- The Government draft a Kosovo programme 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 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

220. Section 4 of Administrative Instruction 2005/8 on Determination of Competences and Description of Duties of Officer for Gender Equality in Municipalities mandates the Municipal Gender Office to keep and analyse the statistics-database in the field of gender equality. The Administrative Instruction establishing the Office of Gender Equality provides the Office’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.

E. Health and social welfare

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

222. In Prizren/Prizren and Mitrovica/Mitrovica, several women's NGO projects have been financially supported by the municipality thanks to the lobbying of the Gender Equality Committee. The Municipal Gender officer regularly informs Committees on NGO project proposals, which are then approved or rejected by the Committee. 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 Mitrovica/Mitrovica an education project for girls in rural areas was started in 2003 and other projects were continued through 2004 and 2005.

223. According to UNICEF¹⁷¹ despite receiving over 11 per cent 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). According to the same source, of the total, 26 per cent is provided as designated grants to the municipalities for primary health care expenses. UNICEF also reports that though accurate data remains a problem, it is estimated that the current infant mortality rate in Kosovo is 35 per 1,000.¹⁷²

F. Disability

224. Mental or physical disability is listed in the Anti-Discrimination Law as one of the specifically prohibited grounds for discrimination and reflects Kosovo's commitment to bring about equality for persons with disabilities. The Law provides a legal basis for the removal of barriers to equal participation and the elimination of discrimination based on disability.

225. Since early 2000, Kosovo has taken steps to promote equality for persons with disabilities by designating Handicap International as the international "lead agency" on disability who in turn supports local NGOs such as HandiKOS' recommendation to establish an UNMIK Task

¹⁷¹ See *Situational Analysis of Children and Women in Kosovo*, UNICEF, 2003.

¹⁷² *Ibid.* 2.2, Infant Mortality.

Force on Disability. A primary task of the Task Force was to develop a comprehensive disability strategy based on United Nations Standards Rules on the Equalization of Opportunities for People with Disabilities. In December 2003 a Comprehensive Disability Policy Framework was issued identifying 14 policy guideline points that cover policy objectives for accessibility, education and employment for persons with disabilities 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: creation of an Office for 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 the form of a Disability Council. Since 2002 a post of Advisor on Disability Issues was established within the Office of the Prime Minister and a draft proposal for the establishment of a National Council on Disability as a permanent advisory body supported by the Advisory Office is being considered by the Prime Minister; the draft proposal developed awareness-raising on disability issues campaigns and events such as roundtables on driving licence availability for persons with disabilities, “Nothing about us without us” took place throughout 2005 to ensure that persons with disability issues are on the agenda and reflected in policies.

226. At the municipal level with the aim of improving involvement of organizations representing the disabled in developing municipal policy, four municipalities (Pristina, Prizren/Prizren, Gjakove/Dakovica and Sukareke/Suva Reka) established commissions on persons with disabilities. 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 interested persons.

227. Additionally, all municipalities are working with the NGO HandiKOS on developing programmes for children with disabilities. There are five municipalities that have classes for students with disabilities and these classes serve 1,081 students with special needs.

G. Minorities

228. Chapter II of this Report describes the arrangements directed at protecting the position of minority communities in the legislature and executive.

229. 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.”¹⁷³

¹⁷³ UNMIK Regulation No. 2000/45, section 4.3.

230. 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 a proportionate share of their total Kosovo consolidated budget financed from Own Source Revenues, General, Education and Health grants to the minority communities residing within their boundaries, in accordance with 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.

231. Every year the Minister of Finance and Economy and the Deputy Special Representative of the Secretary-General 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.

232. 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 Minister of Finance and Economy who analyses and controls the reported figures.

233. 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.

234. 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”.¹⁷⁴ 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 was allocated for these offices and 241 employees were employed within these offices. The Ministry of Finance and Economy’s Department of KCB is in close

¹⁷⁴ UNMIK Regulation No. 2000/45, section 23.11.

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.

235. UNMIK Regulation No. 2000/45 sets forth the mandatory establishment in each municipality of the Communities and Mediation committees.¹⁷⁵ 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.

236. 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.¹⁷⁶

237. Although the committees' roles and procedural guidelines have been outlined respectively in UNMIK Administrative Instruction 2003/002 and 2005/001,¹⁷⁷ 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 reveals that in only a few municipalities (Dragash/Dragas, Ferizaj/Urosevac, Kline/Klina, Prizren/Prizren and Shtime/Stimlje) 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/Urosevac, Gjilan/Gnjilane, Kaqanik/Kacanik, Prishtine/Pristina, Prizren/Prizren and Viti/Vitina), while these latter, in most municipalities, have never met beyond their inaugural session (Deqan/Decane, Gjakove/Dakovica, Kline/Klina, Skenderaj/Srbica and Suhareke/Suva Reka Deqan/Decani, Gjakove/Dakovica, Kline/Klina, Skenderaj/Srbica and Suhareke/Suva Reka). Importantly, in two municipalities (Gillogovc/Glogovac and Malisheve/Malisevo) both committees were never established.

238. 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

¹⁷⁵ Ibid., section 23.

¹⁷⁶ Ibid., section 23.3.

¹⁷⁷ Administrative Instruction 2003/002 on Procedural Guidance for Municipal Communities Committees, of 15 September 2003, and Administrative Instruction 2005/001 on Procedural Guidance for Municipal Mediation Committees, of 13 April 2005.

many municipalities,¹⁷⁸ 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' programmes. 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.

239. 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 against in accessing public and social services on ethnic and language grounds.

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

241. 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.

242. 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 [...]".¹⁷⁹ Moreover the Ministry is required to "develop policies and implement legislation for a non-discriminatory and accountable healthcare

¹⁷⁸ In Decan/Decani, Fushe Kosove/Kosovo Polje, Istog/Istok, Lipjan/Lipljan, Mitrovica/Mitrovica, Obiliq/Obilic, Podujeve/Podujevo, Prizren, Rahovec/Orahovac, Shtime/Stimlje and Vushtrri/Vucitrn. However, Kosovo-Serb Communities Committee representatives were finally appointed in Fushe Kosove/Kosovo Polje and Podujeve/Podujevo.

¹⁷⁹ UNMIK Regulation No. 2001/19, section 1.7 (c).

system”,¹⁸⁰ to “monitor the health situation and implement appropriate measures to prevent and control healthcare problems”¹⁸¹ and “promote community participation and the development of community initiatives and activities relating to health [...]”¹⁸²

243. Municipalities are responsible for providing primary health care,¹⁸³ (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 health-care system run by the Ministry of Health, there are facilities run by the Serbian Ministry of Health: that Ministry supervises them, pays salaries, and covers all other related operational costs. There is little cooperation or information-sharing between the two.

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

245. 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.

246. On the situation of minorities UNICEF reported in 2003¹⁸⁴ 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 Mitrovice/Mitrovica and the

¹⁸⁰ UNMIK Regulation No. 2001/19, annex VI, Ministry of Health, at (i).

¹⁸¹ Ibid. at (v).

¹⁸² Ibid. at (vii).

¹⁸³ 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”.

¹⁸⁴ *Situation Analysis of Children and Women in Kosovo*, UNICEF, 2003, 2.1.3, The Situation of Minorities.

other in Gracanica/Graçanice, not far from Prishtine/Pristina. The report also states that many Roma, Ashkali and Egyptian 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.¹⁸⁵

247. 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.

248. From 2003, the UNMIK Department of Justice began the establishment of Court Liaison Offices to assist especially Kosovo Serbs in gaining access to courts. As of 2006 there are eight Court Liaison Offices providing assistance over two thirds of Kosovo. These are primarily established in minority areas by the Department of Justice to promote access to justice. They provide local contact points for information on courts and legal services to members of the local community who for security reasons are reluctant to visit the areas where the courts are located. The Court Liaison Officers deliver claims to the court and distribute court documents within their areas, as well as filing/reporting complaints of discrimination by courts or prosecutor's offices. They also escort members of the public to the court and some Court Liaison Offices run a shuttle service between the court and the local area.

249. UNMIK Regulation No. 2006/25 has, inter alia, the purpose of improving access to justice for minority communities in a number of ways. The Special Representative of the Secretary-General will establish new Court Liaison Offices, after consultation with the Ministry of Justice, to help "vulnerable" communities in areas which are geographically isolated or there is a lack of security or other factors.¹⁸⁶ The Kosovo Judicial Council is now responsible for administering the courts and will consider access by minority communities in allocating court resources.¹⁸⁷ The Special Representative of the Secretary-General has the authority, after consulting relevant stakeholders, to allow Municipal Court out-of-court sessions to be held within their jurisdiction.¹⁸⁸

¹⁸⁵ Ibid. 5.9.2, Access to Services.

¹⁸⁶ UNMIK Regulation No. 2006/25 of 27 April 2006 on a Regulatory Framework for the Justice System in Kosovo, section 3.1 and following.

¹⁸⁷ Ibid., section 4.2.

¹⁸⁸ Ibid., section 4.3.