

Strasbourg, 02 June 2005

ACFC(2005)003

**REPORT SUBMITTED BY THE  
UNITED NATIONS INTERIM ADMINISTRATION MISSION IN  
KOSOVO (UNMIK) PURSUANT TO ARTICLE 2.2 OF THE  
AGREEMENT BETWEEN UNMIK AND THE COUNCIL OF  
EUROPE RELATED TO THE FRAMEWORK CONVENTION FOR  
THE PROTECTION OF NATIONAL MINORITIES**

(received on 02 June 2005)

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<b><u>Annex II:</u></b>	UNMIK Regulation No. 2001/9 dated 15 May 2001 on a Constitutional Framework for Provisional Self-Government in Kosovo
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- Annex XXXVIII:** UNMIK Executive Decision No. 2004/1 dated 18 February 2004 on Setting Aside of a Decision of the Municipal Assembly of Prishtine/Pristina of 30 December 2003
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- Annex XLIII:** Sustainable Returns and the Rights of Communities and Their Members Final – 6 July 2004
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**REPORT PURSUANT TO ARTICLE 2.2 OF THE AGREEMENT BETWEEN UNMIK AND  
THE COUNCIL OF EUROPE ON TECHNICAL ARRANGEMENTS RELATED TO THE  
FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES**

**Pristina, 30 May 2005**

## INTRODUCTION

*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) entered into force with its signature on 23 August 2004.

The present Report is submitted pursuant to Article 2.2 of the UNMIK/CoE Agreement and is compiled on the basis of inputs submitted by UNMIK as well as by the PISG.

Part I adduces the available general geographical, demographic, socio/economic, historical, politico-legal, policy and public-education information. For the most part, its content is drawn from the quarterly Reports on the United Nations Interim Administration in Kosovo, which the UN Secretary-General submits to the Security Council in accordance with paragraph 20 of Security Council Resolution 1244 (1999)(UNSCR 1244). All such information is expressly referenced to its source.

Part II provides the details regarding the concrete measures adopted by UNMIK and the PISG to give effect to the principles set out in the Framework Convention. The PISG inputs are attributed to their contributors in the body of the Report.

The full texts of pre-1989 non-discriminatory Socialist Federal Republic of Yugoslavia (SFRY) and Socialist Autonomous Province of Kosovo (SAP Kosovo) laws, UNMIK Regulations and Administrative Directions as well as Kosovo Assembly laws promulgated by the Special Representative of the Secretary General (SRSG) – which together make up the complex legal regime of Kosovo under United Nations Interim Administration – germane to the protection of non-majority communities in Kosovo are reproduced as annexes to the present report. All UNMIK Regulations and Administrative Directions – like all UNMIK primary and secondary legislation – are posted at <http://www.unmikonline.org/regulations/index.htm>.

Due to the weak statistical base in Kosovo and the lack of a reliable census in Kosovo for over a decade, many of the macro- and micro-economic data cited in the present report should be viewed with a considerable degree of caution. The like applies to demographic and social data, neither of which can be readily and accurately disaggregated by ethnicity, age, gender or location.

## PART I – GENERAL INFORMATION

### I. KOSOVO – TERRITORY AND PEOPLE

#### A. Geography

Kosovo, which is formally part of the Union of Serbia and Montenegro (S&M), is in the Western Balkans. It is a landlocked entity and has a landmass of 10,887 square kilometres. This is roughly one-third the size of Belgium. Kosovo is a geographical basin, situated at an altitude of about 500 meters, surrounded by mountains, and divided by a central north/south ridge into two sub regions of roughly equal size and population.

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

Approximately 430,000 ha is forested (39 percent) and 577,000 ha is classified as agricultural land (52 percent). Of the latter, about 180,000 ha (31 percent) are pastures and about 400,000 ha (69 percent) is cultivable.

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

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, magnetite and precious metals<sup>1</sup>.

## B. Demographic and Ethnic Structure

Kosovo currently lacks accurate demographic data, a consequence of its turbulent recent history and the significant population changes that accompanied it. The last commonly accepted census in Kosovo took place in 1981, when the total population was estimated to be 1,584,000. A census was held in 1991. However, its results are considered to be unreliable due to the low levels of participation from the majority Kosovo Albanian community.<sup>2</sup>

**Census Data 1948 – 2003**

Year	Total Population
1948	729,000
1953	808,000
1961	964,000
1971	1,244,000
1981	1,584,000
1991	1,956,000
2003	2,000,000

Source: UNFPA-IOM-SOK 2000

(2003 figures are population estimates from the Statistics Office of Kosovo (SOK).)

For logistical, technical and financial reasons, it will not be possible to conduct a full population census of Kosovo before 2006.<sup>3</sup>

The population of Kosovo has been variously estimated by the UN Secretary-General reports and the World Bank as numbering 1.7<sup>4</sup> and 2.2<sup>5</sup> million in 1998. This unclear demographic picture was complicated by the 1998-1999 conflict, which saw a massive movement of population both during and after the hostilities. The conflict itself displaced approximately 800,000 Kosovo Albanians

<sup>1</sup> World Bank, Kosovo Economic Memorandum, 49-50 (17 May 2004).

<sup>2</sup> UNICEF, Situation Analysis of Children and Women in Kosovo, 8. (2003) [*hereinafter* Children and Women in Kosovo].

<sup>3</sup> UNPF, Demographic, Social and Reproductive Health Situation in Kosovo: Results of a Household Survey – July 2003, 7 (January 2005) [*hereinafter* 2003 DSRH Survey].

<sup>4</sup> Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, UN. Doc. S/1999/799, para. 8 (12 July 1999) [*hereinafter* First SG Report].

<sup>5</sup> Towards Stability and Prosperity, *supra* note 3, at 2.

in the main to neighbouring Albania and FYR Macedonia. Up to 500,000 people may have been internally displaced.<sup>6</sup> The total number of deaths resulting from the 1998-1999 conflict was put at 4,000-12,000.<sup>7</sup>

Following the NATO intervention and the end of hostilities in June 1999, there was a mass departure of non-Albanians from Kosovo. 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.

Total population		
	Municipality	Population
1	Prishtinë/Priština	496,000
2	Prizren	211,089
3	Gjakovë/Đakovica	149,126
4	Ferizaj/Uroševac	143,574
5	Pejë/Pec	130,150
6	Podujevë/Podujevo	114,685
7	Vushtrri/Vučitrn	110,100
8	Gjilan/Gnjilane	105,269
9	Mitrovicë/Mitrovica	100,970
10	Suharekë/Suva Reka	81,483
11	Lipjan/Lipljan	74,700
12	Rahovec/Orahovac	73,350
13	Skenderaj/Srbica	70,555
14	Glogovac/Glogovac	67,000
15	Malishevë/Mališevo	60,027
16	Viti/Vitina	60,007
17	Kamenicë/Kamenica	58,450
18	Deçan/Dečani	54,579
19	Istog/Istok	54,298
20	Klinë/Klina	52,354
21	Kaçanik/Kaçanik	50,000
22	Fushë Kosovë/Kosovo Polje	41,000
23	Dragash/Dragaš	40,500
24	Shtime/Štimlje	29,696
25	Obiliq/Obilić	28,530
26	Leposavić/Leposaviq	21,112
27	Zvečan/Zveçan	15,067
28	Zubin Potok	14,900
29	Shtërpçë/Štrpce	13,843
30	Novobërdë/Novobrdó	5,196
		2,527,610
Kosovo - Total population		100%

Source: OCA

<sup>6</sup> First SG Report, *supra* note 9, at para. 8.

<sup>7</sup> Memorandum of the President of the International Development Association to the Executive Directors on a Transitional Support Strategy of the World Bank Group for Kosovo, 1 (13 April 2004) [*hereinafter* Transitional Support Strategy].



Total of Kosovo Serbs		
	Municipality	Population
1	Leposavić/Leposaviq	20,000
2	Mitrovicë/Mitrovica	15,000
3	Zvečan/Zveçan	14,300
4	Gjilan/Gnjilane	14,000
5	Zubin Potok	13,400
6	Prishtinë/Priština	12,000
7	Kamenicë/Kamenica	12,000
8	Shtërpçë/Štrpce	9,343
9	Lipjan/Lipljan	9,000
10	Vushtrri/Vučitrn	4,500
11	Viti/Vitina	3,400
12	Obiliq/Obilić	3,325
13	Fushë Kosovë/Kosovo Polje	3,240
14	Novobërdë/Novobrdó	2,500
15	Rahovec/Orahovac	1,350
16	Pejë/Peć	1,000
17	Skenderaj/Srbica	350
18	Istog/Istok	348
19	Prizren	205
20	Klinë/Klina	54
21	Deçan/Dečani	32
22	Podujevë/Podujevo	25
23	Shtime/Štimlje	23
24	Ferizaj/Uroševac	16
25	Gjakovë/Đakovica	6
26	Dragash/Dragaš	0
27	Malishevë/Mališevo	0
28	Suharekë/Suva Reka	0
29	Glllogovc/Glogovac	0
30	Kaçanik/Kačanik	0
		139,417
	Kosovo Serbs as a % of total population	6
	Kosovo Serbs as a % of total non-majority communities population	70

Source: OCA

### C. Economic Indicators

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.

### Selected Macroeconomic Indicators<sup>8</sup>

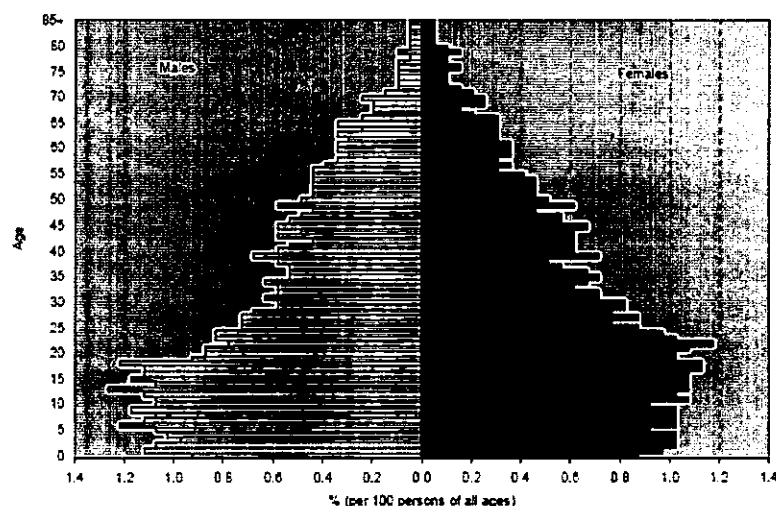
Description	2001	2002	2003	2005
<b>Real growth rates (in percent)</b>				
GDP	...	1.2	3.1	3.2
Contribution of foreign assistance to GDP growth		-3.9	-3.3	-1.7
GNDI	...	-0.2	1.1	1.8
<b>Price changes (in percent)</b>				
CPI	11.7	3.6	1.0	1.5
GDP	21.6	5.5	0.5	2.2
Real effective exchange rate (CPI based)	8.6	0.9	-1.0	-0.5
<b>General government budget (in percent of GDP)</b>				
Revenues	19.8	28.8	32.8	31.9
Expenditures	15.1	23.2	30.3	34.3
Of which: Capital	1.3	2.4	5.4	6.1
Current balance	5.9	8.0	7.8	3.7
Overall balance	4.7	5.6	2.5	-2.4
Overall balance (after grants)	7.2	6.2	2.5	-2.4
<b>Saving/investment balances(in percent of GDP) 1/</b>				
Domestic savings	-63.1	-51.5	-47.5	-40.7
Investment	40.7	34.5	29.3	27.8
Current account balance (before foreign assistance & remittances)	-103.7	-86.0	-76.8	-68.5
Workers' remittances and donor local employees' wages 2/	24.8	22.5	20.2	18.5
Foreign assistance 3/	70.4	52.0	40.7	32.9
Current account balance	-8.6	-11.6	-15.8	-17.1
<b>Saving/investment balances (in percent of GDP) 4/</b>				
Domestic savings	-34.6	-29.6	-28.2	-24.5
Investment	25.6	24.1	22.3	22.8
Current account balance (before foreign assistance & remittances)	-60.1	-53.7	-50.4	-47.3
Workers' remittances 2/	13.4	13.9	13.4	12.9
Donors' contribution to GNDI	38.2	28.2	21.2	17.3
Current account balance	-8.6	-11.6	15.8	-17.1
Saving/investment balances of the private sector	-15.8	-18.2	-18.3	-14.7
Saving/investment balances of the government	7.2	6.7	2.5	-2.4
<b>Donors' contribution to GDP ( in percentage of GDP)</b>	<b>23.1</b>	<b>18.1</b>	<b>2.5</b>	<b>-2.4</b>
<b>Main aggregates (in millions of euros)</b>				
GDP	1,625	1,735	1,797	1,895
GDP per capita (in euros)	870	913	930	964
GNDI per capita (in euros)	1,086	1,119	1,118	1,143
Workers' remittances 2/	217	241	241	244
Foreign assistance 3/	1,144	902	732	624
Direct contribution of foreign assistance to GDP	376	314	254	221
Direct contribution of foreign assistance to GNDI	620	490	381	327

Source: IMF staff estimates

<sup>8</sup> Source: <http://www.bpk-kos.org/Publications/Monthly%20Statistics%20Bulletin%20no.41.pdf>.

## D. Social Indicators

**Age Pyramid**



Source: Statistics Office of Kosovo

**Education Enrolment (per cent)**

		Albanian	Serb	Turkish	Bosniak	RAE	Gorani	Croatian	Other	Male	Female
primary	2000-01	92.4	4.7	0.6	1.7	0.4	0.03	0.1	0	52.2	47.8
	2001-02	92.2	4.5	0.7	1.0	0.9	0.6	0.02	0.02	52.2	47.8
	2002-03	96.2	1.2	0.7	1.1	0.5	0.3	0	0.01	53.0	47.0
secondary	2000-01	91.6	7.7	0.1	0.4	0.2	0.02	0.05	0	58.0	42.0
	2001-02	89.6	7.0	0.7	1.1	0.1	0.2	0.07	0	56.3	43.7
	2002-03	78.3	20.7	0.4	0.6	0.03	0	0.02	0	54.9	45.1

## II. GENERAL POLITICAL STRUCTURE

### A. Brief Historical Overview

- March 1999** The NATO bombing campaign begins following the failure of Rambouillet Peace talks.  
A massive refugee crisis develops as over 800,000 people flee the conflict.
- June 1999** The Yugoslav Army withdraws from Kosovo.  
UN Security Council Resolution 1244 is passed bringing Kosovo under UN Interim Administration (UNMIK). The same resolution reaffirms the commitment of all member States to the sovereignty and territorial integrity of the FRY.  
  
An emergency judicial system was initiated on 30 June 1999 with the opening of the District Court in Prishtinë/Priština.  
Kosovo Transitional Council (KTC) is formed with the aim of developing self-government in Kosovo.
- Dec 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 assisted in administering Kosovo until the establishment of the Provisional Institutions of Self-Government.

- October 2000 First Municipal Elections are held in Kosovo.
- 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.
- November 2001 Legislative Elections are held with the LDK emerging as the largest party in the Assembly of Kosovo, followed by the PDK.
- March 2002 The Provisional Institutions of Self-Government (PISG) are sworn in by the SRSG. Certain key governmental functions are transferred to PISG control.  
The Euro becomes the official currency in Kosovo, replacing the Deutschmark.
- 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."
- October 2002 Second round of Municipal Elections are held.
- December 2003 "Standards for Kosovo" adopted
- October 2004 Elections to the Assembly of Kosovo

## **B. Type of Government – Executive, Legislative and Judicial Bodies and Other Institutions**

### **1. United Nations Interim Administration in Kosovo**

Under UN Security Council resolution 1244 (1999) of 10 June 1999, 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, resolution 1244 calls upon UNMIK to perform basic civilian administrative functions; promote the establishment of substantial autonomy and self-government in Kosovo; facilitate a political process to determine Kosovo's future status; coordinate humanitarian and disaster relief of all international agencies; support the reconstruction of key infrastructure; maintain civil law and order; promote human rights; and assure the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo.

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. To implement its mandate, UNMIK consists of four "pillars", each headed by a Deputy Special Representative.

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

The Principal Deputy Special Representative assists the SRSG in directing and managing UNMIK and ensures a coordinated and integrated approach by all of the Mission's four components.

The Deputy Special Representatives report directly to the SRSG 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 SRSG. The Executive Committee assists the SRSG in fulfilling his responsibilities, and is the main instrument through which he formulates and coordinates the implementation of UNMIK's policies and objectives.

In November 2001, UNMIK established the Office of Returns and Communities (ORC) as part of the Office of the SRSG, to respond to the growing focus on and opportunities for minority returns in Kosovo.

The ORC is responsible for policy development, coordination and oversight of the return of displaced persons and refugees to Kosovo, and of building a safe and non-discriminatory environment for non-majority communities. The ORC uses its task force to:

1. Develop policies, provide policy guidance, and coordinate activities relating to the sustainable return of displaced persons and refugees to Kosovo;
2. Prepare an operational framework for the returns process, and work for consistent and effective implementation of the framework;
3. Provide support and guidance to the work of Municipal and Regional Working Groups, and work to ensure that UNMIK policies on returns and minority rights are effectively implemented by them;
4. Convene and act as secretariat for the Task Force on Returns;
5. Develop policies, provide policy guidance, and coordinate activities relating to ensuring a safe and non-discriminatory environment for non-majority communities;
6. Prepare a strategic framework for minority rights protection, and work for consistent and effective implementation of the framework;
7. Convene and act as secretariat for the Advisory Board on Communities;
8. Create and maintain an information clearinghouse on the returns process;
9. Provide policy guidance and support for public information efforts on sustainable returns and minority rights protection;
10. Work with the Assembly and other Provisional Institutions of Self-Government to promote appropriate policies on the returns process and protection of minority rights;
11. Mobilize and coordinate donor support for the returns process and the stabilization of the non-majority communities;
12. Engage actively with IDP Associations and work to ensure effective involvement of IDPs in returns processes; and
13. Liaise with Serbian authorities, including the Coordination Centre, with regard to UNMIK's activities relating to returns and minority protection.

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

The International Police operates under the authority of the SRSG within Pillar I. It is commanded by the Police Commissioner. He exercises all operational, technical and disciplinary authority over all police personnel. The Commissioner reports to the SRSG. The two main goals of the UNMIK police are to provide temporary law enforcement, and to develop a professional and impartial Kosovo Police Service, 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.

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

In the first phase, KFOR was responsible for ensuring public safety and order until the international civil presence could take responsibility for this task. Until the transfer of that responsibility, UNMIK's civilian police advised KFOR on policing matters and established liaison with local and international counterparts.

In the second phase, UNMIK took over responsibility for law and order from KFOR and UNMIK civilian police carried out normal police duties and had executive law enforcement authority.

In the third phase, which is being implemented currently, UNMIK is in the process of transferring responsibilities for law and order and border policing functions to the Kosovo Police Service. UNMIK civilian and border police are reverting to training, advising and monitoring functions.

The other component of Pillar I is the Justice sector.

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, and in training and development of the judiciary and legal profession. In July 1999, the Department of Judicial Affairs was established, and shortly afterwards split into two sections, (i) Prosecution Services and Court Administration and (ii) Penal Management. In March 2000, an Administrative Department of Justice (ADJ) was established by UNMIK Regulation 2000/15<sup>9</sup> and assumed responsibility for those areas. The introduction of international judges and prosecutors had been sanctioned by the SRSG just prior to that through UNMIK Regulation 2000/06.<sup>10</sup> The International Judicial Support Division was created and attached to the Department of Judicial Affairs, which was headed by an international officer but effectively shared the same administrative apparatus as the ADJ. The ADJ and the Department of Judicial Affairs largely overlapped, since they occupied the same premises and shared many of the same supervisors, officers and staff.

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

In addition, the DOJ has a Legal Policy Division, concerned with the facilitating of judicial cooperation and assistance as 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.

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

- Designing and directing an effective and efficient system of courts and prosecutors' offices that promotes the rule of law and respect for the human rights of all persons;
- Integrating ethnic minorities into the Kosovo justice system, facilitating their access to justice, and monitoring the treatment of non-majority communities by the justice system;
- Bringing forensic medicine and pathology services up to internationally acceptable standards to enable them to provide forensic evidence to criminal investigations;

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<sup>9</sup> UNMIK Regulation 2000/15 On the Establishment of the Administrative Department of Justice.

<sup>10</sup> UNMIK Regulation 2000/06 On the Appointment and Removal from Office of International Judges and International Prosecutors.

- Monitoring the work of judges and prosecutors, including auditing the functioning of the courts and public prosecutors' offices and investigating allegations of judicial and prosecutorial misconduct; and
- Protecting victims' rights and ensuring their participation in criminal prosecutions.

The DOJ, as a Reserved Power Entity of the SRSG, has responsibility for 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 now make their requests for funding for equipment and maintenance to the DJA. A petty cash "float" is distributed to each local court for this purpose, at a maximum of Euro 2,500 per month, which is replenished once 75% of the previous payment has been exhausted. Utility bills (electricity, phones, etc.) are an exception to this arrangement: these are required to be submitted directly to the DJA for consideration.

#### **Pillar II: Civil Administration, under the direct leadership of the United Nations**

The Office of Community Affairs (OCA) within Pillar II is a coordinating body which promotes an integrated and comprehensive approach for the protection of non-majority communities, to include freedom of movement, fair share financing,<sup>11</sup> fair employment, the delivery of essential services to those communities, and monitors the compliance of PISG structures, municipalities in particular, with the stipulations of the Constitutional Framework and UNMIK Regulation 2000/45 On Self-Government of Municipalities.<sup>12</sup> As part of the SRSG's core reserved powers structure under the supervision of the DSRSG for Civil Administration, it assumes also the responsibility for the overall coordination of the Local Community Offices/Municipal Community Offices (LCO/MCO) and provides operational guidance to facilitate the gradual process of sustainable integration of communities into the municipality structures and the overall society.

In 2004, the OCA, while continuously monitoring the effectiveness of participation of non-majority communities' representatives in the political, administrative structures at central and local level, monitored also their economic and social integration, and proposed different measures as to the improvement of minority situations.

In 2005 the OCA will particularly devote its effort to facilitating the creation of the new Ministry of Returns and Communities in policy, budgetary, personnel matters and every-day activities. In addition, it will also concentrate on ensuring smooth transfer of responsibilities to the staff of the new Ministry while retaining intervention function).

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

The tasks of the institution-building component of the UNMIK mission, which is led by OSCE (Pillar III), include assisting the people of Kosovo in strengthening the capacity of local and central institutions and civil society organisations, as well as promoting democracy, good governance and respect for human rights. It also includes organising elections.

#### **Pillar IV: Reconstruction and Economic Development, 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 in paragraph 11 (g) of its resolution 1244

<sup>11</sup> See Section 4.4 of UNMIK Regulation 2003/41 On the Approval of the Kosovo Consolidated Budget and Authorizing Expenditures for the Period 1 January to 31 December 2004.

<sup>12</sup> UNMIK Regulation 2000/45 on Self-Government of Municipalities in Kosovo.

(1999), the Security Council mandates UNMIK to support the reconstruction of key infrastructure and other economic and social systems. This component of the mission was assigned to the European Union. The main functions of the reconstruction component are to plan and monitor the reconstruction of Kosovo; prepare and evaluate policies in the economic, social and financial fields; and to coordinate between the various donors and international financial institutions in order to ensure that all financial assistance is directed towards the priorities indicated by UNMIK.

### **Joint Interim Administrative Structure**

As of 2000 Kosovo was administered by the Joint Interim Administrative Structure (JIAS). The role and functions of the JIAS and its components bodies were set out in UNMIK Regulation 2000/1, of 14 January 2000. It consisted of the Office of the SRSG, the Kosovo-wide oversight and advisory organs representing Kosovo's institutions and political groupings, and the centrally-based administrative 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.

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

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

In 2001 the Constitutional Framework for Provisional Self-Government in Kosovo (hereinafter the Constitutional Framework) was promulgated.<sup>13</sup> The Constitutional Framework is fundamental to the governance in Kosovo and, having been drawn up after comprehensive negotiation with stakeholders, it represents a delicate balance of competing interests with important safeguards for non-majority communities.

In accordance with the Constitutional Framework, the SRSG retained certain reserved powers. In order to discharge these, the following UNMIK Directorates have been established: Civil Protection, which took over the responsibilities of the UN Mine Action Coordination Centre, following the successful completion of its operations in mid-December 2001; Administrative Affairs; Infrastructure Affairs; and Rural Affairs. The SRSG also retained responsibility for the Kosovo Protection Corps, together with the KFOR. Additional reserved powers were the administration and financing of civil security and emergency preparedness; mine clearance; the administration of public, state and socially owned property; the regulation of public and socially owned enterprises; the administration of railways, allocation of radio frequencies, and civil aviation; the civil registry database; the registration of habitual residents; the Housing and Property Directorate, including the Housing Claims Commission; control over cross-border/boundary transit of goods; general powers, such as international relations, in a number of areas; and the judiciary and the police (except for court administration, which will be transferred to the Ministry of Public Services); and several economic

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<sup>13</sup> UNMIK Regulation 2001/9 on A Constitutional Framework for Provisional Self-Government in Kosovo, 15 May 2001.



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. UNMIK Regulation 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.

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

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

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.

They are all obligated to promote and respect:

“[T]he principle of the division of powers between the legislature, the executive and the judiciary”; and, “[T]he rule of law, human rights and freedoms, democratic principles and reconciliation”.

Without a doubt, they are especially required to ensure that ethnic, linguistic and religious communities and their members enjoy their constitutionally guaranteed community rights as well as “fair representation ... in employment in public bodies at all levels”. Furthermore, according to Chapter 4.3 of the Constitutional Framework, the PISG are to “be guided in their policy and practice by the need to promote coexistence and support reconciliation between Communities and to create appropriate conditions enabling Communities to preserve, protect and develop their identities.”

For their part, municipal PISG are similarly bound by Section 2.5 of UNMIK Regulation 2000/45 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.” The same provision also exhorts municipalities to adopt policies and practices, which give effect 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.”

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

- Economic and financial policy;
- Fiscal and budgetary issues;
- Domestic and foreign trade, industry and investments;

- Education, science and technology;
- Youth and sport;
- Culture;
- Health;
- Environmental protection;
- Labour and social welfare;
- Family, gender and minors;
- Transport, post, telecommunications and information technologies;
- Public administration services;
- Agriculture, forestry and rural development;
- Statistics;
- Spatial planning;
- Good governance, human rights and equal opportunity;
- Non-resident affairs;
- Judicial affairs; and,
- Mass media.

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

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

#### **(a) Legislative Branch**

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

Accordingly, its Chapter 9.1.2 and 9.1.3 ordain the periodic election of the Assembly at three (3) year intervals, by universal and equal suffrage, through proportional representation, with one-sixth 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.

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.

#### **(i) Election**

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.

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.” The remaining 20 are reserved for the additional representation of non-Albanian Kosovo Communities. These are apportioned among seven non-majority communities in accordance with the following formula:

- Ten seats to parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing the Kosovo Serb Community;
- Ten seats to self-declared political entities<sup>14</sup> representing other Communities, with:
  - Four (4) for the Roma, Ashkalija and Egyptian Communities;
  - Three (3) for the Bosniak Community;
  - Two (2) for the Turkish Community; and,
  - One (1) for the Gorani Community.

Like the 'open' seats, the reserved seats for each such Community or group of Communities are to be distributed to parties, coalitions, citizens' initiatives and independent candidates having declared themselves representing each such Community in proportion to the number of valid votes received by them in the election to the Assembly.<sup>15</sup>

In the particular case of Kosovo, Section 5.2 of UNMIK Assembly Regulation provides that:

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

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

(e) 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.”

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.

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 have been exhausted. The seats thus distributed are held personally by the elected candidate and not by the Political Entity.

## (ii) Composition

<sup>14</sup> See, UNMIK Regulation No. 2004/12 on Elections for the Assembly of Kosovo, Section 1.1(i) (5 May 2004) [*hereinafter* UNMIK Assembly Regulation] (defining "political entity" to mean "a Political Party, Coalition of Political Parties, citizens' Initiative or independent candidate").

<sup>15</sup> *Ibid.* UNMIK Regulation No. 2004/12 regulates the actual distribution of 'open' and 'reserved' Assembly seats among contesting political entities. It espouses the Saint Lague higher average system under which the number of votes is divided by the odd number of divisors until the number of divisors used corresponds with the total number of seats to be distributed in that set of seats.

The Constitutional Framework confers the Assembly with a functional structure, the better 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, an eight-member presidency; two main committees; and, nine (9) functional committees. Within it, the Constitutional Framework both assures Members of the Assembly representing non-majority communities membership in the presidency and in the functional committees as well as establishes a special main committee – the Committee on Rights and Interests of Communities – to accommodate minority concerns.

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

The Assembly's two main committees are the Budget Committee and the Committee on the Rights and Interests of Communities. The former is composed of 12 members, allocated proportionally among the parties and coalitions represented in the Assembly: the latter, of nine members, with two each from the Serb, RAE, Bosniak and Turkish communities and one from the Gorani Community.

Their several memberships must reflect the political and 'community' diversity of the Assembly. In particular, the chairmanships of all the committees have to be distributed proportionally among the parties and coalitions represented there. Each Committee should have two vice-chairmen from different parties or coalitions than that of the Chairman, with one also belonging to a different community than s/he.

### (iii) Competences

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

Chapter 9 of the Constitutional Framework provides for the creation of a Committee on Rights and Interests of Communities within the Assembly. The Committee on Rights and Interests of Communities shall be composed of two members from each of Kosovo's Communities elected to the Assembly. Communities represented by only one member in the Assembly shall be represented by this member in the Committee.

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

In conformity with section 9.1.39 of the Constitutional Framework 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 or 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 within three days reasoned arguments in reply. The Presidency shall attempt to submit, within five days following receipt of the reply, a consensus proposal to the Assembly. If a consensus can not be achieved, a special three-member Panel consisting of representatives of the two sides and one member, who shall preside, designated by the SRSG is seized of the matter. The Panel must within five days issue a decision recommending that the Assembly reject the motion, that the Assembly reject the law or provisions at issue, or that the Assembly adopt the law with amendments that the Panel shall propose. The Panel takes its decisions by a majority of its members. This procedure has been followed in relation to several laws at the request of Kosovo Serb members of the Assembly.

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

#### (iv) Languages

The Constitutional Framework requires all the meetings of the Assembly and its committees to be “conducted in both the Albanian and Serbian languages.” Concomitantly, it allows non-Albanian non-Serb Assembly members to address the Assembly or its committees in their own minority languages and to submit documents for their consideration in the same. Should they do so, interpretation or translation into Albanian and Serbian must be provided for the other members of the Assembly or committee.

In like manner, each and every official Assembly document is to be printed in the Albanian and Serbian languages. However, where such documents concern a specific community, it behoves the Assembly to make them publicly available in that community’s own minority language.

#### (b) Executive Branch

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

#### **Government**

**Composition:** Under Chapter 9.4.3 of the Constitutional Framework and Section 1.1 of UNMIK Regulation No. 2001/19, 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.

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 2001/19, Section 2.2 provided for the establishment of nine ministries:

- Ministry of Finance and Economy;

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

Section 2.1 of UNMIK Regulation 2001/19 provides for the creation of the Advisory Office on Good Governance, Human Rights, Equal Opportunity and Gender (AOGG) and the Advisory Office on Communities (AOC), among other organizational units, within the Office of the Prime Minister. An Administrative Direction implementing UNMIK Regulation 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.

Pursuant to Constitutional Framework, Chapter 9.3.3, UNMIK Regulation 2001/19 was first amended by UNMIK Regulation No. 2002/5 Amending UNMIK Regulation No. 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government in Kosovo, which divided the Ministry of Health, Environment and Spatial Planning into the Ministry of Health (MH) and the Ministry of Environment and Spatial Planning (MESP). 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 (UNMIK Regulation 2004/50), which created three new ministries – the Ministry of Communities and Returns (MCR), the Ministry of Local Government Administration (MLGA) and the Ministry of Energy and Mining. With the creation of the MCR, the AOC was transformed into a department of that ministry.

The promulgation of UNMIK Regulation 2004/50 marked a transfer of responsibilities, managed by the international civil presence in Kosovo on the basis of UNSCR 1244, from UNMIK to the PISG. This reassignment of powers served to bring the number of government ministries to thirteen with the same complement of ministers and with new portfolios of Deputy Prime Minister and fifteen deputy ministers.

The Constitutional Framework, Chapter 9.4.3.5(a) requires that the Government should always have at least two ministers, who belong to different ethnic, linguistic or religious communities – one from the Kosovo Serb Community and one from another Community. Should the Government be composed of more than twelve Ministers, Chapter 9.4.3.5(b) of the Constitutional Framework stipulates that “a third Minister shall be from a non-majority Community.” The selection of these Ministers and their responsibilities is to be determined after consultation with parties, coalitions or groups representing non-majority Communities.

Ministers may be “qualified persons from outside the membership of the Assembly. 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.

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.”

In conformity with the Constitutional Framework, Government has allocated three of 13 ministerial positions as well as the post of Inter-Ministerial Co-ordinator to representatives of non-majority communities. The offices of Minister of Communities and Returns, Minister of Agriculture, Forestry and Rural Development and Inter-Ministerial Co-ordinator have been reserved for the Kosovo Serb community: the Minister of Health for ‘another community.’ The serving Minister of

Health is a member of the Kosovo Bosniak community. A Kosovo Serb minister together with an Egyptian Deputy Minister and an Albanian Deputy Minister have been appointed to lead the Ministry of Communities and Returns. However, the posts of Minister of Agriculture, Forestry and Rural Development and of Inter-Ministerial Co-ordinator stand vacant at present. There is one Turkish Deputy Minister in the Government as well.

### **Appointment**

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

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.”

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

### **Competences**

The competences of the Government are delineated in the Constitutional Framework and specified in UNMIK Regulation 2001/19, as amended by UNMIK Regulation 2005/15.

Constitutional Framework, Chapter 9.3.14 empowers the Prime Minister to “represent the Government as appropriate, define the general lines of policy of the Government, and manage its work. His Office – the OPM -- liaises with the Assembly and coordinates the work of all other ministries.

In the latter, the Prime Minister is assisted, among others, by the AOGG. According to UNMIK Regulation 2005/15, the mandate of the AOGG 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 governance.

Under Chapter 9.3.15 of the Constitutional Framework, ministers are responsible for implementing government policy within their respective spheres of competence. In carrying out their duties, ministers are required to ensure that the ministries under their authority not only provide

“reliable services ... not discriminating against ethnic or social origin, race, gender, disability, religion, political or other opinion” but also “address the needs of vulnerable groups and other persons within the population who may be at risk.” 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.”

More generally, Section 1.6 of UNMIK Regulation 2001/19 mandates ministries to draft legislative and other acts make policy recommendations and implement legislation in force within their areas of competence. The specific competences of each of the thirteen ministries are outlined in the Annexes to UNMIK Regulation 2005/15.

### **(c) Judicial Branch**

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

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. The Supreme Court should have two Special Chambers – one on Constitutional Framework Matters established pursuant to Constitutional Framework, Section 9.4.11; the other on claims and counterclaims relating to the decisions or actions of the Kosovo Trust Agency (KTA) established pursuant to UNMIK Regulation No. 2002/12.

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

#### **The Courts**

##### **Jurisdictional Basis**

The present court structure is essentially that which was in place prior to the conflict of 1999. The system 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 at present); 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.

The legal basis for the continuation of this structure derives from the provisions of UNMIK Regulation No. 1999/24 on the Law Applicable in Kosovo (UNMIK Regulation 1999/24), as amended by UNMIK Regulation No. 2000/59. The principal legislation in effect at the latter date governing the establishment and competence of the courts consists of:

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



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

#### Independence and Impartiality of the Judiciary

Kosovo has initiated a significant measure of judicial independence in terms of security of tenure. 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." Pursuant to Chapter 9.4.8 of the Constitutional Framework, judges and prosecutors are appointed by the SRSG from lists of candidates proposed by the Kosovo Judicial and Prosecutorial Council (KJPC) and endorsed by the Assembly. The SRSG is also responsible for deciding promotions, transfers and dismissals of judges and prosecutors on the recommendation of the KJPC or, in exceptional cases, on his own initiative. Lay judges sit on panels with professional judges in the municipal courts and higher courts and are also appointed by the SRSG on the recommendation of the KJPC.

Administration of the judicial system is vested in the executive branch through the Department of Judicial Administration within the Ministry of Public Services, with limited (and largely theoretical) delegation to the Presidents of the Court.

The Ministry of Public Services (MPS) was established by UNMIK Regulation No. 2001/19 on the Executive Branch of the Provisional Institutions of Self-Government. The MPS was given overall responsibility for the administration of the courts, the prosecution services and the prisons service. These functions were assigned to the PISG by Chapter 5.3 of the Constitutional Framework. These functions have been assigned to the DJA. This assignment has not affected the management responsibilities and administrative functions of the courts at local level, which continue to be governed by the applicable laws from prior to 1989. In the regular courts, responsibility for the management of court administration and the organisation of work within individual courts is assigned to the presidents of each court pursuant to Articles 55 and 56 of the Law on Regular Courts.

#### (d) Municipalities

The organisation and functions of Municipalities in Kosovo are established in UNMIK Regulation 2000/45 On Self- Government of Municipalities in Kosovo. 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." 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. 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. 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. The Regulation also states that the human rights and freedoms contained in the ECHR and its Protocols must be observed by the municipal administration, as well as all other applicable law.

Within its territory, according to Regulation 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;
- (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.

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.

The highest representative body of the municipality is the Municipal Assembly, which is elected directly. The number of the members of the Municipal Assembly varies in different municipalities, according to the size of the population and their term of office is four years.

The Municipal Assembly elects the President of the municipality who calls and chairs sessions of the Municipal Assembly. In municipalities where one or more non-majority communities live, an additional Deputy President shall be appointed by the Municipal Assembly from these communities. The Municipal Assembly appoints a Chief Executive Officer who has the qualifications prescribed by the Statute and who amongst others is responsible of the appointment, conditions of service and dismissal of all employees of the municipality. The Municipal 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; assist the President and the Chief Executive Officer; and implement all decisions of the municipality.

According to Section 21 of UNMIK Regulation 2000/45 the Municipal Assembly has three mandatory Committees: a Policy and Finance Committee, a Communities Committee and a Mediation Committee. The Municipal Assembly may also appoint other committees and decide on their competency and activities. The membership of the Communities Committee must include both members of the Assembly and representatives of communities; each community residing in the municipality should be represented by at least one member in the Communities Committee; the majority community in the municipality must have less than one half of the membership of the Communities Committee; and the remaining membership of the Communities Committee must fairly reflect the number of other communities in the municipality. 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.

The Communities Committee have the mandate to ensure within the territory of the municipality that: no person undertaking public duties or holding public office shall discriminate against any person on any ground such as language, religion, ethnic origin, or association with a

community; all persons enjoy, on an equal basis, civil, political, economic, social and cultural rights, and fair and equal employment opportunities in municipality service at all levels; and the municipal civil service reflects a fair proportion of qualified representatives of communities at all levels. The Communities Committee must promote the rights and interests of the non-majority communities living within the municipality, and further promote a diverse society. The functioning of the Mediation Committees is described in the part on *Remedies for the Vindication of Internationally Guaranteed Human and Minority Rights* of this report *infra*.

In the second quarter of 2005 Communities Committees met regularly in 12 Municipalities, met irregularly in five Municipalities, existed, but did not meet in three and did not exist in four Municipalities. During the same period Mediation Committees met in 17 Municipalities.

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

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

### **Use of Minority Languages in Municipalities**

According to Section 9 of the Regulation 2000/45 minority members have the right to communicate in their own language with all municipal bodies and all municipal civil servants.

The meetings of the Municipal Assembly and its committees and public meetings shall be conducted in both the Albanian and Serbian languages or, in municipalities where a community lives whose language is neither Albanian nor Serbian, the proceedings must be translated, into the language of that community.

All official documents of a municipality must be printed in both the Albanian and Serbian languages or, in municipalities where a community lives whose language is neither Albanian nor Serbian, all official documents of the municipality must also be made available in the language of that community. The same is valid for official signs indicating or including the names of cities, towns, villages, roads, streets and other public places.

### **(e) Institutions**

#### **Kosovo Judicial and Prosecutorial Council**

On 6 April 2001 the Kosovo Judicial and Prosecutorial Council (KJPC) was established by UNMIK Regulation 2000/8. The Council is responsible for advising the SRSG on matters related to the appointment of judges, prosecutors and lay-judges, as required, and hearing complaints, if any, against any judge, prosecutor or lay-judge. The KJPC can decide upon disciplinary sanctions, other than removal from office of judges and prosecutors and from the function of lay-judges; recommend such removals to the SRSG; and upon a request of the SRSG renders advice on other issues related to

the judicial system. The KJPC also adopted codes of ethics and conduct for judges, prosecutors and lay-judges which became effective upon the endorsement of the SRSG.

The Council is composed of nine members, it must be multi-ethnic and include both local and international members. Members of the KJPC are distinguished legal professionals, they must be independent and impartial. They cannot hold any position incompatible with their functions as members of the KJPC. The members are to be selected and appointed by the SRSG. Their term of office is one year and may be extended for such period(s) as the SRSG may determine.

In cases of allegations that a member of the KJPC has failed to comply with his or her obligations the SRSG may refer the case to the KJPC which, after considering the allegation and the response of the member, submits a report to the SRSG within thirty days of receipt of the allegation. The SRSG then makes a decision within fifteen days of receipt of the report and he may in cases of allegations of serious misconduct, suspend the member until the final decision is taken. The SRSG may in exceptional circumstances take such action as he may deem appropriate in the exercise of his discretion.

### **Housing and Property Directorate and the Housing and Property Claims Commission**

UNMIK Regulation No. 1999/23 removed from the jurisdiction of the courts and transferred to the Housing and Property Claims Commission three categories of property claims, i.e. those relating to property rights lost through discriminatory laws following the rescinding of Kosovo's autonomous status in March 1989; those arising from informal transactions from that time; and, those arising from interference with property rights through illegal occupancy. Under UNMIK Regulation, petitions for protection orders against domestic violence are returnable to the Municipal Court.

The establishment of the Housing and Property Directorate (HPD) and the Housing and Property Claims Commission (HPCC) had the purpose of regularizing housing and property rights in Kosovo and to resolve disputes over residential property. 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.

The HPD conducts legal research, prepares claims, mediate and forward 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 decisions of HPCC are binding and enforceable and may not be subject to judicial review. Cases that do not meet the requirements in category A, B and C fall under the jurisdiction of regular courts. UNMIK Regulation 1999/23 provides that the HPCC has exclusive jurisdiction over residential property claims until such time as the SRSG determines that the local courts are able to carry out its functions. After 1 July 2003, the HPCC only remain competent to determine claims submitted before 1 July.

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.

#### **(f) Ombudsperson**

The Ombudsperson Institution (OI) in Kosovo was established by UNMIK Regulation 2000/38<sup>16</sup> for the purpose of enhancing the protection of human rights in Kosovo. The OI consists of the international Ombudsperson himself, his two local deputies, human rights lawyers and supporting administrative staff. Since the very beginning, the staff of the OI has been multiethnic – the majority is Kosovo Albanian, other staff members are of Kosovo Serb, Kosovo Turkish and Kosovo Roma origin. The OI was formally inaugurated on 21 November 2000.

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

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 or the information obtained. If the problem in question does not warrant mediation or cannot be solved amicably, the Ombudsperson will, following investigations, issue a report, in which he analyses whether or not there has been a violation of the respective persons' human rights. In case this question is answered in the affirmative, the report also contains the Ombudsperson's recommendations to the SRSG as the highest civil authority in Kosovo on how to ensure that there is a compliance with human rights in future. In cases where the Ombudsperson considers that a general practice or situation affecting not only one person or a group of persons, but the public as a whole, is not compatible with international human rights standards, he issues a so-called Special Report, which also includes recommendations to the SRSG.

### III. LEGAL FRAMEWORK FOR THE PROTECTION OF HUMAN AND MINORITY RIGHTS

In paragraphs 11(j) and 11(k) of UNSCR 1244 the Security Council decided that the main responsibilities of UNMIK should include "protecting and promoting human rights". To ensure the full realization in Kosovo, the SRSG promulgated UNMIK Regulation No. 1999/24 on the Law Applicable in Kosovo (UNMIK Applicable Law Regulation), which amended UNMIK Regulation 1999/1 to make specific international human rights instruments directly applicable by "all persons undertaking public duties or holding public office in Kosovo." UNMIK Applicable Law Regulation, Section 1.1 also made "[t]he law in force in Kosovo on 22 March 1989" the law applicable in Kosovo. One such Kosovo legal provision is Article 210 of the 1974 *Constitution of the Socialist Federal Republic of Yugoslavia (SFRY Constitution)*, which provides that "[i]nternational treaties, which have been promulgated shall be directly applied by the courts."

The SRSG issued the Constitutional Framework "for the purposes of developing meaningful self-government in Kosovo pending a final settlement". Constitutional Framework Chapter 3.2 incorporates the protections provided under particular international human rights instruments in the applicable law of Kosovo.

Illustratively, Section 1.3 of UNMIK Applicable Law Regulation, 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

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<sup>16</sup> UNMIK Regulation 2000/38 on the Establishment of the Ombudsperson Institution in Kosovo, 30 June 2000.

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 that same Regulation provides that “[n]o person undertaking public duties or holding public office in Kosovo shall discriminate against any person on any ground such as sex, race, colour, language, religion, political or other opinion, natural, ethnic or social origin, association with a national community, property, birth or other status.”

Chapter 3 of the Constitutional Framework provides further substantial human rights protection. Its Chapter 3.1 guarantees that “[a]ll persons in Kosovo shall enjoy, without discrimination on any ground and in full equality, human rights and fundamental freedoms.” Chapter 3.2 stipulates that the PISG shall observe and ensure internationally recognized human rights and fundamental freedoms, including those rights and freedoms guaranteed by the UDHR, ECHR and its Protocols, ICCPR and its Protocols, CERD, CEDAW, CRC, European Charter for Regional or Minority Languages and Framework Convention Under Chapter 3.3, “[t]he provisions on rights and freedoms set forth in these instruments shall be directly applicable as part of the Constitutional Framework.”

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

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

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

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

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

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

Inasmuch as these ILO Conventions are not expressly enumerated in Chapter 3.1 of the Constitutional Framework, they are not directly applicable in Kosovo as part of that Constitutional Framework. However, they are arguably “the law applicable in Kosovo – having been promulgated by the SFRY Assembly prior to 22 March 1989 – especially if Article 1.3 of UNMIK Regulation 1999/24 is read together with Article 210 of the SFRY Constitution. Certainly, UNMIK Regulation No. 2001/27 on the Essential Labour Law in Kosovo is based on the International Labour Organization Declaration on Fundamental Principles and Rights at Work aimed at promoting and realizing their universal application in good faith.”<sup>17</sup>

This said, 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 Applicable Law Regulation, as amended, rather than because the former SFRY was at the time a party to the treaties and conventions concerned. Moreover, this does not imply that these treaties and conventions are in any way binding on UNMIK.

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

#### **IV. REMEDIES FOR THE VINDICATION OF INTERNATIONALLY GUARANTEED HUMAN AND MINORITY RIGHTS**

UNMIK Regulation 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:

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

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 co-ordinated by the Directorate of

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<sup>17</sup> UNMIK Regulation 2001/27 on the Essential Labour Law in Kosovo, 8 October 2001, preamble.

Administrative Affairs, which is to distribute the appeal to the appropriate “central authority” for the substantive issue. The central authority must respond within one month.

An appeal against this second-instance decision can be filed to the Supreme Court. The deadline for initiating an administrative lawsuit is 30 days from the day the administrative act is served or, if the party did not receive the act, 60 days from the day it was served.

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 decision.

Another specific remedy is provided through the Communities and Mediation Committees, established by Section 23 of the UNMIK Regulation 2000/45. Persons 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.

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 dealt with.

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.

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. It is unclear what the Central authority would be.

Additionally in cases of dismissals, the individuals affected can complain to the Community Committee in writing, setting out its reasons for the dismissal, within one week of the decision.<sup>18</sup> No deadlines for response to the complaint are provided, but if the complainant is dissatisfied with the response of the Committee, he or she may refer the matter to the Deputy SRSG for Civil Administration, who shall review the complaint and recommend appropriate action to the SRSG for consideration. The complaint shall be submitted for an appeal within 30 days upon receiving the dismissal by the Committee. 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 non-majority communities.

Under the ADL, a person who alleges that he/she was directly or indirectly discriminated 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.

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<sup>18</sup> Administrative Instruction 2003/002, Section 5.7.



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.

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

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

If a person claims being a victim of discriminatory practices in public employment, he/she can seek remedies first through the Independent Oversight Board (IOB) established by UNMIK Regulation 2001/36 and then through the courts. The IOB shall hear and determine appeals against decisions of employing authorities. Before appealing to the IOB, an aggrieved civil servant or applicant must exhaust the internal appeals procedures of the employing authority concerned, unless the Board excuses this requirement based on evidence of reasonable fear or retaliation, failure by the employing authority to resolve such internal appeal within sixty days, or other good cause.<sup>19</sup>

The IOB shall be composed of seven members, appointed by the SRSG in consultation with the Prime Minister. Board members shall be selected on the basis of competence, integrity and their commitment to establishing a politically impartial civil service in Kosovo that is based on merit and reflects the multi-ethnic character of Kosovo. At least three of its members shall be appointed from the Kosovo Albanian Community and at least two members from among the non-Kosovo Albanian communities in Kosovo.<sup>20</sup>

A further appeal or request for extraordinary review of a court decision can be lodged against a decision in an administrative lawsuit.

Claims by civil servants against a discriminatory decision of a Disciplinary Board may be lodged in front of Appeals Boards that must be established by each employing authority.<sup>21</sup> The Appeals Board has the following functions:

- To decide whether there are *prima facie* grounds to admit an appeal against a decision of a disciplinary board;
- If an appeal is admitted, to decide whether it is justified or not after going through the evidence and hearing the parties concerned;
- In case the appeal is held to be justified, to pass orders for providing appropriate relief to the appellant.<sup>22</sup> The Appeals Board shall complete the hearings of a case within thirty days of its receipt.<sup>23</sup>

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<sup>19</sup> UNMIK Regulation 2001/36, Section 11.1, reads:

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

<sup>20</sup> *Ibid.*, Sections 8 (1) and 8 (2).

<sup>21</sup> UNMIK Administrative Direction 2003/2 Implementing UNMIK Regulation No. 2001/36 on the Kosovo Civil Service, Section 33 (1).

<sup>22</sup> *Ibid.*, Section 33 (5).

<sup>23</sup> *Ibid.*, Section 33 (6).

Claims of discrimination in access to education by education officials may be lodged with the Designated Official of the Staff member.<sup>24</sup> Education staff may be disciplined for neglect of duty or violation of obligation in letter of appointment, terms and conditions of employment, Code of Conduct or local rules issued by the Department of Education and Science (DES).<sup>25</sup> If the complaint is grounded, the DES may take disciplinary and/or administrative action.<sup>26</sup>

If a complaint is made against a teacher or if there is evidence of conduct that may require disciplinary action that comes to the school director's personal attention, he/she must investigate the complaint and give the teacher the right to reply to the allegation(s) made.<sup>27</sup> If, after investigation and after having given the teacher the right to reply, the school director decides that there has been conduct that requires disciplinary action, he/she must, prior to the disciplinary action taking effect, notify the teacher in writing of the disciplinary action. Except in the case of an oral warning, the school director must inform the teacher in writing that the teacher may appeal the disciplinary action within 10 days after receipt of such notification. A review panel must conduct the appeal hearing, and within 7 days, issue a written decision to the teacher.<sup>28</sup>

If a complaint is made against a school director or if there is evidence of conduct that may require disciplinary action that comes to the CEO's personal attention, a review panel shall be established in order to conduct an investigation.<sup>29</sup>

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

An applicant, who contends an official decision made by the Centre for Social Work (CSW), may submit an appeal in writing to the director of the CSW where the application for social assistance was originally filed.<sup>30</sup> Such appeals shall be submitted no later than fourteen days after the appellant receives notification of the decision. The Director shall review the appeal and notify the appellant in writing of their decision no later than twenty-one days after receiving the appeal.

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

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

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<sup>24</sup> Department of Education and Science Administrative Instruction 21/2001, Section 3 (1).

<sup>25</sup> *Ibid.* Section 2 (2).

<sup>26</sup> *Ibid.* Section 2 (1).

<sup>27</sup> *Ibid.* Sections 4 (1-2).

<sup>28</sup> *Ibid.* Section 4 (2).

<sup>29</sup> *Ibid.* Section 5 (1).

<sup>30</sup> UNMIK Regulation 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."

competent court is not specified in the Regulation, but it appears that the Administrative Chamber of the Supreme Court will have jurisdiction over such cases.

Persons who claimed wrongful deprivation of residential real property rights (including occupancy rights) between 23 March 1989 and 24 March 1999, as a result of legislation which is discriminatory in its application or intent had an opportunity to file a claim with the HPCC through the relevant office of the HPD prior to the 1 June 2003 deadline.<sup>31</sup> The claim must have been submitted by the natural person falling under the claims category, a family member, or a legally authorised representative. All interested parties identified in the claims form should have been notified of the claim and given 14 days to indicate their intention to participate. A responding party should have received a copy of the claim and s/he had 30 days to respond to the claim. The claimant or other relevant parties had 30 days to respond to any matter raised in the reply. If not rejected in writing by the HPD as falling manifestly outside the HPCC's jurisdiction, the HPD attempted to settle claims amicably.<sup>32</sup> If unable to do so, then the HPD referred any such claim to the HPCC.<sup>33</sup> Rejection of a claim by HPD may be appealed to HPCC.<sup>34</sup> If a party disagrees with a HPCC decision, s/he has 30 days from notification of the decision to submit a request for reconsideration.<sup>35</sup> The request must be submitted to the HPD.<sup>36</sup> No further appeal is provided.<sup>37</sup> HPCC retains exclusive jurisdiction over such claims until such time as it delegates authority back to the regular courts.<sup>38</sup>

Persons who between 23 March 1989 and 13 October 1999, entered into informal transactions of residential property on the basis of free will of the parties but were unlawful under existing law,<sup>39</sup> (also known as HPCC "Category B" claims), could enjoy an additional option if the claim is uncontested and the HPD is satisfied there is sufficient evidence that the claimant acquired the property right through an informal transaction.<sup>40</sup> If the HPD is satisfied, it may order the registration of the informal transaction in the appropriate public record.

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

If a contract of sale relates to property, which is located in a Specific Geographical Area (SGA),<sup>41</sup> a competent court cannot verify the contract without a proof of registration by the UN Municipal Administrator.<sup>42</sup> If a person claims that his property rights have been violated due to refusal to register a sale in a SGA, she/he may file a request in writing to the Municipal Administrator to reconsider his/her decision made under Section 3 UNMIK Regulation 2001/17. The request must be made within 30 days of the refusal. Within 30 days of receiving the request for reconsideration, the Municipal Administrator must issue a final decision. If the claimant disagrees with the rendered decision, an appeal against the decision may be lodged with a three judge panel designated by the SRSG for a judicial review (including compliance with formal requirements). The appeal must be submitted in writing within 60 days from the date on which the Municipal Administrator's decision

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<sup>31</sup> See UNMIK Regulation 1999/23 and UNMIK Regulation 2000/60, note 117.

<sup>32</sup> UNMIK Regulation 2000/60, Section 10.1

<sup>33</sup> *Ibid.*, Section 10.4.

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

<sup>35</sup> *Ibid.*, Section 25.

<sup>36</sup> *Ibid.*, Section 14.1.

<sup>37</sup> UNMIK Regulation 1999/23, Section 2.7

<sup>38</sup> *Ibid.*, Section 2.5.

<sup>39</sup> UNMIK Regulation 1999/23 and UNMIK Regulation 2000/60.

<sup>40</sup> UNMIK Regulation 2000/60, Section 11.

<sup>41</sup> As established by UNMIK Regulation 2001/17 on the Registration of Contracts for the Sale of Real Property in Specific Geographical Areas of Kosovo, 22 August 2001.

<sup>42</sup> UNMIK Regulation 2001/17, Section 4.

not to register the contract becomes final. No further appeal or time frames for the response are provided.<sup>43</sup>

The Assembly Law on the Rights and Responsibilities of Kosovo Residents in the Health Care System<sup>44</sup> also offers a remedy to persons complaining that their rights as patients have been violated.

Under the Law, a complaint against the healthcare institution may be submitted regarding the health care service provided to a Kosovo resident within 60 days after the alleged incident has occurred.<sup>45</sup> The institution shall investigate the complaint and inform the complainant, within 10 working days. An appeal can be lodged against these findings to the supporting entity,<sup>46</sup> which is the municipality for primary healthcare institutions, and for secondary and tertiary healthcare institutions as well as for private sector healthcare institutions, the Ministry of Health.<sup>47</sup> The Law remains utterly silent as to deadlines for such appeal.

A patient may also lodge a request for compensation for the damage caused to his/her health during the medical treatment within one year from the time when he/she first became aware of any damage sustained by him/her.<sup>48</sup> This request shall be submitted to a commission, established by the Ministry of Health,<sup>49</sup> which shall decide about the validity of the claimants' requests regarding damage compensation and shall establish the size of compensation.<sup>50</sup> The request shall be examined within a three-month period (the Law does not define a clear start date) and the decision must be submitted to the complainant in writing.<sup>51</sup>

A decision of the commission may be appealed to a competent court, in accordance with the relevant laws.<sup>52</sup>

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.

It is noteworthy that all remedies foreseen by the Law are exclusively bestowed upon Kosovo residents.<sup>53</sup> While the referral to Kosovo residents is expedient in many Articles, it seems odd not to have any provisions regarding non-Kosovo residents' rights and remedies in the Kosovo health care system.

## **V. RECENT POLICY STATEMENTS ON THE PROTECTION OF MINORITY RIGHTS**

UNMIK and the PISG are fully committed to the exercise of their responsibilities in compliance with the Framework Convention. This commitment has been reflected in a number of important legal instruments. Chapter 4 of the Constitutional Framework provides for a range of rights for communities and their members. "Communities" are defined in paragraph 4.1 of the Constitutional Framework as "[...] inhabitants belonging to the same ethnic or religious or linguistic group [...]". Chapter 3.2 of the Constitutional Framework provides that the PISG shall observe and ensure internationally recognized human rights and fundamental freedoms, including the rights and freedoms set forth in the Framework Convention. In Article 1 of the UNMIK/CoE Agreement of 23 August

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<sup>43</sup> *Ibid.* Sections 6-7.

<sup>44</sup> UNMIK Regulation 2004/47 on the Promulgation of the Law on Rights and Responsibilities of Kosovo Residents in the Health Care System adopted by the Assembly of Kosovo, 19 November 2004.

<sup>45</sup> *Ibid.* Article 24.1.

<sup>46</sup> *Ibid.* Article 24.3.

<sup>47</sup> *Ibid.* Article 2.1.

<sup>48</sup> *Ibid.* Article 26.

<sup>49</sup> *Ibid.* Article 27.

<sup>50</sup> *Ibid.* Articles 27.5 and 30.

<sup>51</sup> *Ibid.* Article 28.2.

<sup>52</sup> *Ibid.* Article 33.

<sup>53</sup> *Ibid.* defined in Article 2.1(a).

2004 UNMIK affirmed on behalf of itself and the PISG that their respective responsibilities will be exercised in compliance with the principles contained in the Framework Convention. The Anti-Discrimination Law sets forth measures directed at the prevention and combating of discrimination, the promotion of effective equality and the implementation of the principle of equal treatment.

With the adoption of the Standards for Kosovo and the Kosovo Standards Implementation Plan, the number of policy statements issued has been steadily increasing. Many of them have as their common denominator the need to create an inter-ethnic society, built on the bedrock of the rule of law, governed by precepts of democracy and characterized by inter-ethnic dialogue and tolerance. Among the most important of these statements are those contained in: the 2003 *Open Letter to the Displaced Residents of Kosova/Kosovo in Serbia proper, Montenegro, and FYROM* (the Open Letter); the Joint Declaration of 13 August 2003 by the Offices of the President of Kosovo and of the Prime Minister of Kosovo and by the President of the Assembly of Kosovo (Joint Declaration); the Letter of 18 August 2003 by the Prime Minister of Kosovo addressed to the Secretary-General of the United Nations and the Security Council (PM Letter); the Appeal of 25 February 2004 by the Prime Minister of Kosovo for the Return of IDPs; the Joint Declaration of 14 July 2004 by the President of Kosovo, the Prime Minister of Kosovo, the President of the Assembly of Kosovo, the Prime Minister and the leaders of the Democratic Party of Kosovo, the Alliance for the Future of Kosovo and members of the Coalition Povratak (2004 Joint Declaration); the March 2005 speech by the then Prime Minister designate to the Assembly of Kosovo; and, the Kosovo Government Programme – 2004-2008. These statements are summarised below and reproduced in the annexes to this report.

In June 2003, the President of Kosovo, the President of the Kosovo Assembly, the Prime Minister and the leaders of the Democratic Party of Kosovo, the Alliance for the Future of Kosovo, the New Party of Kosovo and other parties represented in the Assembly as well as the Commander of the Kosovo Protection Corps signed the Open Letter which called for the displaced residents to return home and, among others, stated:

“[W]e want for you to come back and live in peace with us as neighbours, in a spirit of mutual respect. It is truly time to put the past behind us and to move on. You are a part of the heritage of our country.” The Open Letter further assured of the good will of people and institutions of Kosovo and to “build a democratic, peaceful, secure, multi-ethnic Kosova in which all citizens are treated equally before the law and enjoy equal opportunities in fulfilling their human potential.” The Letter recognizes the problems existing in Kosovo and the fact that some areas are more welcoming to returns than others, but stresses that the PISG are ready to work towards a better and more democratic future for all people.

On 13 August 2003, the Offices of the President of Kosovo, of the Prime Minister of Kosovo and the President of Assembly of Kosovo issued a Joint Declaration in which they stated that “Kosovo’s institutions are determined to create a state, which will base its future in the highest values of democracy, and respect fully the rights of all ethnic groups and universal human values.” The Joint Declaration also called on the international community “to undertake all necessary steps in stopping this campaign made by Belgrade, which opposes all efforts towards stability in the region of South-Eastern Europe.”

On 18 August 2003, the Prime Minister wrote a letter to the United Nations Secretary General and to the Security Council in which *inter alia* are stressed the following achievements of the Government:

- The establishment of the position of the Inter-ministerial Coordinator for the Issue of Returns, held by a representative of a Serb community;
- The commitment to the Strategy of Joint Principles for the return and integration of communities, and the close involvement with UNMIK, Office on Returns, Association of Municipalities and UNHCR in facilitating this process;
- The adoption by the Assembly of a Resolution on the rights of communities and those displaced to return;

- The adoption of a Civil Service Law, where according to the Government, affirmative action for communities is guaranteed; and
- The commitment to prioritise the issue of returns as one of the main objectives of the Government, and to concrete actions of assistance to Serb community.

On 14 July 2004, the President of Kosovo, the President of the Kosovo Assembly, the Prime Minister and the leaders of the Democratic Party of Kosovo, the Alliance for the Future of Kosovo and members of the Coalition Povratak signed a Joint Declaration. The 2004 Joint Declaration recognized the need “to make another effort in our work to meet the standards, to avoid the recurrence of any violence like in March, to reach a qualitative improvement of life for the citizens of Kosovo, to reach reconciliation and inter-ethnic cooperation and to create a safe home for everybody in Kosovo in order to be able to make progress towards Europe.” The signatories also agreed to a set of concrete steps, namely:

- To cooperate with the objective to complete the reconstruction/rehabilitation of the during the March 2004 riots damaged schools and of as many houses as possible in time for the beginning of the upcoming school year;
- To give new concrete impetus to the return process, regardless of ethnicity, race or religion, both at central and local level and to do their utmost that returns can take place so that IDPs can come back; and
- To continue to work together on the reform of local government in Kosovo and to cooperate in the framework of the Kosovo Security Advisory Group.

The 2004 Joint Declaration also called on UNMIK to consider the establishment of a Ministry “responsible for community matters, human rights and returns.” The Povratak members later withdrew their signatures.

On 25 February 2004, the Prime Minister issued a *Call for Return of Displaced Persons in Kosovo*. It stated that displaced persons, regardless of their ethnic background, are invited to return to their homes and property, and to be part of the process of building Kosovo’s future. It also called for the Albanian population to respect property rights and to protect the religious premises that constitute part of the cultural heritage in Kosovo. The Call also reminded that they “have a special obligation to members of the Serb community” and that the members of the Kosovo Serb community should “be able to freely move through the territory of Kosovo.” The Prime Minister also called on the Kosovo Serb community “to get fully integrated into Kosovo institutional life”.

Most recently, on 23 March 2005, during his speech to the Assembly of Kosovo the Prime Minister-Designate stated:

“The Government of Kosovo will ensure conditions that allow all of its citizens to make Kosovo their homeland. Albanians, Serbs, Turks, Bosniaks, Ashkalija, Roma and Albanian-Egyptians will all become sovereign citizens of Kosovo. Ethnic communities will have a greater role in the matters where decisions are taken for their national interest, for example in education and in those matters that have to do with linguistic, cultural, and religious equality.”

The Prime Minister also stated that the Government will be fully committed to work for the return of displaced persons to their properties, expressed his compassion for the people who lived in the temporary settlement called “Plemetina camp”, and committed to the closing of this camp and the improvement of the lives of its inhabitants.

The Kosovo Government Programme 2004-2008 in its Chapter on *Communities, Their Rights and Integration* states:

“[I]n order to achieve a significant progress, long-term and a well addressed engagement is needed. All communities, and especially the Serb one, need to identify the advantages of being part of the society of Kosovo and its democratic institutions. Of essential importance in this aspect are the actions of the Government regarding the enforcement of non-discriminatory legislation and practices in employment, public services, language use, government information, market and business, and

finances.” The Programme states that the Government will work to bring back the displaced from Kosovo and that “a special governmental plan will be supported for improving the position of different communities in the central administration and the local government of public enterprises and other institutions that reflect the interests of all non-majority communities in Kosovo. A special treatment will be dedicated to the Serb community which is still proportionally behind compared to other communities.” The Programme also declares that the Government will support the equality of non-majority communities in education, culture and language use and will strive to ensure their participation and equality in ministries, KPS, KPC and courts.

## **VI. BEST PRACTICES FOR THE PROMOTION OF THE EFFECTIVE PROTECTION OF NATIONAL MINORITIES AND THE RIGHTS OF PERSONS BELONGING TO THEM**

### **Kosovo Police Service**

Pillar III of UNMIK is responsible for providing the initial training for police officers. For this purpose it has established and is operating the Kosovo Police Service School (KPSS), a facility located in Vushtrri/Vučitrn, the traditional site of police training in Kosovo. During the selection process, conscious efforts are made to recruit men and women into the local police service who reflect the ethnic diversity within Kosovo. The recruits also represent different age groups, backgrounds and geographical areas within Kosovo. The applicants undergo oral interviews, medical and psychological examinations, physical agility evaluations, as well as background investigations.

Those selected for the training course and subsequently recruited into the Kosovo Police Service (KPS) must have a strong moral character, be tolerant and willing to work with people of different ethnicity and religion. They must demonstrate a commitment to protecting the human rights of all people.

The KPS has been largely successful in achieving multi-ethnicity in its staffing profile. Currently, the Kosovo Serb officers make up more than 9% of the local police force, which is more than the current proportion of Kosovo Serbs in the population. The overall minority participation in the police service is over 15%.

The present class of the KPS consists of 333 future officers, of which 290 are of Kosovo Albanian ethnicity, four are Kosovo Bosniaks, 35 are Kosovo Serbs, two are Kosovo Turkish, one is Kosovo Gorani and one is Moslem.

The police stations in Kosovo are in the process of being transferred entirely in the hands of the local police. Currently in Kosovo there are 33 municipal police stations and 5 regional HQs. As of March 2005 27 municipal stations have been fully handed over to the KPS and the international police officers are only present as observers. The last police station should be transitioned in August 2005.

<b>Ethnicity and Gender Statistics</b>					
<b>Ethnicity</b>	<b>Female</b>	<b>Male</b>	<b>Total</b>	<b>Total %***</b>	<b>Fem % ****</b>
Albanian	777	4511	5288	84.62%	14.69%
Ashkalija	0	18	18	0.29%	0.00%
Bosniak	32	180	212	3.39%	15.09%
Cerkezi	0	5	5	0.08%	0.00%
Croat	0	2	2	0.03%	0.00%
Egyptian	1	5	6	0.10%	16.67%
Gorani	0	34	34	0.54%	0.00%
Macedonian	1	0	1	0.00%	100.00%
Montenegrin	1	1	2	0.03%	50.00%
Other	0	1	1	0.02%	0.00%
<del>Turkish</del>	<del>8</del>	<del>68</del>	<del>76</del>	<del>0.18%</del>	<del>100.00%</del>
<b>Total</b>	<b>889</b>	<b>5390</b>	<b>6249</b>	<b>100.00%</b>	

Male	85.77%
Female	14.23%

\*\*\* Total % indicates each ethnicity percentage in total number

\*\*\*\* Female % indicates female percentage in each ethnicity<sup>54</sup>

### **Crime Prevention Councils**

Local Community Safety and Crime Prevention Councils (LCS & CPCs) are consultative bodies on security issues, which are responsible for:

1. Building trust among communities in security enforcement measures, including but not limited to the promotion of a human rights compliant culture.
2. Ascertaining the views and concerns of their communities, particularly the most vulnerable on matters of crime, the fear of crime and other quality of life issues;
3. Supporting the Rule of Law Standard to achieve a crime clearance rate for violent crimes against persons that is almost equivalent for all communities.
4. Co-ordinating, consulting, communicating and prioritising issues with its members to resolve problems, including those associated with ethnic tensions, freedom of movement and conflict;
5. Educating communities on what they can realistically expect from the councils and the organisations they represent;
6. Formulating community safety, crime prevention and security initiatives in co-operation with existing organisations and programmes.
7. Implementing and monitoring those initiatives.
8. Complementing the activities of the Kosovo Security Advisory Group (KSAG).

The primary aim of the LCS & CPCs is to be aware of the nature of crime, disorder and other anti-social behaviour in their local areas, in order to identify the methods of developing and implementing effective projects and action plans that reduce those problems.

The Councils comprise of representatives from civil administration; UNMIK Police and KPS, including School Resource Officers (SROs); KFOR, PILLAR III and civil society including each ethnic community residing in the municipality, religious leaders, the business community, NGOs working with victims of crime and other parties interested in reducing crime and improving the quality of life for local people.

The Terms of Reference for the LCS & CPCs include the following:

- To carry out a detailed, joint local audit every three years that identifies priority crimes, areas or themes, such as incidents of theft in rural areas, anti-social behaviour outside schools or the

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<sup>54</sup> Source: UNMIK Pillar I.



misuse of drugs. The audit should also identify priority groups, such as young people or victims of domestic violence.

- To carry out regular reviews of the audit findings to ensure they are current and valid.
- To publish the audit and review findings and consult on them.
- To set local strategic aims and objectives for crime and disorder prevention, crime and disorder reduction and quality of life improvement for local people, using the audit or review and consultation results and any other sources of information, such as Kosovo-wide public perception surveys.
- Methods will include:
  - Identifying and publishing projects and action plans that will achieve the local strategic aims and objectives.
  - Initiating project groups from the Community Safety Action Teams to carry out the action plans.
  - Deploying joint resources to assist the successful implementation of projects and action plans.
  - Co-ordinating with other organisations/stakeholders regarding support for the projects and action plans.
  - Calling on/inviting additional co-opted members regarding specific priority areas, projects and action plans as required.
  - Reporting back on the progress of projects and action plans to the LCS&CPC members and, when relevant, to the KCBP-SG.
- To formulate and publish an annual Local Community Safety Strategy that sets out the findings of the audit or reviews and consultation, which details the projects and action plans for addressing priority areas and targets.

Two examples of LCS & CPCs best practices are summarised below:

The Fushë Kosovë/Kosovo Polje LCS&CPC is jointly chaired by the UN Municipal Representative and the President of the Municipality (indicating the developing partnership of the executive branches within the municipality). The first community safety project of this council was to locally oversee the central elections in October 2004, which were virtually trouble-free in the Municipality. The council has also set up its first project relating to confidence building for potential returnees, which includes initiatives to increase: the exchange of information between key agencies; pro-active policing; dedicated patrol officers in sectors of the Municipality; community dialogue, and trained KPS staff carrying out a community education process on good citizenship.

Developments by the Vushtrri/Vučitrn LCS&CPC include Village Co-ordinators workshops. The first of these, attended by municipal representatives as well as KPS officers, focused on encouraging the return of IDPs, reducing community tensions and discussing steps to improve public confidence in the KPS. These discussions continued at subsequent workshops, during which the KPS presented a report on ways of improving police/community relations. They were attended by a great number of people, on one occasion 36 participants, including both Kosovo Serb and Ashkali village representatives. This is a major achievement and an indication of the great courage and commitment of those community members.

The Vushtrri/Vučitrn community is now more closely involved in the design and delivery of police training courses. A joint police/community problem-solving workshop focusing on the Serbian village of Priluzje has also been held. This workshop resulted in a detailed action plan covering a number of activities – public meetings on the freedom of movement, inter-community cultural and sports activities, school exchange visits and joint fact-finding missions – all of which will help to address the safety and security concerns of Priluzje's residents.

By May 2005 CPCs were established in all of Kosovo Municipalities.

### **UNMIK Community Policing**

The UNMIK Community Policing Unit became operational on 10<sup>th</sup> January 2004 by the deployment of 350 international police officers to 30 specific locations throughout Kosovo, that were chosen by police working with ORC and UNHCR, in order to provide a safe and secure environment for IDPs planning to return to their villages and enclaves -- and so for all persons living in the area, no matter the community to which they might belong.

UNMIK community policing, thereby at once helps implement UNSCR 1244, which among others "assures the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo" and the Standards for Kosovo, whose implementation plan requires public confidence in the police to be increased through community policing.

It promotes these ends through democratic policing, which requires the police to communicate and consult with the community it services. This approach engages the whole community, affording it the opportunity to find rapid and effective solutions to problems which may confront any or all of its members. Because police and community teamwork allows events and difficulties to be anticipated and planned for in advance, thereby preventing their occurrence in most cases and minimizing threats to a given community, this type of police work has come to be known as proactive policing among law enforcement officials. That method is favoured by the international policing community, especially in post-conflict situations, because through its involvement with the community the police fosters mutual trust and respect, become a police service -- not a police force. From the police organisations perspective it requires a greater commitment of resources but has the added advantages of enhanced efficiency and community safety.

In Kosovo, as a radical and innovative departure from standard policing practice, UNMIK community police officers are presently housed in buildings not normally associated with policing operations. These buildings range from offices within municipal buildings to private offices and houses. Great care has been taken in the selection of these police premises most especially to ensure that no family or individual are prevented from returning to their former homes because of UNMIK community police billeting. The buildings used are identifiable by the customary blue UN signs showing them to be UNMIK Community Police Bases.

UNMIK community Police officers patrol mostly on foot and only occasionally in vehicles. Patrols are highly visible and mounted on a 24/7 basis, providing continuous cover. They supply an immediate policing response and are supported if necessary by the KPS.

Although separate from the KPS, UNMIK Community Police officers are an integral part of the Police Service of Kosovo. Accordingly, they service the entire community within the areas, which they cover, dealing with everyone fairly and equitably, consonant with the law applicable in Kosovo and hence with European Human rights standards. This said, UNMIK community police officers work closely with all the groups represented in their communities i.e. different ethnic, religious, and youth groups, the municipal administration and NGOs. UNMIK community police officers engage with those representative groups in the identification and solution of the problems the community faces.

## **VII. PUBLIC INFORMATION ON THE EUROPEAN FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES**

The Advisory Office on Communities (AOC) has organised a public awareness raising campaign about the importance of the implementation of international human rights treaties, particularly the ECHR, Framework Convention, European Charter for Regional and Minority Languages and the European Social Charter.

It has included a series of information sessions, which focused on the Framework Convention, with special emphasis on the rights and freedoms flowing from its principles and exercisable individually as well as in community with others. These sessions were held in five regions of Kosovo – *i.e.*, the municipalities of Gjilan/Gnjilane, Prizren, Pejë/Peć, Mitrovicë/Mitrovica and Prishtinë/Priština. In all, some 120 participants – of whom two-thirds were persons belonging to non-Albanian Kosovo communities – representing ethnic non-majority communities, Municipal Assembly Presidents, and NGOs, ... were actively involved in these sessions. This Framework Convention public awareness raising campaign was conducted with the financial support of the Finish Human Rights Programme.

On 1 July 2004, AOC organised a conference entitled “Community Standards” that focused on the importance of the implementation of the Standards for Kosovo while discussing international conventions. The majority of its participants were Kosovo non-Albanian community assembly members and NGO representatives, including thirty persons belonging to the Kosovo Bosniak, Kosovo Turkish, Kosovo Roma and Kosovo Egyptian communities.

The AOC has also organised two workshops together with the European Centre for Minority Issues (ECMI) about reporting on the implementation of the Framework Convention. The first was held in Prishtinë/Priština with the additional support of the OPM/AOGG. It was attended by approximately 20 PISG employees and ethnic-community representatives. The second took place in January 2005. It was attended by representatives from those PISG institutions, which had been identified as essential contributors to the Framework Convention implementation report.

## **Part II**

### **Article 1**

**The protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation.**

UNSCR 1244, Paragraph 11(j),(k) charges UNMIK with “protecting and promoting human rights” as well as “assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo.” In his report on a preliminary operational concept for UNMIK to the Security Council, the UN Secretary-General opined that the latter function was “likely to include protection and assistance to minority groups.”<sup>55</sup>

His first report on the operation of UNMIK to the Security Council affirmed that:

- “In assuming its responsibilities, UNMIK w[ould] be guided by internationally recognized standards of human rights as the basis for the exercise of its authority in Kosovo [...] and w[ould] adopt human rights policies in respect of its administrative functions”,<sup>56</sup>
- “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 grounds, 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”,<sup>57</sup> and,
- “In the performance of the duties entrusted to UNMIK, the Special Representative w[ould] [...] issue legislative acts in the form of regulations.”<sup>58</sup>

As described in Part I, Section IV above, the SRSG first promulgated the observance of rights recognized in expressly itemized international human rights instruments and the prohibition of discrimination on the above enumerated grounds, as an obligation incumbent on all persons exercising public duties or holding public office, into law. He subsequently enacted the general constitutional guarantee for the enjoyment of human rights and fundamental freedoms by all persons in Kosovo without discrimination on any ground as well as the substantive human- and minority-rights guarantees set forth in specified instruments as directly applicable law in Kosovo, integral to the Constitutional Framework itself.

By contrast with UNMIK Applicable Law Regulation, The Constitutional Framework’s list includes the Framework Convention. The Constitutional Framework not only requires the PISG to observe but also obligates them to ensure the Framework Convention’s rights and principles together with other international human rights to all persons in Kosovo. Indeed, according to the second 2001 report of the Secretary-General to the UN Security Council:

“The Framework contains, as a key element, extensive safeguards for the protection of communities and human rights. Specific provisions in this regard include: an extensive list of guaranteed rights of communities and their members in areas including language, education, employment, media and public services, together with a reservation to my Special Representative of

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<sup>55</sup> Report of the Secretary General pursuant to paragraph 10 of UN Security Council Resolution 1244(1999), UN Doc. S/1999/672, para. 12 (12 June, 1999).

<sup>56</sup> Report of the Secretary General on the United Nations Interim Administration Mission in Kosovo, UN Doc. S/1999/779, para. 42 (12 July, 1999).

<sup>57</sup> *Ibid.* para. 38.

<sup>58</sup> *Ibid.* para. 41.

the power to intervene to protect these rights; strong human rights provisions, including a provision that all refugees and displaced persons have the right to return to their homes in Kosovo and to recover their property, and a requirement that competent institutions must facilitate returns; and broad authority for my Special Representative to intervene and correct any actions of the PISG that are inconsistent with Security Council Resolution 1244 (1999), including the power to veto Assembly legislation, where necessary.”

These ‘safeguards’ also correspond to certain “Standards for Kosovo”, which were originally articulated as benchmarks in the ‘Standards before Status’ policy developed by the SRSG in mid-June 2001 and then elaborated into a strategy implementation review document on the initiative of the Contact Group (France, Germany, Italy, the Russian Federation, the United Kingdom, the United States, with representatives from the European Union)<sup>59</sup> in mid-December 2003. Three months later, the SRSG – in consultation with the PISG and the Contact Group – finalized the Kosovo Standards Implementation Plan (KSIP), which sets out the actions and policies needed to reach the standards contained in the 2003 document “Standards for Kosovo” (Kosovo Standards Document).

The KSIP included 109 Standards Goals and 503 actions. In the autumn of 2004 Priority Standards Goals were identified to be the key determinant of the timing of the discussions over Kosovo’s future status. UNMIK and the Government of Kosovo agreed 35 Priority Standards Goals and 76 Priority Actions, which were reported to the Security Council in November 2004.

Standard IV on Sustainable Returns and the Rights of Communities and their Members, as laid down in the Kosovo Standards Document, requires that “Kosovo participates in the Council of Europe implementation process for the Framework Convention and fully implements recommendations resulting from that process.” KSIP, Standard IV, Action 10.1 calls for the “Council of Europe, with support from PISG and UNMIK, to include Kosovo in the monitoring process for the Framework Convention.”

On 12 December 2003, the President of the Security Council issued a statement whereby “[t]he Security Council reiterate[d] the primacy of the regulations promulgated by the Special Representative of the Secretary-General and subsidiary instruments as the law applicable in Kosovo.” Specifically, Section 1.3 of UNMIK Regulation 1999/24 On the Law Applicable in Kosovo, as amended, provides that:

“In exercising their functions, all persons undertaking public duties or holding public office in Kosovo shall observe internationally recognized human rights standards, as reflected, in particular in:

- (a) the Universal Declaration on Human Rights of 10 December 1948;
- (b) the European Convention on Human Rights and Fundamental Freedoms of 4 November 1950 and the Protocols thereto;
- (c) The International Covenant on Civil and Political Rights of 16 December 1966 and the Protocols thereto;
- (d) The International Covenant on Economic, Social and Cultural Rights of 16 December 1966;
- (e) The Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965;
- (f) The Convention on Elimination of all Forms of Discrimination Against Women of 17 December 1979;
- (g) The Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment of 17 December 1984; and
- (h) The International Convention on the Rights of the Child of 20 December 1989.”

Section 1.4 of UNMIK Regulation 1999/24 decrees that:

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<sup>59</sup> Statement by the President of the Security Council, UN Doc. S/Prst/2003/26, unnumbered para. 1 (12 December, 2003).

“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.”

UNMIK Regulation 2001/9 On A Constitutional Framework for Provisional Self-Government in Kosovo, Chapter 3, states that:

“3.1 All persons in Kosovo shall enjoy, without discrimination on any ground and in full equality, human rights and fundamental freedoms.

“3.2 The Provisional Institutions of Self-Government shall observe and ensure internationally recognized human rights and fundamental freedoms, including those rights set forth in:

- (a) The Universal Declaration on Human Rights;
- (b) The European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;
- (c) The International Covenant on Civil and Political Rights and the Protocols thereto;
- (d) The Convention on the Elimination of All Forms of Racial Discrimination;
- (e) The Convention on the Elimination of All Forms of Discrimination Against Women;
- (f) The Convention on the Rights of the Child;
- (g) The European Charter for Regional or Minority Languages; and
- (h) The Council of Europe's Framework Convention for the Protection of National Minorities.

“3.3 The provisions on rights and freedoms set forth in these instruments shall be directly applicable in Kosovo as part of this Constitutional Framework.

“3.4 All refugees and displaced persons from Kosovo shall have the right to return to their homes and to recover their property and personal possessions. The competent institutions and organs in Kosovo shall take all measures to facilitate the safe return of refugees and displaced persons to Kosovo and shall cooperate fully with all efforts by the United Nations High commissioner for Refugees and other international and non-governmental organisations concerning the return of refugees and displaced persons.”

The Constitutional Framework, Chapter 4.6 further specifies that:

“Based on his direct responsibilities under UNSCR 1244(1999) to protect and promote human rights and to support peace-building activities, the SRSG will retain the authority to intervene as necessary in the exercise of self-government for the purpose of protecting the rights of Communities and their members.”

In addition, Section 8.1(a) of the Constitutional Framework vests the SRSG with “[f]ull authority to ensure that the rights and interests of Communities are fully protected.” Under the Constitutional Framework, Section 8.1(i), (n) and (m), he is also respectively endowed with exclusive reserved powers to:

“Exercis[e] powers and responsibilities of an international nature in the legal field; [...] “Conclud[e] agreements with states and international organizations in all matters within the scope of UNSCR 1244 (1999); [and], Oversee[ing] the fulfilment of commitments in international agreements entered into on behalf of UNMIK [...]”

## **Article 2**

**The provisions of this Framework Convention shall be applied in good faith, in a spirit of understanding and tolerance and in conformity with the principles of good neighbourliness, friendly relations and co-operation between States.**

See the submission under Articles 1 and 18 of this report.

### **Article 3**

**1. Every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice.**

**2. Persons belonging to national minorities may exercise the rights and enjoy the freedoms flowing from the principles enshrined in the present framework Convention individually as well as in community with others.**

The Constitutional Framework and the laws of Kosovo do not use the terms “national minority” but that of “Communities”, described as inhabitants belonging to the same ethnic or religious or linguistic group. The “Communities” in Kosovo are generally considered to comprise Kosovo Albanians, Kosovo Serbs, Turks, Bosniaks, Gorani, Torbesh, Roma, Ashkaelija, Egyptians, and Kosovo Croats.

The last recognised census conducted of the population of Kosovo was in 1981 and it is recognised that a population and housing census is of paramount importance for both political and economic reasons. The political dimension of the census includes establishing the necessary demographic facts in view of the preparations for the negotiations on the final status of Kosovo, for the decentralisation/the reform of local government, and the creation of electoral districts in Kosovo. Data generated from the census will also constitute a solid basis for government policies in the area of economic development and elsewhere. For precisely these reasons, conducting a census seen to be fair and comprehensive will be a challenge. The majority community is eager for a census because it believes that its dominant demographic position will be confirmed. Non-majority communities, particularly the Kosovo Serbs, are fearful of a census for much the same reason, but they are also concerned that persons displaced outside of Kosovo will not be properly counted. A related challenge is to define the terms under which displaced persons and, potentially, Diaspora who have a right to be considered Kosovo residents, will be counted that is fair for all communities. The needed Law on the Kosovo Population and Housing Census<sup>60</sup> was adopted by the Kosovo Assembly on 11 July 2003 and promulgated by the SRSG on 9 December 2004. It contains provisions to address these concerns, in particular, by clarifying the definition of “resident population”. As well, the monitoring of the census by the international community will be crucial in order to guarantee its credibility and the trust of the non-majority communities.

The joint UNHCR/OSCE Preliminary Assessment of the Situation of Ethnic Minorities in Kosovo<sup>61</sup> (the Assessment) used the census carried out in 1991, in order to identify the possible location of various non-majority communities despite the fact that it is considered controversial because of the limited participation of the Albanian community in it. The assessment identified the non-majority communities living in Kosovo at the time and gathered information about the locations of their residence and estimated numbers. The Assessment identified the following minority groups as present in Kosovo: Ethnic Serbs, Roma, Croatian / Bosnian Serbs, Gorani, Bosniaks, Turkish, Croats and Cerkezi.

### **Ethnic Serbs**

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<sup>60</sup> UNMIK Regulation 2004/53 On the Promulgation of the Law On the Kosovo Population And Housing Census adopted by the Assembly of Kosovo, 9 December 2004.

<sup>61</sup> UNHCR/OSCE Preliminary Assessment of the Situation of Ethnic Minorities in Kosovo, 26 July 1999.

In July 1999 it was estimated less than 5,000 Ethnic Serbs remained in the urban areas of Prishtinë/Priština with a further 40,000 in Prishtinë/Priština region.<sup>62</sup> In the following years their number continued to diminish. In the neighbouring Podujevë/Podujevo municipality which was traditionally Kosovo Albanian, only five Kosovo Serbs apparently remained in the main town guarded closely by KFOR, and a handful were thought to be scattered in the surrounding villages. The only three Kosovo Serb families that lived in Glllogoc/Glogovac municipality before the war left for Serbia proper and Montenegro in June 1999, transforming Glllogoc/Glogovac into a 100% Kosovo Albanian municipality. In Obiliq/Obilić municipality it was estimated that there was a 9,000-strong Kosovo Serb population. In Fushë Kosovë/Kosovo Polje at the time there were 3,500 Kosovo Serbs.

There was a significant Kosovo Serb population in Mitrovicë/Mitrovica district, forming the ethnic majority in three municipalities. The north of Mitrovicë/Mitrovica town was predominantly Kosovo Serb including an estimated 2,000 displaced from within the town alone. About 8,000 internally displaced ethnic Kosovo Albanians were located in the southern part of town. Leposavić/Leposaviq municipality was almost entirely Kosovo Serbian. The ethnic Kosovo Albanian community had all left whilst Kosovo Serbs displaced from other parts of Kosovo have moved in. Almost all of Zvečan/Zveçan's municipality inhabitants were also Kosovo Serbs and they continued to run its administration. Its population was estimated at about 14,500, including Kosovo Serbs moving from other parts of Kosovo. Zubin Potok municipality had a predominantly Kosovo Serb population of about 11,000.

By contrast, Skenderaj/Srbica's Kosovo Serb community had traditionally been very small and in 1999 amounted to only to the two villages of Suvo Grlo/Syrganë (with 142 inhabitants) and Banja/Bajë (with 232 mostly elderly inhabitants) and the monastery of Device (eighth inhabitants). In Vushtrri/Vučitrn the majority of the pre-war Kosovo Serb population had departed. In Gojbula and Slatina villages there were 155 and 40 Serbs remaining. In Grace (pop.) and Priluzje (pop.) villages remained 541 and 1,893 persons respectively. In the village of Banjska, 600 Kosovo Albanians continued to live peacefully with the Kosovo Serb population of 300.

Gjilan/Gnjilane municipality contained a significant number of Serb enclaves. In the town itself, there were about 4,000 Kosovo Serbs. The main villages inhabited exclusively by Kosovo Serbs in the vicinity were Parteš/Partesh, Pasjan/Pasjane, Šilovo/Shillovë and Donja Budriga/Budrikë e Poshtme.

In Novoberdë/Novo Brdo municipality there were about 2,700 Kosovo Serbs out of a total population of about 4,800. In Kamenicë/Kamenica municipality it was estimated that around 8,000 Kosovo Serbs have stayed in the area. In Viti/Vitina approximately 7,000 Kosovo Serbs were estimated to remain. Ferizaj/Uroševac town was predominantly Kosovo Albanian, most non-majority communities such as the Kosovo Gorani and Croatian Serb refugees having already left. The number of Kosovo Serbs remaining was estimated at around 100. In Lipjan/Lipljan town the surrounding area had several Kosovo Serb villages including Vrelo/Vrellë, Radevo/Radevë, Lepina/Lepi, Skulanovo/Skullan, Suvi Do/Suhadoll, Staro Gracko/Grackë e Vjetër, Malo Gracko/Grackë e Vogël, Livade/Livagjë, Donja Gusterica/Gushtericë e Ulët, Gornja Gusterica/Gushtericë e Epërme and Dobrotin/Dobratin. All of the 500 Kosovo Serbs of Suharekë/Suva Reka municipality were thought to have left. In Shtime/Štimlje town remained 26 Kosovo Serbs.

In the north of Rahovec/Orahovac town there was a concentrated community of around 3,000 Kosovo Serbs, many of whom were displaced from the south and the surrounding villages. The only other Kosovo Serb community known to be present in the municipality were about 1,000 Kosovo Serbs living in the village of Velika Hoca/Hoçë e Madhe.

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<sup>62</sup> *Ibid.* para 9.



Of the estimated pre-war 8,000 Kosovo Serb population in Prizren city, fewer than 300 remained. During and after the war most Kosovo Serbs left Dragash/Dragaš village.

Hardly any Kosovo Serbs stayed in Gjakovë/Dakovica municipality. In the town itself several elderly and/or handicapped Kosovo Serbs were living in a church under KFOR protection. In Deçan/Dečani, twelve Kosovo Serbs had taken refuge in a seminary which has been afforded 24-hour KFOR protection.

Most of the Kosovo Serbs who lived in Pejë/Peć municipality before the conflict left the area during or after the withdrawal of the Serb security forces and only approximately 500-600 ethnic Kosovo Serbs have remained in the municipality. Most of them were found in the Kosovo Serb village of Goraždevac/Gorazhdec. Most of the Kosovo Serbs from Klinë/Klina and Istok/Istog municipalities had left. The village of Crkolez/Cërkolez in Istok/Istog was comprised of 40 Kosovo Serb families who remained under 24-hour KFOR protection.

## **Roma**

Kosovo has a mixed Roma population, consisting of Albanian, Romany and Serbian-speaking groups. Different Groups appear to identify themselves as Kosovo Roma, Kosovo Ashkalija and Kosovo Egyptians. Kosovo Ashkalija and Kosovo Egyptians speak Albanian (although many of them speak also Serbian). Kosovo Roma speak both Albanian and Serbian, depending on the areas where they reside, e.g. in areas populated by ethnic Albanians (e.g. Prizren and Pejë/Peć) they speak Albanian whereas in areas where the Kosovo Serbs are a majority (e.g. North Mitrovicë/Mitrovica, Gračanica/Gračanicë, etc.) Roma speak Serbian. In addition, Roma speak the local variant of Rromani, while Kosovo Ashkalija and Kosovo Egyptians do not (although many of them are potentially able, they practically refuse to speak Rromani in an effort to detach themselves from the Kosovo Roma).

On 12 April 2000 a *Declaration* was made by Kosovo Albanian leaders together with the leaders of the Kosovo Roma, Ashkalija and Egyptian communities, in which the leaders pledged to uphold promote and pursue the ideals of tolerance, non-discrimination and inter-ethnic harmony within and among all communities in Kosovo. The Declaration was followed by a *Platform for Joint Action Regarding Kosovo Roma, Ashkalija and Egyptian Communities*. These documents constitute both an act of self-determination by the Kosovo Roma, Ashkalija and Egyptian communities and an act of recognition of the existence of these ethnic groups by the authorities in Kosovo.

## **Roma population in 1999<sup>63</sup>**

In 1999 it was assessed that the Kosovo Roma community of Prishtinë/Priština city have all left following threats. About 100 Kosovo Roma remained in the Serb-dominated Gračanica/ Gračanicë village, while some families were also found in Laplje Selo. The Kosovo Roma population in Podujevë/Podujevo municipality was estimated at around 850.<sup>64</sup>

In Obiliq/Obilić municipality almost all Kosovo Roma fled the area (mostly to Fushë Kosovë/Kosovo Polje) immediately upon the withdrawal of Yugoslav forces. A group of 90 Kosovo Ashkalija remained in Milloshevë/Miloševo village.

In Mitrovicë/Mitrovica district, the departure of Yugoslav forces triggered not only a movement of the Kosovo Serb population but also the departure of the Kosovo Roma. It was estimated that only 500 Kosovo Roma remained, the rest having sought refuge in Serbia proper.

<sup>63</sup> UNHCR/OSCE Assessment of the Situation of Ethnic Minorities.

<sup>64</sup> UNHCR/OSCE Assessment of the Situation of Ethnic Minorities.

In Leposavić/Leposaviq municipality, a significant Kosovo Roma population remained in Leshak/Lešak village while approximately 500 IDPs were housed in the former barracks in the main town itself where they are assisted by the Yugoslav Red Cross. Many of the latter group appeared to move back and forth to Serbia proper. 200 Kosovo Roma were living in a school in Zvečan/Zveçan.

There were not any Kosovo Roma in Zubin Potok municipality, whereas in Skenderaj/Srbica municipality only two families were identified in Runik/Rudnik village. Vushtri/Vučitrn municipality used to have a Kosovo Roma population of over 2,000 but most of them fled and moved to Fushë Kosovë/Kosovo Polje and Leposavić/Leposaviq.

The numbers of Kosovo Roma in Gjilan/Gnjilane was estimated at around 200-500. Novoberdë/Novo Brdo municipality about 40 Kosovo Roma were living in Bostan/Bostane village. The Kosovo Roma population of Kamenicë/Kamenica municipality was estimated at 300 in the whole municipality, 100 of which in the town.

In Ferizaj/Uroševac municipality there were around 2,500 Kosovo Roma, at least half of whom were located in the main town. About 100 Kosovo Roma families were to be found in the town of Lipjan/Lipljan with some others located in Magurë/Magura village in the municipality. Only three Kosovo Roma families remained in Kaçanik/Kaçanik.

An estimated 3-4,000 Kosovo Roma lived in and around Prizren city mostly in the settlements of Terzimahalla, Jenimale, Birorada, Dushanovë/Dusanovo, Ulcinska and Mother Theresa. No Kosovo Roma remained in Štrpce/Shtërpçë or Dragash/Dragaš municipalities, but there are a few families left in Suharekë/Suva Reka. In Rahovec/Orahovac, there were several villages with a Kosovo Roma community. The town of Gjakovë/Đakovica had a substantial Kosovo Roma community of about 5,000. Of the 200 Kosovo Roma who remained in Pejë/Peć municipality, the majority (150) were in the main town. Scattered Kosovo Roma communities were thought to reside in neighbouring Klinë/Klina and Istok/Istog municipalities.

### **Gorani community**

The Gorani are a Slav-speaking/Islam practising ethnic group ("Gorani" is a descriptive word relating to the community's mountainous origins - *Goranci* means highlanders in Serbian and Bosniak languages). They mainly live clustered in the southern part of Dragash/Dragaš municipality ("Gora") while smaller communities are scattered in Prizren, Prishtinë/Priština, Fushë Kosovë/Kosovo Polje, Obiliq/Obilić, and Lipjan/Lipljan. Overall, an estimated number of 11,000 reside in Kosovo, while the majority of the Gorani population resides abroad, in Serbia proper, FYR Macedonia and Albania. The fact that traditionally Gorani have been migrant workers makes it difficult to estimate numbers with accuracy. In addition, due to the fact that in pre-1999 census, Gorani (together with Bosniaks and Torbesh) were generally categorized as "Muslim Slavs", it is difficult to gauge the exact size of the Gorani population and caution should be exercised as to the accuracy of any figure.

Their ethnic heritage is claimed by a variety of actors including FYR Macedonia, Serbia proper, Bosnia, and Bulgaria, who all claim the Gorani descended from their respected regions and then converted to Islam. Others see Gorani as a distinct ethnic group. An important issue is the identity that they choose. The unclear ethnic affiliation has seen more people from Dragash/Dragaš region classify themselves as Bosniaks. The perception is that the Gorani are closer to Serbian authority than the Bosniak community. This is mainly due to Gorani's extensive connections with Serbia proper, shared linguistic roots and similar political attitudes but also because, by claiming Bosniak identity, people would reduce the risk of being affiliated to Serbs.

The Gorani language is similar to that spoken in the western part of FYR Macedonia and is different to other Slav dialects spoken in Kosovo, but understood by speakers of Serbian, Croatian, and Bosniak. Gorani can be most properly identified as a dialect of the Macedonian language, although it varies considerably from the standard literary Macedonian and even from village to village. The language has not been standardized and no descriptive scholarly work on the Goran idiom is available. This, together with never-ending fights between two political factions (one supporting the usage of Serbian and the other the usage of Bosniak) contribute to preventing the Gorani community from bringing forward a coherent demand over language rights.

### **Gorani community in 1999<sup>65</sup>**

Dragash/Dragaš municipality is almost entirely populated by Gorani and so the majority face no problems. However, Dragash/Dragaš town is mixed Albanian Gorani. Some 350 Gorani were also spread out through Mitrovicë/Mitrovica town. In Kamenicë/Kamenica municipality there were five Goran families.

### **Bosniak community**

This group consists of Slavs who are associated with the “Muslim nationality” created within the former Socialist Federal Republic of Yugoslavia. Although many of them describe themselves as Bosniak, this does not necessarily mean that their ancestors were from that geographical area but rather that Bosniaks are seen as the successors to the old Muslim nationality group. In reality, these communities originate from a variety of regions, including modern-day Bosnia and Sandzak. Although some are dispersed within towns, most of them live in predominantly Muslim villages. Within the Muslim community, there is a distinct group of Torbesi, found mainly in the Prizren and Rahovec/Orahovac areas.

The language spoken by the Bosniaks, Bosniak, is linguistically specific to them, but is so closely related to Serbian and Croatian as to be – besides Cyrillic – practically indistinguishable. Bosniak is understood by all Serbian and Croatian speakers. Similarly, all Bosniak speakers understand Serbian and Croatian.

In 1999 about 1,750 Bosniaks were spread out on both sides of Mitrovicë/Mitrovica town. A substantial Bosniak community was found in Prizren town; according to community leaders it numbered 20,000. Approximately 4,000 Bosniaks had remained in the Pejë/Peć municipality, mostly in Vitimirica/Vitomiricë. Dobruša/Dobrushë village in Istok/Istog had a population of about 650 Bosniaks who returned to their homes in May 1999 after fleeing at the end of March 1999.

### **Turkish**

The Turkish community in Kosovo speaks a combination of an Albanian and Turkish dialect. In 1999 there were sizable Turkish communities in Mitrovicë/Mitrovica and Prizren municipalities. Their political leaders generally retained a neutral position in Kosovo while claiming minority rights for education, employment and media.

### **Croats**

Janjevë/Janjevo in Lipjan/Lipljan municipality in 1999 had some 450 Kosovo Croats who so far had not experienced many problems and had fact co-operated with their Kosovo Albanian and Kosovo Roma neighbours in re-establishing their community. Letnicë/Letnica in Viti/Vitina municipality is another cultural and religious centre of the Kosovo Croat minority which in 1999 had about 450 inhabitants.

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<sup>65</sup> UNHCR/OSCE Assessment of the Situation of Ethnic Minorities.

## **Cerkezi**

The Cerkezi group is believed to have arrived in Kosovo from the Kafkaz Mountains in Russia more than 80 years ago and have settled in Milloshevë/Miloševo in Obiliq/Obilić municipality. The Cerkezi are Muslims and speak Albanian, Serbian and Cerkish. Although in their culture and traditions they seem closer to Albanians than to Serbs, they have always maintained good relations with both communities. During the conflict they were expelled to the FYR Macedonia and some of their houses were burned by Serbs. In 1999 there were 85 Cerkezi in Milloshevë/Miloševo.

Article 8.1 of the newly promulgated Law on the Kosovo Population and Housing Census states:

“The information collected by the census consists of two categories of data:

(a) The information data details on the individuals identity (Family Name, First Name, Father’s Name, Mother’s Name, Date of Birth/date, month, year/Place of birth, National entity, gender as well as the address-permanent residency.

(b) Information data details on the structure and the characteristics of the family or individual dwelling objects inquired only for statistical purposes in compliance with the international standards.”

The above provision would allow the individuals to declare their ethnic affiliations.

## **Article 4**

**1. The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited.**

**2. The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities.**

Access to justice for members of non-majority communities in Kosovo is impeded by tangible barriers arising from lack of security, physical safety, transportation, language, poverty and court fees. It is also obstructed by intangibles like delay, uncertainty in the law, lack of confidence in the fair application of the law, and the non-majority communities’ limited knowledge of law and legal rights. Effective implementation of the equal protection of the law requires a more significant dedication of financial resources and political will than presently exist in Kosovo.

Access to justice is seriously compromised by a lack of legal representation that places minority groups at a serious disadvantage, discouraging their participation and undermining their faith in the justice system. There are three main causes of the problem: 1) most members of minority groups are indigent and cannot afford legal representation, 2) there are insufficient skilled professionals in non-majority communities, and 3) many lawyers are reluctant to represent minority claimants. The legal aid that is available to non-majority community members is limited and there is no source of legal aid for IDPs, who form the largest single minority group.

Legal and conventional rights to effective representation, essential to attaining equality under the law, are not being met under the present system.

The principle of equal treatment for all persons is enshrined in the ADL which protects non-majority communities by prohibiting discrimination on the basis of language, ethnic origin, nationality, race, religion or belief. Access to justice is a protected activity under Article 4 (j) of the ADL which guarantees "fair treatment before tribunals and all other organs administering justice". Pursuant to Article 9 of the ADL remedies for violation of these protections include sanctions, compensation for pecuniary and non-pecuniary damages, restitution and positive measures. The ADL does not provide any mechanism to monitor its provisions, nor for a specialized tribunal to investigate alleged breaches and hear complaints.

Generally poor quality representation is provided by the system of *ex officio* appointments for criminal legal aid. Such publicly funded appointments are made pursuant to Articles 12 (3), 12 (4), 73 and 74 of the *Provisional Criminal Code Procedure*. The system for payment of *ex officio* defence counsel, which is administered by the DJA, is currently under review.

As noted above, the existing programme for civil legal aid excludes IDPs, under the residential requirements of the donor-funded civil legal aid programme administered by the Kosovo Chamber of Advocates (KCA).

Although no specific provision is made for non-majority communities, Article 9.4 of the ADL provides that all monies collected from the imposition of sanctions under the ADL "shall be placed in a fund which will be established for the purposes of supplying free legal assistance to natural or legal persons who claim violations of the right to equal treatment under this Law". Such a fund has not yet been created, nor have any monies been collected for it.

Within the DOJ, responsibility for fostering establishment of an independent, impartial and multi-ethnic judiciary has been delegated to the Judicial Development Division (JDD). It fulfils that role through the work of four units: the Judicial Integration Section (JIS), Judicial Inspection Unit (JIU), Professional Development Section (PDS), and Victim Assistance and Advocacy Unit (VAAU). All four report that fulfilment of the mandate is compromised by an insufficient and under-resourced complement of staff.

The JIS was created by the DOJ in November, 2001, in recognition of the need to promote the integration of minority judges and prosecutors in the Kosovo justice system, to facilitate access to justice for members of minority groups, and to monitor the justice system and address instances of discrimination against non-majority communities. It performs these functions with a staff of 18 (including 15 Kosovo Serb employees) and less than 1.75% of the DOJ budget.

The JIS coordinates 5 Court Liaison Offices (CLOs) throughout Kosovo. The CLOs have proven to be the most effective means of overcoming barriers impeding access to justice for non-majority communities. The CLOs facilitate escorts and transportation for members of non-majority communities to redress limited access to justice arising restrictions on movement attributable to residual fear from the riots in March, 2004. They also received and filed almost 15,000 civil claims on behalf of claimants from minority groups and IDPs following the riots of March, 2004. In addition, the CLOs provide public legal education on an *ad hoc* basis to the non-majority communities they serve.

The JIU was created by UNMIK Administrative Direction 2001/04 Implementing UNMIK Regulation 2000/15 On The Establishment Of The Administrative Department Of Justice in May 2001, and employs 14 staff, only one of whom is a member of a minority group (an ethnic Bosniak working as a judicial inspector). The mandate of JIU includes investigation of complaints of judicial and prosecutorial misconduct. Where misconduct is found, the JIU prosecutes disciplinary hearings before the Kosovo Judicial and Prosecutorial Council (KJPC). Although frequently raised in complaints to the JIU, ethnic bias is rarely found to have been established after investigation by the JIU and, in fact, no such finding has been made by the KJPC within the last three years.

The PDS serves as the secretariat for the KJPC, the independent body responsible for selecting and recommending candidates for judicial and prosecutorial appointments to the SRSG and for conducting disciplinary proceedings involving judges and prosecutors. The PDS employs a staff of 13, none of whom are members of a minority group. Cooperating closely with the JIS, the PDS continues to encourage greater ethnic diversity in judicial and prosecutorial appointments.

The mandate of VAAU requires that particular attention be paid to the needs of victims of ethnic violence. Despite a network of 9 offices across Kosovo, reaching non-majority communities has proven problematic. Only five of 36 VAAU staff are members of non-majority communities.

Consistent with the view that a multi-ethnic judiciary is more likely to preserve and promote the equality of members of non-majority communities before the courts, DOJ has made considerable efforts in that regard with its available resources. However, the recruitment of judges and prosecutors from minority groups is seriously compromised by poor salaries, benefits and working conditions. The limited pool of eligible candidates for such offices is also a concern. Better quality legal education (with special emphasis on access for members of non-majority communities) and continuing legal education are required.

The total number of ethnic non-majority communities serving in the judiciary is 10.5% and among prosecutors is 9.4%. Only 5.2% of judges and 2.3% of prosecutors are Kosovo Serbs. Accrued pensions and benefit rights in Serbia proper discourage applications from Kosovo Serbs for these positions.

The under-representation of non-majority communities amongst court staff is even more pronounced. Of 1,925 court staff employed by the Department of Judicial Administration (DJA) of the Ministry of Public Services (MPS) only 84 or 4.4% are members of minority groups. The ethnic composition of court staff is 1.7% Kosovo Serb, 1.5% Turkish, 1.5% Bosniak, 0.7% Roma, and 1% other. The isolation created by such significant ethnic disparity has a negative impact on the morale and working conditions of minority community judges and prosecutors.

The efforts of the DOJ and KJPC to promote greater ethnic diversity in the courts require greater commitment to the same principle on the part of DJA and MPS. Mandatory quotas for appointments from minority candidates to positions within the justice system have not been established. This reflects, at least in part, the significant difficulty in quantifying the relative proportion of minority groups within the total population.

The Penal Management Division (PMD) also functions within the structure of the DOJ. Its mandate includes the creation and management of an efficient, effective and humane correctional system that demonstrates respect for the rule of law and human rights. The PMD administers 8 detention and correctional institutions across Kosovo. Fifteen percent of the PMD's 1,600 Kosovan staff are members of minority groups.

The process of creating a comprehensive and sustainable legal aid plan is a priority, but is proceeding slowly. Although the poor standard of remuneration for *ex officio* appointments is recognized to be a major cause of the poor quality of representation provided, the budget of the criminal legal aid programme is to be cut even further. Similarly, donor-funding for the civil legal aid programme is not expected to continue beyond the current fiscal year.

### Disaggregation of Judges (as of 7 February 2005)

Courts	Currently Budgeted Number	Currently serving	Resigned Retired Removed*	Appointed in 2004	Promoted amongst appointed in 2004	Female	Male	Alb	Srb	Oth
SC	14 + 2 <sup>66</sup>	13 + 1 <sup>67</sup>	-	1	-	3	11	13	-	1
DC	48	46	1 <sup>68</sup>	-	-	10	36	38	4	4
CC	11	9	1 <sup>69</sup>	-	-	4	5	7	-	2
MC	165	139	8 <sup>70</sup>	10	-	35	104	125	9	4
HMOC	5	5	-	1	-	2	3	5	-	-
MOC	118	100	8 <sup>71</sup>	3	3 <sup>72</sup>	29	71	92	3	5
<b>Total</b>	<b>363</b>	<b>313</b>	<b>18</b>	<b>15</b>	<b>3</b>	<b>83</b>	<b>230</b>	<b>280</b>	<b>16</b>	<b>16</b>

\*Column shows number of Resigned/Retired/Removed judges during the year 2004

### Disaggregation of Judges (as of 11 February 2005)

Courts	Currently Budgeted Number	Currently serving	Resigned, Retired, Removed*	Appointed in 2004	Promoted amongst appointed in 2004
SC	14 + 2 <sup>73</sup>	13 + 1 <sup>74</sup>	-	1	-
DC	48	46	1 <sup>75</sup>	-	-
CC	11	9	1 <sup>76</sup>	-	-
MC	165	138	8 <sup>77</sup>	10	-
HMOC	5	5	-	1	-
MOC	118	100	8 <sup>78</sup> +1	3	3 <sup>79</sup>
<b>Total</b>	<b>363</b>	<b>312</b>	<b>19</b>	<b>15</b>	<b>3</b>

\*Column shows number of Resigned/Retired/Removed judges during the year 2004

<sup>66</sup> Two positions for the Special Chamber on KTA related matters.

<sup>67</sup> Judge for the Special Chamber on KTA related matters.

<sup>68</sup> DC judge was appointed as a Deputy Public Prosecutor in the OPPK.

<sup>69</sup> CC judge was appointed as a judge to the Special Chamber of the SC.

<sup>70</sup> Amongst 8 MC judges, seven were appointed as prosecutors, one died.

<sup>71</sup> Amongst 8 MOC judges, three were promoted, five became prosecutors.

<sup>72</sup> Three MOC judges were promoted, one to the HMOC, and two to the MC.

<sup>73</sup> Two positions for the Special Chamber on KTA related matters.

<sup>74</sup> Judge for the Special Chamber on KTA related matters.

<sup>75</sup> DC judge was appointed as a Deputy Public Prosecutor in the OPPK.

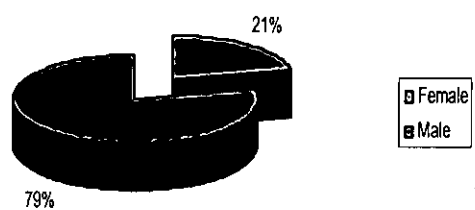
<sup>76</sup> CC judge was appointed as a judge to the Special Chamber of the SC.

<sup>77</sup> Amongst eight MC judges, seven were appointed as prosecutors, one died.

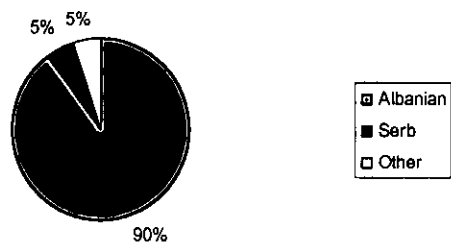
<sup>78</sup> Amongst eight MOC judges, three were promoted, five became prosecutors.

<sup>79</sup> Three MOC judges were promoted, one to the HMOC, and two to the MC.

**Gender ratio of Judges**



**Judges ethnic distribution**





Disaggregation of Lay Judges (as of 28 February 2005)

COURTS	MAL E	FEM	ALB	SRB	BOS	TUR K	ROM A	TOT AL
DC - PRISHTINË/PRIŠTINA	16	2	18	0	0	0	0	18
MC - PRISHTINË/PRIŠTINA	32	3	35	0	0	0	0	35
MC - FERIZAJ/UROŠEVAC	14	1	15	0	0	0	0	15
DEPT. of MC FERIZAJ/UROŠEVAC in STERPCE	5	0	2	3	0	0	0	5
MC - KAČANIK/KAČANIK	8	1	9	0	0	0	0	9
MC - PODUJEVË/PODUJEVO	21	2	23	0	0	0	0	23
MC - LIPJAN/LIPLJAN	12	1	11	2	0	0	0	13
MC GLLOGOVCI/ GLOGOVAC	17	8	25	0	0	0	0	25
DC - GJILAN/GNJILANE	42	2	44	0	0	0	0	44
MC- GJILAN/GNJILANE	11	1	12	0	0	0	0	12
MC - KAMENICË/KAMENICA	22	1	21	2	0	0	0	23
MC- VITI/VITINA	17	1	18	0	0	0	0	18
DC - PEJË/PEĆ	35	7	40	0	2	0	0	42
MC - PEJË/PEĆ	13	6	13	2	3	0	1	19
MC - KLINË/KLINA	6	1	7	0	0	0	0	7
MC - GJAKOVË/DJAKOVICA	10	1	9	0	2	0	0	11
MC - DEÇAN/DEÇANI	13	0	13	0	0	0	0	13
MC - ISTOG/ISTOK	11	5	13	0	3	0	0	16
DC PRIZREN/PRIZREN	26	7	26	0	1	6	0	33
MC PRIZREN/PRIZREN	7	4	6	0	1	4	0	11
MC RAHOVEC / ORAHOVAC	11	1	12	0	0	0	0	12
MC SUHAREKË/SUVA REKA	15	2	17	0	0	0	0	17
MC-DRAGASH/DRAGAŠ	11	2	13	0	0	0	0	13
MC MALISHEVË/MALIŠEVO	12	2	14	0	0	0	0	14
DC MITORVICA / MITROVICA	29	7	31	3	2	0	0	36
MC MITROVICË/MITROVICA	10	1	9	2	0	0	0	11
MC SKENDERAJ/SRBICA	11	2	12	1	0	0	0	13
MC VUSHTRRI/VUÇITRN	18	4	22	0	0	0	0	22
MC LEPOSAVIĆ/LEPOSAVIQ	4	4	0	7	1	0	0	8
MC ZUBIN POTOK /ZUBIN POTOK	4	1	1	4	0	0	0	5
TOTAL	MAL E	FEM	ALB	SRB	BOS	TURK	ROM A	
	463	80	491	26	15	10	1	543
	85.7		90.4					100%
	%	14.3%	%	4.8%	2.8%	1.8%	0.2%	

### Disaggregation of prosecutors (as of 7 February 2005)

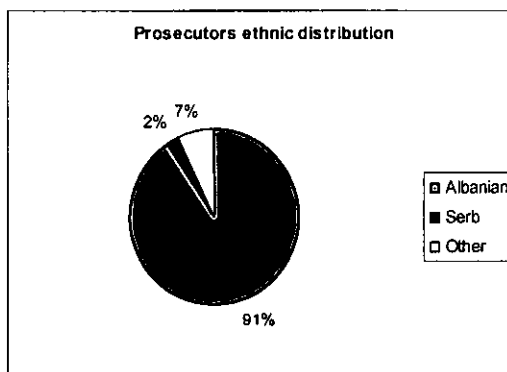
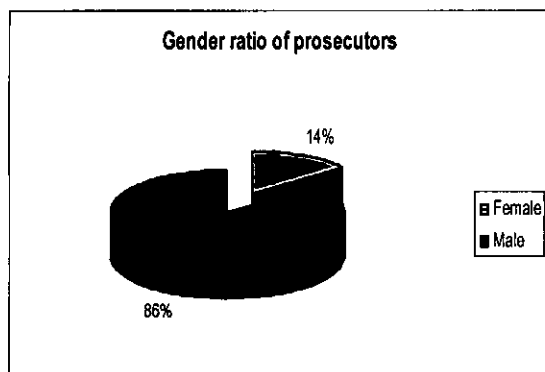
Courts	Current Budgeted Number	Currently serving	Resigned Retired Removed*	Appointed in 2004	Promoted amongst appointed in 2004	Female	Male	Alb	Serb	Other
PPK	4	7	1 <sup>80</sup>	4	-	1	6	7	-	-
DPPO	21	30	2 <sup>81</sup>	16	1 <sup>82</sup>	4	26	26	1	3
MPPO	33	48	5 <sup>83</sup>	21	4 <sup>84</sup>	9	39	44	1	3
Total	58	85	8	41	5	14	71	77	2	6

\*Column shows number of resigned/retired/removed prosecutors during the year 2004.

### Disaggregation of prosecutors (as of 11 February 2005)

Courts	Current Budgeted Number	Currently serving	Resigned, Retired, Removed*	Appointed in 2004	Promoted amongst appointed in 2004
PPK	4	7	1 <sup>85</sup>	4	-
DPPO	21	30	2 <sup>86</sup>	16	1 <sup>87</sup>
MPPO	33	48	5 <sup>88</sup>	21	4 <sup>89</sup>
Total	58	85	8	41	5

\*Column shows number of resigned/retired/removed prosecutors during the year 2004.



### **Disaggregation of Correctional and Civilian Staff (as of 15 February 2005)**

<sup>80</sup> Died.

<sup>81</sup> Promoted.

<sup>82</sup> Promoted to PPK.

<sup>83</sup> Amongst five MPP, four were promoted, one died.

<sup>84</sup> Four prosecutors were promoted to the DPPO.

<sup>85</sup> Died.

<sup>86</sup> Promoted.

<sup>87</sup> Promoted to PPK.

<sup>88</sup> Amongst five MPP, four were promoted, one died.

<sup>89</sup> Four prosecutors were promoted to the DPPO.

## CORRECTIONAL

MULTIPLIER	9	8	6.75	6	5	TOTAL
DUBRAVA	2	7	12	32	465	518
PRIZREN/PRIZREN	1	2	4	10	66	83
GJILANI/GNJILANE	1	0	4	5	71	81
QP.LIPJAN/LIPLJAN	0	3	7	8	173	191
LIPJAN/LIPLJAN	2	1	7	15	137	162
PEJË/PEĆ	1	1	5	7	66	80
MITROVICË/MITROVICA	0	3	3	5	46	57
PRISHTINË/PRIŠTINA	1	2	0	7	58	68
PHQ	4	3	0	0	0	7
PROB.OFFIC.	0	0	0	0	0	0
REGI.OFFIC.	0	0	0	0	0	0
TOTAL	12	22	42	89	1082	1247

								CIVILIAN	PMD
9	8.5	8	7.5	7	6.75	6	5	TOTAL	TOTAL
0	0	2	0	1	9	69	43	124	642
0	0	0	0	0	2	22	6	30	113
0	0	1	0	0	1	16	7	25	106
0	0	1	0	0	1	16	12	30	221
0	0	3	0	0	1	22	25	51	213
0	0	0	0	0	0	14	8	22	102
0	0	3	0	0	0	21	15	39	96
0	0	2	0	0	1	8	9	20	88
1	0	2	1	0	5	2	0	11	18
0	1	0	0	0	45	0	0	46	46
0	0	0	0	0	3	0	0	3	3
1	1	14	1	1	68	190	125	401	1648

GENDER	CORRECTIONS	CIVILIAN	TOTAL
MALE	1105	245	1350
FEMALE	142	156	298
TOTAL	1247	401	1648

MALE	81.92%	CORREC	75.67%
FEMALE	18.08%	CIVIL	24.33%

<b>Albanian</b>			<b>1401</b>		<b>85.01%</b>
<b>Serbian</b>			<b>192</b>		<b>11.65%</b>
<b>Bosniak</b>			<b>34</b>		<b>2.06%</b>
<b>Turkish</b>			<b>4</b>		<b>0.24%</b>
<b>Roma</b>			<b>15</b>		<b>0.91%</b>
<b>Slovenian</b>			<b>1</b>		<b>0.60%</b>
<b>Montengrin</b>			<b>1</b>		<b>0.60%</b>
<b>TOTAL</b>			<b>1648</b>		

**ALBANIAN**      **85.01%**  
**MINORITY**      **14.99%**

In an important initiative to facilitate access to justice for non-majority communities, the DOJ and Municipal Court of Pristinë/Priština (MC) opened a Department of the Municipal Court in Gračanica/Graçnicë (DMCG) in December, 2004. When fully operational, the DMCG will facilitate access to justice for the minority population of approximately 20,000 residing within the municipality. However, commencement of operations have been slowed by irregularities in the procedures for staffing DMCG by the DJA, institutional conflict between the MC and DJA, and inertia created by the death of the senior minority judge at the MC.

Equality before the courts in criminal cases begins with the assurance that all crime is thoroughly investigated, regardless of the ethnic background of the victim or perpetrator. To that end, the most serious cases of ethnic violence are assigned to and investigated by international prosecutors with the Criminal Division (CD) of the DOJ. By way of example, international prosecutors were assigned by DOJ to prosecute all serious cases of ethnic violence arising from the riots in March, 2004, including; 21 possible homicides; violence to UNMIK, KPS and KFOR personnel; and damage to religious and cultural heritage sites.

Significant progress is being made in the prosecution and punishment of crimes that promote ethnic fear and hatred. Of 19 prosecutions arising from the riots in March, 2004, six have resulted in convictions, another seven have resulted in indictments and are awaiting trial, and the remainder are still under investigation. An additional case of ethnic violence unrelated to the riots in March, 2004, is also awaiting trial and another is under investigation.

Access to justice for civil claimants from ethnic non-majority communities and IDPs has been facilitated by the DOJ. Court Liason Offices received and filed almost 15,000 such claims following the riots of March, 2004. Conversely, however, by direction of DOJ, no action has yet been taken by the courts on any of those claims.

A major contribution made by UNMIK in Kosovo has been international support in the area of the administration of justice. In 1999 the judicial system was in a fragile state and required substantial international support to ensure effective administration of justice and capacity-building. In this context, the Kosovo judiciary has been supplemented by International Judges and International Prosecutors who have been appointed from 2000 initially in Mitrovicë/Mitrovica and subsequently throughout Kosovo primarily to take responsibility for sensitive criminal justice matters.

UNMIK Regulation No. 2000/64, as amended, of 15 December 2000 was promulgated to ensure adequate involvement of International Judges and Prosecutors in especially sensitive cases. Pursuant to section 2.1, the Special Representative of the Secretary-General may, *inter alia*, approve the designation of a panel of three judges including at least two international judges of whom one shall be the presiding judge to a criminal case for the purpose of ensuring the independence and impartiality of the judiciary and the proper administration of justice. In very many instances this provision has been applied in criminal cases in which the defendant or the injured party has been a member of a minority Community.

At the present time there are 12 international judges and 11 international prosecutors at District and Supreme Court levels in the criminal justice system of Kosovo.

Although the police maintain records and report on the ethnicity of complainants and accused in crimes investigated by them, the DOJ does not do so for civil or criminal cases in the courts. Moreover, limited resources prevent broad-scale monitoring of civil and criminal cases. Monitoring was conducted primarily as a complaint-driven response to concerns of ethnic bias or partiality in particular cases. A more systematic approach is being developed by JIS, and a pilot project to assess compliance with minority language requirements in public communications by the courts is underway.

Similarly, the DOJ has not conducted a systematic survey of the perception of the justice system by members of minority groups. The report of the *Public Opinion Survey in Kosovo: Measuring and Improving Citizens' Understanding of the Justice System* (July, 2004) noted that 26% of respondents believe ethnic bias is a major source of corruption in the judicial system. It recommended that future surveys further explore the issue of the apprehension of ethnic bias.

The Assembly of Kosovo has in the past delayed the process of appointment of minority candidates to positions as judges and prosecutors.

### **Input of the Ministry of Health**

The main acts regulating the rights of non-majority communities in the health sphere in Kosovo are:

- The Law on Health (No. 2004/4);<sup>90</sup>
- The Law on Rights and Responsibilities of Kosovo Residents in the Health Care System (No. 2004/47);<sup>91</sup>
- The Law on Private Health Service (No. 2004/50);<sup>92</sup>

The Draft Law on Health Insurance is currently under discussion in the Assembly of Kosovo.

The following provisions are of particular importance:

Article 12 of the Law on Health, reads:

“12.1 The provision of health care is provided by the following principles:

- a) Equity,  
[...]
- d) Inclusiveness and non-discrimination;  
[...]

12.2 Equity:

- a) The correct treatment of Kosovo residents based on law and full respect of the basic human rights and freedoms without discrimination defined by international conventions;
- b) Insuring full access to the health care in all the levels and to all Kosovo residents including easy access to the health care for the persons with disability;
- c) The equal distribution of the health care resources based on social and economic equity.  
[...]

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<sup>90</sup> UNMIK Regulation 2004/31 On the Promulgation of the Kosovo Health Law Adopted by the Assembly of Kosovo, 20 August 2004.

<sup>91</sup> UNMIK Regulation 2004/47 On the Promulgation of the Law on Rights and Responsibilities of Kosovo Residents in the Health Care System adopted by the Assembly of Kosovo, 19 November 2004.

<sup>92</sup> UNMIK Regulation 2005/1 On the Promulgation of the Law on Private Practices in Health adopted by the Assembly of Kosovo, 13 January 2005.

12.5 Inclusiveness and non-discrimination: Equal health care for all Kosovo residents by ensuring the standards during fulfilling the needs at all levels of health care as well as ensuring health care without discrimination regardless: gender, nation, race, colour, language, religion, political preferences, social status, the property status, the level of physical or mental abilities, family status, or age differences.”

Article 4 of the Law on Rights and Responsibilities of Kosovo Residents in the Health Care System reads:

“4.5 Health care is provided without any discrimination, if, in the course of the medical treatment Kosovo residents are not discriminated on the basis of their social position, political views, origin, nationality, religion, gender, sexual preferences, age, marital status, physical or mental disability, qualification or on any other grounds not related to their state of health.”

Article 6 of the Law on Rights and Responsibilities of Kosovo Residents in the Health Care System reads:

“6.1 In the course of medical treatment, the Kosovo residents’ human dignity, privacy, personal integrity and religious beliefs shall be respected.”

It should be noted that the Ministry of Health has a Division for the Rights of Ethnic Communities and that the majority of the Municipalities have Municipal Directorates of Health.

The Ministry undertakes the following activities in order to ensure the protection of non-majority communities’ healthcare rights:

1. Research on ethnic breakdown and qualifications of people employed in health institutions.

According to the Ministry of Health in 2003 the ethnic composition of their employees in the regions was as follows:

- Prizren region: Kosovo Bosniaks 171 (10.49%), Kosovo Turks 140 (8.58%), Kosovo Serbs 17 (1.04%), RAE 42 (2.57%), Other Communities 7 (0.43%), (in total 377 Non-Albanian or 13.7%);
- Gjakovë/Đakovica region: Kosovo Bosniaks 2 (1.19%), Kosovo Serbs 2 (0.19%), RAE 68 (6.68%), Other Communities 3 (0.29%), (in total 75, or 8.35%);
- Pejë/Peć region: Kosovo Bosniaks 9 (0.84%), Kosovo Serbs 6 (0.56%), RAE 4 (0.37%), other communities 3 (0.28%), (in total 22, or 2.05%);
- Mitrovicë/Mitrovica region: Kosovo Bosniaks 16 (0.54%), Kosovo Turks 9 (0.30%), Kosovo Serbs 1895 (64.1%), RAE 1 (0.03%), Other Communities 2 (0.06%), (in total 1923, or 65.03%);
- Gjilan/Gnjilane region: Kosovo Bosniaks 3 (0.16%), Kosovo Turks 21 (1.17%), Kosovo Serbs 260 (14.53%), Kosovo RAE 6 (0.33%), Other Communities 1 (0.056%), (in total 291, or 16.25%);
- Prishtinë/Priština region: Kosovo Bosniaks 21 (0.38%), Kosovo Turks 24 (0.43%), Kosovo Serbs 855 (15.50%), Kosovo RAE 6 (0.1%), Other Communities 8 (0.14%), (in total 914, or 16.55%).

2. Participate in interviewing panels with the purpose of eliminating any kind of discrimination in the course of recruitment and interviewing procedures within central health institutions;

3. Participate in disciplinary commissions with the same purpose;

4. Monitors activities with regard to ensuring equality in the provision of health services. The activities consist of oversight and interviews with employees and patients on the field. Such activities have been carried out periodically in every municipality of Kosovo (except northern part of Mitrovicë/Mitrovica, Zubin Potok/Zubin Potok and Leposavić/Leposaviq, in which the Ministry of Health has no access). Oversight has been carried out in Gračanica/Gračanicë, Obiliq/Obilić, Štrpce/Shtërpçë, Novobërdë/Novo Brdo, Llapllasellë/Laplje Selo, Batushë/Batuša, Plemetina/Plementin, etc. The Ministry of Health reports that no discrimination against patients was observed during these visits.

5. Covers part of expenses for the hospital the northern part of Mitrovicë/Mitrovica - approximately 300 000 Euro.

6. It has opened two hospitals in the Kosovo Serb community areas of Gračanica/Gračanicë and Novo Selo/Novosellë.
7. Access to members of non-majority communities to regional hospitals such as the hospitals in Gjiilan/Gnjilane and Prizren for kidney-dialysis.

**Access to health care:<sup>93</sup>**

Under UNMIK Regulation No.2001/19, 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 [...]”. Moreover the Ministry is required to “[d]evelop policies and implement legislation for a non-discriminatory and accountable healthcare system”, to “[m]onitor the health situation and implement appropriate measures to prevent and control healthcare problems” and “[p]romote community participation and the development of community initiatives and activities relating to health [...]”.

Municipalities are responsible for providing primary health care, (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 healthcare system in Kosovo. Apart from the healthcare system run by the Ministry of Health, there are facilities run by the Serbian Ministry of Health (SMH). The SMH supervises them, pays salaries, and covers all other related operational costs. There is little co-operation or information-sharing between the two.

The violent events in March 2004 aggravated the mutual mistrust between members of the Kosovo Albanian community and members of non-Albanian communities (the Kosovo Serb community to a larger extent). Kosovo Serbs 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.

Furthermore, the lack of adequate transportation represents the most significant obstacle to accessing healthcare for members of non-majority 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 non-majority 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 non-majority communities have to rely on private vehicles or public transport. However, either perceived or genuine security concerns by non-majority communities’ members often dissuade them from travelling privately even in cases of medical emergencies.

According to UNICEF<sup>94</sup> despite receiving over 11 percent of government expenditures, there continue to be serious imbalances with regard to how funds are allocated within the healthcare system. The largest expenditures, Euro13.250m (30 per cent), is on the purchases of pharmaceuticals, followed by expenditures on salaries; 11 per cent are spent on capital outlays (infrastructure).<sup>95</sup> According to the same source, of the total, 26 per cent is provided as designated grants to the municipalities for primary health care expenses.<sup>96</sup> UNICEF also reports<sup>97</sup> that though accurate data

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<sup>93</sup> *OSCE Mission in Kosovo, Department of Human Rights and Rule of Law Weekly Report, Hindered access to healthcare: problems faced by members of non-majority communities (10-16 August 2004).*

<sup>94</sup> *See Situation Analysis of Children and Women in Kosovo, UNICEF, 2003.*

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*

<sup>97</sup> *Ibid.* 2.2, Infant mortality.

remains a problem, it is estimated that the current Infant Mortality Rate (IMR) in Kosovo is 35 per 1,000. No breakdown of this data per ethnicity is available.

On the situation of minority communities, UNICEF reports<sup>98</sup> that currently, there are only two functional maternal and child health care facilities in Kosovo Serbian areas that are freely accessible to the community. One is located in the northern part of Mitrovicë/Mitrovica and the other in Gračanica/Gračanicë, not far from Prishtinë/Priština. The report also states that many RAE families live in dwellings with non-existent or very basic sanitation facilities and lack running water, all of which significantly increase the risk of disease and infections. In contrast, both Kosovo Bosniak and Kosovo Turkish children are reportedly relatively well integrated and do not face overt discrimination within the healthcare system.<sup>99</sup>

### **Input of the Ministry of Culture, Youth, Sports**

The following provisions provide guarantees for the right of equality to persons belonging to non-majority communities.

Article 2 of the Law on Archive Material and Archives No. 2003/7)<sup>100</sup> states:

“2.1. A public archive is a legal person.

2.2. Archives are institutions that evidence, receive, maintain, conserve, settle, process and may publish archive material and make them accessible for their to be used for scientific research work and professional work as well as for other needs of the interest of civic and legal bodies, organisations, institutions, individuals and residents.”

Article 2.6 of the Law on Libraries (No. 2003/6)<sup>101</sup> provides:

“In multi-language communities, the requests of ethnic minorities are considered in their equal cultural terms and their interests are presented in librarian materials.”

Article 50.3 of the Law on Cinematography (No. 2004/22)<sup>102</sup> provides:

“The Preview Committee is composed of the members of cinematography sector and other fields as writers, sociologists, psychologists, film critics, producers, directors, distributors and showmen. The Committee shall have in its composition also representatives of organization for well being of family, representatives of ethnic and religious communities.”

The following provisions of the Law on Sports ( No. 2003/24):<sup>103</sup>

#### **“Article 2**

2.1. All persons regardless of their age, gender, nationality, political affiliation, religion, physical abilities, and the social and economic level have the right of participating in the physical-sportive activities.

#### **Article 9**

9.1. Every resident of Kosovo is eligible on participating in the physical-sportive activities.

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<sup>98</sup> *Ibid.* 2.1.3, The Situation of Minorities.

<sup>99</sup> *Ibid.* 5.9.2, Access to Services.

<sup>100</sup> UNMIK Regulation 2003/20 On the Promulgation of a Law Adopted by the Assembly of Kosovo on Archive Material and Archives, 23 June 2003.

<sup>101</sup> UNMIK Regulation 2003/19 On the Promulgation of a Law Adopted by the Assembly of Kosovo on Libraries, 23 June 2003.

<sup>102</sup> UNMIK Regulation 2004/38 On the Promulgation of the Law on Cinematography Adopted by the Assembly of Kosovo, 14 October 2004.

<sup>103</sup> UNMIK Regulation 2004/26 On the Promulgation of the Law on Sports Adopted by the Assembly of Kosovo, 28 July 2004.



#### Article 15

The duty of sports organizations is to determine projects concerning the efficiency of the structures for the development of physical education and sports for all, comprising different genders and ethnic groups, as of development of massive activities up to the highest sports level.

#### Article 28

28.1. Sports Federations must include both genders all ethnic groups and non-majority communities in all their management structures.

#### Article 32

32.1. One federation is established in regard with the respective sport branch activity in the whole territory of Kosovo.

32.2. Pupils, students and disabled persons can establish their federations regarding particular sport branch.

#### Article 34

34.1. Sport clubs shall be established and shall function in compliance with this law and according to the acts of the respective sports federations.

#### Article 35

35.1. Sports clubs can be public or private. Public clubs should be registered as non governmental organizations and private clubs should be registered under the relevant applicable laws in Kosovo.

A Special Minority Recruitment Drive increased minority community employment to 14.7% in the MCYS, 3.1% in the central level cultural institution and 11.1 % in the regional level cultural institutions.

### **Returns of internally displaced persons and refugees to Kosovo post 1999**

The returns process outlined in the Manual for Sustainable Return (released by UNMIK on 1 March 2003) begins with the identification of a genuine, informed, and voluntary wish to return of IDPs/refugees. This may arise from a variety of sources namely through remainees and IDPs who are displaced close to their original home; through IDPs/refugees associations; and through the media. A particularly effective way to identify the wish to return is through both the UNHCR-coordinated "Go and Inform Visits" (GIVs- intended to brief displaced residents, in their locations of displacement, on the current situation of their place of origin, enabling them to make a more informed choice on the possibility of returning) as well as the "Go and See Visits" (GSVs -intended to provide the displaced with an opportunity to assess their possibilities in light of the current situation in their municipality. Displaced persons are invited to visit their pre-conflict homes as part of an organised tour where security and transport are provided, briefings are conducted and informal meetings with former neighbours occur).

It is important to note that – besides their primary function -both GIVs and GSVs are essential tools to open dialogue among IDPs/refugees and the receiving communities, including municipal institutions. Contacts between IDPs/refugees and their municipalities of origin are achieved especially throughout the participation of IDPs/refugees in Municipal Working Groups (MWGs). As the local coordination *fora* for returns projects, MWGs (chaired by UN Municipal Representatives) provide an opportunity for all those involved in the return process (IDPs/refugees, receiving communities, municipal actors, UNHCR, UNMIK Pillar II and III, KFOR, UNMIK Police/KPS and NGOs) to: a) interact and share information regarding returns needs; b) identify any obstacle to the sustainability of the return, namely material obstacles (e.g. unresolved property issues, poor opportunities for economic livelihood, etc.) and situational challenges (e.g. lack of freedom of movement, of access to public services due to a discriminating environment, etc.); and c) strategically address these obstacles through the development of concept papers for identified return needs.

The concept papers that NGOs develop as a result of the MWGs' discussions should address various needs to be met by returns projects, including: a) housing/reconstruction/repossession assistance; b) infrastructure; c) employment and income generation; d) access to public and community services; and e) inter-ethnic dialogue and community integration. Until 2004 concept papers endorsed by MWGs were submitted to the central level for review by a board composed of key partners including UNMIK ORC, UNHCR, OSCE and NGOs. With the recent establishment of the Ministry of Communities and Returns, the current process of central level review is being revised to include more direct PISG involvement.

### **Standards on Freedom of Movement and on Sustainable Returns and the Rights of Communities and their members**

The goal that Standard III *On Freedom of Movement* aims to achieve is: "All people in Kosovo are able to travel, work and live in safety and without threat or fear of attack, harassment or intimidation, regardless of their ethnic background. They are able to use their own language freely anywhere in Kosovo, including in public places, and enjoy unimpeded access to places of employment, markets, public and social services, and utilities."

While freedom of movement obviously involves unrestricted and safe access to public and private transportation, as well as the ability to move freely without threat to physical well-being, it also includes the possibility to co-exist in a society where language, social and cultural rights of all communities are protected. In this context, the most important points in Standard III with regard to non-majority communities are:

#### **On Freedom of Movement**

- All communities are able freely to exercise rights to social, cultural and religious expression, including attending ceremonies and access to relevant sites
- Military and police escorts are no longer needed; members of all ethnic communities have access to safe and public transportation
- Public employees from non-majority communities are able to work in majority areas without difficulties
- The number of crimes specifically related to movement by non-majority communities (e.g. stoning incidents) is significantly reduced and infrequent
- Political leaders, without prompting, condemn and take action against acts of violence against ethnic communities and their members

#### **On Free use of language**

- Meetings of the Assembly and its committees are conducted in all official languages
- Official municipal and ministry documents are translated in a timely manner into all official languages
- Municipalities and ministries provide adequate interpretation and translation services for all communities, including translation of all official documents and interpretation for all official meetings in relevant languages
- Personal documents are issued in the native language of the recipient
- Official signs inside and outside municipal and ministerial buildings are expressed in all official languages
- Names of streets, cities, towns, villages, roads and public places are expressed in Albanian, Serbian and any other language of a community that lives there in a significant number

The main goal of Standard IV *On Sustainable Returns and the Rights of Communities and their members* is: "Members of all communities must be able to participate fully in the economic, political and social life of Kosovo, and must not face threats to their security and well-being based on their ethnicity. All refugees and displaced persons who wish to return to Kosovo must be able to do so in

safety and dignity". In this context, the most important points in Standard IV with regard to non-majority communities are:

#### On Minority Rights

- The laws of Kosovo provide a full range of protection for human rights and the rights of communities and their members, consistent with European standards
- A comprehensive and effective structure is in place within the PISG to monitor compliance with human and community rights and to respond to violations
- Existing mechanisms within municipalities responsible for protection of human and community rights (Municipal Community Offices, Municipal Assembly Communities and Mediation Committees) have adequate resources and staff, and are functioning effectively
- Kosovo participates in the Council of Europe implementation process for the Framework Convention for the Protection of National Minorities and fully implements recommendations resulting from that process
- There is fair distribution of municipal and ministerial resources to all communities.
- The educational curriculum encourages tolerance and respect of the contributions of all communities to the history of Kosovo

#### On the Returns process

- The number of municipalities with sustainable returns increases, including an increase in returns to urban areas, the pace of returns overall accelerates, and the level of unmet demand for return has been substantially reduced
- Returnees to Kosovo are able to participate in the economy and job market without discrimination and limitations based on the freedom of movement
- Health care, social services, education and public utilities are available to returnees on a level equal to that of the rest of the population
- Returnees face no greater risk of violence than the population as a whole, and police and the judiciary respond promptly and without discrimination to crimes, irrespective of the ethnic background of the victim
- Municipalities and ministries are able to assume responsibility for returns within all communities in a manner consistent with European standards
- Funding is allocated from the KCB to support returns projects and smaller communities
- Visible support of the returns process by community leaders and public information and education efforts supported by the PISG create a climate of tolerance and support for the right to return
- PISG support for returns, including financial assistance, is distributed equitably to all communities

As of May 2005, 19 Municipal Returns Strategies have been endorsed while drafts are in progress in many other municipalities. 26 Municipalities hired Municipal Returns Officers. Fourteen Municipalities have so far implemented or supported returns projects or parts thereof.

The following table includes only returns to the place of origin, and not the return movements to secondary displacement within Kosovo. Figures include both returns from internal displacement (from within Kosovo, Serbia proper and Montenegro) as well as from external displacement (within the region and from other third countries), and includes only voluntary returns (spontaneous, facilitated and organised).

<b>Ethnic groups</b>	<b>Returns 2000</b>	<b>Returns 2001</b>	<b>Returns 2002</b>	<b>Returns 2003</b>	<b>Returns 2004</b>	<b>Total Returns</b>	<b>%</b>
K-Serbs	1826	679	966	1549	762	5782	47.3
K-Roma	20	214	390	287	407	1318	10.8
K- Ashkalija /Egyptians	0	533	884	1182	534	3133	25.6
K- Bosniaks	57	0	149	393	457	1056	8.6
K- Gorani	3	0	73	145	134	355	2.9
K-Albanians	0	27	294	245	8	574	4.7
	<b>1906</b>	<b>1453</b>	<b>2756</b>	<b>3801</b>	<b>2302</b>	<b>12218</b>	<b>100</b>

In addition to the above figures 139 individuals returned throughout 2005 according to UNHCR statistics.

A central level PISG strategy for returns is yet to be adopted.

On 18 April 2005, an Agreement on Return to the Roma Mahala was signed by the UNMIK Regional Representative and the President of Mitrovicë/ Mitrovica Municipal Assembly, and co-signed by the international stakeholders. This Agreement commences the process of construction of the first of houses in the Roma Mahala in 2005, and the beginning of a return of the RAE communities to their pre-1999 location. The Roma Mahala in Mitrovicë/Mitrovica used to be the largest RAE settlement in the Balkans. It was destroyed in the aftermath of the conflict by members of the majority community who took revenge for the alleged collaboration of Roma individuals with the Serbian forces during the conflict. At that time, French NATO forces had already seized control over the territory.

The Kosovo Government allocated the same level of funding for returns from the 2005 KCB as in 2004- 10.5 million Euro and remained the largest direct donor for returns. An additional 2.2 million Euro were allocated from the KCB for reconstruction of houses damaged in March 2004. All Ministries appointed Returns Focal Points.

### **Input of the Ministry of Transport and Communications**

The MTC created mechanisms, through which it purports to ensure the scrupulous application of the legislation in effect.

The MTC attempted to encourage the applications of members of non-majority communities for position within its administration. All vacancy announcements issued the MTC include a section whereby minority community members (especially those belonging to the Kosovo Serb minority community) are encouraged to apply.

The MTC has strived, ever since its creation, to get access to the entire territory of Kosovo, irrespective of the impediments it encountered in accomplishing its tasks.

The MTC staff has the following percentage of minority employees:

Serbs	4 (1.38%)
Bosniaks	4 (1.38%)
Turks	5 (1.72%)
Roma	1 (0.34%)

The MTC has issued licenses to a number of companies owned by members of Kosovo's non-majority communities, respectively:

The Department of Road Transportation based on the Administrative Instruction No. 2002/G7 on *"Implementation of Lines, Relations and Timetables for Cross Urban Buses in Kosovo"* and the Administrative Instruction No. 2003/G2 on *"Licensing the Passenger Public Road Transport in Kosovo"* identified routes and itineraries and issued licenses to three transport companies, owned by Kosovo Serbs. These are: "Kollashin Prevoz" from Zubin Potok, "Tandemus", from Brezovica/Brezovicë, and "Zhupa Trans" from Prizren. Three other applications from Gračanica/Gračanicë are currently being processed.

The Technical Control Department, based on Administrative Instruction No. 2004/06, issued a license to the Vehicle Technical Control Company "Celje Auto", owned by a Kosovo Serb.

In order to facilitate the provision of better services and ensure a safe economic development, the MTC Department of Road Infrastructure has implemented the following projects for non-majority communities:

- Continuous routine maintenance, in summer and winter, of local and regional roads in Mitrovicë/Mitrovica municipality. The implementing company was the certified "Kosova Put" Business Company from Zvečan/Zveçan. Similar road maintenance is conducted in other regions of Kosovo and the funding is provided from the Kosovo Consolidated Budget (KCB). The oversight is carried out by the managers of Kosovo Directorate of Roads, and the manager tasked with the supervision of the activities carried out in the northern municipalities is a Kosovo Serb.
- Reconstruction of the 2.5 kilometers long local road "Tresav-Rikovc", located in an area inhabited by the Kosovo Serb community. The implementing company is "Kamilja" from Leposavić/Leposaviq.
- Reconstruction of the 4.9 kilometers long local road "Vraçevë-Tresavë", located in an area inhabited by the Kosovo Serb community. The implementing company was "Kamilja" from Leposavić/Leposaviq.
- Reconstruction of the 8.6 kilometers long local road "Reqan-Lubinje", located in an area inhabited by the Kosovo Bosniak community.
- Reconstruction of the 5.05 kilometers long local road in "Manastrica", an area inhabited by Kosovo Bosniak Community.
- Reconstruction of the 340 meters long local road "Bosnian Neighborhood", located in an area inhabited by Kosovo Bosniak Community.

As an example for affirmative action oriented towards non-majority communities, during the licensing process for companies conducting technical vehicle control, the MTC exempted the Serb community company "Auto Celje" from some of the terms and conditions for licensing and allowed its registration.

### **Input of the Ministry of Energy and Mining**

The Ministry of Energy and Mining (MEM), was established based by UNMIK Regulation 2004/50 On the Establishment of New Ministries and Introduction of Posts of Deputy Prime Minister and Deputy Ministers in the Executive Branch, promulgated by the SRSG on 2 December 2004. The Departments of Strategy, Energy, Mining, and Central Administration are already established. The recruitment of the employees in the respective Departments and offices in the Ministry is in progress based on standard procedures for competition, which are regularly published in two languages, Albanian and Serbian.

The integration of minority communities in the MEM was done according to the UNMIK Regulation 2004/50 and the Administrative Instruction on the Civil Service of Kosovo. Non-majority communities are encouraged through public announcements published in Albanian and Serbian languages. Since its establishment some of MEM's main purposes were the creation of a multi-ethnic staff and administration and the creation of a climate of trust and tolerance among the staff. MEM has 69 employees, of which six are members of non-Albanian non-majority communities, four Kosovo Serbs and two Kosovo Turks.

### **Input of the Ministry of Public Services**

The Ministry of Public Services (MPS) established the Disciplinary and Appeal Boards and examines all complaints for discrimination within the civil service. All the civil servants, including members of non-majority communities, have the right to defend their rights against any alleged violations.

The MPS issued an Administrative Instruction on Disciplinary Commission and Commission for Complaints and Equal Opportunities. The members of the Disciplinary Commission and Complaints Commission were appointed, including minority members. Several cases were reviewed according to measures provided by Administrative Direction on the Kosovo Civil Service<sup>104</sup> and the Administrative Instruction issued by the Ministry of Public Services.

Following a decision made by the Permanent Secretary of the Ministry, an Equal Opportunity Officer has been appointed. Her responsibilities include examining cases related to equal opportunities and drafting reports and annual action plans on behalf of the Ministry.

### **Input of the Ministry of Agriculture, Forestry and Rural Development**

The MAFRD has prepared a strategy for rural development in Kosovo, and is now developing policies for the support of specific sub-sectors.

Vacancies and other MAFRD announcements are published in newspapers also in Serbian language. Vacancies are also broadcast by radio in Gračanica/Graçanicë.

The ethnic composition of the MAFRD staff is as follows:

- 452 males of Albanian ethnicity;
- 59 females of Albanian ethnicity;
- 47 males of Serb ethnicity;
- 9 females of Serb ethnicity;
- 8 males of Bosniak ethnicity;
- 2 females of Bosniak ethnicity; and
- 6 employees of Gorani ethnicity.

The MAFRD in cooperation with different organizations in several cities of Kosovo organised trainings for its staff, some of which were organised for the Kosovo Serb, Kosovo Bosniak, and Kosovo Gorani members of the staff. The MAFRD with the cooperation of the Advisory Unit for the Support of the Statistics and Agricultural Policies (ASPAUK) for example organised training on the subject *Legislation on the Farmer's Cooperatives*. Farmers from all ethnic communities benefited from this training. The MAFRD organised a seminar on "Minorities and Returns" supported by the ASPAUK, which is financed by the European Agency for Reconstruction (EAR) and KFOR. The organisation of this seminar was consistent with prior efforts of the political authorities in Kosovo to

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<sup>104</sup> UNMIK Administrative Direction 2003/2 Implementing UNMIK Regulation 2001/36 On the Kosovo Civil Service, 25 January 2003.

encourage returns. The seminar was held in Brezovica/Brezovicë on 13 February 2004. More than eighty persons attended the seminar, including representatives of the Government, Municipal Authorities, UNMIK, and donor organisations, NGOs, representatives of rural development projects, farmers, and agricultural producers. Members of Kosovo Bosniak, Kosovo Serb, Kosovo Turk and Kosovo Roma communities participated in the seminar. This seminar was organised as part of a long consultative process, which would ensure that the needs of the rural communities in Kosovo are addressed within the general strategy of the Ministry.

### **Input of the Ministry of Finance and Economy**

Since its establishment the Ministry of Finance and Economy (MFE) has drafted policies and worked towards the benefits of all people in Kosovo regardless of their ethnic background. The MFE recognises the importance of creating a free, collaborative and open environment which facilitates the participation of all residents of Kosovo and aiming at high representation of members of communities.

Article 2.3 of UNMIK Regulation 2000/45 On Self Government of Municipalities in Kosovo states:

“All organs and bodies of a municipality shall ensure that inhabitants of the municipality enjoy all rights and freedoms without distinction of any kind, such as race, ethnicity, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and that they have fair and equal employment opportunities in municipality service at all levels. Municipalities shall give effect in their policies and practices to the need to promote coexistence between their inhabitants and to create appropriate conditions enabling all communities to express, preserve and develop their ethnic, cultural, religious and linguistic identities. [...]”

Furthermore the municipalities with their policies and practices shall promote coexistence of inhabitants and shall create adequate conditions for their equity and employment.

Additionally the SRSG every year issues Regulations on the approval of the Kosovo Consolidated Budget based on provisions set forth in the Law on Managing Public Finances and Accountabilities.<sup>105</sup>

Section 4 of UNMIK Regulation 2003/41 On the Approval of the Kosovo Consolidated Budget and Authorizing Expenditures for the Period 1 January to 31 December 2004 states that municipalities shall allocate part of their overall budget, revenues, general grant, and from the educational and health grant to the non-majority communities, the so called “Fair Share Financing” mechanism.

Twenty of the 27 Municipalities achieved Fair Share Financing targets in 2004 while the remaining seven Municipalities achieved 90 percent of the target. The trend is positive and five Municipalities are expected to achieve their targets in the third quarter of 2005.

Every three months of the fiscal year, by 15th of the following month, 27 municipalities with mixed population 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 MEF which analyses and control for the reported figures.

The final report for the 2003 fiscal year shows that 16 municipalities have fulfilled the correct financial allocations for the minority population at the estimated timeline, while 11 municipalities faced difficulties in accomplishing their obligations. Difficulties aroused in the budgetary lines of

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<sup>105</sup> UNMIK Regulation 2003/17 On the Promulgation of a Law Adopted by the Assembly of Kosovo on Public Financial Management and Accountability, 12 May 2003.

education and health, due to small number of children, teachers and health staff among the minority population in Kosovo.

The following table shows the financial allocation in 2003 based on municipalities' budgetary lines.

**Table - Report for the fiscal year 2003**

Municipality	Municipal Administration	Education	Health	Total obligation	Total with separated sum
Glogovac/Glogovac	-	-	-	-	-
Fushë Kosovë/Kosovo Polje	161,244	49,546	230,012	440,802	-
Lipjan/Lipljan	112,756	109,436	379,165	601,357	11,648
Obiliq/Obilić	77,082	50,556	188,967	316,605	-
Podujevë/Podujevo	6,634	2,539	12,116	21,289	30,344
Prishtinë/Priština	375,385	114,995	311,229	801,609	625,801
Shtime/Štimlje	11,280	6,988	29,005	47,273	-
Dragash/Dragaš	193,250	103,400	465,538	762,188	-
Prizren	1,211,438	80,805	445,881	1,738,124	-
Rahovec/Orahovac	49,959	12,352	52,589	114,900	109,344
Suharekë/Suva Reka	32,530	7,186	37,399	77,115	42,675
Malishevë/Mališevo	-	-	-	-	-
Deçan/Dečani	8,694	4,418	18,081	31,193	3,351
Gjakovë/Đakovica	90,658	35,533	145,317	271,508	-
Istog/Istok	47,051	2,206	95,446	144,703	48,585
Klinë/Klina	30,690	12,124	32,963	75,777	273,565
Pejë/Peć	449,113	104,423	395,000	948,536	-
Leposavić/Leposaviq	15,573	5,998	32,163	53,734	29,166
Mitrovicë/Mitrovica	367,569	115,570	503,656	986,795	510,790
Skenderaj/Srbica	10,285	4,533	22,419	37,237	54,973
Vushtrri/Vučitrn	54,413	9,298	164,447	228,158	1,760
Zubin Potok/Zubin Potok	35,966	4,396	3,526	43,888	-
Zvečan/Zvečan	10,587	2,384	26,348	39,319	25,528
Gjilan/Gnjilane	420,514	160,530	947,978	1,529,022	-
Kaçanik/Kaçanik	-	-	-	-	-
Kamenicë/Kamenica	163,899	108,681	458,775	731,355	78,676
Novoberdë/Novo Brdo	82,752	16,562	70,138	169,452	9,624
Štrpce/Shtërpce	55,216	80,619	195,403	331,238	-
Ferizaj/Uroševac	121,893	28,334	123,627	273,854	-
Viti/Vitina	98,644	38,024	183,421	320,089	18,595
<b>Total</b>	<b>4,295,075</b>	<b>1,271,436</b>	<b>5,570,609</b>	<b>11,137,120</b>	<b>1,874,425</b>

With the assistance of the MEF, municipalities exceeded the estimated financial allocations goal for 2003 by 16.83%. All allocated means were spent for the needs of minority population in infrastructure and other needs.

Every year the Minister of Finance and Economy and the DSRSG 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.

Section 7.1 (f) of UNMIK Regulation 2003/29 On Taxes on Immovable Property in Kosovo, reads: "The following institutions and organizations shall be exempt from property tax in respect of property they own or use:



[...]

(f) Religious institutions, approved by a municipality in coordination with the Tax Administration, in respect of property used for religious purposes.”

While advertising vacancies the MEF in many cases allowed extension of the deadlines in order to allow non-majority communities to apply and in other cases amended the criteria in order to allow members of non-majority communities to compete. Vacancies are always advertised both in Albanian and in Serbian. Several times vacancies were advertised in the local non-majority communities’ radio stations.

The MEF considers that its engagement constitutes a contribution towards meeting the Standard on Integration and Adequate Representation of Communities in the Kosovo Civil Service.

The level of employment of non-majority communities in MEF gradually increased to 3.01%. The MEF aims to further increase the percentage in the future.

The ethnic breakdown of employees in MEF

Total	Albanians	Serb	Bosniak	Other
931	901	26	2	-
Participation in %	96,77	2.79	0,21	

MEF employees in the regions:

- In Prishtinë/Priština the MEF has two Kosovo Serb employees (the MEF is planning to open an office in Gračanica/Gračanicë);
- In Mitrovicë/Mitrovica the MEF has 16 Kosovo Serbs employees and one Kosovo Bosniak (with separate offices in North Mitrovicë/Mitrovica);
- In Ferizaj/Uroševac the MEF has four Kosovo Serb employees (with offices in Štrpce/Shtrëpcë);
- In Gjilan/Gnjilane the MEF has three Kosovo Serb employees;
- In Pejë/Peć the MEF has one Kosovo Bosniak employee;
- In Prizren the MEF has one Kosovo Bosniak employee.

### Community Offices

Local Community Offices were established within the municipalities in order to recognise the interest of communities and to be an active factor for change. These offices are financed by the KCB –they receive allocations for salaries and allowances, goods and services and capital expenses, according to their requests for the fiscal year. In 2004, 1,300,759 Euro were allocated for these offices and 241 employees were employed within these offices. The MEF’s Department of KCB is in close cooperation with these offices, to which it provides support in drafting the budgets and managing of budgetary means.

Employees from non-majority communities are employed also in the following fields: Education, Health, Municipal Administration and Emergency Unit.

The MEF’s Department of Tax Administration organised several seminars and trainings for non-majority communities.

- On 25 September 2003 in Gračanica/Gračanicë - seminar with Serbian taxpayers focusing on all taxes.
- On 18 March 2004 in Pejë/Peć - seminar with Serb tax payers, focusing on all taxes.
- In August 2004 in Brezovica/Brezovicë - training entitled Knowledge of Tax Administration Procedures in Kosovo.

- On 22 November 2004 in Mitrovicë/Mitrovica - seminar about the taxation system
- In December 2004 in Gjiilan/Gnjilane - seminar about the taxation system
- On 2 October 2004 in Mitrovicë/Mitrovica - seminar on amendments of tax procedures,.

Fifty seven participants from non-majority communities attended these seminars and trainings.

All Regulations, Instructions, Manuals, information materials and forms for payment of all types of taxes are available in Serbian. The different forms can be found in the Regional offices and in banks.

### **Input of the Ministry of Education**

Despite all the efforts from MEST in cooperation with the SRSG, UNICEF, OSCE and other relevant actors, despite regular advertisement of job vacancies for directors, teachers, administrative and technical staff in Serbian newspapers the Serbian community is not integrated in the education system of Kosovo. From all persons employed in the MEST, 8.1% belong to non-majority communities.

### **Number and ethnic breakdown of MEST employees**

Nr.	Ethnicity	Nr.of employees	Nr. of employees in %	Female	Male
1.	Albanian	195	92.0 %	70	124
2.	Serb	3	1.4%	2	1
3.	Bosniak	5	2.4%	2	4
4.	Turk	7	3.3%	5	2
5.	Roma	1	0.5%	1	0
6.	Others	1	0.5%	1	0
<b>Total:</b>		<b>212</b>	<b>100%</b>	<b>81</b>	<b>131</b>

<b>Organisational units</b>	<b>Nr. of employees</b>	<b>Nr. of employees in %</b>	<b>Female</b>	<b>Male</b>
Ministers Office	7	3.3 %	2	5
Permanent Secretary Office	15	7.1 %	6	9
Department of Administration and Finance	30	14.2 %	15	15
Department of Technical Services	25	11.8 %	7	18
Department of High Education	6	2.8 %	2	4
Department of Pre-university Education	51	24.6 %	26	25
Regional Offices for Education	78	36.7 %	23	55
<b>Total:</b>	<b>212</b>	<b>100.4 %</b>	<b>81</b>	<b>131</b>

### **Article 5**

**1 The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.**

**2 Without prejudice to measures taken in pursuance of their general integration policy, the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to**

**national minorities against their will and shall protect these persons from any action aimed at such assimilation.**

### **Input of the Ministry of Culture, Youth, Sports**

According to UNMIK Regulation No. 2000/19 the MCYS has the following mandate in the field of culture:

“The Ministry shall:

(i) Develop policies and implement legislation for the promotion of the culture sector, including programmes for the protection of cultural heritage, the promotion of cultural links and the formation of cultural clubs, groups and associations;

[...]

(iv) Foster and facilitate communication and contacts between persons and cultural organizations through activities such as development, dissemination, and exchange of informational, cultural, educational and other materials;

(v) Promote cultural, sports and youth activities and links with members of all ethnic, religious or linguistic communities, including those temporarily or permanently living outside of Kosovo (“non-residents”); and

(vi) Liaise with established networks of non-residents, which address the cultural needs of Kosovo migrants and returnees.”

The MCYS announces competitions for funding of projects in two languages, Albanian and Serbian, in the printed media as well as throughout local minority radio stations. Project proposals are evaluated and selected by a Board, which is composed of one representative from the Ministry and six representatives of the civil society and other institutions, out of which two are members of non-majority communities.

MCYS’s policies are developed based on the principles of equality, support and assistance for the creation of normal conditions for Kosovo residents, and aiming to preserve and promote their traditions and culture and integrating everyone in the society.

An inventory of cultural heritage sites was 90% completed by the beginning of May 2005. Significant progress was made in inclusion of Orthodox sites in all Municipalities. The compilation of a catalogue of all monuments and heritage sites began in 2005. A Priority Intervention List of 25 archaeological and architectural sites (Orthodox and Islamic) for restoration is also being compiled and 200000 Euro were allocated from the KCB for that purpose.

A Draft Law on Cultural Heritage was presented to the Kosovo Assembly but was returned this year to the MCYS for further amending. The draft is currently undergoing a review by an internal working group. The promulgation of the law is expected to offer the proper tools for an adequate and complete protection of Kosovo’s cultural heritage.

In 2004, MCYS spent 4.202.000 Euro or 87 % out of its total budget of 4.800.000 Euro, for non-majority communities projects in support of dialogue, diversity and integration, including the repair of damages caused to cultural monuments during the March events. For example, the MCYS organised an archaeological camp “Archaeology and Youth” with youth groups from all the communities. It also provided support to members of the Kosovo Serb community who returned from Serbia proper and Montenegro and assisted the organisation of three summer camps. In the summers of 2003 and 2004 two 10 days’ camps were organised in Brezovica, for 40 children minority children from Serbia proper and Montenegro. The cost of the camps amounted to 25.000 Euro. In January 2005, in Brezovica, a winter camp for Kosovo Serb children took place. It was attended by 50 children and it cost 26.750 Euro.

The MCYS also finances the magazines "MOST" and "KYPRY". In 2003 the MCYS allocated respectively 7.000 Euro and 3.000 Euro for these editions and in 2004 - 35.000 Euro and 5.000Euro.

It is important to note that the Houses or Centres of Culture in several municipalities which are managed and financially supported by municipalities obtain additionally funding from MCYS supports them upon requests for the implementation of particular projects.

In June 2004, a Memorandum of Understanding was reached between the MCYS and the Serbian Orthodox Church (SOC) regarding urgent intervention measures for churches and other Serbian Orthodox religious sites and buildings in Kosovo damaged during the riots in March 2004. In continuation of the same effort, on 24-25 March 2005, a Memorandum of Understanding (MoU) on Agreed General Principles for the Reconstruction of Serbian Orthodox Religious Sites was signed between the Patriarch of the Serbian Orthodox Church and the MCYS. The latter provides for the establishment of a five-member commission, which should implement the recommendations of the Council of Europe (CoE) and UNESCO for intervention, restoration and reconstruction of the damaged churches, monasteries and other religious sites. The commission would consist of one international expert to be nominated by the CoE or the European Commission or another international agency, one representative of the SOC, one representative of IPM Belgrade, one of IPM Kosovo and a representative of the MCYS. UNMIK shall facilitate the work of the commission by coordinating security issues and providing technical assistance. The SOC and the MCYS may suggest changes to the recommendations made by the CoE and UNESCO which will be reviewed by the Commission. The Commission will also have the competencies to prepare tender papers, issue tenders for the reparation works and select the companies to implement the works. The SOC may ask the Commission to reconsider the companies selected, but the final shall rest with the Commission. However if the SOC does not approve the selected company the reconstruction will not be funded with PISG funds. If the selected company is approved, the MCYS should ensure that funds are committed and released. The MoU states that the 4.2 million Euro already committed by the PISG shall be used for this purpose. Additional funds may also be allocated by the PISG. The Commission also would have the responsibility to supervise the works. The MoU specifies also that the use of PISG funds shall not affect the "ownership identity and original function" of the religious sites.

A sum of 4.2 million Euro was allocated from the Kosovo Consolidated budget for the initial reconstruction of Serbian Orthodox sites damaged in 2004.

A specially zoned area was designated around the Deçan/Dečani canyon by the SRSB to ensure the preservation of the Monastery, Kosovo's only UNESCO world heritage site, and the heritage of the canyon itself.

#### **Article 6.1**

**The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.**

#### **Measures to promote tolerance and intercultural dialogue**

During the period 2000-2004, Pillar III has supported community reconciliation and reintegration, as well as promoted democratic values within all ethnic communities by cultivating the new generation of leaders, mainly from the civil society within all Kosovo communities, in order to enhance higher participation of civil sector in the decision-making process, reconciliation and participation in political life.

More specifically, it focused its activities on supporting various dialogue initiatives between ethnic groups in Kosovo and between organisations from Serbia proper and Kosovo. The

reconciliation processes and interethnic co-operation were promoted through the inclusion of grass-root civil society leaders from different ethnic communities in capacity building programmes aiming to strengthen their capacity to operate effectively across ethnic lines. These projects encouraged the creation of interethnic platforms for public policy generation and promoted the development of mechanisms of interaction between residents from all communities on one hand and the public institutions on the other. Information was disseminated about models of and positive practices in interethnic cooperation at grassroots level and assisted the local institutions in their efforts to engage in cross-community co-operation and development.

One key area of programme support was the enhancement of civic dialogue and co-operation among civic groups and organisations from Serbia proper and Kosovo, in particular of youth and women groups, as well as the initiation of an inter-religious dialogue, exploring prospects for the regionalisation of inter-ethnic religious co-existence. The civic dialogue process was institutionalised with the establishment of a joint Civic Dialogue Council (CDC), which included individuals from Kosovo and Serbia proper in order to ensure local ownership of the project activities. Four major conferences brought together over two hundred new civil society leaders and activists. Building on the outcome of youth, women and media exchange programmes the CDC launched a number of grass-root level grant projects. The Freedom House Foundation-Belgrade Office and the Rockefeller Brothers Fund continued to support projects promoting civic inter-ethnic dialogue. Local partners like the Mother Theresa Society from Prishtinë/Priština and the Centre for Regionalism from Novi Sad assumed an increasing monitoring responsibility in 2003/2004.

One of the biggest achievements in 2004 was the broader inclusion of women, youth and media organisations that are working in respective areas. Various local NGOs from Kosovo and Serbia proper dealing with issues related predominantly to the sphere of media, youth and women issues were incorporated.

Nine NGOs (five from Serbia proper and four from Kosovo) applied for 48,500 Euro through small grants projects. A precondition for getting a grant was that the applicant NGOs were obliged to have a partner organisation for the project that included members of different ethnic background, and/or different geographic location.

In 2001-2003 Pillar III implemented the Civil Society Academy (CSA) training programme, engaging a large variety of grass-root civil society leaders from different ethnic communities and different municipalities. This capacity-building programme aimed to strengthen the ethnic communities' ability to operate effectively on public policy issues across the ethnic divide, as well as to positively influence the ongoing processes of reconciliation, inter-ethnic dialogue, networking and coalition-building in Kosovo. CSA trainees organised regional roundtable discussions in their municipalities and Kosovo-wide conferences to discuss civic participation in the public policy-making process and the institutionalisation of a government – civil society dialogue.

In 2004 Pillar III together with the implementing partner NGO "Future" from Gračanica/Graçanicë implemented a project called "New Leaders for New Age". The aim of the project was to build the capacity of a selected number of the young civil society leaders from the Kosovo Serb minority community and facilitate their integration in public life and mainstreaming within the Kosovo Albanian and other minority civil society organisations and activities.

As part of this project, a comprehensive capacity building programme for several youth civil society activists was organised in order to enhance their ability to evaluate and address crucial questions related to policy choices. The project aimed at helping to cultivate the new generation of leaders, mainly civil society leaders of Kosovo Serbs to contribute to higher participation of youth in the decision-making process and political life.

A priority action was the development of effective models to foster interactive relations between residents from all ethnic communities and local government bodies. Youth groups have been

involved in projects simulating Municipal Assembly sessions aiming to develop their capacity to raise and pursue issues with local government authorities.

The Youth Assemblies (YA) have been functioning in Kosovo for nearly two years, teaching, through simulation, training and discussion, the role of individuals in the monitoring and lobbying of governmental activities. It is a gender balanced project which involves participants from the Kosovo Albanian, Kosovo Serbian, Kosovo Croat, Kosovo Roma, Kosovo Ashkalija and Kosovo Bosniak communities of Kosovo. It includes direct interaction and discussion amongst those communities and as such provides, besides education, a powerful tool for reconciliation and understanding of Kosovo's youth.

The YA work is built on regular Municipal Assembly session simulations focussing on local community issues. Additional activities included roundtable discussions, workshops, summer and winter camps, information sessions on AIDS and drug abuse prevention, environmental protection and cultural/sports activities. The project provides YA members with the opportunity to develop the necessary knowledge and skills to discuss and analyse Municipal Assembly work, as well as to exchange ideas on how to enhance youth interaction with local government structures. The project will continue throughout 2005 and will be implemented in 10 municipalities in Kosovo.

Since 2001 Pillar III has established Centres (CCs) in areas predominately inhabited by Kosovo Serbs and in one case by Kosovo Gorani population, centers that facilitate civic engagement in public life and encourage community development.

In 2004 the handover process of CCs to local NGOs was completed. Pillar III continued the support to the multiethnic Network for Democratic Development by strengthening the organisational capacities of the individual centres and of the network, and by enhancing their role as effective agents of community development.

From January to September 2003, the Ethnic Community Support Team (ECST) has been engaged in implementing the policy related to the three areas of (a) "Remain", (b) "Return" and (c) "Reconciliation", as outlined in the OSCE Mission Policy Statement of May 2002.<sup>106</sup>

In the area of "Remain", the ECST has generally advocated for a greater inclusion of non-majority communities into the structures of local government. In this context, a major step forward has been the drafting, of the Administrative Instruction (AI) 2003/002 that provides procedural guidance for the work of municipal Communities Committees. A similar AI, on municipal Mediation Committees, has also been drafted and is currently being discussed within the OCA. Projects implemented within this area mainly concentrated on raising the awareness of non-majority communities on the role of municipal bodies, with a particular stress on RAE communities. A Kosovo-wide project, the "RAE Advocacy Hub Network", has been implemented in an effort to encourage these communities to take responsibility in representing, debating and negotiating their interests vis-à-vis their municipalities. Minority languages and cultural identities have also been promoted, through the support rendered to community based newsletters (e.g. the Kosovo Turkish "Ilke" or the Kosovo Bosniak "Biseri") and to the organisation of traditional festivals and commemorations of symbolic relevance (e.g. the "Roma Day", the "Edrelezi", the "700 years of Croat presence in Kosovo", and the "Kosovo Turkish Bajram").

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<sup>106</sup> In May 2002, the OSCE issued a mission policy statement on Kosovo's ethnic communities, which was updated in 2003 and which emphasised three cross-departmental strategies with respect to Kosovo's ethnic communities: (1) the OSCE counters discrimination and otherwise works to ensure the necessary social, institutional and legal preconditions for minorities to remain in Kosovo; (2) the OSCE, building on the core strength in confidence building and dialogue, works towards reconciliation and tolerance among Kosovo's communities; and (3) the OSCE, in support of UNMIK's Office of Returns and Communities (ORC), promotes the right of all IDPs and refugees to return.

While advocating for PISG taking responsibility towards minority education, through the organisation of thematic roundtables involving both the MEST and non-majority communities representatives, the ECST also implemented projects in the field of remedial education (such as catch-up classes and pre-school education) and vocational training (e.g. in Gjakovë/Đakovica), mostly targeting RAE communities.

In the area of “Reconciliation”, the Team supported existing multiethnic networks of local NGOs, in an effort to help them develop local ownership of inter-ethnic dialogue. In order to initiate the process of reconciliation among divided ethnic communities, a number of micro-projects targeting different groups sharing common interests have also been implemented.

In the area of “Return” most activities were carried out at the central level, through the advice provided to the Return Co-ordination Group’s Technical Advisory Board on return-related projects. At the field level, two main projects were implemented in the southern municipalities of Kosovo, the “Roundtable on Returns” and the “Reconciliation Team”. The aim was to contribute to the dissemination of balanced information for potential returnees as well as for receiving communities.

### **Input of the Ministry of Education, Science and Technology**

With regard to the education system, sensitive steps are taken towards educating the new generation and acknowledging cultural diversity and contributions which communities provide for the development of the Kosovan society. A new school subject, Civic Education, was introduced with a new curriculum, through which pupils learn about human rights, democracy, governance, laws, their obligations and duties as members of this society. The Framework of the New Curriculum of Kosovo, page 72 specifies: “In the secondary education and senior secondary education, civic education will be focused on establishing new democratic society and developing the knowledge, abilities and attitudes related to democratic civilization.” In this way, pupils learn about literature, history, culture, geography of each other’s communities and by knowing each other’s culture they learn to respect them; therefore they become educated in the spirit of democracy, tolerance and coexistence by establishing viable interethnic relations.

### **Input of the Ministry of Culture, Youth, Sports**

The MCYS has forms of communication and co-operation with all communities in Kosovo. The Ministry has strongly supported and will support communities through creating policies, and allocating budget specifically for projects for non-majority communities.

Members of the Serb minority hold within the MCYS the positions of the Head of the Division of Integration and Participation in the Department of Youth, of the Senior Officer on Culture Heritage, and in Department of Sport of Supervisor for Minority Integration Policy.

The tolerance and intercultural dialogue are consistent parts of MCYS policies and are continuously progressing. For example the MCYS provided support to projects promoting youth belonging to non-majority communities, such as the 2003 multicultural camp in Gjakovë/Đakovica, the 2004 Culture Camp for children of Kosovo Serb IDPs, and the camp for Kosovo Serbs displaced in Serbia and Montenegro, which took place between 17 January and 27 February 2005.

Since 2001 the MCYS, has supported multiethnic projects including youth from all municipalities with the aim of increasing interethnic tolerance such as non-majority communities involvement in summer sport camps, support and creation of new clubs, investments in sports’ infrastructure in locations inhabited by non-majority communities, etc.

During 2002 within the Department of Youth different organisations proposed 249 projects. 64 (26 %) of these projects originated from non-majority communities.

In 2002 the Department of Youth offered support to 133 youth projects. The overall number of events/youth activities developed in Kosovo during 2002 is much higher, for example during the youth month about 350 activities were developed in municipalities of Kosovo.

#### **Data for 2002**

Number of registered projects:	249	
Number of registered projects by non-majority community groups:	64	26%
Approved projects:	133	
Approved multiethnic projects:	39	29%
Total budget of the Department of Youth:	240.000.00Euro	
Total budget for multiethnic projects:	58,510.50Euro	24%

In 2003, 40 organisations won funding for projects with an overall budget of 93,130.50 Euro. In 2004, 44 organisations won projects with an overall budget of 63,711.00 Euro. The total number of projects supported by the Department of Youth to date is 95 projects with overall budget of 168,551.50 Euro. Lists of projects supported by the Department of Youth and by the Department of Sport are annexed to this report.

#### **Article 6.2**

**The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.**

Since the inter-ethnic riots in March 2004, the overall security situation has improved considerably. In the past twelve months there has been a declining trend in serious crimes committed against members of non-majority communities. Crime clearance rates over the past six months have remained broadly comparable for minority and majority victims. Ethnic bias continued not to be a prominent factor in policing and judicial processes. Local Crime Prevention Councils operate in every Municipality. The months preceding and following the Kosovo-wide elections in October 2004 were marked by notable calm and stability. There has been no case of inter-ethnic killing since the fatal drive-by-shooting of a 16-year old Kosovo Serb on 6 June 2004 in Gracanica. In light of the improved security situation, KPS has taken on greater responsibility from KFOR for the protection of key locations, including the main bridge in Mitrovicë/Mitrovica. The transfer of police stations to KPS Command has also continued; 27 of 32 police stations were under KPS command as of 25 April 2005. Notwithstanding this positive trend, the security environment remains fragile and ethnically motivated incidents, including harassment and intimidation, continue to occur.

#### **Incidents of ethnically motivated violence in Kosovo, June 1999 - April 2005<sup>107</sup>**

The current security situation for non-majority communities in Kosovo, despite being fragile, is a major improvement over that which prevailed when UNMIK was established in June 1999 after the

<sup>107</sup> This portion of the report is based on the Reports of the Secretary-General of the United Nations on the United Nations Interim Administration Mission in Kosovo to the Security Council.



end of the NATO bombing campaign. By July 1999<sup>108</sup>, a large number of Kosovo Serbs had left their homes for Serbia proper, prompted by numerous incidents committed against Kosovo Serbs, including high profile killings, abductions, looting, arsons and forced expropriation of apartments.<sup>109</sup> At the time KFOR was responsible for maintaining both public safety and civil law and order. However, its ability to do so was limited due to the fact that it was still in the process of building up its forces.<sup>110</sup> The absence of a legitimate police force was deeply felt and its establishment was identified as a matter of priority.<sup>111</sup> By September 1999 over 1,100 United Nations international civilian police had been deployed to assist KFOR efforts to maintain law and order.<sup>112</sup> In 1999, the Kosovo Police Service School (KPSS) was established to train police cadets for the Kosovo Police Service, which later became a professional police force.

By December 1999, attacks on Kosovo Serbs and members of other non-majority communities continued to be the overriding human rights concern in Kosovo.

In early February 2000 there was a serious deterioration in the security situation. On 2 February, a clearly marked humanitarian shuttle bus belonging to the UNHCR, carrying 49 Kosovo Serb passengers was targeted by a rocket, resulting in two persons killed and three injured.<sup>113</sup> On 3 and 4 February 2000 violence broke out in northern Mitrovica, resulting in eight deaths at least 20 to 30 persons seriously injured and the displacement of over 1,650 Kosovo Albanians from northern Mitrovica and the reduction of the number of Kosovo Serbs in the southern part of the city to just 20 individuals.<sup>114</sup> A total of 46 persons, the majority of whom were Kosovo Albanians, were taken into custody in the course of KFOR operations following the events.<sup>115</sup>

In late 2000, UNMIK created a Political Violence Task Force, staffed jointly by senior staff of UNMIK police and the Kosovo Force (KFOR), which established a Kosovo-wide network of officials to coordinate activities between UNMIK police and KFOR at the local, regional and central levels.<sup>116</sup> Security responses by UNMIK police and KFOR ranged from the provision of military and police patrols to personal protection for high-risk individuals.<sup>117</sup> Numerous joint security operations between UNMIK police and KFOR were conducted.

In late January and early February 2001 there were violent protests by the Kosovo Albanian population in south Mitrovica, following a grenade attack against the "little Bosnia" neighbourhood in the north.<sup>118</sup> The Kosovo Albanian leaders signed a joint declaration and plan of action, which called for: an increase in KFOR, UNMIK police and KPS presence; ensuring freedom of movement for all residents; the return of displaced families; and the establishment of functioning political structures.<sup>119</sup> A number of attacks against Kosovo Serb houses and cultural sites in different regions also took place in January and February.<sup>120</sup> On 16 February an attack occurred in Podujevë/Podujevo on the weekly

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<sup>108</sup> Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/1999/779, 12 July 1999.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*, para 6.

<sup>111</sup> *Id.*

<sup>112</sup> Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/1999/987, 16 September 1999, para 4.

<sup>113</sup> Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2000/177, 3 March 2000, para 20.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2000/1196, 15 December 2000, para 16.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

KFOR-escorted convoy of civilian buses en route from Nis, resulting in the death of 10 victims and the injury of more than 40 others.<sup>121</sup>

In August and September 2001, in order to ensure the freedom of movement of non-majority communities, UNMIK assumed operational responsibility for the bus lines, hitherto sponsored by the UNHCR, which have been transporting up to 30,000 persons per month, and the running of trains between key Kosovo communities. That resulted in an incremental improvement in the freedom of movement of non-majority communities.<sup>122</sup>

By the beginning of 2002 the level of serious crime involving members of non-majority communities had decreased, although there were numerous cases of minor inter-ethnic intimidation and violence, with a number of juveniles involved in stone-throwing incidents against minority community targets, including individuals, convoys, vehicles, trains and houses.<sup>123</sup>

In July 2002, a series of explosions destroyed homes belonging to Kosovo Serbs in the Gnjilane region.<sup>124</sup>

In September 2002 UNMIK had 4468 international police and 4933 KPS officers deployed in all five regions of the province and at border crossings.<sup>125</sup>

The end of 2002 was marked by the blowing up of two Orthodox churches. Funds from the PISG Kosovo Consolidated Budget were allocated to pay for the repair to the damaged Orthodox churches.<sup>126</sup>

On 12 April 2003, a railway bridge in northern Kosovo was blown up, cutting off railway traffic to central Serbia.<sup>127</sup> An ethnic Albanian extremist group claimed responsibility for this attack. As a reaction, the SRSG issued on 17 April an Administrative Direction, Implementing UNMIK Regulation 2001/12 On the Prohibition of Terrorism and related Offences.<sup>128</sup> The Kosovo Serb former deputy mayor of Klokot was shot dead on 19 May 2003 and on 4 June three Kosovo Serb residents were murdered in their house.<sup>129</sup> UNMIK established a nine-member Special Police Squad to investigate the crime. Additional patrols were put in place following the murder. Representatives of the PISG, Kosovo Albanian and Kosovo Serb leaders condemned the murders.<sup>130</sup> On 13 August 2003 two Kosovo Serb youths were killed and four were injured in a shooting incident.<sup>131</sup> There were further shooting incidents in the same month. In order to enhance security in the respective regions UNMIK police mobile reserve units conducted random vehicle checkpoints, and vehicle and foot patrols targeted high crime areas with the specific aims of interdicting movement of persons with weapons and checking for criminals.<sup>132</sup>

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<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2002/1126, 9 October 2002, para 18.

<sup>125</sup> Source: <http://www.unmikonline.org/civpol/factsfigs.htm>.

<sup>126</sup> Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2003/113, 29 January 2003, para 27.

<sup>127</sup> *Id.*, para 20.

<sup>128</sup> UNMIK Administrative Direction 2003/9, 17 April 2003.

<sup>129</sup> Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2003/675, 26 June 2003, para 19.

<sup>130</sup> *Id.*

<sup>131</sup> Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2003/996, 15 October 2003, para 16.

<sup>132</sup> *Id.*, para 18.

As of December 2003 UNMIK had in Kosovo 3,752 international police officers.<sup>133</sup>

In the second half of 2003 the freedom of movement of non-majority communities improved. NATO took decisions on the reduction of force levels in Kosovo and fixed security points were being gradually phased out. Controls of movement between northern and southern Mitrovica were lifted.<sup>134</sup>

The violent riots that took place in Kosovo on 17-18 March 2004 constituted a serious set-back for Kosovo and efforts to create sustainable multi-ethnicity.

Although apparently spontaneous at the outset, the demonstrations protesting the deaths of three Kosovo Albanian children, who were allegedly chased into the Ibar River by Kosovo Serbs quickly evolved into a violent campaign against non-majority communities and the international community.

The violence resulted in 19 dead, of whom 11 were Kosovo Albanians and 8 were Kosovo Serbs, and 954 injured. Approximately 730 houses belonging to non-majority communities, mostly Kosovo Serbs, were damaged or destroyed. In attacks on the cultural and religious heritage of Kosovo, 36 Orthodox churches, monasteries and other religious and cultural sites were damaged or destroyed.<sup>135</sup>

The violence against the non-majority communities was an organised, widespread, and targeted campaign.

Although initially reluctant, the Kosovo Albanian leaders eventually condemned the violence on 17 March, the Prime Minister and the SRSG, issued statements calling for an end to violence.<sup>136</sup> Both President Rugova and the Head of the Kosovo Protection Corps made television addresses, calling for calm.

On 18 March 2004 the Prime Minister of Kosovo, accompanied by other ministers of the Government, convinced the Kosovo Albanian protestors who were gathered near the Kosovo Serb roadblock at the Kosovo Serb village of Caglavica to lift their siege of the village. After the violence subsided, the Government established a KCB fund to repair all the damage done to buildings and religious sites. An inter-ministerial commission was charged with managing the reconstruction fund, and representatives of the Kosovo Serb and Ashkalija communities were included in the commission.<sup>137</sup> To date, almost all properties damaged or destroyed in March have been reconstructed. Payments of 2,000 euro in start-up assistance have also been made to most of those eligible.

After UNMIK Police, KFOR and KPS re-established order, efforts were launched to apprehend those involved in the violent actions. UNMIK requested 100 international police investigators from Member States to assist in the investigations.<sup>138</sup> The statistics below reflect the current status of the investigations, prosecutions and trials of the alleged participants in the March 2004 violent riots.

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<sup>133</sup> Source: <http://www.unmikonline.org/justice/police.htm#2>.

<sup>134</sup> Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2004/71, 26 January 2004.

<sup>135</sup> Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2004/348, 30 April 2004, para 3.

<sup>136</sup> *Id.*, para 12.

<sup>137</sup> *Id.*, para 14.

<sup>138</sup> Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2004/613, 30 July 2004, para 24.

## Cases and types of charges per Courts and Regions by 15 April 2005<sup>139</sup>

### Gjilan/Gnjilane region

#### District Court – Total 8 cases

Number of cases	Charges	Under Investigation	Indicted (awaiting trial)	Completed
4 (2 with IJP)	Causing general danger(157 CCK), Participation in gathering that commits violence (200 CCK)	1	2	1
3 (3 with IJP)	Aggravated murder (147, par.5 and 6 as read with 23 PCCK),		3	
1	Weapons (Reg.2001/7)			1

#### Municipal Courts – 51 cases

Number of cases	Charges	Under Investigation	Indicted (awaiting trial)	Completed
23	Aggravated theft (135 CCK)		12	11
11	Attack on official person in performance of duties of security (184 CCK)		1	10
5	Causing general danger (157 CCK)		1	4
2	Theft (134 CCK)			2
2	Disturbing the official person in performing official duties (183 CCK)			2
3	Participation in the group that prevents an official person from performing his official duty (185 CCK)		1	2
2	Failure to act on order to get away (article 187 CCK)			2
1	Damaging another persons object (145 CCK)			1
1	Light bodily injury (39 CCK)		1	
1	Participation in group that commits criminal acts (320 p.1 PCCK)			1

#### Minor offences Courts – 41 cases

Number of cases	Charges	Pending	Indicted	Completed
41	Breaking public peace and order (art.18 p.10 and p.11 LPPO)	7		34

### Prishtinë/Priština region

#### District Courts – 9 cases

<sup>139</sup> Source: OSCE, Department of Human Rights and Rule of Law, Legal System Monitoring Section. Note that the number of cases actually reflects the number of persons charged.

Number of cases	Charges	Under Investigation	Indicted (awaiting trial)	Completed
3 (2 with IJP)	Weapons (Reg.2001/7)	1	1	1
2	Attacking official persons performing official duties (317 PCCK)			2
1	Causing general danger (157 CCK)			1
1 (1 with IJP)	Attempted murder (30p.1 CCK – 19 CCY)			1
1	Obstructing official persons in performing official duties (316 PCCK)			1
1	Participating in crowd committing a criminal offence (318 PCCK)			1

#### Municipal Courts – 67 cases

Number of cases	Charges	Under Investigation	Indicted (awaiting trial)	Completed
33	Aggravated theft (135 CCK)	5	13	15
23	Theft (134 CCK)	3	4	16
4	Causing general danger (291 PCCK)			4
2	Participating in brawl (40 CCK)	2		
1	Unlawful occupation of property (259 PCCK)			1
1	Attack on official person in performance of duties of security (184 CCK)	1		
3	Participation in group that commits criminal acts (320 p. 1 PCCK)			3

#### Minor offences Courts – 10 cases

Number of cases	Charges	Pending	Indicted	Completed
9	Breaking public peace and order (art.20 p.1 p.3 LPPO)	1		8
1	Insult (65 CCK)	1		

#### Prizren region

##### District Court – 15 cases

Number of cases	Charges	Under Investigation	Indicted (awaiting trial)	Completed
7 (7 with IJP)	Inciting to national, racial, religious or ethnic hatred 115 (3) (4) PCCK		4	3
4 (4 with IJP)	Causing general danger (157 CCK)		1	3
1 (1 with IJP)	Aggravated theft (253 p.1 PCCK)		1	
3 (1 with IJP)	Participation in group that commits criminal acts (320 PCCK)		2	1

#### **Municipal Court – 28 cases**

Number of cases	Charges	Under Investigation	Indicted (awaiting trial)	Completed
23	Participation in group that commits criminal acts (320 p.1 PCCK)		16	7
2	Aggravated theft (253 PCCK)			2
1	Attack against official person (184 CCK)			1
2	Making weapons and instruments intended for commission of criminal offences (198 CCK)		2	

#### **Minor offences Court – 77 cases**

Number of cases	Charges	Pending	Indicted	Completed
79	Breaking the public peace and order by quarrel, scream, arrogant and unpleasant behaviour (art.21 p.1 LPPO)	5		74

#### **Peja /Peć region**

##### **District Court – 4 cases**

Number of cases	Charges	Under Investigation	Indicted (awaiting trial)	Completed
2 (2 with IJP)	Participation in gathering that commits violence (200 CCK)			2
1 (with IJP)	Unauthorised ownership, control possession or use of weapon, Article 328 par.2 PCCK			1
1	Weapons (Reg.2001/7), Preventing official person in performance of duties (185 CCK)			1

**Municipal Courts – 28 cases**

Number of cases	Charges	Under Investigation	Indicted (awaiting trial)	Completed
7	Participation in group obstructing official persons in performing official duties (318 PCK)		5	2
15	Participation in crowd committing a criminal offence (320 PCK)	10	2	3
6	Theft (134 CCK)	1	4	1

**Mitrovicë/Mitrovica region****District Court – 6 cases**

Number of cases	Charges	Under Investigation	Indicted (awaiting trial)	Completed
2	Weapons (Reg.2001/7)	2		
1 (1 with IJP)	Attempted murder (30p.1 CCK – 19 CCY)			1
2	Damage to movable property (260 p.1 PCK)	1		1
1	Aggravated theft		1	

**Municipal Courts – 5 cases**

Number of cases	Charges	Under Investigation	Indicted (awaiting trial)	Completed
1	Aggravated theft (135 CCK)		1	
1	Participation in gathering that commits violence (200 CCK)		1	
3	Participation in crowd committing a criminal offence (320 PCK)	2	1	

*Abbreviations in the statistics above:*

CCK – Criminal Code of Kosovo

CCY – Criminal Code of Yugoslavia

PCK – Provisional Criminal Code of Kosovo

LPPO – Law on public peace and order

IJP – International Judge and Prosecutor

No comprehensive data on the status of investigations and prosecutions of the ethnically based violent incidents that occurred since 1999 currently exists. The need for the collection of such data has been acknowledged and a data base is in the process of creation by the Office of Returns and Communities.

Despite improvements in the overall security situation in Kosovo, physical security remains the overriding concern of Kosovo Serbs. This fear is fuelled by misinformation that does not correspond with the facts on the ground but regrettably translates into self-imposed limits on freedom of movement. These perceptions also prevent many IDPs from returning to Kosovo. Perceptions of security, however, have recently improved. In April 2005, 64 percent of those surveyed said that they were able to travel safely in Kosovo which is an increase of more than 20 percent from March. Yet the erosion of confidence and lingering fear will not be easily overcome

The DOJ has devoted considerable international resources to the investigation and prosecution of ethnically-based violence. Its intention is two-fold. The first is to restore the confidence of national minority groups in the rule of law by denunciation of ethnically-based violence. The second is to protect national minority groups from the threat of further violence by general and specific deterrence of individuals inclined to participate in acts of discrimination and ethnically-based violence.

Some evidence of the effect of the riots in March, 2004, is provided by the renewed need for escorts and transportation for judges, prosecutors, court staff and other persons from non-majority communities wishing to access the courts. Although the number of persons requiring such assistance from the CLOs dropped in the fourth quarter of last year, they are again on the increase. Recruitment of judges and prosecutors from non-majority communities has stagnated as potential candidates continue to express concern about the safety of themselves and their families in Kosovo. As a result, minority representation in the justice system has fallen as judges from non-majority communities and prosecutors die or retire and cannot be replaced.

From June 1999 KFOR was primarily responsible for ensuring public safety and order. Gradually responsibilities were transferred to the UNMIK Police which assumed full executive law enforcement authority. The UNMIK Police have provided the KPS Officers on-the-job training, advice and monitoring.<sup>140</sup> Under Chapter six of the Constitutional Framework the KPS functions under the authority of the SRSG and under the supervision of the UNMIK Police. Since UNMIK Police Officers working in full cooperation and coordination with the KPS are international personnel, their executive role and responsibility for the supervision of the KPS have contributed to equality before the law and equal protection of the law for non-majority communities in the area of policing. Already the KPS has gradually been entrusted with increased policing responsibilities and in due course the KPS will assume the remaining responsibilities that are currently under the authority and supervision of the UNMIK Police.

### **Freedom of Movement**

During the second quarter of 2005 the freedom of movement of non-majority communities improved in every Municipality except in northern Mitrovicë/Mitrovica. A questionnaire survey by UNMIK police in which were interviewed 185 non-majority communities revealed that 92% of them travelled outside their areas of residence. 8% used escorts and 9% UN transport. The rest used private and public transport. 3% stated that they were victims of crime while travelling in the last 6 months.

The Civil Service bus line, the UNMIK Freedom of Movement Train and the Humanitarian Bus Service networks are the essential means of organised transport aiming to provide greater freedom of movement to the beleaguered non-majority communities, particularly the Kosovo Serbs.

The number of people using Humanitarian transport (bus and train service) is around 30,000 – 35,000 per month.

Despite the increased interest of Kosovo Serbs to obtain UNMIK driving licenses, they continue to face obstacles. They are refused driving licenses upon submission of their expired Yugoslav driving licenses issued before 1999 (that they had been allowed to continue using). They cannot obtain Kosovo driving licenses with their newly established driver licenses they obtained in Serbia proper after 1999. A vehicle technical inspection site for non-majority communities was recently established in Gracanica area, only a consequence of intervention by the PDSRSG. The negotiations with the PISG are underway for the opening of three more centres for the non-majority communities throughout Kosovo.

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<sup>140</sup> First SG Report, paragraphs 61-62, *supra* note 9.



Very early in its mandate, UNMIK adopted regulations to protect non-majority communities from hate crime. The *Regulation on the Prohibition Against Inciting to National, Racial, Religious or Ethnic Discord or Intolerance*,<sup>141</sup> creates four related criminal offences. Inciting ethnic hatred or intolerance by acts likely to disturb public order is punishable by a fine or imprisonment not exceeding 5 years. Where it is proven that such acts were committed systematically or by a person in a position of authority or by derision of non-majority communities' symbols, damaging property or desecrating graves, the period of imprisonment may be extended to a term not exceeding eight years. Where the acts were both committed systematically or by a person in authority **and** by derision of non-majority communities' symbols, damaging property or desecrating graves, the period of imprisonment may be extended to a term not exceeding ten years.

A virtually identical prohibition is reproduced as Article 115 of the PCC,<sup>142</sup> which prohibits everyone from inciting national, racial, religious or ethnic hatred, discord or intolerance. The provisions of this Article are cited in the input to Framework Convention report, Article 7.

Further, Article 158 of the PCC entitled Violating Equal Status of Residents of Kosovo reads:

“(1) Whoever unlawfully denies or limits the freedoms or rights of a resident of Kosovo, as set forth in the Constitutional Framework and the applicable law, on the basis of a difference of race, colour, sex, language, religious belief or non-belief, political or other opinion, national or social origin, property, birth, education, social status or other personal characteristics or affiliation to an ethnic, religious or linguistic community in Kosovo or whoever unlawfully grants a resident of Kosovo any privilege or advantage on the basis of such a difference or affiliation shall be punished by imprisonment of six months to five years.

(2) Whoever denies or limits a member of an ethnic, religious or linguistic community in Kosovo the right to freely express his or her identity or to enjoy his or her autonomy shall be punished by imprisonment of six months to five years.

(3) Whoever, contrary to the laws regarding the use of language and script, denies a resident of Kosovo the right to freely use his or her own language or script shall be punished by a fine or by imprisonment of up to one year.

(4) When the offence provided for in the present article is committed by an official person in the exercise of his or her duties, the perpetrator shall be punished by imprisonment of one to seven years, in the case of the offence provided for in paragraph 1 or 2 or by imprisonment of six months to three years, in the case of the offence provided for in paragraph 3. “

In addition, the ADL protects non-majority communities by prohibiting discrimination on the basis of language, ethnic origin, nationality, race, religion or belief. In the ADL “discrimination” is deemed to include “harassment”, which is defined as unwanted conduct that has the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. “Discrimination” is also deemed to include an instruction to discriminate. Coupled with the sanctions contained in Article 9 of the ADL these provisions could serve as a mechanism for the protection of non-majority communities from acts of discrimination and hate crime. This has the effect of making available to victims of ethnically-based crime not only the penalties and restitutionary remedies of the criminal law, but also compensation for pecuniary or non-pecuniary damages and positive measures. However, as noted previously, the ADL does not provide any mechanism to police or enforce its provisions, nor for a specialised tribunal to investigate alleged breaches and hear complaints. For the verbatim text guaranteeing the equal treatment and non-discrimination, see the legal input under Article 4.1 of the Framework Convention.

A number of initiatives have been undertaken by Pillar I to prevent instances of ethnically-based violence and acts of discrimination against non-majority communities.

<sup>141</sup> UNMIK Regulation 2000/04 On the Prohibition Against Inciting to National, Racial, Religious or Ethnic Hatred, Discord or Intolerance.

<sup>142</sup> Provisional Criminal Code of Kosovo, UNMIK Regulation 2003/25.

The establishment of Local Crime Prevention Councils (LCPC) is an effort to address and enhance security. The LCPC work as consultative bodies, bringing together representatives of each ethnic community in the municipality including religious leaders and representatives of the board of education as well as KFOR, police and Pillar III. Participation of non-majority communities in the LCPCs provides a vehicle for expression of their security concerns and dialogue with the majority community.

The creation of the Kosovo Security Advisory Group (KSAG) co-chaired by the Prime Minister and the Deputy to the Special Representative of the Secretary General (DSRSG) was intended to facilitate dialogue between the non-majority and majority communities on issues related to security and freedom of movement. Unfortunately it met only twice. Further meetings were cancelled when the Kosovo Serbs ceased to participate.

In all police stations have been appointed Inter-ethnic crime officers with the mandate to monitor investigations into crimes that appear to be ethnically-based.

Every regional police headquarters has appointed a minority issues officer who reports monthly to Main Police Headquarters on issues concerning minority groups in the region.

All offences arising from the riots in March, 2004, have been prioritised by "Operation Thor", a police unit of specially designated investigators. The work in every region and Main Police Headquarters. It is intended that "Operation Thor" will evolve into a Central Monitoring Team in relation to crimes against non-majority communities.

### **Input of the AOGG**

The Advisory Office on Good Governance, Human Rights, Equal Opportunities and Gender (AOGG) is part of the Office of the Prime Minister, and according to UNMIK Regulation No. 2001/19 on the Executive Branch of Provisional Institutions for Self-Government in Kosovo, Annex I, C (v) is *inter alia* mandated to:

"Assist in the development and implementation of public information campaigns and other promotional schemes to promote public awareness of international human rights standards, transparency in governance, gender equality, equal opportunity and other principles basic to democratic governance"

In May 2002, after the constitution of the Government the AOGG in co-operation with the PILLAR III Department on Human Rights and Rule of Law, organised a one day seminar on "International Human Rights Standards within the applicable law in Kosovo", in which the Minister, the Prime Minister, as well as the employees in the Office of the Prime Minister (including all members of non-majority communities that were employed by the Office of the Prime Minister at the time) participated.

The seminar was devoted to introduction to the main international human right protection instruments. Special attention was devoted to the Framework Convention on the Protection of National Minorities. During the course of the seminar were presented case studies and the participants were requested to analyse these cases and to identify which articles of the Framework Convention might have been violated.

On 7 December 2004, a workshop on the ADL funded by the OSCE was organised by the AOGG. The purpose of the workshop was to promote the ADL. It was attended by 45 participants out whom 5 belonged to non-majority communities- Kosovo Serbs, Bosniaks and Turk. The seminar resulted in a set of recommendations which are annexed to this report.

Following the promulgation of the ADL by the SRSG, the PISG undertook a public awareness campaign about the rights guaranteed by it and on its implementation. The awareness campaign began in November 2004, and will continue in 2005. In the course of the campaign, information will be transmitted in Albanian, Serbian, Bosniak, Turkish, and Roma languages. The motto of the campaign is "All different, all equal before the law". The campaign foresees the printing and publication of the ADL in the form of a brochure in Albanian, Serbian and Turkish languages and the printing and publication of posters and leaflets in Albanian, Serbian, Turkish, Bosniak, and Roma languages.

The distribution of the above materials will be carried out in PISG at central and at local level. The beneficiaries of the awareness campaign are all Kosovo residents.

## **Article 7**

**The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.**

### **Freedom of Assembly**

UDHR Article 20, ICCPR Article 21, ECHR Article 11 and CRC Article 15 guaranteeing everyone the right to freedom of assembly without discrimination of any kind are directly applicable in Kosovo under Chapter 3.3 of the Constitutional Framework. The special right to freedom of assembly established by and conferred on persons belonging to "national minorities" by Article 7 of the Framework Convention is similarly guaranteed. The exercise of the right to freedom of assembly by persons is governed by the 1981 SAP Kosovo Law on Public Peace and Order and the 1981 SAP Kosovo Law on Public Assembly. The former regulates the behaviour of people in public places: the latter, the organization of public assemblies. Both laws contain general provisions only in respect to the formalities, conditions, restrictions and sanctions to which the exercise of the freedom of assembly is subject. The public authorities with the discretionary powers to permit, deny or disperse an assembly under those laws are no longer mandated to do so. Nor do their restrictions reflect the UDHR, ICCPR and ECHR caveats that freedom of assembly may be limited only to the extent necessary in a democratic society. The Ombudsperson has recommended that a new law on public assembly be promulgated accordingly. There are no disaggregated statistics concerning public assemblies.

### **Legal:<sup>143</sup>**

The 1981 SAP Kosovo Law on Public Assembly obligates the organizers of a public gathering to notify the municipal law enforcement agencies of such an event and requires those same law enforcement agencies to ensure that the public assembly takes place without any breach of the peace or public disturbance. The applicable provisions are as follows:

Law on Public Assembly (Socialist Autonomous Province of Kosovo Official Gazette 8/81, 27 February 1981).

#### **"Article 3:**

"The organiser [of a public assembly] is obliged to provide a [written] notification about the holding of the assembly at least 48 hours before the time at which this assembly shall take place; this notification should also include the time, location and purpose of holding the public assembly.

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<sup>143</sup> There are no official English versions of the two SAP Kosovo laws, which currently regulate the exercise of the right to freedom of assembly. All quotations provided in this section are from unofficial translations, whose full texts are available from OMiK.

The organiser shall give notice about the holding of the public assembly to the law enforcement agencies of the municipal council of the municipality in the territory of which this assembly will be held [...].

“Article 6:

“The competent municipal law enforcement agency is obliged to ensure the unimpeded holding of a public assembly, and must ensure the safety of people and property throughout the public assembly.”

The Provisional Criminal Code of Kosovo criminalizes the unlawful restriction of the exercise of the right to freedom of assembly.

UNMIK Regulation 2003/25 On The Provisional Criminal Code of Kosovo

Article 173 reads in pertinent part:

Preventing or Hindering a Public Meeting

(1) Whoever, by use of force, serious threat, deception or in any other way, prevents or hinders the convening or holding of a public meeting to which persons are entitled by law shall be punished by a fine or by imprisonment up to one year.

(2) When the offence provided for in paragraph 1 of the present article is committed by an official person abusing his or her position or authorisations, the perpetrator shall be punished by imprisonment of up to two years.

The Law on Public Assembly prescribes the ECHR, Article 11(2) restrictions on the freedom of assembly “in the interests of public safety, for the prevention of disorder ... [and] for the protection of health.” The parallel provisions in the SAP Kosovo legislation are quoted verbatim below:

Law on Public Assembly (Official Gazette of the SAP of Kosovo, no. 8/81)

“Article 2

The freedom to convoke and hold a public assembly may be restricted only in circumstances prescribed by this Law.

[...]

Article 7

The holding of a public assembly shall be banned upon request by the competent administrative authorities for the protection of health, subject to their competences as provided for by law.

[...]

Article 8

The holding of a public assembly may be restricted if there are grounds to expect that the public peace and order will be disturbed during the public assembly and that safety will be endangered, or if the holding of such an assembly may pose an insurmountable obstruction to the regular public traffic – where the organiser and the coordinator or the municipal law enforcement agency are unable to ensure public peace and order and regular public traffic.”

That law also imposes obligations upon the conveners and organisers of public assemblies to militate against the above-listed eventualities and to disband the assembly should they occur or should the safety of people and property be otherwise endangered. To cite the applicable provisions in full:

Law on Public Assembly (Official Gazette of the SAP of Kosovo, no. 8/81)

#### “Article 5

“(2) Convoker and organizer of a public assembly are obliged to ensure peace and order during the public assembly; for this purpose they are obliged to organize a guardianship service.

(3) Convoker and organizer of a public assembly are obliged to restrain the continuation of public assembly if there are irregularities by which is endangered the safety of people and property.

(4) In cases as in paragraph 3 of this article the convoker and organizer are obliged to inform about the holding of a public assembly the competent municipal body for internal affairs.”

The Law on Public Peace and Order imposes similar obligations on the organisers of public performances. In addition, it provides for the intervention of law enforcement authorities if the organisers are unable to meet these obligations. The provisions prescribing these requirements are reproduced below.

Law on Public Peace and Order (Official Gazette of the SAP of Kosovo, no. 13/81)

#### “Article 4

(1) The organiser of public performance or holder of the right of use of means of public transportation shall provide public peace at the performance, that is in the means of public transportation, and to determine persons for keeping the order at the performance, that is in the means of public transportation.

(2) If the public peace is disturbed at the performance that is in the means of public transport, organiser of public performance, that is the holder of the right of use of means of public transport and persons who keep peace at the performance or means of public transport, shall inform competent agency for internal affairs or its authorised official person about that immediately.

(3) Upon a call of the organiser of public performance, that is of the holder of the right of use of means of public transport or upon a call of person who keeps the order on the performance, that is in the means of public transport, competent agencies for internal affairs and their authorised employees give help in establishing of disturbed peace and order.

(4) If the organiser of a public performance or other persons who keep order at the performance are not able to establish peace and order, they shall terminate the performance. If they do not do so, termination may be ordered by the competent agency of internal affairs or its authorised official person.”

Just as the Law on Public Peace and Order imposes on the organisers of public performances to safeguard public safety and public order, so it requires individual participants in such public gatherings to do the same as well as to respect the rights and freedoms of others. The legal provision, which lays down these obligations, is cited in full as follows:

Law on Public Peace and Order (Official Gazette of the SAP of Kosovo, no. 13/81)

#### “Article 2

In a public place, everybody is obliged to behave in such a manner that, by his behaviour, or the execution or non-execution of actions, he does not affect the normal life of citizens, does not endanger their safety, does not affect the freedom of movement of [other] persons, does not upset the citizens, does not disturb the [peaceful] use of public buildings, apartments and other houses and does not disturb official persons and state agencies, as well as the organizations of associated labour and other

organizations that exercise public duties and their officials, and does not disturb public order, social discipline and socialist moral.”

Under the Public Assembly Law, the law enforcement agencies of a municipal council in whose territorial jurisdiction a public assembly is planned may both authorize and prohibit its organisation. They may also disperse such an assembly in the event of a public disturbance or breach of the peace. This notwithstanding, the *UNMIK Municipalities Regulation* does not task municipal authorities with the enforcement of law and order. Instead, Chapter 6 of the Constitutional Framework provides that the KPS, which functions under the authority of the SRSG and under the supervision of UNMIK police, will gradually assume responsibility for the maintenance of law and order. That said, UNSCR 1244, Paragraph 9(c) vests ultimate authority for ensuring public safety and public order with the international civil authority, viz. UNMIK.

There are no statistics about the issue or refusal of permits for public assemblies organized by persons belonging to non-majority communities. UNMIK police do not keep comprehensive records on applications to hold public demonstrations, nor on the refusal of such applications. Instead, it adduces anecdotal information about demonstrations in the Prizren and Prishtinë/Priština Regions.

In the first, permission for a demonstration was not granted in two instances. Both concerned a request to hold a demonstration regarding a war memorial to be erected in the Shatervan Area. The reason for the denial was based upon the belief that there was the possibility of violence and the location requested was not appropriate.

In the second, the Family Association for Kidnapped Persons and War Victims organised a protest involving between 50-150 participants on 30 August 2004. The organisers of the protest intended to block two major streets in the central part of Prishtinë/Priština and to present a slide show in front of the National Theatre. Their request was rejected, because UNMIK police considered that if this part of town was blocked off, it would have caused disruption in all essential services -- including emergency ambulance and police services. During negotiations, UNMIK police proposed an alternative venue for the demonstration to the organisers. This was refused. The protest apparently took place without permission.<sup>144</sup>

A similar situation occurred one year earlier, when the political party “Lëvizja Popullore e Kosovës” (LPK) applied for permission to organise a peaceful protest in front of the Kosovo Assembly between 13 and 28 November 2003. This request was rejected in a memo issued by the Operations Officer of the Prishtinë/Priština Regional Headquarters of UNMIK Police and upheld by the Prishtinë/Priština Regional UNMIK Commander on 6 November 2003. The latter based his decision on Article 2 of the Law on Public Peace and Order, stating that the protest would have required the police to cordon off the area and so to block off the road for several days. The resultant disruption of pedestrian and vehicular traffic would have been disproportionate to the interest of LPK to hold a peaceful protest.

This decision and its reasoning were the subject of a complaint by LPK to the OI. The Ombudsperson found that UNMIK Police had applied the wrong law to the situation, noting:

“The Law on Public Peace and Order regulates, in a general manner, the behaviour of citizens in public, but does not specifically cover the requirements for obtaining permission to hold a public assembly. Instead, these requirements are outlined in the Law on Public Assembly.”<sup>145</sup>

Not prescribed by the applicable law invoked in that case, the UNMIK regional police commander’s decision was found to be in breach of ECHR, Article 11 as – in the judgment of the Ombudsperson – was the Public Assembly Law itself. He recommended – by way of an effective

<sup>144</sup> The above factual inputs were provided by the Office of the UNMIK Police Commissioner.

<sup>145</sup> Ombudsperson Institution in Kosovo, Report No. 1163/03, The People’s Movement of Kosovo against the UNMIK Police, para 31.

remedy -- that a new law on the right to public and peaceful assembly, consonant with the ECHR, be adopted by the Kosovo Assembly and promulgated by the SRSG no later than 15 September 2004.

By a letter addressed to the Ombudsperson of 20 August 2004, the Deputy Special Representative of the Secretary-General responsible for Pillar I rejected the Ombudsperson's findings and recommendations inasmuch as "Articles 2-3 and 7-9 of the Law on Public Assembly indicate with reasonable clarity the scope and manner of exercise of discretion conferred on public authorities in respect of freedom of assembly."

### **Freedom of association**

The Constitutional Framework guarantees the right to freedom of association in general, with special provisions governing that right for persons belonging to non-majority communities. However, the same NGO, political party and labour laws governs the actual exercise of that right by law. *Prima facie* incitement of inter-communal, ethnic or religious hatred or violence is proscribed by UNMIK Regulations and Administrative Directions governing the establishment of NGOs and political parties in exercise of the freedom of association. Of 2,800 registered non-governmental organizations, 300 represent Kosovo Serbs, 55 Roma, and smaller numbers the Bosniak, Turkish, Gorani and Croatian communities. They operate relatively freely throughout Kosovo. No separate statistics -- disaggregated or otherwise -- exist for trade unions. Twelve political parties representing non-majority communities contested the 2004 Kosovo-wide parliamentary elections.

Chapter 4.4 of UNMIK Regulation No. 2001/9 On A Constitutional Framework for Provisional Self-Government in Kosovo reads, in pertinent part:

[...]

"(g) Establish associations to promote the interests of their Community; [and,]  
(h) Enjoy unhindered contacts with, and participate in, local, regional and international non-governmental organizations in accordance with the procedures of such organizations...."

Additionally Article 20 of the UDHR, Article 22 of the ICCPR, Article 11 of the ECHR and Article 15 of the Convention on the Rights of the Child apply as an integral part of the Constitutional Framework.

The law applicable in Kosovo makes no distinction between the exercise of the right to freedom of association by persons belonging to non-majority communities and those belonging to the majority community. Instead, UNMIK Regulation No. 1999/22 On the Registration and Operation of Non-Governmental Organizations in Kosovo of 15 November 1999 regulates the nature, registration and status of all NGOs operating in Kosovo. The applicable provisions read as follows:

#### **"Section 1.3**

An NGO shall not distribute any net earnings or profits as such to any person. The assets, earnings, and profits of an NGO shall be used to support the not-for-profit purposes of the organization and shall not be used to provide benefits, directly or indirectly, to any founder, director, officer, member, employee, or donor of the NGO. This section does not preclude the payment of reasonable compensation to such persons for work performed for the organization."

Section 4 of UNMIK Regulation No. 1999/22 reads, in pertinent part:

#### **"Registration**

4.1 An NGO shall apply for registration with UNMIK in order to operate as a legal entity in Kosovo.

4.2 A foundation or association registers by filing with UNMIK an application form, founding instrument, and its statutes.

[...]

4.6 UNMIK shall issue to an NGO a registration certificate or a written decision denying registration within sixty (60) business days of receiving an application to register, unless UNMIK requests in writing further information or clarification. If registration is denied, UNMIK shall include an explanation of the grounds upon which registration was denied."

"Section 10.3 An NGO may apply for public benefit status upon initial registration by the NGO or thereafter. UNMIK shall grant public benefit status if the registration documents of the NGO demonstrate that the purposes and activities of the NGO satisfy the requirements of section 10.1. To retain public benefit status, the NGO shall prepare activity and financial reports pursuant to administrative directions issued by the Special Representative of the Secretary-General."

UNMIK has issued implementing legislation further detailing the registration procedures to be followed by NGOs. The applicable provisions are set forth below:

UNMIK Administrative Direction 2000/10 Implementing UNMIK Regulation 1999/22 On The Registration and Operation of Non-Governmental Organizations in Kosovo of 9 May 2000.

#### "Section 1 - Registration

1.1 In accordance with section 4 of UNMIK Regulation No. 1999/22 of 15 November 1999, an NGO shall apply for registration with UNMIK in order to operate as a legal person in Kosovo. NGOs not seeking to operate as a legal person need not register.

1.2 In accordance with section 4.3 of UNMIK Regulation No. 1999/22, an NGO shall designate an authorized representative in Kosovo, who shall be of legal age. All applications for registration must be signed by the NGO's authorized representative.

1.3 Applications for the registration of NGOs shall be submitted to and accepted by the UNMIK NGO Liaison Unit at its offices located at designated UNMIK headquarters. Registration decisions shall be made by the UNMIK NGO Liaison Unit. Registration numbers shall be assigned by the UNMIK NGO Liaison Unit."

For its part, UNMIK Regulation No. 2004/11 On the Registration and Operation of Political Parties in Kosovo of 5 May 2004 provides:

#### "Section 2

##### "Registration of Political Parties

2.1 The Office shall maintain a Register of Political Parties identifying the name, addresses and telephone numbers of all offices of each registered Political Party, and the names and addresses of the President and the members of the highest executive body of each registered Political Party.

2.2 A Political Party that is entered in the Register of Political Parties thereby acquires the status of a legal person with the capacity to own property, enter into contracts and sue and be sued in its own name."

Neither of the above-cited two UNMIK Regulations governing the freedom of association expressly contains an ECHR-Article 11(2)-like list of permissible restrictions on its exercise. In the case of UNMIK Regulation No. 1999/22 On the Registration and Operation of NGOs (UNMIK NGO Regulation), those restrictions may be inferred from the all-purpose grounds for denying NGO registration – namely, non-conformity with UNSCR Resolution 1244 and with UNMIK Regulations. Both UNMIK Regulation No. 1994/24 On the Law Applicable in Kosovo and the Constitutional



Framework make the restrictions on the freedom of assembly set forth in ECHR, Article 11(2) directly applicable law in Kosovo. The all-purpose restrictions on the freedom of association, as set forth in the UNMIK NGO Regulation are quoted verbatim below.

“Grounds for Denying Registration

5.1 UNMIK may deny an application [...] (b) if the statutes of the NGO would violate the provisions of the United Nations Security Council Resolution 1244 (1999), or of any UNMIK regulation;[...]

UNMIK Regulation 2004/11 On the Registration and Operation of Political Parties contains a similar ‘directly applicable law’ caveat. It also proscribes *ab initio* the incitement of inter-communal, ethnic or religious hatred or violence. The pertinent provisions read as follows:

UNMIK Regulation 2004/11 On the Registration and Operation of Political Parties

“Section 4

Grounds for Denying Registration

4 The Office shall deny an application for registration by a Political Party if:

(a) the registration documents, including the Party Statute, do not comply with the requirements of this Regulation or are contrary to the applicable law; [...]

(c) the Party is applying for registration under a name, acronym, or symbol that is likely, in the judgment of the Office, to incite inter-communal, ethnic or religious hatred or violence.”

The right to associate in trade unions is both guaranteed and regulated by the Essential Labour Law in Kosovo. The applicable provisions are quoted below:

UNMIK Regulation No. 2001/27 On Essential Labour Law in Kosovo, entered into force on 8 October 2001.

Section 5 of UNMIK Regulation No. 2001/27 reads, in pertinent part:

“5.1 Employees and employers shall be entitled to establish and, subject only to the rules of the organization(s) concerned, join organization(s) of their own choosing without previous authorization. Employees’ organizations shall include unions.

5.2 Employees’ and employers’ organization(s) shall be entitled to establish and join federation(s) and confederation(s). Such organization(s), federation(s) or confederation(s) shall be entitled to affiliate with international organization(s) of employees and employers.

5.3 Employees’ and employers’ organization(s), and their respective federation(s) and confederation(s), shall be entitled to draft their constitution and rules, elect their representatives, organize their administration and activities, and formulate their programmes.

5.4 The public authorities shall refrain from any interference that would restrict employees’ and employers’ rights, as set out in section 5.1, and their respective organization(s), federation(s) and confederation(s) rights, as set out in section 5.2.

5.5 Employees’ and employers’ organization(s), and their respective federation(s) and confederation(s), may not be dissolved or suspended by the Administrative Department of Labour and Employment (hereinafter “the Department”), or the authority that will succeed it.

5.6 The acquisition of legal personality by employees' and employers' organization(s), and their respective federation(s) and confederation(s), shall not be made subject to conditions of such a character as to restrict the application of sections 5.1, 5.3, 5.4 and 5.5.

5.7 Unions shall register and submit a copy of their constitution and a list of the names, surnames, dates of birth, and addresses of the persons responsible for the management and administration of the union, with the Department, or the authority that will succeed it.

5.8 Employees and employers, and their respective organization(s), federation(s) and confederation(s), shall exercise their rights under this regulation in accordance with the applicable law in Kosovo."

The same law also proscribes discrimination on the basis of union membership. The pertinent provision reads as follows:

"2.2 The term discrimination includes any distinction, exclusion or preference made on the basis of race, colour, sex, religion, age, family status, political opinion, national extraction or social origin, sexual orientation, language or union membership which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation."

According to the data preserved by the UNMIK Non-Governmental Organizations Registration and Liaison Unit, no NGOs have been denied registration in Kosovo since 1999. Nor have any NGOs had their registration suspended or revoked. According to the same unit several NGOs from non-majority communities have been allowed to file their application forms in their own languages in addition to the required languages.

The PILLAR III Political Party Registration Office affirms that no political party has been ever denied registration.

Altogether twelve entities were certified to contest the 20 seats reserved or 'set-aside' for Kosovo's smaller communities in addition to the 100 multi-ethnic seats. The Kosovo Serb entities Serbian List for Kosovo and Metohija and the Citizens' Initiative Serbia received 8 and 2 seats, respectively. The following political parties representing non-majority communities are currently registered in Kosovo:

- KOS (Kosovo Objective Party) - Serbian
- KDTP (Turkish Democratic Party of Kosovo) - Turkish
- BSDAK (Bosniak Party of Democratic Action of Kosovo) - Bosniak/Gorani
- BSK (Bosniak Party of Kosovo) - Bosniak/Gorani
- DSB (Democratic Party of Bosniaks) - Bosniak/Gorani
- DSV (Democratic Party Vatan) - Bosniak/Gorani
- SDA (Party of Democratic Action) - Bosniak/Gorani
- GIG (Citizens' Initiative of Gora) - Gorani
- IRDK (New Democratic Initiative of Kosovo) - Roma/Ashkali/Egyptian
- PDAK (Democratic Ashkali Party of Kosovo) - Roma/Ashkali/Egyptian
- PDASHK (Democratic Albanian Ashkali Party of Kosovo) - Roma/Ashkali/Egyptian
- PREBK (United Roma Party of Kosovo) - Roma/Ashkali/Egyptian

Of the main Kosovo Albanian parties, the LDK, which won 45.4% share of the vote, has taken 47 seats. The PDK, with 28.9% of the vote, has won 30 seats, the AAK, with 8.4% of the vote, has won 9 seats and ORA with 6.2% of the vote, has won 7 seats. A further 4 Kosovo Albanian entities - PShDK, PD, LPK and PLK - took a total of five seats. In the current assembly Kosovo Serbs representatives hold 10 seats, Bosniaks' representatives hold 4 seats, Turks representatives hold 3 seats, Roma/Ashkalija/Egyptian hold 3 seats and Gorani 1 representative.

## Freedom of expression

Persons belonging to non-majority communities are specifically guaranteed the freedom of expression and information in their own languages by the Constitutional Framework. The exercise of these rights is discussed under the inputs to Framework Convention, Articles 10(1) and 9 respectively. The formalities, conditions, restrictions and sanctions, to which the exercise of the freedom of expression is subject, are set forth in UNMIK Regulations governing the broadcast and print media and promulgating the Provisional Criminal Code of Kosovo. The six priority actions contained in the returns and rights of communities' standard of the KSIP, as revised following the violence in March 2004, can be said to reflect UNMIK's policy on necessary restrictions on the exercise of the freedom of expression in a democratic society. These priority actions require *inter alia* that Provisional Institutions and party leaders publicly condemned the media reports, which contributed to ethnic violence, and investigate the public authorities, who either contributed to or failed to exercise due diligence to prevent the violence in March 2004.<sup>146</sup> The investigation of the TMC into the role of local print and broadcast media during the March 2004 violence charged a number of local broadcasters with incitement to violence and hate speech that, at the time, was decried by them as an infringement of the freedom of the press. Subsequently, some of them – in lieu of a fine – acknowledged that proclamations had been aired “which might be considered as hate speech.”<sup>147</sup>

Chapter 4.4(a), (c) and (i) of the Constitutional Framework guarantee persons belonging to ethnic, religious and linguistic minorities the rights to use their own language in private and in public and to receive and impart information in their own language and alphabet. The full texts of these provisions are provided in the legal inputs under Articles 10(1) and 9.

Both UNMIK Regulation 1999/24 on the Law Applicable in Kosovo and the Constitutional Framework make ECHR, Article 10 and ICCPR, Article 19 directly applicable in Kosovo, thereby guaranteeing all members of all communities the freedom of expression. *UNMIK Regulation 2000/36 On The Licensing And Regulation of the Broadcast Media in Kosovo* (UNMIK Regulation 2000/36 on Broadcast Media) and its associated Code of Conduct for the Broadcast Media in Kosovo (Broadcast Code of Conduct) as well as *UNMIK Regulation 2000/37 on the Conduct of the Print Media in Kosovo* (UNMIK Regulation 2000/37 on Print Media) and its associated Temporary Code of Conduct for the Print Media in Kosovo (Press Code of Conduct) translate the general ECHR and ICCPR validations for restrictions on the freedom of expression into identical special provisions proscribing the broadcast and publication of information, which endangers the reputation or rights of others, and reserving the powers of the SRSG to impose restrictions, which serve the interests of public safety and the prevention of disorder or crime.

For the purpose of comparison, the applicable provisions of UNMIK Regulation 2000/36 On Broadcast Media and UNMIK Regulation 2000/37 on Print Media are quoted in full below.

UNMIK Regulation 2000/36 On The Licensing And Regulation of the Broadcast Media in Kosovo, Section 5 – Special Provisions:

“5.1 Radio and television operators shall refrain from broadcasting personal details of any person, including name, address or place of work, if the broadcast of such details would pose a serious threat to the life, safety or security of any such person through vigilante violence or otherwise.

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<sup>146</sup> Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, UN. Doc. S/2004/907, para. 7 (17 November 2004) [*hereinafter* S/2004/907].

<sup>147</sup> Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, UN. Doc. S/2005/88, Annex I, Technical assessment of progress in the implementation of the standards for Kosovo, para. 8 (14 February 2005) [*hereinafter* Second Technical Assessment].

“5.2 Nothing in the present regulation shall in any way limit or restrict the authority of the Special Representative of the Secretary-General to take such action as he may deem necessary for security reasons, to protect life, or to maintain civil law and order.”

UNMIK Regulation 2000/37 on the Conduct of the Print Media in Kosovo, Section 4 – Special Measures:

“4.1 Owners, operators, publishers and editors shall refrain from publishing personal details of any person, including name, address or place of work, if the publication of such details would pose a serious threat to the life, safety or security of any such person through vigilante violence or otherwise.

“4.2 Nothing in the present regulation in any way limits or restricts the authority of the Special Representative of the Secretary-General to take such action, as he may deem necessary for security reasons, to protect life, or to maintain civil law and order.”

The preambles to the two Codes of Conduct associated with the above UNMIK Regulations recite the text of ECHR, Article 10(2) in full. Its general restrictions then inform the operative paragraphs proscribing “provocative statements” that are contained in the Broadcast Code of Conduct and the Press Code of Conduct alike.

The verbatim language of the requisite paragraphs is as follows:  
Code of Conduct for the Broadcast Media in Kosovo<sup>148</sup>

“2.2. Broadcasters will not broadcast any material that encourages crime or criminal activities or which carries imminent risk of causing harm, such harm being defined as death, or injury, or damage to property or other violence.

“2.3. Broadcasters will not broadcast any material that denigrates an ethnic or religious group or implies that an ethnic or religious group is responsible for criminal activity.”

UNMIK Administrative Direction 2000/22 on A Temporary Code of Conduct for the Print Media

“2.1. Publishers will not write, print, publish or distribute any material that encourages crime or criminal activities or which carries imminent risk of causing harm, such harm being defined as death, or injury, or damage to property or other violence.

“2.2. Publishers will not write, print, publish or distribute any material that denigrates an ethnic or religious group or implies that an ethnic or religious group is responsible for criminal activity.”

Both UNMIK Regulation 2000/36 on Broadcast Media and its associated Broadcast Code of Conduct predicate the grant of broadcast licenses on compliance with the latter Code. The applicable provisions read as follows:

UNMIK Regulation 2000/36 On The Licensing And Regulation of the Broadcast Media in Kosovo:

“2.2 Applicants for a broadcast license shall agree to abide by the Broadcast Code of Conduct issued by the Temporary Media Commissioner and attached to the Application and Registration Form.”

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<sup>148</sup> The code of conduct for the broadcast media was issued by the TMC and was not promulgated in the form of an Administrative Direction by the SRSG. The latter notwithstanding, UNMIK Regulation 2000/36, section 2.2 (alinea 2) provides that:

“Applicants for a broadcast license shall agree to abide by the Broadcast Code of Conduct issued by the TMC and attached to the Application and Registration Form.”

## Code of Conduct for the Broadcast Media:

Section 1 – Application: “All owners, station managers, editors-in-chief and/or those with ultimate and final editorial control of programmes on radio or television stations in Kosovo (hereafter “broadcasters”) agree to abide by this Code as a condition of receiving a license to broadcast from the Temporary Media Commissioner.”

Inasmuch as UNMIK Regulation 2000/36 sanctions non-compliance with the Broadcast Code of Conduct, compliance with its provisions is a requirement for holding a broadcast license. The apposite provisions governing the imposition of administrative sanctions for failure to comply with the Broadcast Code of Conduct are reproduced below.

According to UNMIK Regulation 2000/36 On The Licensing And Regulation of the Broadcast Media, Section 3, the Temporary Media Commissioner may impose one or more sanctions on broadcast licensees who fail to adhere to the Broadcast Code of Conduct:

UNMIK Regulation 37 on Print Media applies similar administrative sanctions on the print media for failure to comply with the Media Code of Conduct. The pertinent provision reads as follows:

Both UNMIK Regulation 2000/37 on the Print Media and UNMIK Regulation 2000/36 on the Broadcast Media provide that the imposition of those administrative sanctions is without prejudice to any applicable criminal sanctions or civil causes of action. Their identical wording is replicated below.

The Provisional Criminal Code of Kosovo (PCCCK establishes special criminal liability for criminal offences committed through the media. The PCCCK also criminalizes the proscriptions of “provocative statements” contained in the Broadcast Code of Conduct, Section 2.2-2.3 and the Print Code of Conduct, Section 2.1-2.2. To quote the relevant section:

UNMIK Regulation No. 2003/25 on the Provisional Criminal Code of Kosovo:

“Article 115

Inciting National, Racial, Religious or Ethnic Hatred, Discord or Intolerance

(1) Whoever publicly incites or publicly spreads hatred, discord or intolerance between national, racial, religious, ethnic or other such groups living in Kosovo in a manner which is likely to disturb public order shall be punished by a fine or by imprisonment of up to five years.

(2) Whoever commits the offence provided for in paragraph 1 of the present article in a systematic manner or by taking advantage of his or her position or authority or causes disorder, violence, or other grave consequences by the commission of such offence shall be punished by imprisonment up to eight years.

(3) Whoever commits the offence provided for in paragraph 1 by means of coercion, jeopardizing of safety, exposing national, racial, ethnic or religious symbols to derision, damaging the belongings of another person, or desecrating monuments or graves shall be punished by imprisonment of one to eight years.

(4) Whoever commits the offence provided for in paragraph 3 of the present article in a systematic manner or by taking advantage of his or her position or authority or causes disorder, violence or other grave consequences by the commission of such offence shall be punished by imprisonment of one to ten years.”

The PCKK penalizes the criminal exercise of the freedom of expression against the honour and reputation of others. It devotes one of twenty chapters to this category of criminal offences. That chapter is reproduced below:

“Chapter XVIII: Criminal Offences against Honour and Reputation

Insult

Article 187

(1) Whoever insults another person shall be punished by a fine or by imprisonment of up to three months.

(2) A person is not criminally liable under paragraph 1 of the present article:

(i) If he or she describes another person in an insulting manner in a scientific, artistic or literary work, in a serious review, in the exercise of his or her official duties, journalistic profession, political activity or other social activity, or in protecting a right or a justified interest; and

(ii).If according to the manner of expression or other related circumstances it is apparent that the act is not committed with the intent to disparage.

(3) If the insulted person has responded to the insult, the court may punish, or waive the punishment of, one or both parties concerned.”

“Defamation

Article 188

(1) Whoever asserts or circulates untrue statements about another person which damage his or her honour and reputation although he or she know such statements to be untrue shall be punished by a fine or by imprisonment of up to three months.

(2) A person is not criminally liable under paragraph 1 of the present article if the statement asserted or circulated is true or if he or she had a well-founded reason to believe in the veracity of such statement.”

The TMC is responsible for the development and promotion of an independent and professional media in Kosovo and the implementation of a temporary regulatory regime for all media in Kosovo, pending the establishment of an Independent Media Commission. TMC has authority to impose the above-listed sanctions on broadcast licensees as well as on owners, operators, publishers and editors-in-chief of publications published and/or distributed in Kosovo. It may request the assistance of the relevant law enforcement authorities in Kosovo and appropriate public officials in the enforcement of an imposed sanction.

Any person or entity, upon whom administrative sanctions are imposed, may appeal the TMC’s decision to the Media Appeals Board (the Board). The Board may uphold, modify, or rescind any condition or sanction imposed by the TMC. Final decisions of the Board are binding and enforceable.

Municipal courts have jurisdiction to hear cases falling under the provisions of PCKK, Article 115(1). Those cases, which come within the preview of PCKK, Article 115(2)-(5) come under the jurisdiction of the District Courts. The decisions of the latter can be appealed to the Supreme Court. In appropriate circumstances, such cases are heard by international judges having earlier been assigned to and investigated by international prosecutors

The “standards before status” policy, which was jointly endorsed by UNMIK and the PISG, requires Hate speech or any form of incitement to be condemned by political leaders, the media

regulatory authority and media commentators. The Kosovo Standards Implementation Plan, which was developed to give effect to this policy and was likewise approved by UNMIK and the PISG, posits that action needs to be taken to ensure professional, responsible, and non-discriminatory media that caters to all ethnic communities. "The violence of 17-20 March and the irresponsible role played by some in the media underline this need."<sup>149</sup> Such action entails the creation of a multi-ethnic press council, to provide print media with a necessary self-regulatory system, including a system for eliminating hate speech. That system should require the media to criticise any form of hate speech and refrain from broadcasting or printing it. The media should encourage tolerance among the communities and report in an unbiased way, especially when dealing with situations of inter-ethnic tension.

The violence in March 2004, which appears to have been sparked by the death of three Kosovo Albanian children by drowning in the River Ibar near the town of Zubin Potok (Mitrovica region) on 16 March 2004, was judged to have been made worse by inflammatory and biased media reporting.<sup>150</sup>

In the wake of that violence, assessments were conducted to analyse the malfunctions in media performance and to tailor further assistance accordingly. On 23 April 2004, the TMC issued a report with his preliminary findings on the conduct of the most influential media in Kosovo – the Kosovo-wide public broadcaster Radio Television Kosovo (RTK), the private television station Kosovo Television (KTV) and the private television broadcaster TV21 – during the three days of riots.<sup>151</sup> He found that all three had violated the TMC Code of Conduct for Broadcast Media, proposed the imposition of sanctions and made certain remedial recommendations.

With regard to RTK, the report concluded that while a number of RTK journalists and camera crews had shown commendable courage and poise in reporting from violent situations across Kosovo, some regional correspondents, ranged in style from calm and factual to inappropriately emotional. The TMC also concluded that the news judgment of the RTK management was marked by reckless disregard for the risk of inciting and exacerbating civil disorder and that the character of RTK news coverage appeared to have been driven by an appetite for drama and sensation and with no moderating sense of responsibility for the effects its broadcasts might have had in a volatile political climate.

The report criticized as reckless and unprofessional the fact that the RTK's news managers chose to broadcast the story of the drowning deaths of three boys, attributing misleading statements to the surviving 14-year-old boy and at the same time not providing full coverage of statements by the police. The TMC also criticized RTK's decision to substitute symphony concerts for normal programmes with text scrolls underneath, reporting violent clashes. He deduced that this contributed to a sense of sensationalism, and was an over-dramatisation of an event – the drowning of three children – which had no political significance. In conclusion, the assessment also found that:

"Much of RTK reporting on the evening of 16 March, with its references to "Serb bandits" and "Chetnik hordes" and the casual use of the term "attack" to describe what had happened to the children—in addition to other material broadcast on 17 March—appears to conflict with RTK's own Editorial Code of Conduct in regard to the use of "emotive" or "provocative" language." It also stated the RTK's coverage arguably constituted a "violation of Article 2.2 of the TMC Broadcast Code of Conduct prohibiting the broadcast of material with a clear and immediate risk of inciting violence, and will be treated as such."

The TMC report made the following recommendations with regard to RTK:

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<sup>149</sup> Kosovo Standards Implementation Plan, Functioning Democratic Institutions, Media/Civil Society, p.7

<sup>150</sup> Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, UN Doc. S/2004/378, para. 5 (30 April, 2004).

<sup>151</sup> The TMC report is available at [http://www.osce.org/documents/mik/2004/04/2765\\_en.pdf](http://www.osce.org/documents/mik/2004/04/2765_en.pdf).

1. That a Senior International Adviser is placed within RTK to provide urgent and sustained expert guidance in news management, pertaining especially to coverage of domestic conflict situations, and more generally to introduce explanatory, issue-oriented journalism to its news coverage.

2. A review of the internal corporate governance of RTK to be carried out under the authority of UNMIK Regulation 2001/13 with regard the structure, functions and membership/personnel of the Board of Directors and Broadcasting Operations of RTK to ensure the presence of skills, experience and temperament necessary to provide competent management and oversight of that management at RTK.

3. That RTK should resist "scapegoating", namely that lower-ranking individuals should not be blamed for failing in their responsibilities, but rather a candid examination of the processes of management and implementation of standards, such as RTK's own code of ethics should be conducted.

4. That UNMIK and the RTK board should conduct an audit of the process by which the existing RTK code of conduct is made available to news staff, explained and enforced.

5. That RTK should make its priority task to ensure that RTK meets its obligation under UNMIK Regulation 2001/13 to devote at least 15% of its programming to non-majority communities.

6. That the international community, and in particular the PILLAR III Mission in Kosovo and the European Broadcasting Union, should consider a resumption of aid focused on further development of skills relevant to public service broadcasting, including co-production projects.

With Regard to KTV, the TMC report came to the conclusions that the KTV's reporting of the drowning of the three boys gave unwarranted credence to the surviving boy's story and that in doing so KTV failed to adequately represent the uncertainty of what had happened. The report further concluded that despite the fact that the interview with the surviving boy showed that the children fled from a dog, and not people, KTV did nothing to draw attention to this important revelation, and thus missed an important opportunity to alter public perceptions of the event before violence broke out the next day. The report further found that, while some KTV correspondents displayed poise and courage in reporting from scenes of violence, other KTV correspondents filed grossly biased reports that were not challenged or corrected.

The TMC compared KTV to the two other major stations and stated that while KTV displayed a stronger preference for drama and sensation in its reporting than TV 21, on the other hand it did nothing to "politicise the deaths of the three boys or to create the kind of patriotic hysteria around the story that marked the coverage of RTK." However, KTV's failure to provide archive tapes of most of its programming was assessed as a violation of the terms of its license.

The TMC recommended with regard to KTV:

1. That specific training for correspondents and editors in the technique and ethics of conflict reporting should be conducted.

2. That KTV should conduct an immediate and thorough review of the qualifications of its local correspondents and remove those who are unable or unwilling to meet the basic ethical standards of fairness, balance and freedom from ethno-cultural or political bias.

3. That KTV should implement within 30 days a system to maintain a 21-day archive of all its broadcast programming.



With regard to TV 21, the TMC concluded that the initial news report of the incident by TV21: attached unwarranted credence to the story of the surviving boy; did not accurately represent what he was telling interviewers; and, failed to include the crucial perspective that there was no independent evidence to support the boy's story. The TMC stated that this failure could be interpreted as a violation of Article 7.2 of the TMC Broadcast Code of Conduct.

The TMC assessed that TV 21 presenters approached the story in a calm manner and made commendable efforts to include rational comment and analysis and did nothing to politicise the story or sensationalize its reporting. The report also assessed that TV 21 took commendable steps to learn what actually had happened to the four boys, reported on the violence in a calm and factual manner, and on balance sought to reduce the emotional aspect of its news coverage while fully informing its audience.

The report recommended with regard to TV 21 that specific training for correspondents and editors in the technique and ethics of conflict reporting should be conducted.

Initially, the media – in particular RTK – did not acknowledge that their reporting – as summarized above – displayed a serious lack of professionalism that fanned rather than contained the violence. Indeed, RTK responded with claims that freedom of the press had been infringed by the TMC's investigation, preliminary finds, proposed fines and remedial recommendations.

The TMC has since reached settlements with RTK, KTV and TV21 on the complaints over their coverage of the March 2004 violence. RTK in particular acknowledged that it had aired "proclamations that could be considered as hate speech" since they "implied that a specific ethnic category of people were responsible for criminal activity". A minimum level of funding was agreed on for training editorial staff during 2005.<sup>152</sup>

### **Freedom of Religion**

Many Serbian Orthodox churches were targeted and destroyed during the March violence. For a description see the factual input to Article 6 of the Framework Convention.

A commitment was made by the PISG with the assistance of the CoE to rebuild those churches. For a description see the factual input to Article 5 of the Framework Convention.

The Constitutional Framework guarantees the religious rights of non-majority communities as follows:

- "4.4. Communities and their members shall have the right to:[...]
- (l) Preserve sites of religious, historical, or cultural importance to the Community, in cooperation with relevant public authorities; [...]
  - (n) Operate religious institutions"

Also UNMIK Regulation No. 1999/24 and the Constitutional Framework make Article 9 of the ECHR, Article 18 of the ICCPR and Article 18 of the UDHR directly applicable in Kosovo thereby guaranteeing freedom of religion.

The SAP Kosovo Law on the Legal Status of Religious Communities (Official Gazette of SAP of Kosovo No. 5/77) provides for the imposition of restrictions on the public manifestation of religion by municipal authorities responsible for public order in the interests of public safety, for the

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<sup>152</sup>The full texts of the settlements are available respectively at: [http://www.imc-ko.org/IMG/pdf/RTK\\_Settlement\\_15\\_Dec\\_04\\_ENG.pdf](http://www.imc-ko.org/IMG/pdf/RTK_Settlement_15_Dec_04_ENG.pdf), [http://www.imc-ko.org/IMG/pdf/KTV\\_Settlement\\_09\\_Dec\\_04\\_ENG.pdf](http://www.imc-ko.org/IMG/pdf/KTV_Settlement_09_Dec_04_ENG.pdf) and [http://www.imc-ko.org/IMG/pdf/TV\\_21\\_Settlement\\_09\\_Dec\\_04\\_ENG.pdf](http://www.imc-ko.org/IMG/pdf/TV_21_Settlement_09_Dec_04_ENG.pdf).

protection of public order or for the civil protection of people, that resemble those set forth in ECHR, Article 9(2). To quote from an unofficial translation:

#### “Article 3

It is prohibited to abuse religious institutions, activities, religious ceremonies, religious press, and religious education, including other forms of expressing religious feelings for political purposes. Provocations and incitement of hate and religious intolerance are prohibited. It is prohibited to hinder religious gatherings (congregations), education, and other forms of expression of religious feelings, which are not against this Law.

#### Article 7

Within overall measures undertaken by municipal authorities competent for public communication or peace and order, or for other needs in the field of peoples protection (civil protection), such an authority can cease holding religious assembling during the time while circumstances exist based on which such measures have been undertaken.

#### Article 10

Religious ceremonies in assemblies, including other religious activities, besides clergy members and persons with Yugoslav citizenship, can be held by foreign citizens and/or persons without citizenship, provided that religious community has obtained permit for such activity by municipal administrative authority for internal affairs.

#### Article 11

With regard to editing religious publications and religious press, provisions of Law on editing activities and Law on public information are applicable accordingly. As Editor in Chief and/or responsible editor for religious publications and press can be only a person who has SFRJ citizenship, with the capacity to act, who hasn't been punished for criminal offences against peoples and the state with unconditioned imprisonment, including person who hasn't been punished for any other criminal offence with not less than three years unconditioned imprisonment. The editor of religious press is obliged to file a request before administrative authority competent for information issues of the province, for registration in the evidence not later than 15 days before publication

In addition to the request for registration in the evidence, attached should be also the request which contains the name of the editor, name and the type of religious press, editing period, financial resources, venue, name and address of editorial office, language and script of publications, name and address of Editor in Chief and of print house, including evidence pertaining to editor in chief and responsible editor that they meet.”

The Law on the Legal Status of Religious Communities – like HRC General Comment 22 on the Right to Freedom of Thought, Religion or Belief<sup>153</sup> – proscribes any manifestation of religion, which amounts to advocacy of racial or religious hatred that constitutes incitement to hostility or violence. Such ‘provocations’ have been criminalized by PCCK, Article 115. For the full text of this provision, see the legal input to ‘freedom of expression’ above.

#### Article 8

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<sup>153</sup> Committee on Human Rights, General Comment adopted by the Committee on Human Rights under Article 40, Paragraph 4 of the International Covenant on Civil and Political Rights, General Comment 22 on “The Right to Freedom of Thought, Conscience and Religion,” para. 7, UN Doc. CCPR/C/21/Rev.1/Add.4 (30 July 1993), posted at: <http://www.ohchr.org/english/bodies/hrc/comments.htm>.

**The Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organizations and associations.**

In Kosovo, the freedom to manifest religion or belief is guided by the same general rules as the freedom of expression, inasmuch as there are no separate provisions guaranteeing the freedom to manifest religion in practice. The same rules govern the establishment of organisations and associations as do the establishment of religious communities as legal persons. The same rules apply to the establishment of religious education institutions and to the establishment of any other private education institution. Currently no religious institutions, organisations or associations are receiving funding from the Kosovo Consolidated Budget or any financial support from the authorities in Kosovo.

### **Input of the MCYS**

The MCYS states that institutions in Kosovo are separated from religion and if there is no discrimination they would not interfere.

For the law governing the freedom to manifest one's religion or belief and the right to establish religious institutions, organisations and associations, see the information provided under Article 7 of the Framework Convention in this report.

### **Input of the AOC**

A Draft Law on Religious Freedom and Legal Status of Religious Communities in Kosovo is currently being prepared by a working group chaired by the AOGG. All religious communities active in Kosovo were included in the working group, which was tasked with the elaboration of the law. The working group includes some NGOs. The AOC requires the assistance of the international community in the form of a request for the participation of the Orthodox Church, which is persistently refusing to take part in the working group.

Following criticism voiced by the international community, the Draft Law on Religious Freedom and Legal Status of Religious Communities in Kosovo was returned to the working group for additional deliberation. In April 2005 an amended Draft of the Law on Religious Freedom and Legal Status of Religious Communities was submitted to the Kosovo Assembly where it is currently awaiting hearing.

A Religious Diversity Officer is engaged in developing policies which shall provide all religious communities equal rights to enjoy and exercise their religious freedoms. A Senior Officer for Legislation and Assembly is responsible for making recommendations ensuring the conformity of draft legislation with international standards on human rights.

Within the framework of policies related to religious communities, policies on the PISG position towards religious congregations were drafted.

The AOC has maintained regular contacts with religious communities and considered all their requests, especially those of "small" protestant religious communities. 28 protestant churches have been operating in Kosovo during the last few years. In the last six months the AOC has had meetings with representatives of the Adventist Church, the Evangelical Church, the Baptist Church and the Jehovah's Witnesses as well as representatives of other protestant churches.

Both the Pastor of the Macedonian Adventist Church and the Leader of the Jehovah's Witnesses Community have made statements to the effect that the PISG is facilitating the full exercise of their

religious freedoms. Such statements may serve as the basis for the establishment of conditions for the active participation of all religious congregations.

#### **Article 9.1**

**The Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems that persons belonging to a national minority are not discriminated against in their access to the media.**

Chapter 4 of the Constitutional Framework explicitly protects the rights of Communities and their members in respect of access to information in their own language and guaranteed access to, and representation in, public broadcast media as well as programming in relevant languages.

In addition, Chapter 5.4 states that:

“5.4 The Provisional Institutions of Self-Government shall also have the following responsibilities in the field of mass media:

(a) Adopting laws and enforcement mechanisms in accordance with international human rights and freedom of expression standards as contained in Articles 19 and 29 of the Universal Declaration of Human Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols to prevent defamation or hate speech in the Kosovo systems of mass media;

(b) Regulating broadcast media consistent with these international legal constraints and the best European practices through an independent media commission, whose members will be appointed by the Provisional Institutions of Self-Government from nominations submitted by non-governmental and non-political organizations in Kosovo; these members will include both genders and will reflect the ethnic and regional diversity of Kosovo society;

(c) Guaranteeing the editorial independence of the public broadcaster by safeguarding the independence of its Board, whose members will be appointed by the Provisional Institutions of Self-Government from nominations submitted by non-governmental and non-political organizations in Kosovo; these members will include both genders and will reflect the ethnic and regional diversity of Kosovo society; and

(d) Establishing an office or offices of public information to present the Institutions' deliberations and decisions to the international and local media.”

Section 4 UNMIK Regulation 2000/36 On the Licensing and Regulation of the Broadcast Media in Kosovo

#### **“MEDIA APPEALS BOARD**

4.1 The Media Appeals Board (hereinafter called "the Board") is hereby established.

4.2 The Board is an independent body which shall hear and decide on appeals by a person or an entity against any of the following decisions by the Temporary Media Commissioner:

- (a) refusal to issue a broadcast license;
- (b) the condition(s) attached to a broadcast license; or
- (c) sanctions imposed by the Temporary Media Commissioner.

[...]

4.6 The Board shall determine its own rules of procedure, which rules shall guarantee fair and impartial proceedings in accordance with internationally recognized human rights standards[...]"

Section 5 UNMIK Regulation 2000/36 On the Licensing and Regulation of the Broadcast Media in Kosovo

#### "SPECIAL PROVISIONS

5.1 Radio and television operators shall refrain from broadcasting personal details of any person, including name, address or place of work, if the broadcast of such details would pose a serious threat to the life, safety or security of any such person through vigilante violence or otherwise.

5.2 Nothing in the present regulation shall in any way limit or restrict the authority of the Special Representative of the Secretary-General to take such action as he may deem necessary for security reasons, to protect life, or to maintain civil law and order."

The TMC is in the process of being supplanted by the above-referenced Kosovo institution, the Independent Media Commission, under legislation currently before the Assembly.

UNMIK Regulation 2001/13 establishes a single Kosovo-wide public broadcaster, Radio-Television Kosovo, with an express responsibility to devote at least 15 percent of its broadcast time, including prime time, to minority programming.

It is anticipated that this UNMIK Regulation will also be superseded by a newer piece of legislation by mid-2005.

#### Article 9.2

**Paragraph 1 shall not prevent the Parties from requiring the licensing, without discrimination and based on objective criteria, of sound radio and television broadcasting, or cinema enterprises.**

UNMIK Regulation 2000/36 requires broadcasters to obtain a license from the TMC. It is the policy and practice of the TMC to issue broadcast licenses based on compliance with basic qualifications and the public interest without discrimination. There is no policy, practice or legal authority in Kosovo to license other media such as cinema enterprises. Private commercial media enterprises are subject to normal business registration requirements.

A total of 111 radio and television stations currently are licensed by the TMC, of which 108 are private and three are public broadcasters (RTK.) Of these, 33 or approximately 30% are predominately or exclusively Serb radio and television stations; 3 or approximately 2.7% are Bosniak-language stations; 2 or approximately 1.8% are Turkish-language stations and one is Gorani.

A total of 13 Albanian stations and 5 predominately minority-language stations also broadcast in a variety of minority languages including Kosovo Roma, Kosovo Ashkalija, Kosovo Gorani, Kosovo Turkish and Kosovo Bosniak.

The proportion of stations devoted primarily or exclusively to minority languages in Kosovo in most cases substantially exceeds the estimated percentages of the respective populations represented by non-majority communities.

Minority programming by the public broadcaster RTK, consisting of RTK television, Radio Kosova and Radio Blue Sky, is shown in Annex 21, appended.

### **Article 9.3**

**The Parties shall not hinder to creation and the use of printed media by persons belonging to national minorities. In the legal framework of sound radio and television broadcasting, they shall ensure, as far as possible, and taking into account the provisions of Paragraph 1, that persons belonging to national minorities are granted the possibility of creating and using their own media.**

No legal restrictions apply to the establishment of print media in Kosovo, apart from normal requirements for business registration. For broadcasting, see under Article 9.2.

A general TMC moratorium exists on the issuance of new broadcast licenses. However, TMC lifted the moratorium from December 2003 to July 2004 for the purpose of accepting applications for new minority and/or multi-ethnic broadcasters. The TMC is currently completing evaluation of approximately 60 applications for such stations.

### **Article 9.4**

**In the framework of their legal systems, the Parties shall adopt adequate measures in order to facilitate access to the media for persons belonging to national minorities and in order to promote tolerance and permit cultural pluralism.**

Currently the PISG has no programme to subsidise the creation, operation or distribution of any media, including minority broadcast or print media. There are no state-run media in Kosovo. At the same time, no law or official policy obstructs access to media for persons belonging to non-majority communities.

Both Radio Kosova and Radio Blue Sky, part of RTK, broadcast in four languages: Albanian, Serbian, Turkish, and Bosniak. Radio Kosova has daily news and feature programme broadcasts of 2,30 hours in Turkish and Bosniak language. The Bosniak language broadcast in Radio Kosova starts at 12:00 and lasts one and a half hour till 13:30, with plans for its extension to two hours daily. The Turkish programme starts at 17:00-18:00 in Radio Kosova frequencies. While the Blue Sky Radio has daily broadcasts in Serbian and Turkish lasting 3 hours. The Serbian language programme is broadcast from 14:00-16:00 every day, and that in Turkish from 16:00-17:00.

The programme in the ethnic community languages includes news, reports, feature stories, analyses, and presentation of local, regional and world press reviews, features on art, culture, film, music and show business. The programme is combined with selected music in the broadcasting community languages. The Serb programme starts with daily news at 14:00, which is simultaneously broadcast by RTK – Television of Kosovo. The news is followed by reports on daily local and regional events covered by staff members in the respective language. That is followed by reports filed from correspondents throughout Kosovo, such as Mitrovicë/Mitrovica, Gjilan/Gnjilane, Leposavić/Leposaviq, Belgrade and Podgorica for Serbian language and from Prizren, Mitrovicë/Mitrovica for the Turkish language programme. The Bosniak language programme is of similar content and has correspondents in Mitrovicë/Mitrovica, Prizren, and Pejë/Peć. The programme in ethnic community languages contains also feature stories on various issues of life in the Serbian, or Turkish or Bosniak communities respectively. The weekly programme schedule of both programmes contains also musical and sports programmes. The Turkish language programme features also a half an hour weekly children's programme.

Both Radio Kosova and Radio Blue Sky plan for more programme timing in their schedules for the community language programmes. A list of the programmes in languages of ethnic communities in RTK - Radio Kosova and Radio Blue Sky is annexed to this report.

### **Article 10(1)**

**The Parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing.**

Kosovo Standard III on Freedom of Movement, as set forth in the Kosovo Standards Document of 10 December 2003, predicates status on the “[a]bility of all people in Kosovo to use their own language freely anywhere in Kosovo, including in public places.” The Constitutional Framework guarantees communities and their members the right to use their language in private and in public. The exercise of this right is governed by a complex legal structure, which comprises former SFRY legislation, UNMIK regulations and administrative directions as well as laws adopted by the Kosovo Assembly and promulgated by the SRSG.

The implementation of this legislation variously falls to the Office of the Prime Minister, the Ministries of Public Services, Finance and Economy, Health, as well as the newly created Ministries of Communities and Returns (MCR) and Local Government Administration to say nothing of the PISG at the municipal level. These authorities are also responsible for ensuring that policy at the central and municipal levels includes provisions for the promotion and protection of the inter-related rights of persons belonging to ethnic, linguistic and religious communities to use minority languages, to the freedoms of expression and movement and to public participation, health, work and education. Minor offences and district courts have jurisdiction over cases involving the unlawful denial of the right to freely use a minority language both in private and in public.

The PISG 2004-2005 “Kosovo Government Programme” undertakes to “support the equality of non-majority communities in [...] language use according to European standards.” In this regard, the Government has pledged to develop an official language policy, which at once meets the requirements of ethnic and linguistic communities and lays down mandatory norms to be followed by all PISG bodies. A subsidiary standard advanced by the KSIP at the end of March 2004 posits that the Assembly’s Committee on Rights and Interests of Communities should be mandated to oversee the implementation of that official language policy.

Since then, the Government has committed itself to prioritise the enactment of a Law on Official Languages in its 2005 Legislative Strategy. The MPS has prepared an initial draft of a law on Languages, which is annexed to this report. At the time of writing, the initial draft law was under discussion by a PISG/UNMIK working group, chaired by the MPS, prior to its early submission to and adoption by the Kosovo Assembly. To ensure that the draft law on languages, as submitted to the Assembly, contains clear, consistent and enforceable provisions, it should be independently evaluated both for consistency with existing legislation and for conformity with international human and minority rights standards.

Although formally recognised in the applicable law, the private and public exercise of the right to use a minority language by many persons belonging to ethnic, linguistic and religious communities is essentially limited to the private sphere or that of the community. When outside their own communities they tend to refrain from using their native language in public.

The language requirements governing the Kosovo Assembly and the Government meetings and documentation are described in Part I of this report. The actual provisions stipulating those conditions are here precisely replicated from the Constitutional Framework.

UNMIK Regulation No. 2001/19 on A Constitutional Framework for Provisional Self-Government in Kosovo

“Languages of the Assembly

“9.1.49 Meetings of the Assembly and its Committees shall be conducted in both the Albanian and Serbian languages. All official documents of the Assembly shall be printed in both the Albanian and Serbian languages. The Assembly shall endeavour to make official documents which concern a specific Community available in the language of that Community.

“9.1.50 Assembly members from Communities other than the Kosovo Albanian and Kosovo Serb Communities shall be permitted to address the Assembly or its Committees in their own language and to submit documents for consideration by the Assembly in their own language. In such cases, interpretation or translation into the Albanian and Serbian languages shall be provided for the other members of the Assembly or Committee.

“9.1.51 All promulgated laws shall be published in the Albanian, Bosniak, English, Serbian and Turkish languages.”

Just as the language obligations incumbent on municipal PISG are described in Part I of this report, so the exact legal prescriptions are reproduced below.

#### UNMIK Regulation No. 2000/45 on Self-Government of Municipalities in Kosovo

##### “Section 9

##### “Languages

“9.1 Members of communities shall have the right to communicate in their own language with all municipal bodies and all municipal civil servants.

“9.2 Meetings of the Municipal Assembly and its committees and public meetings shall be conducted in both the Albanian and Serbian languages. In municipalities where a community lives whose language is neither Albanian nor Serbian, the proceedings shall also be translated, when necessary, into the language of that community.

“9.3 All official documents of a municipality shall be printed in both the Albanian and Serbian languages. In municipalities where a community lives whose language is neither Albanian nor Serbian, all official documents of the municipality shall also be made available in the language of that community.

“9.5 The Statute of the municipality shall make detailed provisions for the use of languages of communities as set out in this section, taking into consideration the composition of communities in the municipality.”

Both the Constitutional Framework and UNMIK Regulation No. 2000/45 on Self-Government of Municipalities in Kosovo all but mirror the 1977 SAP Kosovo “Law on Implementation of the Equality of the Languages and Alphabets in the Socialist Autonomous Province of Kosovo” (SAP Kosovo Language Law). That Law establishes the complete equality of Albanian and Serbo-Croatian throughout the territory of the then-Socialist Autonomous Province of Kosovo and of the Turkish language in areas inhabited by persons belonging to the Turkish minority. It remains the applicable law in Kosovo under the terms of UNMIK Regulation No. 1999/24. For ease of reference, the comparable provisions of the SAP Kosovo Language Law are reproduced in full below.

#### SAP Kosovo Language Law

##### “CHAPTER I

##### “1 BASIC PROVISIONS



#### **“Article 1**

In the Socialist Autonomous Province of Kosovo the equality of the Albanian, Serbo-Croatian and Turkish languages and their alphabets shall be ensured.

#### **“Article 2**

The Albanian and Serbo-Croatian languages and their alphabets shall be equally used in the Socialist Autonomous Province of Kosovo.

The Albanian, Serbo-Croatian and Turkish languages and their alphabets shall be equally used in the territories where the members of Turkish minority also live.

#### **“Article 3**

The governmental agencies and other agencies, organizations of associated labor, and other self-managing organizations and communities of SAP Kosovo, as well as their agencies of authority, in a communication and official procedure shall realize the principle of equality of languages and alphabets determined with the article 1 of this law.

#### **“Article 4**

Everybody shall be guaranteed the right to use his/her own language in the procedure before the court or other governmental agencies, organization of associated labor and other self-managing organizations and communities, which in exercising the public authorizations decide on rights and obligations of the citizens, and to be informed about facts in his/her own language.

[...]

### **“CHAPTER II**

#### **“II PROPER USE AND APPLICATION OF LANGUAGES AND ALPHABETS**

“Application and use of languages and alphabets in the work of the authorities in the Socialist Autonomous Province of Kosovo

#### **“Article 10**

(1) In the work of the Assembly of the SAP of Kosovo, Presidency of the SAP of Kosovo, Council of the Province , Executive Council of the Assembly of Kosovo , Administration of the Province, Constitution Court of Kosovo (in further text :Organs of Province ) and their forums, shall equally use and apply Albanian and Serbo-Croatian languages and their alphabets.

(2) The members of Turkish nationality have the right, according to the law in realisation of their rights and obligations, before the authorities of the Province, to use their own language and alphabet.

(3) Members of the Turkish nationality are entitled, in the way determined by this Law, to use their own language and alphabet in realisation of their duties before the Provincial Authorities and their forums.

[...]

#### **“Article 16**

By the work regulation and by other general enactment of Provincial authorities and their forums is more precisely determined the equal use of Albanian, Serbo-Croatian and Turkish language and their alphabets.

The SAP Kosovo Language Law further provides that any violation of the above provisions is at once unlawful and punishable as a minor offence. The applicable provisions read as follows:

Law on Realization of Equality of Languages and Alphabets in the Socialist Autonomous Province of Kosovo (Official Gazette of the SAP of Kosovo", no. 48/77)

#### “Article 9

In the Socialist Autonomous Province of Kosovo every act which violates the principle of equality of the Albanian, Serbo-Croatian and Turkish language and their alphabets shall be unlawful and punishable.

[...]

#### Article 44

By fine up to 3000 dinars shall be punished for minor offence official person respectively responsible person, who, in dispute with disposition of this law if:

1. Denies to the party, the right on using mother tongue language and prescriptions in the procedure or in the procedure does not inform him about this fact (article 4).
2. Does not deliver to the citizen in his mother tongue, the public document, special act or other document (article 13, 19 and 25).
3. Refuse to receive prescript or other act written in mother tongue.”

#### The Provisional Criminal Code of Kosovo

#### “Violating Equal Status of Residents of Kosovo

#### Article 158

(1) Whoever unlawfully denies or limits the freedoms or rights of a resident of Kosovo, as set forth in the Constitutional Framework and the applicable law, on the basis of a difference of race, colour, sex, language, religious belief or non-belief, political or other opinion, national or social origin, property, birth, education, social status or other personal characteristics or affiliation to an ethnic, religious or linguistic community in Kosovo or whoever unlawfully grants a resident of Kosovo any privilege or advantage on the basis of such a difference or affiliation shall be punished by imprisonment of six months to five years.

(2) Whoever denies or limits a member of an ethnic, religious or linguistic community in Kosovo the right to freely express his or her identity or to enjoy his or her autonomy shall be punished by imprisonment of six months to five years.

(3) Whoever, contrary to the laws regarding the use of language and script, denies a resident of Kosovo the right to freely use his or her own language or script shall be punished by a fine or by imprisonment of up to one year.

(4) When the offence provided for in the present article is committed by an official person in the exercise of his or her duties, the perpetrator shall be punished by imprisonment of one to seven years, in the case of the offence provided for in paragraph 1 or 2 or by imprisonment of six months to three years, in the case of the offence provided for in paragraph 3.”

The Task Force on Language Standards Compliance, established on 15 January 2004 and including representatives from UNMIK and the PISG, reviewed the issue of non-compliance of Kosovo administrative authorities with the implementation of language standards. After five working sessions, the Taskforce concluded that “the free use and respect of the legal requirements of languages continue to be at best lukewarm and at worst ignored”. Technical difficulties and lack of sufficient human and financial resources were recognised as a chronic drawback practically restricting the right of members of linguistic minorities to communicate with/receive communication from administrative authorities in their own languages. The oft-stated reasons for the existing problems include a combination of technical and political challenges. On the one hand, difficulties resulting from inadequate technical facilities to handle translation, understaffed translation cells, lack of qualified interpreters and scarce financial resources are endemic. On the other hand, this shortage of resources is coupled with the local officials’ insufficient political will to prioritise the issue of language rights.

According to the findings, out of 30 municipalities, 12 did not have one single language assistant/interpreter. Most of the municipalities that provided language services limited themselves to hiring one single staff just to avoid being singled out as indifferent to the needs of its minority residents. Even in municipalities, where there have been earnest efforts to recruit greater numbers of

language assistants, the translation/interpretation services are not fully adequate. The situation in the central ministries and other public administrations was not better. Out of six ministries, only one employed six language services staff, two employed five, one had one and the two remaining availed of the services of UNMIK languages assistants. Aside from these technical *lacunae*, simultaneous translation was not systematically arranged, documents were not routinely translated, their delivery was not timely and the quality of the translation was often poor.

The paucity of Kosovo language services could be attributed to various factors. Overriding among them are the unattractive salary levels and the absence of the category of translators/interpreters in the scale of professions of the Kosovo Civil Service. Indeed, the low salaries offered to Kosovo Civil Servants (compared to UNMIK or international agencies wages) and the current lack/absence of budget for language/translation needs in the municipalities, an over-reliance on UNMIK staff, the low priority given to the issue of hiring Kosovo Civil Service interpreters/translators, all contributed to make this profession highly unattractive.

Compounding these obstacles is the refusal/reluctance of many officials, and consequently of rank and file officers, to use the Serbo-Croatian language in their dealings with the public. At the central level, translation and dissemination of official documents into Bosniak and Turkish languages, despite the clear provisions of the Constitutional Framework is still not adequately complied with. No Regulation or Administrative Direction has hitherto been translated into either of them while only the Constitutional Framework has been translated into the Turkish language. The Anti-Discrimination Law is readily available in Albanian only.

The lack of a uniform understanding of the applicable law is a further challenge, with the various provisions differently interpreted and applied by the various municipalities. Part of the reason is the vague wording of Section 9 of UNMIK Regulation 2000/45 with regard to the non-Albanian and non-Serbian-speaking communities, as no reference is made to the size or language of the respective community. As a result, implementation currently requires discretion and solid judgement on behalf of the municipal authorities.

Since the findings of the Taskforce were issued, there have been some significant advances. For example, on 23 January 2005, the then Prime Minister Ramush Haradinaj issued a letter addressed to all the Presidents of Municipal Assemblies, in which he requested immediate action on the implementation of language standards. The Prime Minister explicitly requested that by 10 February 2005 all street signs in the respective municipality should appear in three languages (presumably English, Albanian, Serbian); as of 23 February official document in the municipality would not be distributed without being translated in three languages; by 30 January 2005 language units are established and functioning within every municipality; that Presidents of Municipal Assemblies return to the sender all documents received from the PISG that are not received translated in three languages.

The full text of the letter is annexed to this report.

#### **Article 10 (2)**

**In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities.**

As stated above, a composite legal framework comprising SFRY legislation and relevant sections of UNMIK Regulations and Administrative Directions regulates the scope and the modalities of the implementation of this right. The Constitutional Framework provides for the official use at the Assembly and Government level of both Albanian and Serbian –and guarantees for Bosniak and Turkish languages. The municipal law extends the right of members of linguistic minorities to use

their own language in relations with administrative authorities to all Non-Serb and Non-Albanian speaking communities. However, the implementation of these provisions at both the central and the local government is so far not at the required level and enforcement measures are mostly conducted by the UNMIK. Main reasons include: 1) not a uniform understanding of the applicable law by municipal authorities in its implementation, 2) lack of qualified personnel and inadequate technical capabilities and 3) need for strong political will and demonstrated genuine commitment.

In addition to the Law on Implementation of the Equality of the Languages and the Alphabets in the Socialist Autonomous Province of Kosovo<sup>154</sup> establishing the equality of Albanian and Serbo-Croatian and of Turkish language in areas "where members of Turkish nationality live" (Art.2), Chapter 4 of the Constitutional Framework sets forth the rights of communities and their members. These include, among others, their right to (a) Use their language and alphabets freely, including before the courts, agencies, and other public bodies in Kosovo; (c) Enjoy access to information in their own language; ... (i) Provide information in the language and alphabet of their Community ... (m) Receive and provide public health and social services, on a non-discriminatory basis ... Moreover, while the Provisional Institutions of Self-Government are mandated to "create appropriate conditions enabling Communities to preserve, protect and develop their identities (Section 4.3), the SRSG will "retain the authority to intervene as necessary in the exercise of self-government for the purpose of protecting the rights of communities and their members" (section 4.6). Relevant provisions concerning the use of languages at the Central Assembly and Government levels are included in Sections 9.1.49, 9.1.50, 9.1.51, 9.3.17, 9.3.18 and 14.4. At the local level, UNMIK Reg. 2000/45 establishes that all organs and bodies of a municipality shall ensure that inhabitants of the municipality enjoy all rights and freedoms without distinction of any kind, such as [...] language (Section 2.3). Relevant provisions concerning relations between administrative authorities and persons belonging to linguistic minorities the use of languages are included in Sections 9.1, 9.2, 9.3, and 9.5.

#### **Article 10 (3)**

**The Parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.**

There are extensive provisions for the protection of the language rights in the criminal process. The rights of the accused upon arrest include the right to be informed promptly, in a language he or she understands, of the reasons for arrest, the right to legal assistance and the right to notify his or her family or other person of his or her arrest; to the free assistance of an interpreter if he or she does not understand the language of the police; to be informed of his or her legal rights in a language that he understands. Upon examination under criminal process, the accused has the right to be promptly informed, in a language he or she understands, of the nature and reason for the charges against him or her; and to the free assistance of an interpreter if he or she does not understand the language of the person conducting the examination. No later than the filing of an indictment against him or her, the accused has a right to disclosure, in a language he or she understands or speaks, of all witness statements, although not the entire record of the case. The law specifically states that it is a substantial violation of criminal procedure if the accused was denied the right to use his or her own language in the main trial.

The accused is not liable for the costs of interpretation in proceedings conducted in a language that he does not speak.

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<sup>154</sup> In Official Gazette SFRY n. 48/1977, as amended by the *Law on Amendments to the Law on Realisation of the Languages and Alphabets in the Socialistic Autonomous Province of Kosovo* (Official Gazette SAPK, No 11/85)

As you may note from the inclusive language of Article 15 (2), language rights are not only guaranteed to the accused. In addition, the *Provisional Code of Criminal Procedure* provides that a witness must be informed, in a language he fully understands and speaks, that his or her examination is to be recorded. The testimony of a co-operative witness must be taken in written form in the language of the witness.

Of several hundred complaints received by the JIU, only two are related to breach of the language rights of the member of a minority community.

The applicable SAP Kosovo Language Law stipulates that official communication must be in the Albanian and Serbian languages. It also requires official communication in the Turkish language in those municipalities inhabited by members of the Turkish community (which in practice is understood to be the Municipality of Prizren).

The Provisional Criminal Procedure Code is the principal act regulating language rights of minorities in the criminal justice system.

Article 11 reads in pertinent part:

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

Article 14 reads in pertinent part:

“(1) Any person deprived of liberty shall be informed promptly, in a language which he or she understands, of:

- 1) The reasons for his or her arrest;
- 2) The right to legal assistance of his or her own choice; and
- 3) The right to notify or to have notified a family member or another appropriate person of his or her choice about the arrest.”

Article 15 provides that:

“(1) The languages and scripts which may be used in criminal proceedings shall be Albanian, Serbian and English. Another language or script may also be used if it is prescribed by law for use within the individual territorial jurisdiction of a court.

(2) Any person participating in criminal proceedings who does not speak the language of the proceedings shall have the right to speak his or her own language and the right to be informed through interpretation, free of charge, of the evidence, the facts and the proceedings. Interpretation shall be provided by an independent interpreter.

(3) A person referred to in paragraph 2 of the present article shall be informed of his or her right to interpretation. He or she may waive this right if he or she knows the language in which the proceedings are conducted. The notification of the right and the statement of the participant shall be entered in the record.

(4) Pleadings, appeals and other submissions may be served on the court in English, Albanian or Serbian or another language, taking into account the provisions of the Constitutional Framework and any law prescribing additional languages for use within the individual territorial jurisdiction of a court. After the beginning of the main trial, a person who makes a submission may not revoke his or her decision about the language which shall be used in the proceedings without the permission of the court.

(5) An arrested person, a defendant who is in detention on remand and a person serving a sentence shall be provided a translation of the summonses, decisions and submissions in the language which he or she uses in the proceedings.

(6) A foreign national in detention on remand may serve on the court submissions in his or her language before, during and after the main trial only under the conditions of reciprocity.”

#### Article 90

“(1) The person examined shall be informed, in a language he or she fully understands and speaks that the examination is to be audio- or video-recorded and that he or she may object if he or she so wishes.”

#### Article 99

“(6) The costs of interpretation shall not be paid by the defendant who does not know or speak the language in which the criminal proceedings are conducted.”

#### Article 214

(1) An arrested person has the following rights:

1) To be informed about the reasons for the arrest, in a language that he or she understands;

[...]

3) To be given the free assistance of an interpreter, if he or she cannot understand or speak the language of the police;”

#### Article 231

“(2) Before any examination, the defendant, whether detained or at liberty, shall be informed of:  
[...]

(3) The right to be given the free assistance of an interpreter if he or she cannot understand or speak the language of the person conducting the examination;”

#### Article 270

“(6) At the time of the arrest, the person shall be informed of the reasons for the arrest in a language which he or she understands and of his or her rights under Article 214 of the present Code.”

#### Article 301

“[...]Any such testimony must be either in written form in the language of the co-operative witness, signed by him or her to acknowledge its truthfulness, or recorded on audio- or video-tape which is determined to be authentic by the court.”

#### Article 307

(1) No later than at the filing of the indictment the prosecutor shall provide the defence counsel with the following materials or copies thereof which are in his or her possession, control or custody, if these materials have not already been given to the defence counsel during the investigation:

[...]

(2) Names of witnesses whom the prosecutor intends to call to testify and any prior statements made by those witnesses;

[...]

(2) The statements of the witnesses shall be made available in a language which the defendant understands and speaks.”

#### Article 403

“(1) There is a substantial violation of the provisions of criminal procedure if:  
[...]

(3) [...]the accused, defence counsel, the subsidiary prosecutor or the private prosecutor was, notwithstanding his or her request, denied the right to use his or her own language in the main trial and to follow the course of the main trial in his or her language (Article 15 of the present Code);”

The DOJ issued Justice circular No. 2000/08 *On the Use of Languages in Court Proceedings*, Justice circular No. 2001/18 regarding *Bilingual Court Forms and Prosecution Folders*, and Justice circular No. 2003/07 in relation to *Public Access to Courts*, which remind Courts and Public Prosecutors of the need to adhere to the applicable law respecting the use of official languages in all communications. The law provides that all official communication must be in both Albanian and Serbian, and in the Turkish language and alphabet in the Municipality of Prizren (where the greatest number of members of the minority Turkish community reside). The circulars stress that all orders and judgments must be in the language of the parties to proceedings. They also point out that official communication includes signs, notices, and all other forms of communication posted in public places in Kosovo.

Responsibility for monitoring compliance by the courts with the language requirements of the applicable law falls to JIS and its CLOs.

Although the languages of non-majority communities are not always respected by the courts, their use in legal proceedings is seldom problematic since closely related variants of the Serbo-Croatian language are spoken by most of the minority groups in Kosovo. The historical dominance of the Serbo-Croatian language in Kosovo means that as a practical matter even those judges, prosecutors and court staff who are not members of non-majority communities can communicate in their language. The principal exception to this generalization relates to the Turkish language. Their rights are accommodated by members of the Turkish minority community who occupy positions as judges, prosecutors and court staff in the municipality where their numbers predominate.

#### Article 11

**1 The Parties undertake to recognise that every person belonging to a national minority has the right to use his or her surname (patronym) and first names in the minority language and the right to official recognition of them, according to modalities provided for in their legal system.**

**2 The Parties undertake to recognise that every person belonging to a national minority has the right to display in his or her minority language signs, inscriptions and other information of a private nature visible to the public.**

**3 In areas traditionally inhabited by substantial numbers of persons belonging to a national minority, the Parties shall endeavour, in the framework of their legal system, including, where appropriate, agreements with other States, and taking into account their specific conditions, to display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is a sufficient demand for such indications.**

The use of official languages on public signs is respected in most Ministries and Municipalities. Non-compliance applies equally in both Kosovo Albanian and Kosovo Serb majority Municipalities. In predominantly mono-ethnic areas, the signs often appear only in the language of the majority or in

an internationalised version. The Municipalities of Obiliq/Obilić, Novoberdë/Novo Brdo, Kamenicë/Kamenica, Suharekë/Suva Reka, Podujevë/Podujevo and Gillogovc/Glogovac are cases of selective attempts to give the respective Municipalities "Albanised" names. In the last few months there has been some progress with mono-lingual signs being replaced with bilingual signs, but still much remains to be done. As of April 2005, official signs on Municipal buildings were compliant or partially compliant with language policy in 65 percent of Municipalities. Street, town and village signs were compliant or partially compliant in 60 percent of Municipalities.

There is no specific legislation that stipulates that personal names of minority members shall be recorded in their original language and/or alphabet.

UNMIK Regulation 2004/36 amending Regulation on the Names of Municipalities 2000/36 followed by Administrative Direction 2004/43, UNMIK Regulations 2000/45 and 2001/9 regulate the way the names of the municipalities should appear in Kosovo. The Regulation on the Names of Municipalities is annexed in full to this report.

### **Input of the Ministry of Transport and Communications**

The MTC has issued the Law on Roads, and several administrative instructions. The most relevant one is the Administrative Instruction No. 2002/G1, which regulates the placement of road signs in official languages.

Article 13.1 of the Law on Roads reads:

"The Ministry is responsible for maintaining the traffic signs and Roads; while the Municipality is responsible for maintaining Roads."

Article 20 of the Law on Roads reads:

"20.1 The Ministry is responsible for placing traffic signs on Main and Regional Roads.

20.2 The Municipality is responsible for placing traffic signs on Local Roads.

20.3 The Ministry and Municipality are responsible for placing relevant traffic signs on the road-side portion of the intersections of Public Roads with railway lines, each of them in accordance with their respective competencies."

Within the MTC the Department of Road Infrastructure is responsible for the placement of signs on local and regional roads outside the settlements. The placement of signs on the roads inside the settlements is under the competencies of municipalities.

In order to avoid cultural and language discrimination against non-majority communities, the MTC has developed a policy for the placement of road signs in Kosovo's official languages in compliance with the Constitutional Framework and all other relevant applicable legal acts. Despite the good will and the keenness of all the PISG in general, and of MTC in particular, the Ministry encountered some obstacles in allowing the placements of these signs.

### **Article 12**

- 1. The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.**



In this context the Parties shall *inter alia* provide adequate opportunities for teacher training and access to textbooks, and to facilitate contacts among students and teachers of different communities.

2. The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.

### **Parallel education system**

Two systems of education operate in Kosovo. All primary and secondary schools located either in Kosovo Serb enclaves or in municipalities where the Kosovo Serb community represents the majority use the curriculum of the Serbian Ministry of Education and Sports (SMES). The SMES provides these schools with textbooks, diplomas and stamps. Both teachers and support staff are supervised by the SMES and receive salaries both from the latter and from the PISG/Ministry of Education, Science and Technology (MEST).

In Mitrovicë/Mitrovica region, all primary and secondary schools located in the municipalities of Zubin Potok, Leposavić/Leposaviq, Zvečan/Zveçan and in northern part of Mitrovicë/Mitrovica are under direct authority of the SMES. The same applies to primary and secondary schools located in Banja/Banjë (Skenderaj/Srbica municipality), Gracë/Grace, Gojbulë/Gojbulja and Prilluzhë/Priluzhje (Vushtrri/Vučitrn municipality).

In Prishtinë/Priština region primary and secondary parallel schools have been identified in the municipalities of Fushë Kosovë/Kosovo Polje, Prishtinë/Priština (only in rural north and south areas), Lipjan/Lipljan and Obiliq/Obilič.

In Gjiilan/Gnjilane region the following primary and secondary schools under parallel structures have been identified: seven primary and six secondary schools in Gjiilan/Gnjilane municipality; four primary and one secondary schools in Viti/Vitina municipality; one primary school in Novobërdë/Novo Brdo; 11 primary and two secondary schools in Kamenicë/Kamenica municipality. In Štrpce/Shtërpçë municipality all primary schools (apart from the one attended by the Kosovo Albanian community) and the high school are under direct supervision of the SMES.

In Prizren region the only municipality in the region that has an existing parallel structure is Rahovec/Orahovac, with two primary schools and one secondary school.

In Pejë/Peć region the primary school located in Osojane/Osojan (Istog/Istok municipality) and the primary and secondary school in Gorazhdevc/Gorazdevac (Pejë/Peć municipality) are all supervised by the SMES.

The Serbian University in northern Mitrovicë/Mitrovica has been operating under Serbian rule since the end of the conflict. All universities that function in Kosovo since 2001 were legalised when the Law on Higher Education was signed by the SRSB on 12 May 2003.<sup>155</sup>

### **Input of the Ministry of Education, Science and Technology**

The PISG pay a specific attention to communities and make efforts to cultivate and assist the development of their language, history, culture and tradition as a valuable asset for the multiethnic live of Kosovan society. Also, efforts are made to maintain and further promote the coexistence of Albanians with non-majority communities

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<sup>155</sup> UNMIK Regulation 2003/14 On the Promulgation of the Law Adopted by the Assembly of Kosovo on Higher Education in Kosovo.

Bosniaks and Turks are integrated within the unified education system of Kosovo according to new curriculum, which are developed based on the reform that was launched in 2002. 16 Bosniak and 12 Turk experts worked on compiling curriculum for Minority Community subjects (mother tongue, history, music and art). The minority experts, together with Albanian experts, have attended 12 seminars led by international and national experts. To date, curriculum for grades: IX, I, VI, X, II, VII, XI for grades: III, VIII, XII are developed in Bosniak and Turkish languages. Curriculum for grades IX and X is currently being developed for the Serb community.

Roma, Ashkali and Egyptian communities (RAE) in Kosovo are poorly educated. With the aim of increasing the level of education of these communities, MEST organised a specific form of education: intensive accelerated learning, which enabled pupils to complete two grades in one school year as well as provided additional supporting instructions on how they should do their homework. Nine to sixteen years old children, who had terminated their education due to different reasons were included in the accelerated learning. Between 1999 and September 2000 the accelerated learning programme were implemented by international NGOs. As of 2002 it has fallen in the competences of MEST. To date intensive learning was implemented in the following municipalities: Pejë/Peć, Gjakovë/Đakovica, Shtime/Štimlje, Ferizaj/Uroševac, Suharekë/Suva Reka, Prizren, Istog/Istok, Leposavić/Leposaviq, and 2740 pupils are certified. Out of these 760 pupils were integrated into regular schools, which is the objective of MEST.

In the 2004-2005 school year, the second phase of the intensive learning programme is being implemented in ten municipalities: Pejë/Peć, Gjakovë/Đakovica, Shtime/Štimlje, Ferizaj/Uroševac, Prizren, Istog/Istok, Prishtinë/Priština, Suharekë/Suva Reka, Shtime/Štimlje, and Lipjan/Lipljan and 695 pupils are included in the classes. 61 teachers and eight coordinators are involved in the implementation of the intensive learning programme and additional financial resources are provided. MEST initially identified pupils, organised the intensive learning, trained the teachers and supported the development of this programme with 17900 Euro, while the OSCE granted 51040 Euro for the implementation of the programme.

With regard to Roma community, MEST in collaboration with the OSCE, UNICEF and the SOROS foundation organised one month summer school between two and 29 August 2004 in Prizren. The school included lectures by international experts from the University of Paris on Roma issues and aimed at empowering Roma teachers. Twenty participants obtained diplomas from the summer school. Forty eight Roma teachers have also been trained by MEST, the NGOs Kosovo Education Development Project (KEDP) and Kosovo Education Centre (KEC). Teachers belonging to the RAE communities together with Albanian teachers attended trainings organised on *ad hoc* basis by the MEST on the implementation of the new curriculum. KEDP has organised trainings specifically for RAE teachers, which lasted for one week and were entitled "Pupil in the Center". Twenty five RAE teachers (22 male and three females) who are employed full time in regular schools participated in these trainings. The MEST made efforts in co-operation with KEDP and KEC to include teachers from all communities in trainings. To date 325 Serb teachers, 137 Turks, 109 Bosniaks, 94 Gorani, 48 Roma and eight Croatians participated in trainings organised by the MEST.

MEST has also provided free of charge textbooks for pupils belonging to RAE communities (283 sets), which cost of 8900 Euro.

The MEST regularly supports financially the celebration of 8 April, International Day of Roma in Prizren. In co-operation with the PILLAR III, the MEST has involved international experts in developing a curriculum in Roma language as mother tongue for primary education and as a subject of choice for six months period. According to the MEST curriculum textbooks should be written for the RAE community. The RAE community is also included in NGOs such as "Durmish Asllano" in Prizren, "Baro Amalije" in Gjilan, "Iniciativa 6" in Prizren etc.

The MEST has given a specific importance to the education of non-majority communities and has established the Unit of Communities and Gender Equality within its structure. The aim of MEST and of this Unit is to create a unified education system in Kosovo, to provide inclusion in higher quality education at all levels for all, irrespective of their ethnicity, language, religion and race.

For better functioning of education system and in order of being closer to pupils the MEST established seven Regional Education Offices (REO) in Prishtinë/Priština, Prizren, Pejë/Peć, Gjakovë/Đakovica, Ferizaj/Uroševac, Mitrovicë/Mitrovica and Gjiilan/Gnjilane. Each office includes Gender Affairs Officers and Community Officers (three Bosniaks, three Turks and one Serb). The vacancy for Serb Community Officer is opened.

Vacancy announcement for recruitment of employees in MEST, REO is published in the following Albanian newspapers in both languages: “Koha ditore”, “Bota sot”, “Zëri” and “Pavarësia”. Vacancies are also published in the newspaper “Jedinstvo” in Serbian language, the magazines “Alem” in Bosniak language and “Yeni Dnyem” in Turkish language.

In every municipality exists a Municipal Directorate for Education (MDE), which is in charge with hiring qualified staff in schools, supplying schools with textbooks and other learning aids, maintaining the schools’ infrastructure and hygiene, etc. The MDEs have such obligations also with regard to minority schools.

The personnel sector of the MEST is responsible that official documentation issued by the MEST is produced in official languages. The MEST has an office for translations within its structure.

The MEST employs teachers from different ethnic communities with the aim of integrating non-majority communities in the education system and institutions of Kosovo.<sup>156</sup>

#### **Teachers according to ethnic background and schooling levels 2004/2005**

Level	Albanian	Serb	Bosniaks	Ashkalija	Roma	Croats	Turks	Egyptians	Gorani	Total
Preschool	560		6	0	0	0	7	0	0	573
Primary	16502		311	14	4	0	111	4	62	17009
Secondary	4179		74	1	0	0	44	0	16	4314
Total	21241	1960	391	15	4	0	162	4	78	21896

Since the establishment of MEST, the Kosovo Assembly has adopted the Law on Primary and Secondary Education of Kosovo<sup>157</sup> and the Law of Higher Education in Kosovo.<sup>158</sup> The Law on Education of Adults is drafted and is in process of adoption. These laws in their specific sections guarantee education in the mother tongue of all communities.

Article 5.1 of the Law on Primary and Secondary Education in Kosovo, specifies:

“Access to and progression through all Levels of primary and secondary education in Kosovo shall be without direct or indirect discrimination on any real or presumed ground such as sex, race, sexual orientation, physical, intellectual or other impairment, marital status, colour, language,

<sup>156</sup> The monthly salaries in the education system are as follows: Director of Primary School -228 Euro, Director of Secondary School- 260 Euro, teacher of primary school- 209 Euro, teacher of secondary school- 217 Euro, technical staff and cleaners- 155 Euro.

<sup>157</sup> UNMIK Regulation 2002/19, 31 October 2002, On the Promulgation of a Law Adopted by the Assembly of Kosovo on Primary and Secondary Education in Kosovo.

<sup>158</sup> UNMIK Regulation 2003/14, 12 May 2003, On the Promulgation of a Law Adopted by the Assembly of Kosovo on Higher Education in Kosovo.

religion, political or other opinion, national, ethnic or social origin, association with a national community, property, birth or other status of the pupil or the pupil's family.”<sup>159</sup>

Article 17.1 of the Law on Primary and Secondary Education states:

“In carrying out their functions and responsibilities under this Law and the applicable law with respect to educational provision for children and adults within the municipality, each municipality shall:

- (a) Promote equality of opportunity in access to primary and secondary education in the municipality, in staff development and training and in all other aspects of education; and
- (b) Respect and promote the rights of Communities and their members established in Chapter 4 of the Constitutional Framework for Provisional Self-Government.”

Article 13.5 of the Law on Higher Education states:

“The statute of each public provider of higher education shall ensure that the following principles apply within the provider:

- (a) Equality of opportunity in employment and equal access to study and research, regardless of sex, race, sexual orientation, marital status, colour, language, belonging to an ethnic or national minority, political or religious belief and, so far as is reasonably practicable, age, physical or mental impairment; and
- (b) That all persons and bodies conduct themselves in accordance with the highest standards of selflessness, integrity, objectivity, accountability, openness, honesty and leadership: in discharging his or her official duties no person shall act as a delegate of any group of any description and shall neither seek nor accept any mandate: all persons must act at all times solely in the interests of the provider as a whole.”

The organisation of the special education in Kosovo is based on Article 35.1 of the Law on Primary and Secondary Education, which reads:

“Pupils who either do not or are unable to benefit satisfactorily from ordinary tuition have the right to special education and it shall be the duty of a municipality to provide it in accordance with the provisions of this law and within the framework and limits of the municipal budget.”

The following data on the number of pupils from different ethnic groups was provided for the school year 2004-2005 by the seven REOs of MEST in Kosovo.

#### Number of pupils in school levels according to ethnic background

Level	Albanians	Bosniaks	Ashkalija	Roma	Croatian	Turks	Egyptians	Gorani	Total
Preschool	7002	19	29	2	2	16	0	2	7072
Pre-primary	17159	186	38	25	0	105	30	50	17593
Primary	315699	4363	2231	1008	38	2365	859	642	327205
Secondary	68500	666	68	33	0	465	8	19	69759
Total	408360	5234	2366	1068	40	2951	897	713	421629

<sup>159</sup> NB. The published Serbian translation of the above Article reads:

“Access and progressing through all levels of primary and secondary education in Kosovo shall be provided without any direct or indirect discrimination on any real or presumed ground such as sex, race, sexual orientation, marital status, colour, language, religion, political or other opinion, national ethnic or social origin, membership in national community, property, origin or other status of the pupil or the pupil's family.”

**Number of pupils, teacher and schools in Serbian language, Kosovo 2003/2004  
(data received by 18 December 2003)**

Preschool		Primary			Secondary			Total			
No. of schools	No. of pupils	No. of schools	No. of pupils	No. of classes	No. of schools	No. of pupils	No. of classes	No. of schools	No. of pupils	No. of classes	No. of teachers
46	2318	63	14368	856	35	6492	350	98	23178	1206	1960

**Special education**

In Kosovo there are seven special schools for students with special needs with 45 classrooms.

**Number of pupils and teachers according to ethnic background in special education**

	Albanian	Serbian	Bosniak	Turks	Total
Number of pupils	395	72	10	16	493
Number of teachers	89	30	2	2	123

For the functioning of special education for communities, MEST allocated from its budget to every municipality 5725 Euro, and spent 28576 Euro in 2004 Kosovo wide. MEST also provided transport for students with special needs.

The MEST in cooperation with Finnish Support to the Development of Education sector in Kosovo (FSDEK) organised training for 70 Serb, 10 Bosniak and 10 Turk teachers working with students with special needs.

**Article 13**

- 1. Within the framework of their education systems, the Parties shall recognize that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments.**
- 2. The exercise of this right shall not entail any financial obligation for the Parties.**

**Input of the Ministry of Education, Science and Technology**

Private schools in Kosovo were established for the first time in November 1999, but there are no private schools for non-majority communities only. The Turkish 4 year college "Mehmet Akif" has 48 students, who are Albanian, Turkish and from other communities. In this college classes are conducted mainly in English.

MEST promulgated two administrative instructions regulating private schools: Administrative Instruction on Licensing and Registration of Private Education Institutions<sup>160</sup> and Administrative Instruction on Licensing and Registration of Private Primarily and Secondary Education Institutions in Kosovo.<sup>161</sup>

The MEST has the following data regarding private school attendance, except for students belonging to the Serb minority, for which it could not obtain information.

<sup>160</sup> Administrative Instruction 09/2002, dated 8 August 2002.

<sup>161</sup> Administrative Instruction 03/2003, dated 22 February 2003.

**Number of students in private schools by ethnicity**

Level	Albanian	Bosniak	Ashkalija	Roma	Turkish	Other	Total
Pre-primary	258	0	1	8	6	0	273
Primary	368	4	0	0	19	20	411
Secondary	413	0	0	0	14	6	423
Total	1039	4	1	8	29	26	1107

**Article 14**

- 1. The Parties undertake to recognize that every person belonging to national minority has the right to learn his or her minority language.**
- 2. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure, as far as possible and within the framework of their education systems, that persons belonging to those have adequate opportunities for being taught the minority language or for receiving instruction in this language.**
- 3. Paragraph 2 of this article shall be implemented without prejudice to the learning of the official language or the teaching in this language.**

**Input of the Ministry of Education, Science and Technology**

Education is organised in the following four languages: Albanian, Serbian, Bosniak and Turkish. Roma, Ashkalija and Egyptians attend classes in the languages used in the area in which they live. Majority of them attend lessons in Albanian language and a smaller part in Serbian and Bosniak language.

In Kosovo there are many multiethnic schools comprising Kosovo Albanians, Turks, Bosniak, Roma, Ashkalija and Egyptians learning together, such as "Leke Gukagjini" in Prizren, "Motrat Qiriazzi", "Naim Frasheri" in Prishtina, the secondary school "Sami Frasheri" in Prishtinë/Priština, the primary school "7 shtatori" in Vitimirice in Pejë/Peć region. Classes in these schools are presented in the native languages of the students (according to their ethnicity).

The biggest non-majority communities in Kosovo are living in Prizren, Pejë/Peć, Mitrovicë/Mitrovica, Dragash/Dragaš, Prishtinë/Priština, Gjilan/Gnjilane regions. Classes and professional training can be attended in their mother tongue wherever they live. Improving the qualification of teachers is a continuing task for the MEST. In order to achieve that in cooperation with international education institutions the MEST organised round table meetings, various seminars on new methodologies and lecturing in minority languages. In order to exchange experience the MEST is co-operating with Turkey, Bosnia, Macedonia, etc.

Non-majority communities (Bosniaks, Turks, RAE, etc) are integrated in the unified education system though learning Albanian language as non native language. Non-majority communities learn

Albanian language as non native language (two classes per week) and other subjects they attend in their native language (such as math, physics, chemistry, biology, civic education, etc). This is guaranteed with the Law on Primary and Secondary Education in Kosovo.

The MEST works towards providing education for non-majority communities and inclusiveness of students at all levels of education according to new curriculum which is drafted by experts from non-majority communities. Therefore, students from non-majority communities can learn in their language the following four subjects: native language, history, music and art.

Until the edition of new textbooks in accordance with the Kosovo curriculum, Bosniak and Turkish communities were using textbooks from Bosnia and Herzegovina and from Turkey. These textbooks were funded by MEST budget. The MEST allocated 120000 Euro to purchase the text

books and distributed them free of charge to the pupils of grades I to VIII of primary schools. Turkey's Ministry of Education has contributed by distributing additional textbooks to the pupils from the Turkish community. Turkish authorities also provided other support, such as training of Turkish teachers, exchange of experience and scholarships covering tuition fees of students in Turkey. Every year 65 Turkish, 22 Albanian and 3 Bosniak students are going to different Universities in Turkey for studies. Pupils of belonging to non-majority communities have access to different children books, magazines and newspapers in their own languages, such as "Dulistan", "Yeni Dynem", "Alem", "Turkem", "Inci" etc.

In October 1999 for the first time began education in Bosniak language in different levels of education ranging from preschool to university. This allowed pupils to learn in their own language subjects such as history, culture and traditions, as well as those of the majority community.

In 2003-2004 a Business Faculty was opened in Pejë/Peć in Bosniak language. This fact shows how much the Kosovo society cares for the education of non-majority communities. 152 Bosniak students are currently studying in the faculty. Also in 2003-2004 the Education Faculty was opened in Prizren in Bosniak and Turkish languages, enrolling 50 Bosniak and 50 Turkish students in the primary programme. In the Faculty of Philology, 60 students are studying Turkish language and literature. During this school year for a first time started a masters' programme in Turkish language in which were registered 10 students. These faculties were opened in order to assist the members of non-majority communities studying in Kosovo, in their own mother tongue and in order to have qualified people who would assist the education process of non-majority communities in Kosovo.

In order to facilitate the enrolment of students in junior colleges and faculties, the MEST in collaboration with the Rector of the University of Prishtinë/Priština enabled the registration of non-majority communities based on quotas. 40 Bosniak, 23 RAE and 12 Turkish students were registered during the school year 2004-2005.

Currently the education in language other than mother tongue is regulated by the MEST Administrative Instruction (I) 8/2004, which was approved on 5 February 2004. It is worth mentioning that some minority students learned Albanian language as second language even before the adoption of the above administrative instruction as a result of their interest.

The MEST drafted a strategy plan for the integration of non-majority communities. The strategy plan includes an action plan for the integration of Serbian experts in the development of curriculum in Serbian language. It was adopted by the MEST and a job vacancy for Serbian officer for education was advertised.

One of the problems that the education in minority languages is encountering is that most of the teachers are close to pension age and often are not well qualified. In order to enhance the quality of the education in minority languages, a Faculty for Education for non-majority communities in Prizren was opened in 2003-2004 school year. In this Faculty the students learn to apply contemporary education methods and after a two years course they are capable of becoming teachers and to apply the methods learned in their schools.

To advance the education of non-majority communities in their mother tongues, the MEST allocated from its budget substantial amount of money to enhance the infrastructure, provide text books for free, provide laboratories with equipment, organise computer courses and English courses for non-majority communities and provide pedagogical documentation in Serbian, Bosniak, and Turkish. The fact that pedagogical documentation (such as registration books for primary and secondary school, receipts for primary and secondary schools, diplomas, applications for registration and other documentation) is provided in minority languages illustrates that the right of non-majority communities to use their languages in education is respected.

In the period from 1999 to date the MEST implemented various joint projects with various international organisations, governments and institutions, in which non-majority communities were always included. For example the World Bank supported the education in Kosovo through the Project for Enhancing Participation in Education, which is being implemented in all Kosovo municipalities since May 2003 and will continue until December 2006. The project is designed to encourage the participation of marginalised groups (females, non-majority communities, children of poor families, children from remote areas, etc.) in the education process in Kosovo. The World Bank provided grants to primary and secondary schools from which many minority schools benefited. Serbian schools are also regularly competing to win such grants. In the second phase of the project, 33% of the grants were allocated to minority schools. 41 schools (34 primary and seven secondary schools) benefited from grants and received a total of 385.531 Euro.

#### **Article 15**

**The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.**

Job creation and income generation remain areas of significant concern for all Kosovans including non-majority communities and returnees. It remains difficult for returnees and IDPs to participate fully and equally in the economy.

As of May 2005, 17 out of 27 Municipalities exceed their targets for level of employment of non-majority communities in the municipal civil service; 5 Municipalities exceeded their target level by 70%. Non-majority communities' level of employment in the central PISG in May 2005 is estimated at 10.2%; the target goal is 16.6%.

In the beginning of 2005 the Kosovo Government initiated a Special Recruitment Campaign that reserved and advertised for non-majority communities 103 central PISG positions.

In addition see the submissions under Articles 4 and 5 of the Framework Convention in this report.

#### **Article 16**

**The Parties shall refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the principles enshrined in the present framework Convention.**

Since June 1999 the number of non-majority communities in Kosovo has steadily declined and the ethnic composition of the population of the municipalities has drastically changed. Property sales can and are being used to prevent the return of non-majority communities to their homes in specific areas. These are termed 'strategic purchase and/or sale'. In order to protect the members of non-majority communities from being forced to sell their residential property, in order to preserve the ethnic composition of the municipalities and for the purpose of ensuring the right to return of all refugees and displaced persons in Kosovo the SRSG promulgated UNMIK Regulation 2001/17. The Regulation created a regime under which the SRSG designates in minority areas specific geographical areas within Kosovo where all contracts for the sale of residential property must be registered with the UNMIK Municipal Representative (previously Municipal Administrator) prior to court verification. The designation is based on the following criteria:

- security concerns arising from the sale of minority-owned property;



- evidence of an existing pattern of systematic sales of minority-owned property at prices which are unrealistic; and
- sale of residential property in areas where property rights of non-majority communities are of special concern.

The Municipal Representative reviews the documentation and may demand an explanation regarding the sale of the property and its intended future use. The Municipal Representative may refuse to register the contract for the sale of the residential property if he/she has reasonable grounds to believe *inter alia* that the transaction is “directly or indirectly carried out or fostered by an organisation or structure with the aim to systematically buy minority-owned properties in order to change the ethnic balance within the designated area”.

The regime described above, however, came under repeated criticism. In the OSCE/UNHCR Tenth Assessment of the Situation of Ethnic Minorities in Kosovo were cited cases indicating that the Regulation 2000/17 does not serve the purpose originally envisaged. The report stated that “UNMIK representatives of the Prishtinë/Priština, Obiliq/Obilic and Fushë Kosovë/Kosovo Polje municipalities reported also that the Regulation has no significant impact on sales, since all the critical sales took place before the entry into force of the Regulation.” As an example in the village of Devet Jugovica/Nënte Jugoviq, it was reported that 50% of the residential property had already been sold before the enactment the Regulation. In another case in Fushë Kosovë/Kosovo Polje and Obiliq/Obilic, the UNHCR statistics related to the departure of Kosovo Serbs showed that more properties were exchanged than contracts submitted for registration, thus indicating the use of informal transactions.

In 2002-2003 a number of municipal courts appear to have violated the rights of absentee parties who belonged to non-majority communities.<sup>162</sup> The applicable Code on Civil Procedure (the Code) allows cases to be tried.<sup>163</sup> If done, the Code stipulates that court must act as lawyer *in absentia* or appoint a representative as well as must ensure that it has considered all relevant evidence before reaching a decision. The PILLAR III identified cases handled *in absentia* in which procedural guarantees have not been afforded to the absent party in proceedings and the law has been misapplied to the facts. For example in Klinë/Klina, in two municipal court cases held *in absentia* the absent party was not afforded the procedural guarantees codified in the Code. In both cases the absent party to proceedings was Kosovo Serb and the persons illegally occupying their properties applied to the court for a temporary measure—preventing legalisation of the sale of the property by the Kosovo Serb owner to a third party. In one of these two cases, the Kosovo Serb owner was not informed that court proceedings had been initiated, as required by Article 11 of the Code. In the second case, the court refused to accept certified authorisation from the Kosovo Serb owner for the third party purchaser to represent them at court. In both cases, the court also misapplied the law and erroneously ordered temporary injunctions when none of the requisite three criteria stipulated in Article 442 of the Code had been met.<sup>164</sup> Another case was identified at the Municipal Court of Gjakovë/Đakovica where the court initially refused to accept the notarised written authorisation presented by a Kosovo Egyptian to act on behalf of a relative in the case to repossess an illegally occupied kiosk.

In property disputes involving Kosovo Serbs as respondent parties the courts consistently do not use all the available means to locate the respondents, do not demonstrate that their decision to appoint a temporary representative is necessary to prevent detrimental consequences to the parties, and do not

<sup>162</sup> The OSCE, Department of Human Rights and Rule of Law report Property Rights in Kosovo, 2002-2003, iii), Proceedings in Absentia, p. 36.

<sup>163</sup> Article 295, Code of Civil Procedure (Official Gazette 4/77-1478, as amended by 15/1998).

<sup>164</sup> The criteria of Article 442 are: to remove imminent danger of wrongful injury; to prevent violence; or to avert an irreparable damage.

use appropriate public announcement of the appointment of temporary representatives.<sup>165</sup> Although the applicable law<sup>166</sup> foresees the possibility for the appointment of a temporary representative when the whereabouts of the respondent is unknown and where delays may be detrimental to the interests of the parties, before resorting to this option courts should make reasonable efforts to locate the respondents. In all of the monitored cases, the courts failed to use the available means to locate the Kosovo Serb respondents: indeed, some courts appeared to make no effort to do so even where there was no apparent detriment in delaying the hearing.

In addition the Manual for Sustainable Returns explicitly states:

“Return to place of origin

The international community gives priority to assist returns to place of origin (return to pre-conflict home,) over return to displacement (return within pre-conflict boundary or municipality but not to pre-conflict home). This approach is essential for both practical and principled reasons. Prioritising return to place of origin is practical, since many may return to displacement, but justifiably maintain their hope of eventually moving again to their pre-conflict home, where they can re-establish their links with the community, and re-integrate. In an environment of limited resources, the most cost-effective and viable option should be emphasised, which is return directly to the pre-conflict home. This point also makes clear why emphasis on return to place of origin is also the best way to ensure respect for the right to return. Once returns to places of displacement are supported, the momentum to ensure that people are given a real choice to return to their own homes is lessened, and it becomes more likely that the secondary displacement will become permanent. In addition to these arguments, the internal flight alternative has been rejected in the discussion on forced return from abroad.”

#### Article 17

**1. The Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage.**

**2. The Parties undertake not to interfere with the right of persons belonging to national minorities to participate in the activities of non-governmental organizations, both at the national and international levels.**

The right of persons belonging to non-majority communities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity or a common cultural heritage is firmly stressed in the Constitutional Framework, Chapter 4 on the rights of communities and their members. UNMIK has sought to facilitate such trans-frontier contacts through its external relations with states.

The provisions of Constitutional Framework, Chapter 4 guarantee persons belonging to non-majority communities peaceful contacts across frontiers.

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<sup>165</sup> The OSCE Department of Human Rights and Rule of Law, Legal System Monitoring Section, Spot Report on the Appointment of Temporary Representatives in Property Disputes Involving Minorities as Respondent Parties, April 2005.

<sup>166</sup> Article 5 of the Code of Civil Procedure prescribes that “[t]he court shall give to each of the parties the opportunity to express itself regarding the claims and statements of the opposing party.” Article 148 CCP foresees that “[i]f the party cannot find out the address of the person to whom the writ is to be served [...] the court shall try to obtain the required information from the competent administrative body, or [...] in some other way.” Article 84 CCP establishes the possibility of appointing a temporary representative for the respondent in cases where his/her whereabouts is unknown and he or she does not have a legal representative, on the condition that the regular procedure for the appointment of a legal representative would take a long time, thus causing detrimental consequences to one or both parties.

UNMIK has had fruitful communications with Turkish Government authorities in a continuing dialogue to ensure that the various concerns and rights of the Turkish community in Kosovo are swiftly addressed.

#### **Article 18**

**(1) The Parties shall endeavour to conclude, where necessary, bilateral and multilateral agreements with other States, in particular neighbouring States, in order to ensure the protection of persons belonging to the national minorities concerned.**

**(2) Where relevant, the Parties shall take measures to encourage trans-frontier cooperation.**

The authority to conclude agreements with States and international organisations in all matters within the scope of United Nations Security Council resolution 1244 (1999) is expressly reserved to the Special Representative of the Secretary-General (section 8.1(m) of the Constitutional Framework). The Provisional Institutions of Self-Government may reach and finalise (but not definitively conclude) agreements in the area of international and external cooperation provided that such activities are coordinated with the Special Representative of the Secretary-General (section 5.6 of the Constitutional Framework). Such agreements should be concluded by the Special Representative of the Secretary-General. On the basis of these provisions, the Provisional Institutions of Self-Government have the competence to initiate and negotiate agreements in transferred areas, provided that this process is coordinated with UNMIK. Although the Provisional Institutions of Self-Government have responsibility for human rights under section 5.1(r) of the Constitutional Framework, the SRSG and UNMIK has ultimate responsibility for the protection and promotion of human rights.

Apart from the UNMIK/CoE Agreement, certain international agreements within the meaning of paragraph 8.1 of the Constitutional Framework contain provisions which are directed at ensuring the protection of the rights of communities and persons belonging to them. Pursuant to section 1(e) of the attached Agreement on the Transfer of Sentenced Persons between UNMIK and the Federal Republic of Yugoslavia, particular consideration is to be given to the transfer of sentenced persons in UNMIK's custody to the Federal Republic of Yugoslavia (now Serbia and Montenegro), if members of the sentenced person's immediate family reside outside Kosovo in Serbia and Montenegro. It should also be noted that the attached UNMIK – FRY Common Document of 5 November 2001, though not an agreement, contains a number of provisions which expressly protect Kosovo-Serbs.

A list of other Agreements which UNMIK has entered into with States and international organisations follows.

- UNMIK-The Federal Republic of Yugoslavia Agreement on the Transfer of Sentenced Persons, 4 April 2002
- Agreement for Investment Support for Projects in Kosovo Between USA and UNMIK, 17 May 2002
- Agreement Between UNMIK Acting for PISG and Albania (Ministry of Transport and Telecommunications) on Road Transport of Passengers and Goods, 17 June 2002
- Agreement for Cooperation Between the Ministry of Culture, Youth and Sports and the Government of Albania, 13 August 2002
- Joint Declaration on Mutual Recognition of Insurance Documents, 27 September 2002
- Agreement Between UNMIK Acting for PISG and Sweden on the General Terms for Development Cooperation, 11 March 2003
- Agreement Between UNMIK Acting for PISG (Ministry of Environment and Spatial Planning) and Finland on Cooperation in the Water Management Preparatory Project, 20 October 2003

- Agreement Between UNMIK Acting for PISG (Ministry of Education, Science and Technology) and Finland on Phase II of The Finnish Support to the Development of the Education Sector in Kosovo, 17 November 2003
- Agreement Between UNMIK and Iceland for the Provision of Civil Aviation Services in Kosovo, 29 January 2004
- Agreement Between UNMIK and Albania on the Reciprocal Promotion and Protection of Investments, 19 February 2004
- Agreement Between UNMIK Acting on Behalf of PISG (Ministry of Health) and Finland on Phase II of the Finnish Support to the Development of the Health Sector in Kosovo, 3 March 2004
- Financing Agreement Between EAR and UNMIK on Cards 2004 Annual Action Programme for Kosovo for 51.5 Million Euro, 20 May 2004
- Agreement Between UNMIK and UK Concerning Financial Contribution by the Foreign and Commonwealth Office (FCO) in Support of the Office on Missing Persons and Forensics (OMPF), 29 June 2004
- Agreement Between UNMIK and Council of Europe on Technical Arrangements Related to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 23 August 2004
- Agreement Between UNMIK and Council of Europe on Technical Arrangements Related to the Framework Convention for the Protection of National Minorities, 23 August 2004
- European Community Contribution Agreement with International Organisation (Contract No. 04/Kos01/02/002) and UNMIK for Combating Fraud and Financial Crime in Kosovo For Euro 2,000,000.00, 25 August 2004
- Note of Understanding Between SRSG and COMKFOR on UNMIK and KFOR Responsibilities for the Maintenance of the Rule of Law in Kosovo, 21 December 2004

To foster the spirit of trans-frontier cooperation, UNMIK -- as mandated by UNSCR 1244 and the Constitutional Framework - has entered into agreements with neighbouring countries and beyond on behalf of the PISG. More than 22 countries have been contacted with a view to concluding cooperation agreements, especially in the fields of education, culture, health, agriculture, spatial planning and environment. Discussions have also been conducted concerning a number of project funding agreements. Specifically, the PISG Ministry of Health has established international cooperation relations with Bosnia and Herzegovina, Albania, Slovenia and FYROM that target information exchange and training, research, drug quality control and the treatment of patients who cannot be treated in Kosovo.

In addition, to ensure maximum freedom of movement, UNMIK has committed both energy and resources in pursuit of the recognition of travel documents and licence plates issued by UNMIK and the promotion of visa free travel. The usefulness of the UNMIK Travel Documents as tools for integration and freedom of movement cannot be over-emphasised.

The Prishtinë/Priština-Belgrade Dialogue Working Group (WG) on Missing Persons, which had been originally initiated in 2004, reconvened in Belgrade on 16 March 2005, after a twelve-month pause caused by March 2004 violence. WG is chaired by Francois Stamm of the International Committee of the Red Cross (ICRC) and includes delegations from PISG and the Government of Serbia. The purpose of the WG is not to identify the parties who committed murder and abduction, but to establish the fate of the victims. Consolidated provisional list of 2960 missing persons, of which 2300 are of Albanian ethnicity, was presented by the ICRC and approved by both delegations. The dialogue will continue on 9 June 2005. The ICRC intends to keep the talks at a humanitarian and technical level, avoiding political interferences.

### **Part III**

#### **ANNEXES**

- Annex I- United Nations Security Council Resolution 1244 (1999)
- Annex II- UNMIK Regulation 2001/9 On a Constitutional Framework for Provisional Self-Government in Kosovo, 15 May 2001
- Annex III- UNMIK Regulation 2001/19 On the Executive Branch of the Provisional Institutions of Self- Government in Kosovo
- Annex IV- UNMIK Regulation 2005/15 amending UNMIK Regulation 2001/19 On the Executive Branch of the Provisional Institutions of Self- Government in Kosovo UNMIK Regulation 2000/45 On Self- Government of Municipalities in Kosovo
- Annex V- UNMIK Regulation 2004/32 On the Promulgation of the Anti Discrimination Law adopted by the Assembly of Kosovo
- Annex VI- Kosovo Assembly Law 2004/3 On Anti-Discrimination
- Annex VII- UNMIK Regulation 2000/36 on the Names of Municipalities as amended by UNMIK Regulation 2004/36
- Annex VIII- Administrative Direction 2004/43 Implementing UNMIK Regulation 2000/43, as amended, On the Number, Names and Boundaries of Municipalities
- Annex IX- UNMIK 2004/53 On the Promulgation of the Law on the Kosovo Population and Housing Census Adopted by the Assembly of Kosovo
- Annex X- Kosovo Assembly Law 2003/16 On the Kosovo Population and Housing Census
- Annex XI- Letter of the Prime Minister of Kosovo dated 23 January 2005, to the Presidents of Municipal Assemblies
- Annex XII- The Letter by the Prime Minister of Kosovo addressed to the Secretary-General of the United Nations and the Security Council of 18 August 2003
- Annex XIII- The Appeal by the Prime Minister of Kosovo for the Return of IDPs of 25 February 2004
- Annex XIV- The Joint Declaration by the President of Kosovo, the Prime Minister of Kosovo, the President of the Assembly of Kosovo, the Prime Minister and the leaders of the Democratic Party of Kosovo, the Alliance for the Future of Kosovo and members of the Coalition Povratak of 14 July 2004 (2004 Joint Declaration)
- Annex XV- Speech by the Prime Minister designate to the Assembly of Kosovo, March 2005
- Annex XVI- Declaration by the Offices of the President of Kosovo and of the Prime Minister of Kosovo and by the President of the Assembly of Kosovo of 13 August 2003
- Annex XVII- Projects for Non-majority communities, Supported by the Ministry of Culture, Youth and Sports
- Annex XVIII- Kosovo Government Programme - 2004-2008
- Annex XIX- Recommendations of the workshop on the Anti-Discrimination organised by the Advisory Office GG
- Annex XX- List of Kosovo Serb NGO's in Kosovo
- Annex XXI- RTK Television – Current Schedule of Minority-Language Programming
- Annex XXII- List of programmes in languages of ethnic communities in Radio Kosova and Radio Blue Sky
- Annex XXIII- UNMIK - FRY Common Document, Belgrade, 5 November 2001
- Annex XXIV- UNMIK-The Federal Republic of Yugoslavia Agreement on the Transfer of Sentenced Persons, 4 April 2002
- Annex XXV - Agreement Between UNMIK Acting for PISG and Albania (Ministry of Transport and Telecommunications) on Road Transport of Passengers and Goods, 17 June 2002
- Annex XXVI - Agreement Between UNMIK Acting for PISG (Ministry of Education, Science and Technology) and Finland on Phase 11 of The Finnish Support to the Development of the Education Sector in Kosovo, 17 November 2003
- Annex XXVII - Agreement Between the United Nations Interim Administration Mission in Kosovo (UNMIK) acting for the Provisional Institutions of Self -Government in Kosovo

(Ministry of Culture, Youth and Sports) and the Ministry of Culture, Youth and Sports of the Government of the Republic of Albania on Cooperation in the Fields of Culture, Youth and Sports

- Annex XXVIII - Stability Pact for South Eastern Europe Annual Report 2004
- Annex XXIX - ED 2000/2 of 2 June 2000 on the Closing of Offices of DITA Newspaper
- Annex XXX - ED 2002/6 of 17 July 2002 on the Registration of Privately Operated Vehicles in Kosovo by Members of the Kosovo Serb Community
- Annex XXXI - ED 2002/10 of 11 September 2002 on Setting Aside of a Decision of the Municipal Assembly of Gjakove/Djakovica of 17 April 2002
- Annex XXXII - ED 2002/15 on the Extension of Accreditation of and Renaming the Higher Education Facility in Mitrovica
- Annex XXXIII - ED 2002/16 of 18 December 2002 on the Refusal of the Gjakova/Djakovica Municipality to issue Death Certificates to Ms. Hazbije Geroqina and Mr. Gjergj Hasanaj
- Annex XXXIV - ED 2003/4 of 22 April 2003 Amending Executive Decision No. 2002/6 on the Registration of Privately Operated Vehicles in Kosovo by Members of the Kosovo Serb Community
- Annex XXXV - ED 2003/5 of 30 June 2003 Amending Executive Decisions No. 2002/6 and No. 2003/4 on the Registration of Privately Operated Vehicles in Kosovo by Members of the Kosovo Serb Community
- Annex XXXVI - ED 2003/8 of 11 July 2003 Amending Executive Decisions No. 2002/6, No. 2003/4 and No. 2003/5 on the Registration of Privately Operated Vehicles in Kosovo by Members of the Kosovo Serb Community
- Annex XXXVII - ED 2003/11 of 27 August 2003, on Setting Aside of a Decision of the Municipal Assembly of Fushe Kosove/Kosovo Polje of 25 June 2003
- Annex XXXVIII - ED 2004/1 of 18 February 2004 on Setting Aside a Decision of the Municipal Assembly of Prishtinë/Priština of 30 December 2003
- Annex XXXIX - ED 2004/4 of 5 March 2004 on Setting Aside a Decision of the Board of Directors of the Municipality of Prizren of 1 June 2001 and a Decision of the Directorate of Property and Legal Matters, Cadastre and Geodesy of 16 July 2001
- Annex XL - ED 2004/8 of 8 April 2004 on Setting Aside Provisions in the Municipal Regulation No. 2004/1 of the Municipal Assembly of Mitrovicë/Mitrovica of 20 February 2004
- Annex XLI - ED 2004/21 of 5 October 2004 on the 2004 Elections for the Assembly of Kosovo
- Annex XLII - ED 2004/22 of 7 October 2004 on Setting Aside a Decision of 5 July 2004 of the Board of Directors and Decisions of 24 July of the Department of Urbanism and Public Utilities of Klinë/Klina Municipality
- Annex XLIII- Sustainable Returns and the Rights of Communities and Their Members- Kosovo Standards Implementation Plan
- Annex XLIV- Freedom of Movement- Kosovo Standards Implementation Plan
- Annex XLV- Standards for Kosovo