

Kosovo/Kosova (Serbia)

Human rights protection in post-status Kosovo/Kosova: Amnesty International's recommendations relating to talks on the final status of Kosovo/Kosova

Amnesty International considers that respect for the human rights of all, without discrimination, should lie at the heart of the talks process. This should be a central and unifying consideration in all decisions and agreements made about the future of Kosovo/Kosova (hereafter Kosovo).¹

The following memorandum sets out Amnesty International's recommendations aimed at ensuring that, irrespective of the future status of Kosovo, the human rights of all Kosovo communities are respected, protected and fulfilled, and that all those holding positions of authority in Kosovo are held to account.

Amnesty International urges that these recommendations should be included in any final documents and implemented as part of any agreement.

1. Human Rights

Recommendation: Amnesty International urges that matters relating to human rights should be integral to all decisions made on the future status of Kosovo. The protection of human rights should not be considered as a “technical issue”, but should be considered throughout the process and as the foundation of any agreement for the future of Kosovo.

Amnesty International notes with concern the statement by Martti Ahtisaari, Special Envoy to the UN Secretary General (UNSG),² that “serious discussions” on final status could not begin until discussions on “technical matters” including human rights were concluded.³ Amnesty International welcomes the declared aim of the Contact Group⁴ and the Serbian delegation on

¹Amnesty International uses Kosovo, in accordance with UN SC Resolution 1244/99.

² On 24 October 2005, the United Nations (UN) Security Council authorized the UN Secretary General to appoint as his special envoy to Kosovo former Finnish President Martti Ahtisaari; see S/2005/708, 31 October 2005.

³ Statement by Martti Ahtisaari, Pristina, 12 April 2006, various media.

⁴ On 10 November 2005, the President of the Security Council sent a letter from the Contact Group to the UN Secretary General which set out an agreed set of 10 “guiding principles for the future status

ensuring the protection of the rights of minority communities.⁵ The organization also urges the parties to ensure that measures are taken to guarantee the rights of all citizens of Kosovo, without discrimination and irrespective of their ethnicity. Amnesty International underscores that such measures must address the human rights of all minorities in Kosovo, including the Roma, Ashkali, Egyptians, Bosniaks, Gorani, Turks and other minorities.

Such measures should ensure the implementation of human rights compliant laws and include the establishment of properly functioning institutions to ensure the protection of human rights. Further, agreement should also be reached on measures to ensure that all persons in authority in Kosovo have a binding obligation to respect, protect and fulfil human rights.

Amnesty International notes that the United Nations Interim Administration in Kosovo (UNMIK) was charged under UN Security Council (UNSC) Resolution 1244/99 with establishing the rule of law in Kosovo and with the protection and promotion of human rights. Six years later, Amnesty International considers that many of the human rights concerns expressed by the organization since 1999 remain to be addressed; indeed many of the organization's recommendations are repeated in this document, which urges that serious measures must now be taken to ensure respect for human rights in Kosovo.

2. Consultation

2.1 Recommendation: All parties to the talks, including the UNSG's Special Envoy should take immediate measures to ensure the transparency of the talks process. The process should be open to meaningful and inclusive public consultation. Parties should

process for Kosovo". These included "(1). The settlement of the Kosovo issue should be fully compatible with international standards of human rights, democracy and international law and contribute to regional security. (3). The settlement should ensure multi-ethnicity that is sustainable in Kosovo. It should provide effective constitutional guarantees and appropriate mechanisms to ensure the implementation of human rights for all citizens of Kosovo and of the rights of members of all Kosovo communities, including the right of refugees and displaced persons to return to their homes in safety.

(8).The settlement of Kosovo's status should promote effective mechanisms to strengthen Kosovo's ability to enforce the rule of law, to fight organized crime and terrorism and safeguard the multi-ethnic character of the police and judiciary; The Contact Group also required (10) a continued "international civilian and military presence to exercise appropriate supervision of compliance with the provisions of the Status settlement, to ensure security and, in particular, the protection of minorities as well as to monitor and support the authorities in the continued implementation of standards", Letter dated 10 November 2005 from the President of the Security Council addressed to the Secretary General, 0559768, 10 November 2005.

⁵ Amnesty International notes that on 7 June 2006 the Contact Group issued a further document outlining 13 steps to be completed "within four to six months", including the adoption of legislation on languages and religious freedom, the establishment of additional police stations to ensure security and the protection of minority rights and the identification of funds for refugee returns.

encourage the participation and input of persons belonging to and representative of minority communities.

Amnesty International notes the apparent failure of the authorities in Kosovo to consult with and encourage the participation of members of minority communities in the delegations to the talks and in the working groups. The authorities should consult with members of all communities, including minority communities and women's organizations, on matters relating to discrimination and the rights of all communities in Kosovo. The organization notes that representatives of the Serb, Bosniak, Roma, Ashkalia, Egyptian and Gorani communities have stressed their "dissatisfaction and feeling of disconnection from the negotiation of final status talks on Kosovo".⁶ The organization also notes that the Advisory Committee to the Framework Convention for the Protection of National Minorities (Framework Convention) has highlighted that "the effective involvement of all communities in Kosovo... must be ensured in this process".⁷

2.2 Recommendation: All parties to the talks should ensure that women's organizations are both consulted and involved in the talks process. A specific working group should be established to review all proposed agreements to ensure that they adequately address the rights of women.

The exclusion of women from this process is inconsistent with UN SC Resolution 1325/2000 which "calls on all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including *inter alia*, "Measures that support local women's peace initiatives ... and that involve women in all of the implementation mechanisms of the peace agreement".⁸

Amnesty International regrets that despite repeated approaches by women's organizations to the SRSG, the Special Envoy of the UNSG and other bodies, representatives

⁶ Coordinators of the Working Groups, *Shadow Report on the Implementation of the Framework Convention for the Protection of National Minorities*, Executive Summary, p. 3.

⁷ Advisory Committee On The Framework Convention for the Protection Of National Minorities, *Opinion On The Implementation Of The Framework Convention For The Protection Of National Minorities In Kosovo*, ACFC/OP/I(2005)004, Executive Summary, p. 4; paras 109 and 164.

⁸ Article 8. *Calls* on all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, *inter alia*: (a) The special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction; (b) Measures that support local women's peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanisms of the peace agreements; (c) Measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary, UN SC Resolution 1325, On Women, Peace and Security, (S/RES/1325); Kosova Women's Network, *Report on Implementation of UN Security Council Resolution 1325 in Kosovo*, 30 March 2006.

of women's organizations in Kosovo have not been included in the delegations or in the working groups.⁹

3. Constitutional Guarantees

3.1 Recommendation: Any revised or new Constitution must set out guarantees for the respect and protection of the full range of human rights for all persons, without discrimination. The Constitution should also establish institutions which serve as guarantors of those rights.

Amnesty International considers that the process of drafting a Constitution should take place hand in hand with the talks process. Amnesty International considers that Kosovo has a unique opportunity to draft a new or amended Constitution¹⁰ that guarantees the respect and protection of human rights. It should also set out the framework for the protection and fulfilment of those rights.

This memorandum highlights some recommendations on the range of human rights institutions and mechanisms which should be incorporated into that Constitution.

Amnesty International notes that in 2005 the Provisional Institutions of Self Government (PISG) were reported to be in the process of drawing up a draft Constitution; more recent reports in June 2006 report concerns that there has as yet been no progress on the constitution.¹¹ The organization considers that the process of drafting a constitution should be transparent. It must involve consultation and involve representatives of all communities in Kosovo, enabling their participation in a meaningful and informed discussion. At present, according to information received by Amnesty International from representatives of non-governmental organizations (NGOs) there appears to be no clear channel for the public at large, or even some members of the government, to address a specific body on this issue.¹²

The Constitution and applicable law should ensure the establishment of independent human rights institutions which both monitor and provide remedies, as enshrined in international standards, to the people of Kosovo, in accordance with the Paris Principles on National Institutions for the Promotion and Protection of Human Rights.¹³

⁹ Kosova Women's Network, et al, *Report on Implementation of UN Security Council Resolution 1325 in Kosovo*, 30 March 2006; Amnesty International notes the signing of a Memorandum between Kosovo Women's Network and the Belgrade-based NGO Women in Black to monitor progress of the talks and to ensure that the voices of women are taken into account during the negotiation process.

¹⁰ Amnesty International notes that a Constitutional Framework was established under UNMIK Regulation 2001/9, *On the Constitutional Framework for Provisional Self-Government*, 15 May 2001, (Constitutional Framework).

¹¹ *Koha Ditore*, "Ende nuk është kërkuar nisja e hartimit të kushtetutës", 19 June 2006.

¹² Amnesty International interviews with members of several NGOs and a member of the government.

¹³ A/RES/48/134, 85th plenary meeting, 20 December 1993.

3.2 Recommendation: The amended or new Constitution must guarantee the rights of women to be free of all forms of discrimination, including violence, as enshrined in international standards and in applicable law.

Although in law and under the Constitutional Framework, women are guaranteed equality with men, in reality women from all ethnic groups in Kosovo suffer massive discrimination on the basis of their gender. Amnesty International has observed that discrimination against women remains widespread in Kosovo, including in employment, education and in gender-based violence.

Amnesty International notes that violence against women is a form of discrimination which gravely affects women's enjoyments of their human rights.¹⁴ The organization is therefore particularly concerned that trafficking in women and girls for the purposes of forced prostitution remains widespread, and that domestic violence is prevalent with perpetrators rarely prosecuted.

4. Clarification of the relationship between domestic law and international human rights standards

4.1 Recommendation: The Constitution should make specific reference to international law as one of the sources of national legislation. In case of conflict between national law and international law, the Constitution should specify that international law should prevail.

Amnesty International is concerned at the lack of clarity about the means by which international standards may be applied in practice. The organization has repeatedly called on UNMIK to clarify how the rights enshrined in international and regional standards may be applied in practice in Kosovo.

Applicable law in Kosovo was defined in UNMIK Regulations 1999/1 and 1999/24; the latter stipulated 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:

- The Universal Declaration on Human Rights;
- The European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto (ECHR);
- The International Covenant on Civil and Political Rights and the Protocols thereto (ICCPR);

¹⁴ Committee on the Elimination of Discrimination against Women, General Recommendation No 19, 1992, UN DOC A/47/38.

- 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 Elimination of All Forms of Discrimination Against Women (Women's Convention);
- The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 17 December 1984 (Convention against Torture); and
- The International (*sic*) Convention on the Rights of the Child (CRC)."¹⁵

These standards, (with the exclusion of the ICESCR and the Convention against Torture), were subsequently included in the Constitutional Framework for the PISG. Two further regional instruments were also included: "The European Charter for Regional or Minority Languages; and The Council of Europe's Framework Convention for the Protection of National Minorities".¹⁶ Section 3.3 of the Constitutional Framework states that "the provisions of rights and freedoms set forth in these instruments shall be directly applicable in Kosovo".

However, according to Amnesty International's research, the relationship between international human rights and applicable law remains unclear. With few exceptions, human rights standards are not invoked by the international or domestic judiciary nor are they widely known to the population of Kosovo.

4.2 Recommendation: Amnesty International recommends the establishment of mechanisms in both parliament and the government to screen draft laws and regulations and review existing laws, regulations and administrative directives and actions for their compatibility with international human rights standards applicable in Kosovo.¹⁷

In addition courts should be given jurisdiction to rule on the compatibility of law and actions with international standards.

The Constitutional Framework envisaged the establishment of a Special Chamber to the Supreme Court, empowered to decide on the compatibility of any laws adopted by the Assembly with international standards applicable in Kosovo (as set out in Chapter 3 of the Constitutional Framework) and with the Constitutional Framework itself.¹⁸ No such chamber

¹⁵ Section 1.3, UNMIK Regulation 1999/24, *On the Law Applicable in Kosovo*, 12 December 1999; see also UNMIK Regulation 2000/59, *Amending UNMIK Regulation No. 1999/24 On The Law Applicable In Kosovo*, 27 October 2000.

¹⁶ Chapter 3, Section 3, *On the Constitutional Framework for Provisional Self-Government*, (Constitutional Framework).

¹⁷ See *Recommendation REC(2004)5 of the Committee of Ministers to member states on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights*, (Adopted on 12 May 2004, at the 114th Session of the Committee of Ministers (12-13 May 2004); CDDH(2004)015)

¹⁸ Article 9.4.11, Constitutional Framework. It was also envisaged that this chamber should rule on disputes within the PISG and Assembly on the extent of their rights and obligations under the Constitutional Framework; whether decisions of the PISG infringed upon the independence and

has been established, although this responsibility has since 2006, in part, been transferred to the Office of the Ombudsperson (see section 6, below).

Amnesty International is concerned that within the PISG there are no clearly delineated responsibilities for ensuring that the PISG acts in compliance with human rights standards, including in the introduction of legislation. Responsibility for human rights protection within the PISG is vested in the Office of the Prime Minister, and discharged the Office of Good Governance, Human Rights, Gender and Trafficking (AOGG). However, in July 2005, the former Prime Minister decided to establish Human Rights Units within each of the PISG ministries to report on the implementation of plans for the promotion and protection of human rights; these have reportedly not yet come into being, although candidates for appointment have been selected by the Organization for Security and Co-operation in Europe Mission in Kosovo (OMiK), which has responsibility for institution building.¹⁹ Amnesty International also notes that in February 2006, Agim Çeku, the Prime Minister of Kosovo, announced the creation of a post, within his office, with responsibility for the oversight of human rights.

While these and other measures established within the PISG have sought to ensure the protection and promotion of human rights, Amnesty International concurs with the conclusion of the Advisory Committee on the Framework Convention that this plethora of initiatives has only succeeded in ensuring that there is no single institution responsible for oversight over the acts and omissions of the PISG.

4.3 Recommendations: All parties to the talks should ensure that all Serb, Roma, Albanian and other inhabitants of Serbian municipalities (as agreed under the decentralization talks) should be guaranteed access to all available domestic remedies, institutions and mechanisms established under applicable law in Kosovo.

Amnesty International notes the existence of parallel structures, including the provision of judicial, education, health and welfare services in the predominantly northern municipalities and in other enclaves in which Serbs are a majority. The organization also notes that applicable law in Kosovo is not perceived as applicable in the northern provinces, which continue under the Serbian judicial system.

Amnesty International also notes that talks on the decentralization of authority have preceded discussions on any other issues. The organization further notes that some form of transitional arrangement for the northern municipalities, involving a continued international administration, has been proposed.

responsibilities of a relevant independent body or office; and whether acts by members of the Assembly, a member of the Government or the President of Kosovo constituted an official act and as such is covered by immunity under this Constitutional Framework.

¹⁹ Amnesty International interview with Head of the Office for Human Rights, OSCE, April 2006.

The establishment of a Human Rights Court for Kosovo

On 25 January 2005, the Parliamentary Assembly of the Council of Europe (PACE) in their Resolution 1427 (2005), Protection of Human Rights in Kosovo, made a number of proposals for mechanisms which might “enhance and supplement” existing human rights protections in Kosovo. These included, *inter alia*, a human rights court for Kosovo; the establishment of the special chamber of constitutional matters (foreseen in the Constitutional Framework); the strengthening of the authority of the Ombudsperson; and the creation of an advisory panel.

Amnesty International notes the proposal of the PACE on the establishment of a human rights court for Kosovo, with jurisdiction to examine complaints related to violations of the ECHR. Amnesty International notes the remarks of the European Court of Human Rights and the Committee of Ministers who observed that this “raises the question of the applicability of the European Convention on Human Rights to Kosovo. This question, which can only be resolved having regard to United Nations Security Council Resolution 1244 and other relevant provisions determining the status of Kosovo under international law...”.²⁰ The court goes on to note that this question, “is liable to arise in the context of applications against Serbia and Montenegro lodged with the Court in virtue of Articles 33 or 34 of the Convention.”

5. Redress for violations of human rights

Recommendation: That agreements are made by both the international presence and the PISG to establish comprehensive accountability mechanisms at both a local and international level, so that all persons in Kosovo may be guaranteed a remedy for past, continuing and future human rights violations.

Amnesty International is concerned at the absence of effective mechanisms to ensure that persons whose rights have been violated may be guaranteed redress, including compensation, from the appropriate authorities; or to access an international body, when available domestic remedies have been exhausted.

It is therefore with particular concern that Amnesty International notes that UNMIK has stated in their submission to the UN Human Rights Committee that UNMIK Regulation 1999/24, “does not imply that these treaties and conventions are in anyway binding on UNMIK”.²¹

²⁰ Doc. 10665, *Protection of human rights in Kosovo*, Reply from the Committee of Ministers; Appendix to the Reply. 13 September 2005.

²¹ *Report submitted by the United Nations Interim Administration Mission in Kosovo to the Human Rights Committee on the Human Rights situation since June 1999, Kosovo (Serbia and Montenegro)*, CCPR/C/UNK/1, 15 February 2006, para.123- 124.

The retiring international Ombudsperson has written, “the inhabitants of Kosovo continue to be deprived of the effective human rights protection that their counterparts living in other parts of Europe have long taken for granted”.²²

Some of the international standards and their protocols (including protocols to the ICCPR and ECHR) which have been incorporated into applicable law allow individuals to take complaints of alleged violations of their rights to an international body or court. However, citizens of Kosovo are currently denied access to such bodies, and questions remain about how these rights may be applied in practice.

For example, Amnesty International notes that in February 2006, the European Court of Human Rights decided that it did not have competence to rule on a petition submitted on behalf of Roma, Ashkalia and Egyptians living in lead-contaminated camps in Mitrovica/Mitrovicë in relation to violations of their rights under the ECHR, on the grounds that UNMIK was not a signatory to the convention.²³

Amnesty International also notes that on 1 June 2006 Søren Jessen-Petersen, then SRSG, announced that UNMIK had begun preparations for their departure from Kosovo. Amnesty International considers that UNMIK and the UN have an obligation to ensure that these preparations must include plans for ensuring that persons whose rights have been violated by UNMIK over the last seven years receive prompt and adequate reparation, including redress.

6. The accountability of international authorities in Kosovo

6.1 Recommendation: While an international civilian administration and military presence remains in Kosovo, irrespective of whether it is led by the UN, NATO or the European Union (EU), Amnesty International considers that its acts and omissions should continue to be subject to independent scrutiny, investigation and oversight by the Ombudsperson’s Office. Individuals who make complainants against such authorities should be guaranteed access to redress and reparation.

The jurisdiction of the Ombudsperson over UNMIK was effectively revoked in Regulation 2006/6, *On The Ombudsperson Institution In Kosovo*, which made transitional arrangements for two local deputy Ombudspersons to exercise powers and responsibilities in accordance with UNMIK Regulation 2000/38, *On the Establishment of the Ombudsperson Institution in Kosovo*. The new regulation limits the jurisdiction, function and competencies of the Ombudsperson to acts and omissions by Kosovo Institutions, providing only for “a bilateral

²² Ombudsperson’s Institution in Kosovo, Fifth Annual Report, 2004-2005, 11 July 2005, pp. 23 -26.

²³ Letter from the European Court of Human Rights to the European Roma Rights Centre, 27 February 2006.

agreement with the Special Representative of the Secretary-General on procedures for dealing with cases involving UNMIK.”²⁴

Amnesty International is extremely concerned at the revocation of the jurisdiction of the Ombudsperson, in the context of the transformation of the Office of the Ombudsperson into a local institution. The effective revocation of this jurisdiction over UNMIK leaves people in Kosovo without an independent mechanism for redress through which they may address complaints in cases where their rights may have been violated by UNMIK (or any future international administration, including the EU).

Amnesty International notes that the international Ombudsperson in his 2005 report, (despite reporting continued problems in receiving responses from certain departments of UNMIK, the PISG and particular municipal structures), remarked on positive developments, including the increased cooperation with UNMIK police which has ensured that allegations of human rights violations were for the most part promptly and thoroughly investigated.²⁵

The Special Envoy to the UN Secretary General, the former international Ombudsperson, and the PACE have advocated for the continued jurisdiction of the Ombudsperson’s Office over international authorities “for so long as they remain in Kosovo” in order “to guarantee the efficient functioning covering both the international and local government structures”.²⁶

The UNMIK Human Rights Advisory Panel

The PACE in 2005 also proposed the establishment of a human rights advisory panel, mandated to review the compatibility of the acts or omissions of UNMIK with human rights standards and to examine any complaint lodged by any persons claiming that their rights had been violated by UNMIK, and whose previous complaint to the Ombudsperson, whilst being upheld, had not been resolved.²⁷ At the time, the PACE also expressed concerns that the introduction of such a panel might undermine or duplicate the authority of the Ombudsperson.

Having effectively removed the Ombudsperson’s jurisdiction over UNMIK in February 2006 in March the SRSG subsequently promulgated UNMIK Regulation 2006/12

²⁴ Section 3.4, UNMIK Regulation 2006/6, *On The Ombudsperson Institution In Kosovo*, 16 February 2006; UNMIK Regulation 2000/38, *On the Establishment of the Ombudsperson Institution in Kosovo*, 30 June 2000.

²⁵ *Ombudsperson Institution in Kosovo, Fifth Annual Report 2004-2005*, 2005, p.31.

²⁶ See for example, PACE Resolution 1453 (2005), *Current situation in Kosovo*, para.10 (v).

²⁷ PACE Resolution 1417 (2005), *Protection of human rights in Kosovo*, para. 4 (v), “create an advisory panel/human rights commission consisting of independent international human rights experts nominated by the President of the European Court of Human Rights and appointed by the Special Representative of the Secretary General of the United Nations, charged with scrutinising (draft) UNMIK regulations and subsidiary instruments for compliance with international human rights standards, along with other tasks such as hearing appeals from the UNMIK Claims Office, and addressing to UNMIK opinions on issues, other than individual complaints, brought to its attention by the ombudsperson”.

establishing a Human Rights Advisory Panel (HRAP) to which complaints might be submitted in cases where human rights as defined in applicable law had been violated by UNMIK.

When established, the HRAP (being composed of international jurists with experience in human rights, and nominated by the President of the European Court of Human Rights) may appear to be an institution which could provide independent oversight and adjudication of remedies to complainants in the absence of oversight by the Ombudsperson's Office. However, the SRSG appears to be afforded substantial discretion in deciding whether and how to proceed following the panel's decision on the admissibility of a complaint. The SRSG may: "*In deciding whether to comply with [such] requests [for the appearance of UNMIK personnel or the submission of UN documents] take into account the interests of justice, the promotion of human rights and the interests of UNMIK and the United Nations as a whole*". Further, "*The Special Representative of the Secretary-General shall have exclusive authority and discretion to decide whether to act on the findings of the Advisory Panel*".²⁸

Amnesty International is concerned that the SRSG retains complete control over the progress of and potential outcomes in all complaints submitted to the HRAP, which will therefore fail to provide an impartial and independent body through which persons whose rights may have been violated by UNMIK may be guaranteed access to a remedy.

6.2 Recommendations: To establish mechanisms to ensure that any human rights violations by any person in authority in Kosovo are thoroughly, impartially and independently investigated. Further, such mechanisms should ensure that there is an independent judiciary in both civil and criminal systems to ensure the determination of decisions, and that victims of human rights violations are guaranteed access to redress and reparations, including compensation;

Provisions to this effect should be incorporated into any settlement reached between the parties and approved by the UN Security Council and provide safeguards under which any future civilian administration, including civilian law enforcement officers, may be held accountable for any human rights violations of which they are reasonably suspected.

Under UNSC Resolution 1244/99 the international community in Kosovo was charged with the protection and promotion of human rights. In this context, Amnesty International has repeatedly expressed its concerns at the immunity from prosecution of members of the civilian administration suspected of human rights violations under UNMIK Regulation 2000/47, *On the status, privileges and immunities of KFOR and UNMIK and their personnel in Kosovo*.²⁹

²⁸ See in particular Sections 15.3 and 17.3, UNMIK Regulation 2006/12, *On the Establishment of the Human Rights Advisory Panel*, 23 March 2006.

²⁹ Such immunity derives from the UN Convention on the Privileges and Immunities of the U.N. regarding experts on mission. Article VI, Section 22, provides for "(a) immunity from personal arrest or detention and from seizure of personal baggage; (b) and in respect to words spoken or written and

Amnesty International notes that, irrespective of the nature of any settlement, the international community envisages that arrangements may be made for a continued international civilian and military presence, “to exercise appropriate supervision of compliance with the provisions of the Status settlement, to ensure security and, in particular, the protection of minorities”.

6.3 Recommendation: The organization urges that in any future arrangements with NATO/KFOR or an EU military presence, UNMIK Regulation 2000/47 ‘On the Status, Privileges and Immunities for KFOR and UNMIK and their Personnel in Kosovo’ be amended so that the “exclusive jurisdiction of the respective sending States” be ended in cases of alleged human rights violations by NATO personnel, and that the decision to waive immunity in such a case be taken by the UN Department of Peace Keeping operations (DPKO) (or equivalent EU institution) rather than by the commanders of the respective national elements.

Amnesty International has also repeatedly raised concerns about the immunity from prosecution in Kosovo enjoyed by KFOR personnel and contractors enjoyed under the UN Convention on Privileges and Immunities. The organization welcomes measures being taken by the UN DPKO to increase the accountability of UN Peace Keeping Forces with regard to sexual exploitation, and the increasing number of prosecutions of NATO and other allied military personnel where they are reasonably suspected of human rights violations and abuses.

Amnesty International has in particular expressed concerns in cases of arbitrary arrest and unlawful detention by KFOR personnel, and of allegations of the ill-treatment of detainees by KFOR personnel, as well as other violations of their rights while in detention. In particular, the organization has raised concerns about unlawful and arbitrary detentions by the Commander of KFOR (COMKFOR).³⁰

The organization also notes the concerns raised and recommendations made by the PACE, and notes that to date no human rights review mechanisms (as envisaged by the PACE) including the right to *habeas corpus* and to a judicial body to determine the legality of their detention, have been introduced by the Commander of KFOR.³¹

acts done by them in the course of the performance of their mission, immunity from legal process of every kind.” Article V, Section 20, states: “The Secretary-General [of the United Nations] shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. In the case of the Secretary-General, the Security Council shall have the right to waive immunity.” For Amnesty International’s concerns, see for example, Chapter 6 in, *Kosovo (Serbia and Montenegro) “Does that mean I have rights?”: Protecting the human rights of women and girls trafficked for forced prostitution into Kosovo*, AI Index: EUR 70/00/2004, May 2004.

³⁰ See Amnesty International: *The apparent lack of accountability of international peace-keeping forces in Kosovo and Bosnia-Herzegovina*, AI Index: EUR 05/002/2004, April 2004.

³¹ Section 6, PACE Resolution 1417/2005, *Protection of Human Rights in Kosovo*.

7. Recommendations on the administration of justice

7.1 Recommendation: Measures must be taken, including the strengthening of the international and domestic judiciary, to ensure that those responsible for human rights violations are brought to justice in trials that meet international standards of fairness.

In his report to the Secretary General, Special Envoy of the UN Secretary-General for the Comprehensive Review of Kosovo Kai Eide observed with concern that “the rule of law is hampered by a lack of ability and readiness to enforce legislation at all levels”, and that “the Kosovo police and judiciary are fragile institutions”.³²

The Rule of Law

Under UNSC 1244/99, UNMIK was charged with the administration of justice, mandated to re-establish the rule of law in Kosovo, and tasked to establish an independent, impartial and multi-ethnic judiciary. Amnesty International remains concerned that almost six years after the establishment of the UNMIK Administrative Department of Judicial Affairs, four years after the establishment of the Department of Justice (Pillar 1, Police and Justice) and measures recently taken for the transfer of some competences of the Department of Justice to the nascent Ministry of Justice in the PISG, the judicial system is still failing the people of Kosovo.

The maintenance of the rule of law and of an independent judicial system is crucial to the future of Kosovo. As the UNSG’s Special Envoy to Kosovo reported in October 2005, “The Kosovo justice system is regarded as the weakest of Kosovo’s institutions”..... and “mechanisms to enforce the rule of law are not sufficiently developed”.³³ A detailed account of the failings of the system have most recently been published by the Legal Systems Monitoring Section of the OSCE Mission in Kosovo in a document that reviews recommendations made to UNMIK by that organization over the past six years, and documents UNMIK’s continuing failure to build a justice system which meets international standards.³⁴

At the present time, local prosecutors and judiciary do not conduct certain cases involving war crimes, inter-ethnic crimes, organized crime, including trafficking and other sensitive cases, which have to date remained – for the most part – the preserve of international judges and prosecutors. Measures to ensure the protection of witnesses remain inadequate and provisions in applicable law are not always invoked.

International judges and prosecutors

7.2 Recommendation: Amnesty International urges UNMIK to ensure the recruitment of international judges and prosecutors with demonstrated skills and

³² Kai Eide, *A Comprehensive Review of the Situation in Kosovo*, letter dated 7 October 2005 from the Secretary-General addressed to the President of the Security Council (document S/2005/635), p. ii.

³³ *Ibid.*

³⁴ See OSCE, Department of Human Rights and Rule of Law, Legal systems Monitoring Section.

experience, preferably in the areas of international criminal and humanitarian law and a sound understanding of human rights standards.

International judges and prosecutors were initially introduced into Kosovo in February 2000. They were appointed to Mitrovica/Mitrovicë District Court to respond to allegations of judicial bias in war crimes trials involving Serbian defendants, conducted before Albanian judges.³⁵ Provisions for trials to be conducted before mixed panels were subsequently extended to cover all courts in Kosovo³⁶ and a further regulation was passed allowing for certain serious crimes to be tried before all international panels.³⁷ While no standard criteria for the allocation of cases to international panels have ever been produced by the UNMIK Department of Justice, international judges and prosecutors have been involved in all subsequent trials involving war crimes, inter-ethnic crimes and organized crime, including trafficking. Their jurisdiction has also more recently included corruption and other politically or ethnically sensitive cases.

Amnesty International recognizes that the presence of international judges and prosecutors in the Kosovo courts may be useful, including in cases where members of the local judiciary or prosecutors may be at serious risk of their life, or from other forms of intimidation, in taking on such cases. The organization notes that the mere presence of international judiciary is not, in itself, sufficient to ensure issues of impunity and local judicial capacity building are adequately addressed.

Amnesty International is also concerned that the Department of Justice does not appear to have made adequate progress in ensuring that local prosecutors and judiciary are provided with the capacity for the transfer of jurisdiction over serious crimes, including war crimes.³⁸ The organization welcomes the announcement made in April 2006 for the creation of a new special prosecutor's office for organised crime, trafficking, inter-ethnic crimes, terrorism and corruption, including both international and local prosecutors. Amnesty International notes that a proposal for a special chamber of the Supreme Court with jurisdiction over organised crime, trafficking, inter-ethnic crimes, terrorism and corruption, to include both international and local judges, is also apparently being discussed.

Training of the judiciary, prosecutors and lawyers

7.3 Recommendations: Amnesty International urges the UNMIK and PISG Departments of Justice ensure that the training of local and international judges and

³⁵ Regulation 2000/6, 16 February 2000.

³⁶ Regulation 2000/34, 27 May 2000.

³⁷ Regulation 2000/64, 15 December 2000.

³⁸ Amnesty International notes that the establishment of this institution was anticipated to commence at the end of 2004, and that training of local judiciary in addressing serious crimes would commence at the same time so that cases could be allocated from mid-2005, Chapter 2, "Rule of Law", *Standards for Kosovo*, UNMIK, 31 March 2004, Section 22.1, "Those war crimes not addressed by the ICTY are prosecuted fairly in Kosovo" and Section 18.5. "Incidents of organized crime.. are vigorously investigated and local judges and prosecutors effectively prosecute and try perpetrators."

prosecutors alike includes the jurisprudence of the International Criminal Tribunal for the former Yugoslavia and the European Court of Human Rights, and other international human rights standards, as well as local substantive and procedural law.³⁹

To this end, the organization also recommends that the Kosovo Judicial Institute be given a mandate by the UNMIK Department of Justice to provide a compulsory induction course for members of the international judiciary and prosecutors serving in Kosovo.

International judges and prosecutors are required to work within the domestic Kosovo legal system, using local laws. However they currently receive no training. To ensure that the international judges and prosecutors are able to effectively administer justice in a way that is compatible with the legal traditions and practice of Kosovo they must be properly trained in the local legal system and applicable law.

Amnesty International welcomes the establishment of the Kosovo Judicial Council under UNMIK Regulation 2005/52 on 20 December 2005, “with the purpose of maintaining an impartial, integrated, independent, professional and accountable judiciary”.⁴⁰ This provides a successor to the Kosovo Prosecutorial and Judicial Council, established in 2001, and which has been empowered to appoint and regulate the judiciary, as well as adopting a code of ethics to ensure professional standards. Amnesty International however notes with some concern that international prosecutors and judiciary present in Kosovo are not included within the Judicial Council’s mandate, and thus remain unaccountable.

7.4 Recommendation: Amnesty International urges the UNMIK Department of Justice to take measures to ensure that defence counsel are provided with commensurate training in order to ensure equality of arms.

The organization notes with concern that the Criminal Defence Resource Centre, established to provide assistance and training to defence lawyers, has been required to dismantle most of its programme due to a lack of funding and resources.

Witness Protection

7.5 Recommendation: Amnesty International urges that all necessary measures be taken without delay to ensure the protection of witnesses -- including in cases related to war crimes, inter-ethnic crimes, trafficking, organized crime and corruption -- before, during and after trial.

³⁹ Including, but not limited to the UN Basic Principles on the Independence of the Judiciary; UN Guidelines on the Role of Prosecutors and UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

⁴⁰ UNMIK Regulation 2005/52, *On the Establishment of the Kosovo Judicial Council*, 20 December 2005.

To this end, Amnesty International also urges members of the Contact Group to commit themselves to providing the necessary funding so that witnesses in serious cases including war crimes may be provided with adequate and long-term protection, in accordance with applicable law.

The absence of a comprehensive witness protection programme and the continued failure to protect witnesses during trials has long contributed to the failure to bring perpetrators of serious crimes, including war crimes, inter-ethnic crimes, trafficking, organized crimes and corruption, to justice in Kosovo. Amnesty International notes that in other jurisdictions elsewhere in the region, including at the Belgrade War Crimes Court, and the Belgrade Organized Crimes Court, effective provisions including for witness protection, have been introduced so that cases of war crimes, corruption and other serious crimes, including against Serbian defendants suspected of war crimes, may be prosecuted by the local judiciary.

7.6 Ending impunity for War Crimes

Recommendation: Amnesty International urges the Kosovo Albanian and the Serbian authorities make a commitment, in cooperation with the international administration, to bring to justice all those believed to be responsible for human rights violations and violations of international humanitarian law which took place between 1998 and July 1999.

Amnesty International considers that the continuing failure of the authorities in both Kosovo and in Serbia to bring those responsible for war crimes to justice must be addressed in the context of any agreement of the final status of Kosovo.

Kosovo, like all former republics (with the exception of Slovenia) and provinces of the former Socialist Federal Republic of Yugoslavia (FRY) bears the burden of a legacy of human rights violations and violations of international humanitarian law. In Kosovo, these violations – and abuses by armed opposition groups – date from the period of internal conflict (1998 - March 1999) between the Serbian authorities (including police, paramilitary and military forces) and members of paramilitary forces, including the Kosova Liberation Army (KLA), and the period of internationalised armed conflict between March and June 1999.

Amnesty International is extremely concerned at the lack of progress made in the past seven years by the authorities in both Serbia and in Kosovo in bringing to justice those reasonably suspected of war crimes against the civilian population during the periods of internal and internationalised armed conflict.

The organization is concerned by the small number of trials for war crimes that have been conducted by international prosecutors and judiciary. According to UNMIK these amount to approximately 23 cases, (15 of which were retrials of Serbian defendants originally convicted by panels of Albanian and international judges). Even where the trials have been conducted before mixed panels, a number of the cases have required re-trials, which has further limited the number of perpetrators of crimes committed during and immediately after

the conflict being brought to justice. This has resulted in continuing impunity for both Serbs and Albanians suspected of responsibility for war crimes against the civilian population.

In particular the organization notes that there have been no prosecutions for gender-based war crimes in Kosovo or Serbia-proper, despite measures taken by women's NGOs and others to record testimonies and support the victims of such violence.

Enforced “disappearances” and abductions

7.7 Recommendation: Amnesty International urges all parties to ensure that law enforcement officers and prosecutors in both Serbia and Kosovo open investigations into all outstanding cases of “disappearances” and abductions, ensuring that resources are available to ensure the protection of witnesses, so that the climate of impunity for these continuing human rights abuses is ended and the perpetrators, irrespective of their ethnicity, are brought to justice.

The relatives of the “disappeared” and abducted should have access to reparations, including compensation.

In Serbia, the main concern focuses on the continued absence of indictments relating to those suspected of the “disappearance” of ethnic Albanians in Kosovo when the province was administered by Serbia, and in the period of armed conflict up to June 1999.⁴¹ However the organization notes that some progress has been made in opening investigations, and in a few cases prosecutions have taken place. The organization notes the recently confirmed indictments of Serbian law enforcement officers suspected of involvement in the killing of 46 Albanian civilians at Suva Reka. However, Amnesty International is extremely concerned the failure to bring indictments in investigations opened, in 2000 and 2005, against those responsible for the transfer from Kosovo of the bodies of ethnic Albanians subsequently buried in mass graves in Serbia, including at Batajnica and those responsible for the transfer and incineration of bodies at Mačkatica.

In Kosovo, the organization is concerned at the lack of progress by law enforcement officers and prosecutors in opening investigations and bringing to justice those responsible for the abduction of an estimated 1,200 Serbs, Roma and members of other minority communities, and at the failure to conduct investigations – in cooperation with the Serbian authorities – into those believed responsible for the “disappearances” of ethnic Albanians.

Amnesty International considers that the continued suffering of the relatives of the “disappeared” in being denied information as to the fate and whereabouts of their relatives amounts to a continuing violation of their right under Article 3 of the ECHR and Article 7 of the ICCPR not to be subjected to torture or to inhuman or degrading treatment. Amnesty

⁴¹ *Serbia and Montenegro: Amnesty International’s concerns and Serbia and Montenegro’s commitments to the Council of Europe*, AI Index: EUR 70/002/2004, 3 March 2004; *Serbia and Montenegro: A Wasted Year*, AI Index EUR 70/005/2005; an update on the organization’s continuing concerns is currently in preparation.

International further notes that the right to a prompt and impartial investigation and to a remedy including compensation are enshrined in Article 6, Article 5.5 and Article 13 of the ECHR.

Ending impunity for inter-ethnic crimes post-1999

7.8 Recommendations: Ensure that the perpetrators of ethnically motivated crimes are brought to justice in trials that meet international standards of fairness;

Ensure the establishment of a dedicated ethnic crimes division within the Kosovo Police Service (KPS), and that its staff are specifically trained to work on these issues with international and local prosecutors, and international police officers;

Ensure that the Ministries of Interior and Ministries of Justice take measures to collect and publish comprehensive data on arrests, prosecutions and convictions in cases of ethnically motivated attacks.

UNMIK has failed to bring to justice the majority of perpetrators of the inter-ethnic violence which took place between 17 and 19 March 2004, and in which 19 persons were killed, over 900 were seriously injured and over 4,100 persons were forcibly displaced. UNMIK has also failed to inform victims of human rights violations which took place during the March violence about the progress of investigations and prosecutions.

Following the violence of March 2004, as of November 2005 charges had been brought against 426 individuals and the international and local judiciary had completed prosecutions in 221 cases.⁴² This represented only a fraction of the 51,000 persons believed by the authorities to have taken part in the violence which resulted in human rights violations and abuses, including murder, serious injury, arson and the forcible displacement of members of minority communities from their homes.⁴³

Yet despite the relatively low numbers of prosecutions following the March violence, this represents an improvement on the apparent failure by the authorities to adequately investigate and bring prosecutions in relation to the many ethnically motivated murders which took place between July 1999 and March 2004.⁴⁴ The organization notes that even in major

⁴² OMiK LSMS, *The Response of the Justice System to the March Riots*, December 2005; Human Rights Watch, *Not on the Agenda: The Continuing Failure to Address Accountability in Kosovo Post-March 2004*, May 2006.

⁴³ Amnesty International, *Serbia and Montenegro (Kosovo/Kosova), The March Violence: KFOR and UNMIK's failure to protect the rights of minority communities*, AI Index: EUR 70/016/2004, pp. 13-18; Human Rights Watch, *Failure to Protect: Anti-Minority Violence in Kosovo*, March 2004.

⁴⁴ Amnesty International notes that legislation on the prohibition of incitement to national, racial and religious hatred is rarely invoked, even in cases relating to the violence of March 2004. See for example, LSMS's account of cases related to the violence of March 2004 "in which the conduct of the defendants clearly demonstrated that there was an element of ethnic hatred in their actions", OMiK LSMS, *The Response of the Justice System to the March Riots*, p. 22-3; Human Rights Watch, *Not on the Agenda*.

incidents involving the loss of life, such as the murders at Stari Gračko in July 1999, the bombing of the Niš Express bus in 2001 and the killing of children swimming at Goraždevac in August 2003, perpetrators have not been brought to justice and continue to enjoy impunity. Amnesty International notes the remarks of the Advisory Committee to the Framework Convention, that there is still no comprehensive data on the status and documentation of arrests, prosecutions and convictions in cases of ethnically motivated attacks,⁴⁵ or a dedicated ethnic crimes division within either the international or local police forces, which Amnesty International has repeatedly recommended to the authorities.

Amnesty International also notes that impunity continues for violations of human rights by the Serbian authorities in the period 1989 to 1998, during which ethnic Albanians were subjected to widespread violations of human rights by the Serbian authorities in Kosovo, including unlawful detention, extra-judicial executions, unfair trials and torture and ill-treatment.⁴⁶

8. Ensuring the Rights of Minority Communities

8.1 Recommendation: Ensure the rights of all ethnic minority communities, including the right to return in safety and in dignity, and to freedom of movement and access to economic, social and cultural rights.

As the UNSG's Special Envoy to Kosovo Kai Eide remarked in October 2005, "With regard to the foundation of a multi-ethnic society, the situation is grim."⁴⁷ Little has been achieved in the past months to change that situation. Amnesty International notes with concern that UNHCR is reportedly making preparations for the displacement into Serbia of some 55,000 persons should the final status talks fail to ensure the rights of minority communities.

The failure of UNMIK to guarantee the rights of minority communities has been extensively documented, including the failure of the authorities to ensure freedom of movement and access to economic, social and cultural rights.⁴⁸

The Right to Return

⁴⁵ Human Rights Watch, *Not on the Agenda*.

⁴⁶ See *FRY, Kosovo: A Decade of Unheeded Warnings, Amnesty International's Concerns in Kosovo*, Volumes I (May 1989 to December 1997) and II (January 1998 - March 1999), AI Index: EUR 70/39/1999 and EUR 70/40/99, May 1999.

⁴⁷ Kai Eide, *A Comprehensive Review of the Situation in Kosovo*, p. ii, and paras. 44-61.

⁴⁸ *Serbia and Montenegro (Kosovo/Kosova) "Prisoners in our own homes": Amnesty International's concerns for the human rights of minorities in Kosovo/Kosova*, AI Index: EUR 70/010/2003, April 2003; The Coordinators of the Working Groups, *Shadow Report, On the Implementation of the Framework Convention for the Protection of National Minorities in Kosovo*, September 2005; Humanitarian Law Centre, *Ethnic Minorities in Kosovo in 2005*, (no date); *Opinion On The Implementation Of The Framework Convention For The Protection Of National Minorities In Kosovo*, op. cit.

The most widespread, pervasive and continuing violation of the rights of minority communities, (including that of the Albanian community where they are in the minority), is the continuing failure of both UNMIK and the PISG to take all necessary measures to ensure the right to return, set out in UNSC 1244/99,⁴⁹ the right of freedom of movement guaranteed under Article 12 of the ICCPR; and in the UN Guiding Principles on Internal Displacement which detail the duties of the competent authorities to establish conditions and provide the means “which allow internally displaced people to return voluntarily, in safety and in dignity, to their homes or places of habitual residence”.⁵⁰

The right to return is also reflected in the Constitutional Framework which provides for all communities the right to “[e]njoy unhindered contacts among themselves and with members of their respective communities within and outside of Kosovo”. Amnesty International notes that little or no progress was made in the year following the transfer of responsibilities for returns previously held by UNMK to the PISG Minister for Returns and Communities and to municipal structures; additional responsibilities have been transferred to the PISG in 2006.

UNHCR estimate that some 12,400 persons from minority communities have returned to Kosovo. They include some 5,782 Serbs, 1,318 Roma, 3,133 Ashkali and Egyptians, 1,056 Bosniaks, 355 Gorani and 574 Albanians returning to areas where they are in the minority. Even allowing for an over-estimate of the numbers of Serb IDPs in Serbia, the return figure has been estimated at some 6 per cent of the displaced population.⁵¹

Conditions for minority returns also depend on the ending of impunity for violations of international humanitarian law and human rights law, as noted above. Without guarantees for their safety, freedom of movement and access to economic and social rights, the prognosis for safe and sustainable minority returns will continue to be bleak.

8.2 Recommendations: UNMIK and the PISG should establish Memoranda of Understanding with EU and Council of Europe member states with regard to the return of refugees with the aim of ensuring that that no person is forcibly returned without an individual determination of their status;

UNMIK and the PISG must allocate sufficient resources – including staff – to the Office of Returns and Communities, the PISG Ministry for Returns and Communities and relevant municipal offices to ensure that *all* returnees, including those forcibly returned, are provided with assistance and support for sustainable return;

⁴⁹ Article 9 (c) charged KFOR to “Establish a safe and secure environment in which refugees and displaced person can return home in safety”; Article 11 (k) mandated UNMIK “to [assure] the safe and unimpeded return of all refugees and displaced person to their homes in Kosovo”.

⁵⁰ Commission on Human Rights 54th Session, UN Doc. E/CN.4/1998/53/ADD.2.

⁵¹ Report of the Representative of the Secretary General on the human rights of internally displaced persons, Walter Kallin, Addendum, Mission to Serbia and Montenegro, 9 January 2006, E.CN.4/2006/71/Add.5.

Representatives of EU member states within the Contact Group should urge EU member states to refrain from forcibly returning persons from Kosovo until conditions are ensured for their safe and sustainable return.

Amnesty International is particularly concerned that as talks towards final status proceed, an increasing number of EU and Council of Europe member states have indicated their desire to forcibly return to Kosovo members of both minority and majority communities. To date the numbers of persons forcibly returned have been limited to some degree through official Memoranda of Understanding agreed between some EU member states and the UNMIK Office of Returns and Communities (ORC).

At present Amnesty International is also concerned at the current discrimination faced by those who are forcibly returned to Kosovo, and who are not provided with the assistance received by those who voluntarily return by UNMIK, the PISG, UNHCR or any of their implementing partners.⁵²

Unless agreements are established by UNMIK ORC and the PISG with EU and other Council of Europe member states, the result of “final status” will include an “unmitigated flood” of forcible returns, with which current institutions, including municipalities, will be unable to address.

On 23 May 2006, the PISG approved changes to the policies on return and reintegration, so that competencies over these issues might be transferred from UNMIK to the PISG. Following interviews in April 2006 with UNMIK ORC Amnesty International has concerns that the PISG will not be able to guarantee rights to returning refugees where UNMIK ORC has failed.

Discrimination

8.3 Recommendations: UNMIK and the PISG should ensure that all persons in Kosovo are informed of the provisions of the Anti-Discrimination Law, and take steps to empower them to use the law;

Take serious measures to address structural problems within the judiciary, including those which negatively affect access to justice for all in Kosovo;

Take measures to build confidence in the judicial system by members of minority communities.

In addition to the prohibition against discrimination in all international standards in force in Kosovo, discrimination is specifically prohibited under Section 1.4 UNMIK Regulation 1999/24 and under Chapter 4 of the Constitutional Framework. However, discrimination in access to civil and political rights, as well as to economic, social and cultural rights, particularly on the basis of ethnicity, continues to be widespread in Kosovo,.

⁵² For further concerns see Report of the Representative of the Secretary General on the human rights of internally displaced persons, op.cit.

The Anti-Discrimination Law (ADL), adopted by the Kosovo Assembly and promulgated under UNMIK Regulation 2004/32 in August 2004, has been described as one of the most progressive anti-discrimination laws in Europe, and provides far-reaching guarantees against both direct and indirect discrimination, by both public and private persons. It guarantees equality before the law in the enjoyment of rights enshrined in the ICCPR and the CERD, and covers the majority of rights enshrined in the ICESCR, and gives the right to be heard before competent courts, administrative bodies and the Office of the Ombudsperson.

However, the PISG has been slow to implement measures giving force to the provisions of the ADL. The law has rarely been invoked in the courts by members of minority communities. The Ombudsperson's Office has conducted investigations into complaints related to discrimination in employment and gender discrimination, but the number of complaints brought by individuals has been small.⁵³ Amnesty International considers that this is due, in large part, to the fact that people are unaware of the ADL, and that members of minority communities still face discrimination in gaining access to justice, including because of the lack of a legal aid system. The organization also notes the massive backlog of cases pending in the civil courts, including cases involving the right to property.

9. Accountability under international and regional human rights standards

9.1 Recommendation: Measures are taken to implement legal and other reforms needed to ensure that the recommendations of international and regional treaty body mechanisms are implemented.

As noted above, UNMIK Regulation 1999/24 stipulated that: "In exercising their functions, all persons undertaking public duties or holding public office in Kosovo shall observe internationally recognized human rights standards".

Until the final status of Kosovo is determined, under UN SC 1244/99 Kosovo remains a province of Serbia. However, as the UN Human Rights Committee (HRC) noted in its 2004 Concluding Observations on Serbia and Montenegro's report to the HRC on its implementation of the ICCPR, "the state party was unable to report on the discharge of its own responsibilities with regard to the human rights situation in Kosovo". The HRC subsequently invited UNMIK to report to the HRC; UNMIK's report was received by the HRC in February 2003, and is due for consideration by the HRC on 19 and 20 July 2006.⁵⁴ It

⁵³ *Opinion On The Implementation Of The Framework Convention For The Protection Of National Minorities In Kosovo*, paras. 35-37.

⁵⁴ CCPR/C/UNK/1 para. 3. "The State party explained its inability to report on the discharge of its own responsibilities with regard to the human rights situation in Kosovo, and suggested that, owing to the fact that civil authority is exercised in Kosovo by the United Nations Interim Administration Mission in Kosovo (UNMIK), the Committee may invite UNMIK to submit to it a supplementary report on the human rights situation in Kosovo. the Committee welcomes the offer made by the State party to

is likely that the HRC will make recommendations aimed at ensuring the better implementation of the ICCPR in Kosovo.

Regional Instruments

In August 2004, UNMIK signed agreements with the Council of Europe regarding the Framework Convention and the European Convention on the Prevention of Torture and Inhumane or Degrading Treatment or Punishment.

9.2 Recommendation: UNMIK and the PISG should clarify their respective roles and responsibilities for the implementation of the Framework Convention, and ensure that the publication of a plan of action for the implementation of the comprehensive recommendations made by the Advisory Committee.

On 2 June 2005, UNMIK submitted to the Council of Europe Advisory Committee on the Framework Convention a report pursuant to the Agreement on the Framework Convention for the Protection of National Minorities.⁵⁵ In their response to UNMIK's report, the Advisory Committee noted that, "the reality in Kosovo remains disconcertingly far from these laudable norms" [in this case, as set out in the Anti Discrimination Law], and expressed concerns that the "uncertainty as regards the future status of Kosovo, [have] at times obscured the respective authorities' responsibilities and accountability for the implementation of the Framework Convention, to the detriment of persons belonging to minority communities".⁵⁶ In April 2006, Amnesty International was informed by an official at the UNMIK Office of Legal Affairs that he considered the reporting procedure to be "all paper at the end of the day". He informed the organization's delegates that UNMIK was not required to set up a plan to implement the Advisory Committee's recommendations as UNMIK considered that the recommendations applied only to the PISG.⁵⁷ No measures appear to have been taken by either UNMIK or the PISG to implement the Advisory Committee's opinion.

facilitate the consideration of the situation of human rights in Kosovo and encourages UNMIK, in cooperation with the Provisional Institutions of Self-Government (PISG), to provide, without prejudice to the legal status of Kosovo, a report on the situation of human rights in Kosovo since June 1999." Amnesty International notes that in its initial response to UNMIK's report, the HRC has raised questions, under Article 2 and 4 of the ICCPR, on the constitutional and legal framework within which the Covenant is implemented, and the measures taken to give effect to the rights guaranteed by the ICCPR, see *Advanced Unedited Version, List Of Issues To Be Taken Up In Connection With The Consideration Of The Report Of The United Nations Interim Administration Mission In Kosovo On The Human Rights Situation In Kosovo Since June 1999* (CCPR/C/UNMIK/1).

<http://www.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/CCPR.C.UNMIK.Q.1.pdf>.

⁵⁵ *Report submitted by the United Nations Interim Administration Mission in Kosovo 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.*, ACFC (2005)003, 2 June 2005.

⁵⁶ *Opinion On The Implementation Of The Framework Convention For The Protection Of National Minorities In Kosovo*, Executive Summary, pp.3-4.

⁵⁷ Amnesty International interview with UNMIK Office of Legal Affairs, April 2006.

9.3 Recommendation: All NATO member states, irrespective of whether they are members of the Council of Europe, must ensure that KFOR personnel fully comply with the obligations set out in the agreement made between NATO and the Council of Europe, so that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) should be guaranteed access to all places in Kosovo where persons are deprived of their liberty by KFOR.

In August 2004 agreement was made between the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and UNMIK guaranteeing the CPT access to all places under the authority of UNMIK where persons are deprived of their liberty, with a view to the prevention of torture and other cruel and inhuman treatment or punishment.⁵⁸

Amnesty International notes that for almost two years the CPT were unable to conclude a similar agreement with NATO in respect of detention facilities operated by KFOR, which resulted in any visits being precluded. Amnesty International was particularly concerned at the continued refusal of NATO to allow the CPT unlimited access to the KFOR-run Bondsteel Detention Facility where persons held under COMKFOR (Commander of KFOR) Detention Directive 42 are not guaranteed the rights of detainees enshrined in the ECHR or the ICCPR. On 19 July 2006, an agreement was finally concluded in an exchange of letters between NATO and the Council of Europe, defining the modalities of inspections of NATO-run detention facilities.⁵⁹

⁵⁸ *Agreement between the United Nations Interim Administration Mission in Kosovo and the 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.

⁵⁹ CoE, *Council of Europe Anti-Torture Committee gains access to NATO run detention facilities in Kosovo*, 19 July 2006, <http://www.cpt.coe.int/documents/srp/2006-07-19-eng.htm>