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Kosovo (Serbia and Montenegro) United Nations Interim Administration Mission in Kosovo (UNMIK):Conclusions of the Human Rights Committee86th Session, July 2006

On 19 and 20 July, the Human Rights Committee's (HRC) considered the United Nations Interim Administration Mission in Kosovo's (UNMIK) report(1) on its implementation of the International Covenant on Civil and Political Rights (ICCPR).

In this report, presented to the HRC, Amnesty International highlighted its grave concerns about certain violations of human rights in Kosovo since 1999. (2)

Amnesty International also drew the HRC's attention to the continuing impunity enjoyed by those responsible for grave human rights violations, including war crimes and crimes against humanity. These occurred during the internal armed conflict in Kosovo in the period from 1998 to March 1999 and the subsequent internationalized armed conflict, which led to the establishment of the UN interim administration under UN Security Council Resolution 1244/99.

UNMIK was mandated under this resolution to protect and promote human rights. Amnesty International considers that UNMIK signally failed in many respects to abide by or uphold international human rights law, including the ICCPR, incorporated into applicable law in Kosovo under UNMIK Regulations 1999/1 and 1999/24.

The organization considered that UNMIK has failed to protect the rights of all persons in Kosovo, including by promulgating regulations which fail to meet international standards; in granting immunity to members of the international community, including UN staff and members of the NATO-led Kosovo Force (KFOR), suspected of violations of human rights; and in failing to provide all persons whose rights have been violated by the international community with access to reparations.

Amnesty International welcomed the fact that the HRC is reviewing UNMIK's implementation of the ICCPR in Kosovo over the last seven years. Given the announcement on 1 June 2006 by Søren Jessen-Petersen, then Special Representative of the UN Secretary General (SRSG), that UNMIK has begun preparations for their departure from Kosovo after the determination of the final status of the province, Amnesty International considered that UNMIK and the UN had 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, as required under Article 2 of the ICCPR.

Moreover Amnesty International urged the HRC to seek out assurances that UNMIK and the UN will take immediate measures to implement legal and other reforms to ensure that the recommendations of the HRC made following its examination of UNMIK's report are implemented.

Finally, Amnesty International urged the HRC to set out measures which UNMIK (or any other international administration) and the Provisional Institutions for Self-Government must take to ensure the better implementation of the ICCPR in Kosovo.

During their consideration of the report, the HRC cited Amnesty International's briefing to the committee, and reflected many of the organization's concerns in their concluding observations adopted on 27 July 2006 following their consideration of UNMIK's report.(3)

In their observations the HRC acknowledged the problems faced by "UNMIK as an interim administration and, at the same time, a United Nations body", the transfer of competencies to the Provisional Institutions of Self-Government (PISG) and the existence of Serbian parallel structures. They also noted that the uncertainty about the future status of Kosovo raised questions of accountability and impeded the implementation of the ICCPR in Kosovo. However, the HRC noted that the "protection and promotion of human rights was one of the main responsibilities conferred on UNMIK under Security Council resolution 1244 (1999)", and that under applicable law the Covenant was also binding on the PISG, they stressed that both UNMIK and the PISG "are bound to respect and to ensure to all individuals within the territory of Kosovo…the rights recognized in the Covenant".(4)

The HRCs "principal subjects of concern and recommendations" appear below in each relevant section of Amnesty International's original briefing. The HRC in particular called for UNMIK within six months, in cooperation with the PISG, to provide information on the follow up to the HRC's recommendations on impunity for war crimes and for "disappearances" and abductions (pp. 17-18) and minority returns (p.48).

1. The ICCPR

1.1 Constitutional and legal framework within which the Covenant is implemented (Articles 2 and 4)

Applicable law in Kosovo was defined in UNMIK Regulation 1999/1, and amended in UNMIK Regulation 1999/24, *On the Law Applicable in Kosovo* (12 December 1999), which stated at Section 1.3 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);
- 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, Inhumane or Degrading Treatment or Punishment of 17 December 1984; and
- The International (sic)Convention on the Rights of the Child (CRC)."

These standards, excluding the ICESCR and the Convention against Torture, were subsequently included in the Constitutional Framework for the Provisional Institutions of Self Government, promulgated by UNMIK Regulation 2001/9, *On a Constitutional Framework for Provisional Self-Government in Kosovo* (Constitutional Framework) on 15 May 2001, which added two further regional instruments: …."The Provisional Institutions of Self-Government shall observe and ensure internationally recognized human rights and fundamental freedoms, including those rights and freedoms set forth in: [as above, adding] The European Charter for Regional or Minority Languages; and The Council of Europe's Framework Convention for the Protection of National Minorities".

Although 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", Amnesty International has repeatedly called on UNMIK to clarify how the rights enshrined in the standards, including the ICCPR, may be applied in practice in Kosovo.

It is therefore of particular concern that UNMIK remarks in their submission to the HRC that UNMIK Regulation 1999/24, "does not imply that these treaties and conventions are in anyway binding on UNMIK".(5)

2. Legal Certainty

With reference to the HRC's question (3),(6) in interviews Amnesty International has conducted with lawyers, members of the local and international judiciary and other legal professionals, including the current Ombudspersons, the effects of a lack of legal certainty on the rights of both criminal suspects and victims were repeatedly raised with the organization. Emphasis was given to the confusion following the promulgation of the Provisional Criminal Code of Kosovo (PCCK) and the Provisional Criminal Procedure Code of Kosovo (PCPCK),(7) and their introduction in April 2004. Allegations were also made by lawyers and the Ombudsperson's Office that, despite the training that the judiciary and prosecutors (including international judiciary and prosecutors) and the UNMIK police and the Kosovo Police Service (KPS) lacked knowledge of the applicable law and procedure.(8)

For example, applicable law in Kosovo is defined in Section 1.1 (b) of UNMIK Regulation 1999/24, as the law applicable in Kosovo on 22 March 1989, namely the 1989 Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRY) and the Basic Criminal Code of the Republic of Serbia (Basic Code) - except where they failed to conform with human rights standards. The criminalization of [male] homosexuality under Article 110 (3) of the Basic Code, although repealed in 1994 in Serbia, thus remained part of applicable law in Kosovo.

Discrimination on any grounds was prohibited in Article 3.1 of the Framework Constitution; furthermore discrimination on the grounds of sexual orientation was prohibited under the Kosovo Assembly Law No. 2004/3 on Anti-Discrimination (ADL)(9), and given effect in Section 1.2 (g) of UNMIK Regulation 2005/54, *On the Framework and Guiding Principles of the Kosovo Police Service*, (20 December 2005), which provides for the KPS to discharge its duties without, "discrimination, direct or indirect, based on sex, race, colour, language, religion, political opinion, national, ethnic or social origin, association with a community, property, birth, disability, family status, pregnancy, sexual orientation, age or any other status;"(10)

For example, on 31 December two gay men, G.P. and L.B, were assaulted in a village outside Pristina. Members of the KPS who attended the scene took the two men to hospital for treatment for their injuries and asked them to file a complaint, but on discovering their sexual orientation subjected them to insulting and degrading abuse, informing them that homosexuality was unlawful in Kosovo.(11)

2.1 Human Rights in the north of Kosovo, *with reference to the Committee's question 4:(12)*

With particular reference to the north (taken to include the municipalities of Mitrovicë (north)/Kosovska Mitrovica, Zubin Potok and Zvečan), the failure by UNMIK to establish the rule of law, has resulted in an absence of human rights protection.

Although investigative primacy had been transferred from KFOR to UNMIK police by 2004, the KPS was not introduced into the northern municipalities until mid-2005, and until recently has remained weak and ineffective, subject to intimidation including from the parallel Serbian Minister of Interior "police" presence, which UNMIK reportedly believes handles around 50 per cent of criminal complaints.(13) Although an UNMIK court operates in north (Kosovska) Mitrovica, in the continuing absence of a Serbian judiciary, it is mainly used by Albanians from south Mitrovica/ë brought in by coach, while the parallel Serbian court, which operates under the Serbian Ministry of Justice, deals mainly with civil cases, including the registration of Serbian property and other documents which are not recognised by UNMIK.

In 2005, UNMIK admitted of Mitrovica, "it is Serbia. The UNMIK and Provisional Institutions of Self Government (PISG) presence there is a skin graft, only kept in place by massive doses of immuno-suppressants".(14) North of the river Ibar dividing the town, Serbian authorities and institutions including the Ministries of Health and Education (the latter also continues to pay the salaries of teachers in other Serb enclaves in Kosovo)(15) and parallel courts provide services to residents who buy imported Serbian goods, read Serbian daily newspapers, use Serbian currency and make their phone calls on PTT-Serbia lines. Travellers from south of the Ibar entering by car are required to stop at the southern bridge to remove their KSS number plates before entering, or are otherwise turned back, intimidated or harassed, denying their right to freedom of movement (Article 12).

The Albanian minority living in northern municipalities, including over 2,000 living in the Kosovska Mitrovica rely on the courts in the south. Meanwhile, Albanians displaced in the south are unable to reclaim their property rights, as the KPS in the north has been unwilling to enforce decisions by the Housing and Property Directorate or the courts.

HRC Concern and Recommendations
8. The Committee is concerned about the legal uncertainty resulting from the failure to specify which provisions of the formerly applicable law are being replaced by those UNMIK Regulations and Kosovo Assembly laws which merely state that they supersede any inconsistent laws or provisions. It is also concerned by the legal uncertainty created by the existence of a parallel court system administered by the Serbian Ministry of Justice, in certain parts of Kosovo. (arts. 2 and 4)

UNMIK, in cooperation with the PISG, should ensure that any new law or regulation specifies which formerly applicable laws or provisions are being replaced, that laws and regulations are made accessible to the public in all official languages of Kosovo via the Official Gazette and the internet, and that former Yugoslav laws that continue to be applicable can be consulted easily. UNMIK, in cooperation with the PISG, should also designate a competent body to determine which of the former Yugoslav laws and provisions continue to be applicable and address the issue of parallel Serbian court and administrative structures in parts of Kosovo.

3. The right to an effective remedy, Article 2 (3).

UNMIK has failed to guarantee the right to a remedy to persons whose rights have been violated by UNMIK personnel, including civilian police and contractors, and members of the international peacekeeping force (KFOR). This is a consequence of the immunity from prosecution enjoyed by UNMIK personnel, and their consequent lack of accountability before the Kosovo courts. Immunity is afforded under the UNMIK Regulation 2000/47 *On the status, privileges and immunities of KFOR and UNMIK and their personnel in Kosovo*, 18 August 2000, (16) and has ensured that persons whose rights have been allegedly violated by UNMIK or KFOR personnel, (or personnel contracted to those organizations) have rarely, if ever, been guaranteed their right to a remedy, including reparation. Specific examples are given below, under Articles 7, 8 and 9.

3.1 The Office of the Ombudsperson in Kosovo (Ombudsperson), *with reference to the Committee's Question (2): (17)*

The jurisdiction of the Ombudsperson over UNMIK was revoked in Regulation 2006/6, *On The Ombudsperson Institution In Kosovo*, (16 February 2006), 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*, (30 June 2000). The new regulation, however, limits the jurisdiction, function and competencies to acts and omissions by Kosovo Institutions, providing at Section 3.4 only for "a bilateral agreement with the Special Representative of the Secretary-General on procedures for dealing with cases involving UNMIK."

The final international Ombudsperson's 2005 report continued to note delays in responses from both UNMIK, over which he then had jurisdiction, and the PISG. However, the Ombudsperson remarked positively on the increased cooperation in 2005 from the UNMIK police who had ensured that allegations of human rights violations by the police were, for the most part, promptly and thoroughly investigated.(18) The revocation of the Ombudsperson's jurisdiction over UNMIK leaves people in Kosovo without an independent human rights oversight institution by which they may seek redress and reparation where their rights may have been violated by UNMIK (or any future international administration, including the European Union (EU)).

The retiring international Ombudsperson, the Parliamentary Assembly of the Council of Europe (PACE) and Kai Eide, (Special Envoy of the Secretary-General for the Comprehensive Review of Kosovo) have all argued for the retention of an international ombudsperson with jurisdiction over international authorities for so long as they remain in Kosovo "to guarantee the efficient functioning covering both the international and local government structures".(19) Amnesty International repeats this call.

3.2 The Human Rights Advisory Panel

On 23 March 2006, the SRSG promulgated UNMIK Regulation 2006/12, *On the Establishment of the Human Rights Advisory Panel*, establishing a body to which complaints might be submitted in cases where human rights as defined in applicable law had allegedly been violated by UNMIK.

The concept of a Human Rights Advisory Panel (HRAP) had been proposed in 2005 by the PACE, which had envisaged the establishment of an independent body with the mandate to review the compatibility of UNMIK acts or omissions with human rights standards, and to examine any appeals arising from complaints lodged by persons claiming that their rights had been violated by UNMIK. (20)The PACE was concerned that such measures might undermine or duplicate the authority of the Ombudsperson; they did not foresee the HRAP as replacing the Ombudsperson.

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 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 (Section 15.3): "*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, at section 17.3, *"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".*

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 though which persons whose rights may have been violated by UNMIK may be guaranteed access to a remedy.

HRC Concern and Recommendations
9. The Committee expresses its concern that, despite the establishment of various advisory bodies on human rights, as well as of human rights units within the Ministries, human rights concerns are often not sufficiently attended to in the programmes of UNMIK and the PISG. (art. 2)

UNMIK, in cooperation with the PISG, should ensure that institutional structures and capacities are in place and actually utilized to fully integrate human rights in their programmes.

10. The Committee notes with concern that UNMIK and the PISG have not always extended due cooperation to the Ombudsperson Institution, especially as regards interim measures requests by the Ombudsperson. The Committee, noting that UNMIK Resolution 2006/6 limits the jurisdiction of the new Ombudsperson to be appointed by the Assembly of Kosovo to acts and omissions of the PISG, expresses concern that the Human Rights Advisory Panel established under UNMIK Regulation 2006/12 to receive and examine complaints against UNMIK lacks the necessary independence and authority. (art. 2(3))
UNMIK should ensure that full cooperation is extended to the new Ombudsperson, in particular by the PISG, and should reconsider arrangements for the authoritative human rights review of acts and omissions by UNMIK.

4. Violence against women and domestic violence (Articles 2 (1), 3, 7, 26)

Amnesty International has repeatedly expressed concerns at the failure of the UNMIK authorities to address violence against women, and in particular their failure to implement the provisions of UN Security Council Resolution 1325 (2000), which *inter alia* requires authorities to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, including the trafficking of women and girls for the purposes of forced prostitution (see section 8, below).

4.1 Domestic Violence, *with reference to the Committee's question (8)(21):*

Amnesty International is concerned that despite the introduction of UNMIK Regulation No. 2003/12, *On Protection Against Domestic Violence*, (9 May 2003), no statistics appear to be available relating to the incidence, investigation, prosecution and punishment of domestic violence. According to the head of the UNMIK Victims Advocacy and Assistance Unit (VAAU), in 2005 some 592 individuals were assisted in cases of domestic violence; 52 other individuals were also assisted in cases of rape or attempted rape.(22) These figures are consistent with Amnesty International's monitoring of the UNMIK Police Daily Press Reports, which suggests that each day between one and three cases of domestic or other violence within the family are reported to the police.(23) No figures were available for prosecutions.

Amnesty International is concerned that provisions in the Regulation for the protection of women from violence by intimate partners, husbands or other members of their family, including removal of the perpetrator from the family home, are not always enforced or available to all women suffering domestic violence. In 2005, in two cases, Amnesty International's London office was contacted for assistance by women or members of their family in Kosovo, because protective measures had failed or could not be provided.

For example, NN, an ethnic Albanian seeking international protection, was returned to Kosovo from Finland in October

2004. Fearing that she would be deported with her husband who she alleged had continuously beaten her, NN had gone into hiding, but in was located and was due to be returned to Kosovo. Before deportation, NN applied for asylum on the grounds that because of her husband's violence she would not be safe in Kosovo. She was nevertheless returned (although in a separate plane at different times). In Kosovo she tried to get shelter at a safe-house, but was turned away because it was full and because she had not previously reported the violence to the Kosovo police, a precondition for access to a shelter. She then went into hiding in Kosovo.

Her natal family reportedly received repeated threats that they would be killed unless they returned NN to her husband; but although those threats were reported to the police, and NN's husband was taken into custody, he was released without charge the following day. NN's family subsequently asked the court for a restraint order against her husband, but proceedings were postponed to a later date. Following an attempt by her husband to kidnap her, she again applied for access to a shelter, but was only offered protection for one week. The attempted kidnap was reported to local police (and to KFOR), but no action was taken. She has now divorced her husband, and although the death threats have ceased, has continued to live under virtual house arrest, moving between the houses of three family members, and was reportedly again applying for international protection when Amnesty International last heard from her.

4.2 Impunity for war crimes involving gender-based violence

Impunity for war crimes (see also Section 5, below) involving rape or other forms of gender-based violence continues. There have been no prosecutions in the Kosovo courts in cases involving either Serbian or ethnic Albanian perpetrators despite measures taken by women's non-governmental organizations (NGOs) and others to record testimonies and support the victims of such violence.

In July 1999, an investigation was opened by the Gjilan/Gnjilanë police into allegations by a Serb woman, N.N., that on 16 June 1999 she was allegedly abducted by four men wearing uniform bearing the insignia of the Kosovo Liberation Army (KLA), and taken to a house where she was tied to a radiator, and repeatedly questioned about the whereabouts of Arkan (Željko Ražnatović) and asked to identify photographs of individual Serbian police officers. When she failed to reply, she was beaten with a baton on her hands and head. She was later punched in her stomach, her spine, her hands and her legs.

N.N. was allegedly subsequently transferred to another room where she saw her friend crying as another man forced her into oral sex. She was then grabbed, her T-shirt torn, a pillow was placed over her head and she was raped. Reportedly several other men raped her, and then continued to interrogate her, beating her and raping her "again and again". She was finally released after four days, with threats that she would be killed if she went to the police. She reported the crime to the police, but despite a medical certificate testifying to her injuries and her identification of some of the alleged perpetrators, the case was never sent for prosecution.(24)

HRC Concern and Recommendations
11. The Committee is concerned about the persistence of male-dominated attitudes within Kosovar society, low representation of women in the Ministries and central institutions of Kosovo, under-reporting of incidents of domestic violence, low numbers of convictions related to domestic violence, limited capacity of victim assistance programmes, and the absence of a comprehensive evaluation of the effectiveness of measures to combat domestic violence. (arts. 2(1), 3, 7, 26)

UNMIK, in cooperation with the PISG, should take prompt and effective measures with the goal of achieving equal representation of women in public offices and intensify training for judges, prosecutors and law enforcement officers on the application of existing laws and other instruments to combat gender discrimination and domestic violence. It should further facilitate the reporting of gender-related crimes, the obtaining of protection orders against perpetrators, enhance victim assistance programmes, and ensure effective remedies.

5. Impunity for war crimes and ethnically motivated killings (Article 6. The right to life; Article 2. Right to a remedy)

5.1 The failure to investigate and prosecute violations of international humanitarian law

UNMIK police and the UNMIK Department of Justice have failed to open prompt, thorough and impartial investigations into violations of the right to life, including war crimes, and to bring those responsible to justice, in the course of proceedings which meet international standards of fair trials, ensuring that the victims of these crimes receive adequate reparation. In particular, there is still an overwhelming need to resolve the several thousands of cases of enforced "disappearances" and abductions (see also, Article 7 below).(25)

Prosecutions for war crimes are rare. According to a list made available to Amnesty International in April 2006 by the UNMIK Department of Justice, International Judicial Support Division, only 23 prosecutions for war crimes have taken place in the Kosovo courts since 1999, the majority before 2002.(26)

In Kosovo, the trials of more than 17 Serbs accused of war crimes against the ethnic Albanian population under Article 142 of the applicable law had already been completed by mid-2002. Trials began on 5 November 1999, initially before panels of Albanian judges; after February 2000 they were conducted by majority ethnic Albanian panels which included an international judge.(27) Following concerns about the impartiality of these courts, UNMIK promulgated in

December 2000 "Regulation 64" which introduced proceedings conducted solely by international prosecutors and international judiciary. (28)

Following a series of reports by, *inter alia*, the Legal Systems Monitoring Service of the Organization for Security and Cooperation in Europe (OSCE) Mission in Kosovo that several of war crimes trials had failed to meet international standards for fair trial, by January 2002, eight out of 10 verdicts against those who had been convicted of war crimes by both ethnic Albanian and international panels had subsequently been overturned on appeal by the Supreme Court. Reasons for reversal included – in eight cases – the "incomplete or insufficient establishing of the facts" in all eight cases, and in six, a failure to call defence witnesses. Retrials before an international panel were ordered. In three of the first cases subsequently retried, all three defendants were found not guilty; in other cases defendants were either acquitted or convicted of lesser offences. (29)

According to the UNMIK Department of Justice, since 2002 only six cases of war crimes have been brought before the courts.(30) In very few cases have the victims been non-Albanians. In the "*Dema*" case, for example, three ethnic Albanian defendants were convicted of war crimes against the civilian population, including the abduction and forced transfer and unlawful detention of some 14 ethnic Albanian civilians to a detention centre under the control of the KLA where they were "detained in inhumane conditions".(31) In the "*Llapi*" case, four members of the KLA were convicted for war crimes against the civilian population between August 1998 and June 1999. Charges included the unlawful arrest and detention, torture and ill-treatment of ethnic Albanians suspected of collaboration with the Serb authorities, and the beating and torture of one Serb. (32) The four men were released on 22 July 2005 after the Supreme Court annulled the verdict and ordered a retrial.

International judges told Amnesty International in April 2006 that it was unlikely that many further prosecutions for war crimes would take place.(33) An UNMIK police Deputy Director of Criminal Investigations informed Amnesty International that any further progress was considered difficult, although the intention remained "to possibly try to revive" some old cases.(34)

Given the limited numbers of prosecutions for war crimes which have taken place in Kosovo, Amnesty International is particularly concerned at the extraordinary intervention by the SRSG in challenging the jurisdiction of courts in Serbia over cases involving war crimes allegedly committed in Kosovo in June 1999. For example, on Wednesday 3 April 2006, the Kosovo daily *Koha Ditore* reported that the SRSG had written to the Serbian authorities challenging the jurisdiction of the Belgrade War Crimes Chamber over proceedings against Anton Lekaj.(35)

Anton Lekaj was arrested in Montenegro in August 2004 (in connection with the theft of a car) and transferred to Serbia under an indictment by the War Crimes Chamber at the Belgrade District Court dated 7 July 2005, (KTRZ No. 7/04). He was charged with war crimes against the civilian population, including the rape of a minor Roma female at the Hotel Pastrik in Prizren; the beating and other ill-treatment of two individuals on 13 June 1999 at the same hotel; the inhuman and or degrading treatment on the night of 13 and 14 June of a male detainee; and the transfer of four Romani men to another location on the night of 15 June 1999, and the murder of three of those men. Proceedings against Anton Lekaj opened at the War Crimes Chamber at Belgrade District Court on 18 November 2005. To date, the trial has reportedly been conducted in accordance with international standards.

In a meeting with the UNMIK Office of Legal Affairs (OLA) on Thursday 4 April 2006, Amnesty International delegates were informed that the OLA considered the indictment of former KLA member Anton Lekaj (and three others) to be unlawful , having been made by the "parallel courts", established in Niš in Serbia proper following the withdrawal of the Serbian authorities from Kosovo in July 1999. (36)

Amnesty International considers that, irrespective of the issue of UNMIK's recognition or not of the parallel courts,(37) Serbia is obliged to investigate violations of international humanitarian law which took place on its territory.(38) The organization also notes that even if Serbia were a separate state, under the principle of universal jurisdiction, it would have a duty to investigate and prosecute grave crimes under international law, or if they fail to do so, extradite the suspect to a state willing and able to do so. (39)

As far as the organization is aware, neither UNMIK police nor the Department of Justice have taken any measures to date to open investigations into allegations against Anton Lekaj or three other men indicted by the Serbian authorities. The OLA informed Amnesty International that if the Serbian authorities were to provide UNMIK with the evidence, they would "look into it". Amnesty International members have repeatedly written to the UNMIK police (both the Missing Persons Unit, and Central Criminal Investigations Unit) since 2000 urging them to open investigations into some of the allegations - (specifically the extra-judicial execution of three Romani men, including Rexh Shalla,) - included in the indictment. This information was based on an eye-witness account of the extra-judicial executions,(40)

5.2 "Disappearances" and abductions

"Disappearances" and abductions are a clear and flagrant violation of fundamental human rights guaranteed by the ICCPR.(41) Amnesty International is extremely concerned at the failure to bring to justice those responsible for the abduction of Serbs, Roma and members of other minority communities, believed to have been abducted by members of the KLA or other ethnic Albanian armed groups.(42) Further, UNMIK has failed to provide any information on the fate or whereabouts of the "disappeared" or abducted to their relatives, who have also been denied access to reparations including compensation (see below, Article 7).

In December 2005, according to the Office of Missing Persons and Forensics,(43) some 2,464 persons (1,774 ethnic

Albanians and 690 non-Albanians) continued to be reported as missing.(44) At the same time some 2,700 cases were reported closed, including in 1,490 cases, where mortal remains of ethnic Albanians had been returned to their families (including some 679 from Serbia); an additional 138 bodies at that time awaited return to their families. Amnesty International is not aware that any prosecutions have arisen from these closed cases.

UNMIK police have failed to conduct thorough and impartial investigations into the abduction of members of minority communities. In August 2001 the mortal remains of a Serbian woman Petrija Piljević, abducted in Prizren in on 28 June 1999, were returned to her relatives in Serbia for burial. In 2003, Amnesty International was informed by the Deputy SRSG that a request had been forwarded to the Serbian authorities to make arrangements for UNMIK Police to interview witnesses; no further progress has since been reported in this case. In the case of Vesel Rama, a Romani man from Pristina, believed to have been abducted in July 1999 by the KLA, and whose body was exhumed at the Makovac cemetery in Pristina in 2005, Amnesty International was subsequently informed by the Police Commissioner that "a review of the case was made by the Department of Justice", but that a decision had been made not to open criminal proceedings.(45)

Amnesty International is concerned that that the investigations of "disappearances" and abductions – especially in individual cases– have been given low priority by the UNMIK Police. Until 2003, these were considered to be outside of the mandate of the Central Criminal Investigative Unit (CCIU), which was charged with the investigation of crimes which took place up to the entry of KFOR into Kosovo in July 1999. This excluded their investigation of the majority of the abductions of Serbs and Roma, which took place after the arrival of KFOR into Kosovo. In 2003 responsibility for the investigation of such cases was passed to from the UNMIK police Missing Persons Unit to the CCIU, which made little progress and was not provided with any additional resources.

In April 2004, the then UNMIK Police Deputy Commissioner for Crime, Robbie Pedlow, assured Amnesty International that a number of "cold cases" were being reviewed; according to information received later in the year no "disappearance" or abduction cases were referred for prosecution. In April 2006, the UNMIK Police Director of Criminal Investigations, Wayne Hissong, informed Amnesty International that some significant cases might still be investigated where forensic evidence had been secured but - given the new priority placed on the investigation of organized crime and corruption - it was unlikely that many investigations would be opened into the remaining cases of abductions or "disappearances."

HRC Concern and Recommendations
12. The committee is concerned about the continuing impunity enjoyed by some perpetrators of war crimes and crimes against humanity committed prior to UNMIK's mandate and about ethnically motivated crimes perpetrated since June 1999, including those committed in March 2004, as well as the failure to effectively investigate many of these crimes and bring perpetrators to justice. The Committee regrets the failure of UNMIK to fully cooperate with the International Criminal Tribunal for the Former Yugoslavia. (arts. 6, 7, 2(3))**UNMIK, in cooperation with the PISG, should investigate all outstanding cases of war crimes, crimes against humanity and ethnically motivated crimes committed before and after 1999, including where the perpetrators may have been Kosovo Albanians, ensure that the perpetrators of such crimes are brought to justice and that victims are adequately compensated. It should provide effective witness protection programmes, including by means of witness relocation, and extend full cooperation to ICTY prosecutors.**

13. The Committee, while acknowledging the work done by the Office of Missing Persons and Forensics, is concerned that some 1,713 ethnic Albanians and 683 non-Albanians, including Serbs, Roma, Ashkali and Egyptians, continued to be reported as missing as of May 2006, that low priority has been given to investigations of disappearances and abductions by the Missing Persons Unit of the UNMIK police and, since 2003, by the Central Criminal Investigative Unit, and that in closed cases of disappearances and abductions perpetrators were rarely, if ever, prosecuted and brought to justice. (arts. 6, 7 and 2(3))
UNMIK, in cooperation with the PISG, should effectively investigate all outstanding cases of disappearances and abductions and bring perpetrators to justice. It should ensure that the relatives of disappeared and abducted persons have access to information about the fate of the victims, as well as to adequate compensation.

5.3 Failure to investigate ethnically motivated killings (Article 2, Article 6, Article 26), *with reference to the Committee's question (9). (46)*

UNMIK's failure to bring perpetrators to justice in cases of ethnically motivated murders, including in cases of mass killings (including Staro Gračko, where 14 Serb harvesters were killed in 1999, Goraždevac/Gorazdec, Obilić/Obiliq and Podujevo/Podujevë) and the events of March 2004, continues to fuel the pervasive climate of impunity for inter-ethnic crimes.

Amnesty International has repeatedly expressed concerns, including in March 2003, when the organization noted in detail its concerns for the climate of impunity caused by the failure to adequately investigate the hundreds and possibly thousands of murders committed in the period 1999 to 2000, and to bring the perpetrators to justice. (47) In particular, the organization called for a special unit to be established by the UNMIK police to investigate outstanding ethnically motivated murders and other serious crimes (including "disappearances" and abductions). (48) Despite marked improvements since 2000 in the security conditions for minorities, and the consequent decline in the intensity and frequency of violent attacks, including killings and abductions, the organization considered that UNMIK had failed to guarantee minorities the basic rights guaranteed by the ICCPR and other international human rights standards, including the right to life. Impunity for inter-ethnic murders, including several incidents during that year, continued

throughout 2003, and in the period leading up to the violence of March 2004.(49)

The failure of UNMIK police to thoroughly investigate serious inter-ethnic crimes has also been documented in a number of *ex-officio* investigations by the Ombudsperson's Institution, which have concluded that the authorities did not exercise proper diligence throughout their investigations.(50)

UNMIK police and the Department of Justice have consistently been unable to provide adequate and timely information, including statistics, on the numbers of arrests, trials, convictions and appeals in cases of ethnically motivated killings and other crimes. In March 2002, for example, UNMIK police informed Amnesty International that no systematic analysis of ethnically motivated crimes was undertaken; in April 2006, despite the introduction of a computerized case management system by the Department of Justice, no reliable figures were available.(51)

5.4 The Niš Express bombing

The Niš Express bombing was one of the most serious ethnically motivated attacks since 1999. On 16 February 2001, 11 Serbs were killed and over 40 injured when the lead bus of the Niš Express convoy, travelling from Niš in Serbia to Gračanica in Kosovo, was destroyed by a remote-controlled bomb near Podujevo/Podujevë. This was despite intelligence received by KFOR, who conducted a search of the route and provided a heavily armed escort for the convoy. Four suspects were arrested, three of whom were subsequently detained for nine months without authorization or review by a court and subsequently released without charge (see section 9.2, below). The fourth suspect, Florim Ejupi, escaped from the Bondsteel Detention Facility on 14 May 2001; he was arrested in Albania in 2005, and transferred to Kosovo. On 13 April 2005 Florim Ejupi was charged with the bombing of the bus: the indictment included charges relating to the 12(52) murders, the severe injury of others, the illegal termination of a pregnancy, terrorist offences, causing a danger to the public, racial discrimination and unlawful possession of explosives. As of May 2006 Florim Ejupi had yet to be tried, and remained in pre-trial detention.(53)

Amnesty International is concerned about reports that despite the severity of the attack and its impact on the Serbian community, (54) UNMIK Police were frustrated in their ability to conduct a thorough and impartial investigation. It has been alleged that insufficient resources were deployed to the investigation, which was obstructed by the failure of KFOR to provide evidence to the courts. (55) In 2002 Amnesty International called for an independent enquiry to be established into the failure of UNMIK police to bring the perpetrators of the Niš Express bombing to justice, and into the allegations noted above. No such investigations have taken place.

In March 2005, the NGO Community Rights Group/Kosovo submitted a complaint on behalf of the victims of the Niš Express bombing, against the decision of British Ministry of Defence in October 2003 to deny them compensation. They had alleged negligence and a breach of positive obligation of the UK KFOR soldiers to search the road where the buses passed on that day. No outcome has yet been reported. (56)

5.5 The March 2004 violence

UNMIK has failed to bring to justice the majority of perpetrators of the inter-ethnic violence which took place between 19 and 19 March 2004, and in which 19 persons were killed, over 900 were seriously injured and over 4,100 persons were forcibly displaced.

Violence erupted in Kosovo after following reports of the drowning of three ethnic Albanian children after they had jumped into the river Ibar near Mitroviva/ë on 16 March, reportedly after being attacked and chased by Serbs. On the previous day in Caglavica/Çagllavicë near Pristina an 18-year-old Serb was seriously injured in a drive-by shooting, believed to have been perpetrated by Albanian; Serbs erected road-blocks in protest.

Following reports of the drowning, on 17 March in Mitrovica/ë large crowds of Albanians and Serbs gathered on either side of the bridge over the river Ibar. Violence broke out and reportedly seven people were killed and hundreds wounded. Violence then spread to a number of places throughout Kosovo including Pristina and almost every major town.(57)

The authorities have estimated that some 51,000 people were involved in 33 violent incidents throughout Kosovo - predominantly involving Albanians attacking Serb enclaves and communities, but also involving Albanians attacking other minorities, notably the Ashkali community in Vučitrn/Vushtrri. Albanians were reportedly forced to flee the Serb majority areas of north Mitrovica/ë and Leposavić/Leposaviq.

In May 2004, the then-Deputy Commissioner for Crime Police informed Amnesty International that the UNMIK police intended to actively investigate and prosecute criminal cases associated with the March violence, and to ensure that the legacy of impunity did not prevail.(58) However, according to a December 2005 OSCE report on the criminal justice system response to the violence of March 2004 riots, only 426 individuals had been charged with crimes relating to the March events.(59)

The reasons for the failure of UNMIK police and the prosecutor's office(60) to bring to justice more than a handful of those suspected of organizing and taking part in the violence of March 2004 has been well documented in reports by the OSCE Legal Systems Monitoring Section and by the NGO Human Rights Watch. Both have observed a failure by both UNMIK police and the KPS to conduct through investigations; the failure of prosecutors to adopt their investigative responsibilities, the absence of a comprehensive witness protection programme and the failure to implement witness protection measures in proceedings in court. (The latter has long contributed to the failure to bring

perpetrators of serious ethnically motivated crimes to justice(61)). Human Rights Watch have concluded that "the inadequate criminal justice response to violence in March 2004 symbolizes one of the greatest problems in Kosovo today – rampant impunity for crime, particularly where it has a political or ethnic dimension".(62)

According to Human Rights Watch, international prosecutors and judges had jurisdiction over the 56 most serious or sensitive cases, including the 19 deaths that occurred during the violence, the burning of Serb houses, churches, and monasteries, and the organization and incitement of the riots.

Human Rights Watch reported in May 2006 that of those 56 cases:

"two years later, only thirteen cases — less than one-quarter— had resulted in final decisions. Another twelve cases had been 'dismissed, terminated, or closed.' Only two other cases appear to have potential for moving forward through the judicial system, with an indictment in one case and another awaiting indictment. The remaining twenty-nine cases have not even reached the pre-trial investigation stage—and it is not clear if, or when, they ever will." (63)

5.6 The March Violence (2) UNMIK and KFOR, with reference to the second part of the Committee's question (9)(64)

During the interethnic violence that took place across Kosovo on 18 to 19 March 2004 UNMIK and KFOR failed to act to act to protect the lives and property of minority communities.

Some national KFOR contingents, for example those under French command in Multi-National Brigade (MNB) North-East, and those under German command in MNB South-East, interpreted their mandates as solely the protection of people rather than also extending this protection to property. As a result some KFOR troops took no action to prevent the systematic destruction of minority settlements. Other KFOR national contingents took a more resolute stand in discharging the duties assigned to them under UN SC Resolution 1244/1999.(65)

On the afternoon of 18 March 2004 a crowd of approximately 500 Albanians, after having set on fire the Orthodox Church in South Mitrovica/ë, marched out of Mitrovica/ë towards the Serbian village of Svinjare/Frashër south of the town. UNMIK police reportedly gave KFOR warning that a hostile crowd had assembled some two hours previously.(66) According to eye-witness accounts, a small group of UNMIK police and Moroccan KFOR (under French command) present did nothing to prevent the group from Mitrovica/ë from systematically burning all the houses belonging to Serbs. They also failed to prevent another group of ethnic Albanians from the neighbouring village of Pantina/Pantinë, who had approached the village from the south, from burning Serb houses.

When French KFOR personnel finally arrived on the scene, they merely proceeded to evacuate all the 200 or so Serbs from the village to the nearby KFOR "Belvedere" camp, on the hill overlooking the village, where the villagers were left to watch their homes burning and their life-long possessions being destroyed or stolen. KFOR did nothing to deter the attackers.

Amnesty International understands that during the March 2004 events French KFOR prioritized the protection of persons over the protection of property. However the organization considers that their duty under UN SC Resolution 1244/1999 to "establish[ing] a secure environment in which refugees and displaced persons can return home in safety" and "ensur[ing] public safety and order" clearly includes protecting minority property wherever possible. In allowing the forcible displacement of the residents of Svinjare/Frashër, a long-settled community, KFOR sent a clear signal to other minority refugees and displaced persons that they could not rely on the security forces for adequate protection.

Amnesty International called on NATO and KFOR to make public the results of their investigation into KFOR's failure to protect some minority communities during the March violence; and on the French and German governments respectively to conduct investigations into the role of their forces, which had apparently failed to protect members of Serbian communities in Svinjare/Frashër and in Prizren, and to make the results of such investigations public.(67)

The organization was informed by letter by both UNMIK and NATO that measures had been taken to address some of the lessons learned, including to improve communication between UNMIK and KFOR, to revise contingency plans for riot control and to conduct joint riot control training exercises involving both UNMIK police and KFOR. However, neither NATO, nor any NATO member state has made public the results of any investigations into the conduct of their forces during the March violence.

6. The right to life of Roma, Ashkali and Egyptian (RAE) Internally Displaced Persons (IDPs) in north Mitrovica (68)

Amnesty International has raised concerns with both UNMIK and the PISG about their failure to protect the right to life and health of the Romani, Ashkali and Egyptian IDPs living in camps in lead-polluted areas in north Mitrovica/ë from 1999 to January 2006. The organization remains concerned that following the relocation of the community in 2006, adequate measures have not been taken to provide medical treatment that would ensure that the RAE community might enjoy the highest attainable state of health, in accordance with international standards applicable in Kosovo.

In 2000 a report commissioned by UNMIK, following reports of ill-health amongst KFOR and UNMIK personnel, identified high levels of lead in the Mitrovica/ë area. While international staff were repatriated, no action was taken to relocate the RAE community from camps established by UNHCR in 1999. In July 2004 and November 2004 the World

Health Organization (WHO) reported on the effects of lead on the right to health, and potentially on the right to life, of children living at the camps. The WHO report noted the short half-life of lead, and suggested that the removal of children from the area could reduce their Blood Lead Levels (BLLs) by as much as 50 per cent within weeks.

No measures were taken to facilitate the relocation of the community to a safe environment as recommended by the WHO until after the intervention of the WHO, the UN Special Rapporteur for internally displaced persons and local and international NGOs. Although UNMIK has attributed their delay in part to the failure of the international community to provide funding additional to that identified by UNMIK and the PISG, Amnesty International considers this response inadequate.

In April 2006 following the voluntary relocation of the majority of families to a former KFOR base camp at Osterode; some Roma remained at one of the contaminated sites until it was destroyed by fire. Amnesty International notes the lack of meaningful consultation with the communities prior to their relocation, in contravention of the UN Guiding Principles on Internal Displacement, as recommended by Amnesty International in July 2005. (69)

Amnesty International was informed by two representatives of the RAE community in April 2006 that the camp to which they had been relocated was some 100 metres from one of the contaminated sites; and that they had not been provided with new furniture and fittings, but had brought materials from their previous homes, which they fear may be contaminated. According to the community representatives, tests conducted on some 110 persons found that some 33 children continued to have BLLs above the acceptable limits; while medical treatment had begun in March, they reported that children had not received follow-up treatment from the Institute for Mothers and Children in Belgrade for over a year (see para. 11, TSR).(70)

HRC Concern and Recommendations
14. The Committee, while acknowledging the progress made in the past few months, notes with concern that Roma, Ashkali and Egyptian IDPs living in camps in lead-polluted areas in north Mitrovica since 1999 have been relocated only recently, although the negative effects on the health of the communities concerned were known since mid-2004. The Committee is also concerned about the limited extent of consultation with the IDP communities prior to their relocation, the proximity of the temporary relocation camp Osterode to one of the contaminated sites, and the failure to provide medical follow-up treatment to the affected persons. (art. 6)
UNMIK should ensure that the remaining inhabitants of lead-contaminated IDP camps, as well as those temporarily transferred to the Osterode camp, are relocated to environmentally safe areas, following their consultation in accordance with the UN Guiding Principles on Internal Displacement, and that the victims of lead contamination are provided with adequate medical treatment and access to effective remedies to seek and obtain compensation for any damage caused to their health.

7. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 7).

7.1 Violations of the rights of the relatives of the "disappeared" and missing(71)

UNMIK police and international prosecutors have failed to conduct thorough, impartial and independent investigations so that those suspected of the abduction of members of minority communities may be brought to justice. The HRC has held that the failure to investigate the cases of missing persons results in a continuing violation of Article 7 of the ICCPR. (72)

UNMIK's failure to inform the relatives of the abducted and "disappeared" of the fate and whereabouts of their loved ones has resulted in their continued suffering, amounting to a violation of their rights under Article 7 of the ICCPR. UNMIK has also failed to ensure the relatives of the missing receive reparations, including compensation for the violation the right to life of their relative, and for their own continued distress and suffering.

Amnesty International further notes that the relatives are also a consequently denied the right to a prompt and impartial investigation and to a remedy including compensation, as enshrined in Articles 14 and Article 2.3 of the ICCPR.

7. 2 Unlawful and excessive use of force and firearms by UNMIK police and the KPS(73)

UNMIK police have failed to ensure that police officers act in compliance with the provisions of the *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (Basic Principles). According to information received by Amnesty international both the UNMIK civilian police (also known as CIVPOL) and the KPS have used excessive and unlawful force in contravention of the provisions of the Basic Principles. Although investigations have been opened, police officers (and KFOR personnel) reasonably suspected of the use of unlawful and excessive force are only rarely subject to disciplinary measures, and only occasionally to criminal prosecution.

Reports of the unlawful use of force and firearms by the KPS continue in contravention of the Basic Principles and the provisions of the KPS Policy and Procedure Manual. Although training is reportedly received by the KPS, investigations are reportedly conducted into incidents and disciplinary measures are reportedly taken, Amnesty International notes paras. 19-20 of the TSR, outlining specific provisions made in the KPS Policy and Procedure Manual (2003) which specifically prohibit the use of firearms against a moving vehicle.(74)

On 19 April 2005 a KPS officer in Prizren used his service pistol weapon in an apparent attempt to stop a suspect from driving away in his vehicle. The vehicle did not stop but was later recovered; with a hole was found in the rear left

hand side and a bullet in the trunk. On 23 May 2005, an off-duty KPS officer in Pristina used his official pistol when he was assaulted by five males, including one man who was wounded. All persons involved in the assault were arrested and later released. The weapon was confiscated. On 2 January 2006 at Peć/Peja police station a KPS officer shot and killed a male suspect who was in custody. The KPS Officer was arrested and charged with murder. (75)

According to UNMIK Police Commissioner Kai Vittrup disciplinary measures had been taken in the first two cases. No outcome has yet been reported in the third case.(76)

7. 3 Unlawful use of force and KPS complicity in the March 2004 violence

Following the violence of March 2004 (see above, sections 5.5 and 5.6), Amnesty International and other human rights organizations received credible allegations that members of the KPS had appeared to act in conjunction with ethnic Albanians in attacks on the lives and property of minority communities. (77) Despite internal investigations by the UNMIK police, members of the KPS have not been subject to criminal prosecutions or disciplinary measures. Victims, including those who were injured or ill treated have not received reparations, including compensation.

The organization received credible allegations of KPS complicity in the violence against the Ashkali community in Vučitrn/Vushtrri, allegations that members of the KPS allegedly appeared to be acting in conjunction with the ethnic Albanian crowd and allegations of ill treatment by the police. For example:

"The crowd of 300-400 opened the gates [to his walled yard] *and came inside and started to smash the windows of the cars in the yard and break the house windows. They then tried to get inside the house using a small axe, metal bars and pieces of wood, and hit BX* [his son] *on the forehead with a hoe. When I saw this I started to shoot in the air and the crowd retreated and I closed the gates. The crowd chanted 'UÇK, UÇK' and started to throw stones, I saw weapons but they did not try to come inside again for 20-25 minutes. We called the police 10 or 20 times but they did not want to answer, they just hung up, when we told them which area we were from the line went dead. We asked the police to get KFOR but they said there was no KFOR there… After 20-25 minutes the police came, some of the crowd had dispersed but when they saw the police arrive they came back again. I was initially pleased that the police had arrived. I saw the KPS officers talking with the crowd and how they brought the demonstrators back. The police knocked on my gate and one of my family opened the gate. When the police came in they immediately started to arrest my family."*

The man's son alleged that a KPS officer had hit him twice in the back with the butt of an automatic weapon during arrest and that as he was being led away in handcuffs a police officer kicked his wife in the groin and leg when she ran up to him holding their two-year-old son. Amnesty International was also told that a KPS officer had allegedly thrown what appeared to be a petrol bomb into one of the Ashkali houses and that the KPS prevented people from trying to put the fire out.(78)

A senior source in UNMIK, who wished to remain anonymous, informed Amnesty International in late March 2005 that allegations of KPS involvement in the March violence were received from Vučitrn/Vushtrri, Prizren and other locations. Another anonymous UNMIK source in UNMIK informed Amnesty International in May 2005 that there were reports of KPS involvement in events in Prizren; that Serb KPS officers in Lipjan/Lipljan had reportedly been threatened by their Albanian colleagues not to come to work and KPS officers in Lipjan/Lipljan had greeted people in the crowd and not intervened to prevent the violence. The Ombudsperson's office reported that it had opened *ex-officio* investigations regarding the events.(79) The OSCE also noted "allegations that individual Kosovo Albanian KPS officers actively participated in the disturbances (or did not prevent the attacks taking place)".(80)

According to information obtained by Amnesty International and Human Rights Watch in interviews, telephone calls and correspondence with the UNMIK Police, following the events of March 2004 61 criminal investigations were opened against an unspecified number of KPS officers; to date there have been no criminal prosecutions.(81) Forty-one complaints were subsequently forwarded to the UNMIK police professional standards unit (now located within the KPS): 12 KPS officers were initially suspended pending consideration of their cases; seven were reinstated in September 2005. In February 2006, the professional standards unit was unable to provide Human Rights Watch with information on the status of the remaining cases, although in April 2006, a Deputy UNMIK Police Commissioner informed Amnesty International that some prosecutions might be forthcoming.

7.4 Use of excessive force by KPS and UNMIK police

In August 2005, Amnesty International received credible reports from lawyers acting for the Vetëvendosje (Self-Determination) movement providing the names of police officers allegedly responsible for the ill-treatment of members of Vetëvendosje during demonstrations in Vushtrri/Vučitrn, Ferizaj/Uroševac and Suhareka/Suva Reka.(82) Members of the same organization informed Amnesty International in April 2006 that during a demonstration in Peja/Peć in August 2005, in which a Peja resident unconnected with the demonstration had thrown a rock at a police officer, the police had used pepper-spray against an otherwise non-violent demonstration in which no resistance had been offered. Five persons taken to hospital following the use of pepper-spray by the police were subsequently arrested at the hospital. (83) The organization also alleged that a French KFOR soldier in a demonstration at Mitrovica/ë had allegedly beaten one of the demonstrators with the barrel of an automatic weapon. Following another demonstration on 7 June 2006, in which 82 persons were arrested, a young male reportedly received surgery for a leg injury sustained after being beaten by a KPS police officer. (84) Vetëvendosje has a policy of not making complaints against the authorities.

7.5 Use of unreasonable force against women and children

On 25 May 2006 UNMIK police allegedly beat and used tear gas against women and children in the village of Krusha e Vogël/Mala Kruša.

According to UNMIK Police Commissioner Kai Vittrup UNMIK police were visiting the village to escort defence lawyers from the International Criminal Tribunal for the former Yugoslavia (Tribunal) acting for Dragoljub Ojdanić, accused, *inter alia*, of responsibility for the murder of more than 100 men and boys in Krusha e Vogël/Mala Kruša in 1999. (85)

According to reports received by Amnesty International, on 25 May 2006 a convoy of 12 armoured UNMIK police vehicles arrived, unannounced, at the village at 9.15 am. (86) Reportedly, when UNMIK police stopped to ask the location of a house, a 70-year-old woman saw two Serb women, who had previously lived in the village, sitting in one of the vehicles. She immediately shouted out to women who were on their way to work in the fields: "They [the Serbs] are coming back!" As the women gathered around the vehicles, a community leader asked UNMIK police if they could speak with the passengers who they believed to be their former Serb neighbours, and ask what had happened to the bodies of their husbands and children.

The UNMIK police officer refused their request, and the women sat in the middle of the road…., *"preventing the UNMIK armoured vehicles from moving forward. UNMIK police officers reportedly grabbed the women by the shoulders and arms, forcibly moving them from the road. When the women struggled, the police officers began to use riot batons. The women then responded by throwing stones at the UNMIK police officers and vehicles. In the meantime, men saw what was happening and came to protect the women. When the men came, some of the UNMIK police officers started their vehicles, while others continued to hit the villagers with the butts of their guns and riot batons. Then, all of the officers jumped in their armoured vehicles. As they drove away, they threw tear gas from their moving vehicles at the citizens until they reached the edge of the village. They also threw tear gas near the school where children were playing during recess* [although there had been no reported disturbances in the vicinity of the school]..".(87)

Some 33 women and three men were subsequently admitted to hospital in Prizren for treatment for the injuries sustained and the effects of the tear gas; in addition some 20 children were treated for exposure to tear gas. Fourteen people were kept in hospital including one boy with a broken arm and 13 women suffering from psychological distress, exposure to tear gas and light physical injuries. One woman was treated for serious injuries to her kidneys after being beaten in the back with a riot baton.

On 26 June 2006 UNMIK strongly condemned the "attack by villagers". However on 7 June the SRSG made public the preliminary results of an investigation into the events of 26 May, admitting that mistakes had been made in planning the visit, including the failure to properly evaluate security and political factors: "In particular, the operational planning was made on the basis of inadequate information on the sensitivity of the visit and the history of the village." [AI emphasis]. Noting that the violence was regrettable, the SRSG added: "The investigation has confirmed that it was necessary for the police to use reasonable means to enable the convoy to be evacuated safely". The statement did not make any reference to the opening of any investigations or disciplinary proceedings relating to the use of force by UNMIK police. (88)

7.6 Use of force by KFOR

On 13 February 2000, when shooting broke out in the streets of Mitrovica/ë, Avni Hajredini, a resident of Mitrovica/ë, was shot and killed in circumstances which remain disputed. Although Amnesty International called on KFOR to initiate without further delay an independent and impartial investigation into this death, to be conducted in accordance with international standards, no such investigation was undertaken.

Investigations conducted into an incident during the violence of March 2004, in which a rioter was shot dead by an UNMIK police officer, found that the officer had apparently been acting in self-defence. Amnesty International is concerned that the results of an investigation into three other deaths which occurred during a KFOR operation during the same period have not been made public.

To Amnesty International's knowledge the only case where an alleged human rights violation either by KFOR troops in the course of their duty has been brought before a national judiciary of a respective sending state has been in the United Kingdom (UK). On 7 April 2004 the UK High Court ruled in civil proceedings that the UK government should pay compensation to Mohamet and Skender Bici for damages caused when in 1999 UK KFOR troops opened fire on the car in which they were travelling in an incident in which two other passengers in the car, Fahri Bici and Avni Dudi, were killed. An investigation by the UK Royal Military Police into the incident had cleared the three soldiers responsible for opening fire. However, the presiding judge ruled that the soldiers had deliberately and unjustifiably caused the injuries. Amnesty International believes that the court ruling indicates a failure by the UK military authorities to adequately investigate the incident in question, and illustrates the defects in the NATO system of investigating allegations of human rights abuses committed by its troops.

HRC Concern and Recommendations
15. The Committee is concerned about allegations of excessive use of force by UNMIK, KFOR and the Kosovo Police Service (KPS) and the reported failure to investigate, prosecute and convict many of those responsible for such acts. (arts. 6, 7, 2(3))
UNMIK, in cooperation with the PISG and KFOR, should ensure that complaints about excessive use of force

by police or military personnel in Kosovo are investigated by a competent body and that victims receive adequate compensation.
UNMIK and KFOR should seek the cooperation of the countries of origin of those personnel to ensure that perpetrators are brought to justice.

8. Elimination of slavery and servitude (Article 8) (89)

Amnesty International has expressed serious concerns about the role of the international community in relation to the trafficking of persons into Kosovo for forced prostitution, including their involvement in trafficking. The organization has concluded that the presence of the international community in Kosovo since the deployment, in July 1999, of KFOR and the establishment of UNMIK was a major factor in Kosovo's development into a destination for women and girls trafficked into forced prostitution. (90)

Women and girls trafficked into Kosovo had been abducted or otherwise unlawfully deprived of their liberty, in violation of their rights to liberty and security of their person, enshrined in Article 9 of the ICCPR. Their right to freedom of movement, guaranteed under article 12 of the ICCPR was curtailed or denied, and their rights to privacy and to family life under Article 17 of the ICCPR were further denied.

Amnesty International's research documented how women and girls had been subjected to torture, including rape, and other forms of cruel, inhuman or degrading treatment, such as the repeated use of psychological threats, physical beatings and degrading sexual acts, which violated the rights of women and girls under Article 7 of the ICCPR and Article 37 of the Children's Convention, and in some cases may even have violate the right to life.

The rights of the victims of trafficking were also violated following their arrest by the authorities. As detainees, they were not informed of their rights or how to access them. Their rights to the presumption of innocence, to a lawyer and to an interpreter were denied in violation of their rights under Articles 9 and 14 of the ICCPR, and that measures in the Regulation providing for protection and assistance of trafficked women failed to meet international standards.

The authorities were slow to respond to the situation and prosecutions for traffickers were rare, despite the formation of the UNMIK Police Trafficking and Prostitution Investigation Unit in October 2000, and the promulgation on 12 January 2001 of UNMIK Regulation 2001/4, *On the Prohibition of Trafficking in Persons in Kosovo*, which criminalized those involved in trafficking and those knowingly using the services of trafficked women, although no prosecutions have ever been brought under this section.

UNMIK and KFOR failed to respond in the majority of cases in which credible allegations were made against members of KFOR and UNMIK police suspected of involvement in trafficking, and in the use of trafficked women. Amnesty International noted a scant few cases where the immunity of UNMIK police officers had been lifted and where criminal investigations had taken place. In 2004 trafficking for forced prostitution remained widespread and allegations of official complicity continued. In addition to women trafficked into Kosovo, predominantly from Moldova, Bulgaria and Ukraine, Amnesty International noted that increasing numbers of ethnic Albanians – the majority of them believed to be minors – were being internally trafficked.

In June 2006, only 135 premises remained on the "Off Limits" list, which lists bars, clubs and other sites where trafficking is believed to take place, and from which members of the international community are prohibited (198 such premises were listed in June 2005).(91) However, reports from researchers and NGOs in Kosovo suggested that little had changed, the closure of premises in the absence of criminal prosecutions being attributed either to measures taken by municipal inspectors to close premises under health and employment legislation or to changed tactics by the traffickers.

Relatively few convictions for trafficking have been reported following the introduction of the Action Plan to Combat Trafficking in Human Beings in Kosovo. According to UNMIK police in 2005 three Albanian nationals were convicted and sentenced by Prizren District Court to 12 and 10 years' imprisonment on charges of trafficking in persons, rape, falsification of documents and facilitating prostitution. In October 2005, immunity from prosecution was lifted so that Rashidoon Khan, a senior UNHCR staff member and A.S., an ethnic Albanian minor, might be tried on charges relating to "the Sexual Abuse of Persons under the Age of Sixteen Years, Trafficking in Persons, Unauthorized Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances". Rashidoon Khan was convicted on 31 October 2005 at Pristina District Court and sentenced to three years' imprisonment for the sexual abuse of a minor, and one count of falsifying official documents; A.S. was sentenced to two years' imprisonment. All trafficking charges were dropped. (92)

8.1 Action Plan to Combat Trafficking in Human Beings in Kosovo

Amnesty International welcomed the publication of the Action Plan to Combat Trafficking in Human Beings (Action Plan), but considered that it failed to meet the relevant standards of human rights protection, including those subsequently elaborated in the Council of Europe Convention on Action against Trafficking in Human Beings, signed by Serbia and Montenegro in 2005.

Given that much of the content of the Action Plan was agreed in principle at a conference in Pristina in October 2003, the delay in its publication and implementation by UNMIK and the PISG has resulted in further violations of the rights of trafficked woman and girls. For example, the *Supporting Framework* to the Action Plan stated: "there are indications that the trafficking of foreign VOT's [victims of trafficking] is decreasing and on the other hand the number of locally

recruited VOT's, deported mainly to western countries or internally trafficked , are escalating rapidly". In April 2006, the focal point on trafficking in the Office of the Prime Minister suggested that the increase in internally trafficked young women continued. (93)

Many elements of the Action Plan remain dependant on unsecured donor funding including for example, provisions for effective witness protection including the equipping of courts with additional equipment; the enhancement of court security for both legal professionals and witnesses; ensuring confidentiality in press reporting of trafficking cases; and "advocating for increasing human and financial resources for the Witness Protection Programme". The Action Plan also fails to address the following concerns:

- *The rights of trafficked women:* Amnesty International remains concerned that trafficked women continue to be provided with information about their legal rights through the Victims Assistance and Advocacy Unit (VAAU), rather than being guaranteed access to a lawyer. "Victim friendly forensic interview rooms in court houses and police stations", have not been constructed; indeed the first, established at Pristina police station, has reportedly been dismantled on the order of a senior officer; (94)
- *The rights of trafficked children:* Although concerns for trafficked children are articulated throughout the Action Plan, (though in less detail than in the draft seen in January 2005) there is no specific Standard Operating Procedure for children, whether internally or externally trafficked, in accordance with UNICEF guidelines;
- *The right to assistance and support:* The Administrative Directive implementing the 2001 trafficking regulation, which makes provisions for a procedure by which trafficked women and girls might apply for assistance and support – and which Amnesty International considers arbitrary and conditional - was finally promulgated on 11 February 2005. It failed to guarantee trafficked women and girls an automatic right to protection and assistance;
- *The right to health care:* The Action Plan does not provide for a sexual and reproductive health care programme including access to voluntary HIV testing;
- *Investigation and prosecution*: The Action Plan does not fully address measures required to ensure the investigation and prosecution of traffickers, although unfunded provision is made for equipment and other resources for covert operations.

While NGOs and the UNMIK Interim Shelter Facility continue to provide assistance and shelter, as far as Amnesty International can establish, little of the Action Plan has been implemented, with the exception of the awareness-raising programme noted in the TSR (para. 34). Although a toll-free help line was launched by VAAU in August 2005, other measures have largely been taken forward by the International Office for Migration and local NGOs, including those contracted to the PISG Ministry of Labour and Social Welfare.

HRC Concern and Recommendations
16. The Committee is concerned about the incidence of trafficking in human beings, especially women and children, and about reports that traffickers are rarely prosecuted and convicted. It is also concerned that victims of trafficking are often not informed of their rights and denied access to a lawyer or interpreter upon arrest, and that the Action Plan to Combat Trafficking in Human Beings fails to incorporate adequate measures for victim assistance and support. (art. 8)
UNMIK, in cooperation with the PISG, should ensure the effective investigation and prosecution of persons involved in trafficking, including UNMIK and KFOR personnel. It should also ensure protection as well as adequate access by victims to lawyers and interpreters, health care and counselling, and to other forms of assistance and support, and review its Action Plan to Combat Trafficking in light of the Covenant.

9. The right to liberty and security of the person (Article 9) (95)

9.1 Detentions by KFOR

Detentions by the Commander of KFOR (COMKFOR) violate detainees' rights set out under applicable law and international standards. Amnesty International considers persons detained solely under COMKFOR Detention Directive 42 to be victims of arbitrary detention in clear contravention of the Article 9 (1) of the ICCPR, in that they have not been deprived of their liberty in accordance with procedures prescribed by law. Their detention is without judicial oversight in contravention of Article 9 (3), and detainees are not given access to a court so that they might challenge the legality of their detention in contravention of Article 9(4). Amnesty International considers that arrests and detentions under COMKFOR Detention Directive 42 are in contravention of international law and that they should cease forthwith.

Amnesty International first raised its concerns about arbitrary arrest and detention by KFOR following a wave of violence in Mitrovica/ë in February 2000 in relation to the unlawful arrest and detention of some 46 persons by French KFOR in a gymnasium for up to five days.(96)

Between 2000 and 2003, it has been estimated that 3563 persons were detained by KFOR at the KFOR-run Bondsteel Detention Facility.(97) These included persons detained in relation to the 2001 internal conflict in Macedonia and the inter-ethnic violence in southern Serbia in 2001. They were detained by KFOR, without judicial authority and without access to a procedure by which they might challenge the legality of their detention.

For example, in 2002, Amnesty International raised concerns about the unlawful arrest, detention and alleged ill-treatment by KFOR of three foreign staff of two Islamic humanitarian organizations, who were arrested by Italian KFOR on 12 December 2001 and were detained without judicial authorization under COMKFOR Detention Directive 42. They had not been informed at the time of their arrest of the reasons for their arrest or the charges against them. Neither were they provided with an interpreter so that they might understand the reasons for their detention. The three men were not informed of their right to challenge the lawfulness of their detention before a court, nor were they provided with a lawyer so that they might be assisted with such a challenge. Without access to counsel, the three men were effectively denied access to the right of habeas corpus. They were released without charge on 21 January 2002.

In July 2002, the organization raised further concerns about three men who were similarly unlawfully arrested by KFOR and held in detention for between 43 and 51 days without being brought before a judicial body to authorize their detention.(98)

On 10 October 2003 Amnesty International sent an 18-page memorandum to the NATO, individual NATO governments, and the UN Department of Peace Keeping Operations (DPKO) detailing its concerns at instances in which international peacekeeping forces led by NATO in Kosovo (and in Bosnia and Herzegovina) had failed to adhere to international human rights law and standards when detaining suspects. The memorandum specifically addressed the lack of legal basis for COMKFOR detentions under Detention Directive 42.(99)

According to correspondence received by Amnesty International from both KFOR and the SRSG, KFOR considers that their authority to arrest derives from UN SC resolution 1244/99, which at Para. 9(d) charges the international security presence in Kosovo with responsibility for "ensuring public safety and order until the international civilian presence can take responsibility for this task". Amnesty International believes that, given the progress made by UNMIK in establishing the rule of law in Kosovo and in particular, the existence of a fully functioning international and domestic police service and a comprehensive body of applicable law with regard to arrest and detention – by 2003, this justification was no longer applicable. (100)

Amnesty International further notes that UN SC resolution 1244/99 does not invest COMKFOR with any judicial power, or make any provision for COMKFOR to substitute his judgment for that of a court in order to authorize or supervise detention, nor are COMKFOR's powers subject to judicial scrutiny. Neither COMKFOR detentions nor SRSG detentions under Executive Orders (see below) provide a procedure by which a person can challenge the lawfulness of their detention before a court.(101) Further, there remains no judicial mechanism in place by which a person who has been unlawfully or arbitrarily detained on the order of COMKFOR or the SRSG may enforce their right to reparation, as confirmed by lawyers acting for persons unlawfully detained on the order of the SRSG or COMKFOR.

9. 2 SRSG Detentions on "Executive Orders".

Detentions under Executive Orders on the authority of the SRSG also violate the provisions of Article 9 of the ICCPR. Although no such detentions have been authorized by the SRSG, to the organization's knowledge, since December 2001; however the UNMIK regulation related to such detentions (see below) has not been revoked. Amnesty International, along with other domestic and international organizations, raised repeated concerns about detentions on the order of the SRSG which in not being authorised by a court failed to meet international human rights standards.

In February 2001, Amnesty International raised concerns that Afrim Zeqiri, an ethnic Albanian, (who had been arrested on 29 May 2000 after voluntarily reporting to the police station at Gjilan/Gnjilane), had been detained since 26 July 2000 without legal basis or recourse, following an order for his release on 25 July 2000 by the investigating judge at Gjilan/Gnjilane District Court. An order had been issued by the SRSG on 13 January 2001, extending Afrim Zeqiri's detention, and was due to expire on 12 February. Although no further order for his detention had been issued, Afrim Zeqiri remained in detention, without access to a lawyer or to any legal process by which he could have challenged the legality of his detention. He remained in detention under Executive Orders until 18 April 2001, when the Supreme Court ruled that the District Court retained the competence to decide on his further detention.

In December 2001 Amnesty International again raised similar concerns in connection with the continued detention under Executive Orders of Çele Gashi, Avdi Behluli and Jusuf Veliu, who had been unlawfully deprived of their liberty for nine months since the order for their release from detention had been issued by a court on 28 March 2001.(102)

Amnesty International considered that use of such powers over-reached the limits of the authority invested in the SRSG by UN SC Resolution 1244/99. In substituting his judgment for that of a court, the SRSG had acted outside of the rule of law and over-ridden the international human rights standards which, under UN SC Resolution 1244/99, he was charged to protect and promote. Although paragraph 1 of Section 1 of UNMIK Regulation No. 1999/1 vested UNMIK and the SRSG with all legislative and executive powers, and the *administration* of the judiciary, he was not vested with judicial powers.(103)

Amnesty International notes that in subsequently promulgating UNMIK Regulation, *On the establishment of the Detention Review Commission*, 2001/18 (25 August 2001), the SRSG may have sought to provide those deprived of their liberty under Executive Orders with access to a means by which their detention could be reviewed by a judicial body. Yet, instead of adopting procedures derived from domestic law and consistent with international standards applicable in Kosovo, the SRSG chose to establish a new mechanism, additional to provisions already existing in applicable law and international human rights standards.

Amnesty International considered that the Detention Review Commission was neither an independent nor an impartial

court, in that it contravened the Basic Principles of the Independence of the Judiciary which prohibit the creation of special courts that displace the jurisdiction of ordinary courts.(104) The commission was charged with exercising control over deprivations of liberty made in contravention of the decision of a competent court; its powers were limited to an examination only of the *legality* of the detention and not the *reasons* for continued detention. The organization also considered that in establishing the DRC, the SRSG had failed to observe the principles of the separation of powers of the executive and the judiciary. Amnesty International has repeatedly called for the repeal of UNMIK Regulation, 2001/18.

HRC Concern and Recommendations
17. The Committee notes with concern that criminal suspects have been arrested solely under a detention directive of the Commander of KFOR and under executive orders of the Special Representative of the Secretary-General (SRSG) without being brought before a judge promptly and without access to an independent judicial body to determine the lawfulness of their detention. (arts. 9 and 14)
UNMIK should revoke the Regulation conferring power on the SRSG to detain and expel individuals, seek the cessation of detentions under COMKFOR Detention Directive 42, and ensure that all persons arrested under the discretionary powers of UNMIK police or under a court order are informed of the reasons for their arrest and of any charges against them, brought promptly before a judicial authority, granted access to a lawyer and to proceedings before a court to determine the lawfulness of their detention, and are tried without undue delay.

9.3 Pre-trial detention

Article 9.3 It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

Pre-trial detention of persons accused of criminal offences appears to be the rule, rather than the exception in Kosovo. In March 2006 the OSCE Legal Systems Monitoring Section noted that, "one of the most significant shortcomings … is the consistent failure of the courts to properly and fully reason their decisions", adding that this has been "particularly flagrant in relation to decisions of pre-trial detention", where the courts "merely repeated the wording of the enumerated ground for pre-trial detention, without applying them to the facts of the case".(105) Further the length of many such detentions may violate the right of a defendant to trial within a reasonable time (see below).

For example, on 9 March 2006 S.A. was arrested following an investigation which opened in November 2005 into allegations of fraud. Following an initial appearance at Pristina District court on 10 March she was detained at Lipjan/Lipljan women's prison under Article 281 of the PCCK. In a decision taken on 10 March, and in a second decision dated 20 March, the judge's reasons for detention merely repeated the provisions, including the wording, of the PCCK.(106)

On 8 March 2006 S.A. had handed to the police her passport, which bore a Shengen and multiple-entry US visa. Her lawyer argued that if S.A., (who suffered from a heart condition and high blood pressure) had intended to flee she could have done so at any time since the opening of the investigation in November 2005, during which time she had travelled to France. However, the decision identified a danger of flight (Article 281(2) i) stating "there are circumstances that indicate that if they are left to defend themselves while in liberty, they could flee from the country so they could avoid criminal responsibility." S.A. was also detained on the grounds that she might destroy, hide or falsify evidence or influence witnesses (Article 281 (2) ii). At the time of her arrest, the police had confiscated all relevant papers (some 27 files) and witnesses had already provided testimony to the police and the prosecutor.(107)

After three appeals to the court, S.A. was finally released on 9 May 2006, and placed under house arrest under Article 278 of the PCPK. Although this detention was short, the organization considers it illustrative of the failure of the judiciary to abide by Article 283 (1) of the PCPK which requires consideration of the all the material facts and the reasons for a grounded suspicion that an offence under Article 282 (2) would be committed.

Amnesty International is also concerned that where the police and prosecutor are less than diligent in their investigations, the right of persons to trial within a reasonable time, under Article 14.1 (c), may also be violated.

For example, on 23 February 2006 A.B. and her husband V.B. were detained for investigation on the order of Pristina District court, along with three others on suspicion of the smuggling of immigrants and of being involved in organized crime. Their two young children were placed in a children's home. Applications for the extension of their detention were made after three days, and subsequently on 16 March (until 23 May). On 22 May the international prosecutor made a further request for the extension of their detention, which was granted for a further three weeks; in his decision, the judge advised the prosecutor to "speed up her investigation".

A.B. had initially given a statement to an international judge in the presence of her then-defence counsel on 23 February 2006. She was not interviewed by the prosecutor until 15 June 2006, four months after her initial detention. According to the court documents, with the exception of an order for the analysis of the hard disc of the computer belonging to A.B. and V.B., no attempts have been made by the prosecution to secure more evidence. At the time of writing, both A.B. and V.B. remain in pre-trial detention.(108)

10. Treatment of Prisoners (Article 10)(109)

In 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 places where persons are detained under the authority of UNMIK. (110)However, the CPT have been unable to reach similar agreements with NATO in respect of detention facilities operated by KFOR, including Bondsteel. Amnesty International is concerned at the continued refusal of NATO and KFOR to allow to the CPT unlimited access to the KFOR-run Bondsteeel Detention Facility, where as noted above, persons held under COMKFOR Directive 42 are not guaranteed the rights of detainees guaranteed by the ICCPR.

11. The right to freedom of movement (Article 12)

11.1 Article 12.1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

The consequence of UNMIK's failure to ensure respect for the right to freedom of movement for minorities in Kosovo has resulted in their inability to enjoy the full range of rights set out in the ICCPR, and in the Constitutional Framework, which guarantees all communities the right to "[e]njoy unhindered contacts among themselves and with members of their respective communities within and outside of Kosovo".

In April 2003 Amnesty International reported on UNMIK's failure to bring perpetrators of inter-ethnic crimes to justice and their failure to guarantee freedom of movement. The report detailed violations of the right to freedom of movement and the ensuing impact on the rights of members of minority communities where a lack of freedom of movement denied members of minority communities access to both civil and political rights, and to social, economic and cultural rights, including the rights to education, health care and employment. The denial of access to such rights, through both direct and indirect discrimination, also continued to obstruct the viable return to their homes for minority refugees and internally displaced persons (see below). (111)

The events of March 2004 further limited the right to freedom of movement for Serbs (many of whom fled to the northern municipalities) and Ashkalia (including those from Vushtrri/Vučitrn who subsequently lived in a military base under the protection of French KFOR). Although Gorani, Bosniaks and Turks were rarely directly targeted in the March riots, the UNMIK Office of Returns and Communities (ORC) reported that their right to freedom of movement had also been limited and that their perceptions of risk to their personal security had increased.

Although there have been gradual improvements since March 2004, in the face of continuing ethnically motivated attacks throughout 2005 and continuing into 2006, with regard to the right to freedom of movement the Advisory Committee on The Framework Convention For The Protection Of National Minorities has remarked, "the overall situation remains disconcerting".(112)

Problems persist, for example, in access to justice for minorities. In some areas access to courts may only take place under an UNMIK police escort (as in the case of Albanians attending the UNMIK court in north Mitrovica/ë); or in Serb enclaves via a local UNMIK or police office (where Serbs may submit requests to the court through the police or a visiting court clerk); or as in Vushtrri/Vučtirn, where court officials visit local enclaves in order to provide access to justice.

The situation is not assisted by statements by UNMIK and members of the PISG which have sought to downplay minority concerns by suggesting that the problem remains only that of perception, and that minority communities should take steps to exercise their right to freedom of movement.

In April 2006, Randel Nojkić, former Chair of the Committee on Community Rights and Interests and Return, told Amnesty International that, at the behest of COMKFOR, he had started to travel without an escort. He informed Amnesty International that in late 2005, while driving back from Belgrade to his home in Gračanica/Ulpiana (in a car with Serbian number plates), he had been overtaken by a vehicle bearing Kosovo number plates from which a projectile had been thrown, causing him to swerve into the ditch at the side of the road. On returning to Gračanica/Ulpiana, he reported the incident to the KPS. Some weeks later his three passengers were interviewed, but Randel Nojkić himself was never contacted by the prosecutor, nor was he informed by the court of his right to request an international prosecutor be appointed to the case, (on the grounds of a suspected racist attack); no further action was ever taken.(113)

While continuing impunity for ethnically motivated crimes persists, members of minority communities will continue to believe that they do not have the right to freedom of movement, and will not seek to exercise that right.

11.2 Article 12.4. No one shall be arbitrarily deprived of the right to enter his own country (114)

The most widespread, pervasive and continuing violation of the rights of minority communities, (including the Albanian community where they are in the minority), is the continuing failure of UNMIK and KFOR to guarantee the right to return and ensure a safe and secure environment to which members of minority communities may return in safety and in dignity, as set out in UN SC Resolution 1244/99, (115) Article 12 of the ICCPR, and the UN Guiding Principles on Internal Displacement. (116) Little progress has been made following the transfer of responsibilities previously reserved to UNMIK to the PISG Minister for Returns and Communities.

Amnesty International considers that in order to ensure the safe and durable return of minority communities, measures remain to be taken to end impunity for violations of human rights and international humanitarian law. Without

guarantees for their safety, freedom of movement and access to economic and social rights, the prognosis for safe and sustainable minority returns remains bleak.(117)

According to UNHCR some 848,100 ethnic Albanians fled or were forcibly displaced in the period up to or during the NATO air attacks from March 1999 onwards. While the majority had voluntarily returned in the months following July 1999, a number remained outside the country, and return to areas in which Albanians are in a minority has remained slow.

Following the return of the majority of ethnic Albanian refugees from Macedonia and Albania, members of minority communities, in particular Serbs and Roma, but including other minorities, were either forcibly displaced by returning refugees or decided to flee either to Serb enclaves within Kosovo, the northern municipalities of Kosovo or into Serbia and Montenegro. Some Roma also fled to Macedonia. UNHCR estimates that in 2000 some 40,000 persons were displaced inside Kosovo; some 22,000 remained displaced in 2005. In 2000, an estimated 234,826 persons were displaced in Serbia or Montenegro in 2000; by April 2005, some 226,106 were thought to remain displaced.

According to UNHCR, the number of minority returnees is as follows:
2000: 1,906
2001: 1,453
2002: 2,756
2003: 3,756
2004: 2,411 (following the events of March 2004)
2005: 1,925 (by November). (118)

By April 2006, according to UNHCR, some 115 members of minority communities had returned (49 Serbs, 84 RAE and three Gorani). (119)

UNHCR estimate that these 12,400 people 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 Serbs estimated to be living as IDPs in Serbia, the return figure has been estimated at some 6 per cent of the displaced population. (120)

Further forcible displacements took place during the events of March 2004, when some 4,100 persons, mainly Serbs, but also including Ashkalia from Vushtrri/Vučitrn were forced from their homes. Many of the latter moved to Montenegro, or continue to seek protection in EU member states. By September 2005, some 1,350 predominantly Serb persons were still officially displaced within Kosovo. (121)

Many returnees have subsequently become IDPs within Kosovo, either because of security concerns or through secondary displacement after the March 2004 events. Indeed, this has been assisted by the policy of the UNMIK Office of Returns and Communities which since 2005 has provided returnees with the option of return to another town or municipality, if they are unable to return to their place of origin, often resulting in the overcrowding of mono-ethnic enclaves.(122)

Many returnees, or attempted returnees, have been unable to safeguard or realise their right to their property, or to receive compensation for damage to their property. This may be attributed in part to the backlog of outstanding and potential cases of illegal occupation of residential and non-residential property, including widespread illegal construction of property, and in part due to the absence of affordable legal aid.

Even when persons displaced in Serbia gain access to the pre-1990 registry books now held in Serbia, any legal documents (including identity documents, birth certificates, pension books or travel documents) subsequently issued by the authorities in Serbia proper are not accepted by UNMIK or the PISG. The IDP is required to go through a new process to acquire the necessary documentation, in order to establish their right to basic services or access rights including pension rights, which may sometimes take as long as a year to establish. Roma face particular problems in establishing their right of residence, particularly where they have lived in informal settlements:

For example, the Civil Rights Program Kosovo (CRP/K), an UNHCR implementing partner, took over a year, acting with power of attorney on behalf of one voluntary Roma returnee to enable her to return to her home in Ferizaj/Urosevac municipality. Over 40 years of age, like many other Roma, her birth had not been registered, she had never attended school; her marriage, at the age of 14, had never been registered. In order to prove her place of residence, CRP/K had traced witnesses who could attest to her having previously lived in Ferizaj, and located two elderly women who had been present at her birth, enabling the woman to be provided with a birth certificate, so that she could lawfully return to her place of residence. (123)

In working papers presented to a conference held in Pristina in April 2006, the failure of municipal authorities to move beyond political support to practical implementation of the Municipal Return Strategies was noted.(124) CRP/K and UNMIK ORC both informed Amnesty International that assistance at a municipal level continued to be limited, although an improvement in the last year was acknowledged by CRP/K. Yet another protocol on return was agreed on 7 June 2006.

11.3 Forcible return

Persons forcibly returned to Kosovo (many of whom are in need of international protection) continue to be at risk of

further violations and abuses of their human rights. According to the UNMIK Office of Returns and Communities, in addition to members of minority communities, forced returnees also include vulnerable individuals including ethnic Albanians with medical conditions, including Post Traumatic Stress Disorder and Hepatitis B, for which health services in Kosovo are unable to provide appropriate treatment.(125)

UNHCR policy opposes forcible return. Consequently forcible returnees are currently not provided with support and assistance by UNHCR. If notification is given by returning states, they may be met at Slatina airport by a local NGO, provided with transportation from the airport by the International Office for Migration, and given the option of three nights accommodation in a hotel at Vushtrri/Vučitrn (also intended for use as a detention centre for irregular migrants). Amnesty International is concerned that without assistance those who are forcibly returned to Kosovo, may well be forced into internal displacement or again seek to leave Kosovo.

As talks towards final status proceed, an increasing number of EU and CoE member states have indicated their desire to forcibly return to Kosovo members of both minority and majority communities. To date such forcible returns have been limited, including through official Memoranda of Understanding between some EU and the UNMIK ORC. On 23 May 2006, the PISG approved changes to return and reintegration policies, enabling the transfer of relevant competencies from UNMIK to the PISG. Unless Memoranda of Understanding established by UNMIK ORC with EU member states are renewed by the PISG, it is feared that when UNMIK leave Kosovo there will be "an unmitigated flood of forcible returns"(126) which local institutions will be unable to cope.

HRC Concern and Recommendations
18. The Committee is concerned about the very low number of minority returns and the inability of displaced persons to recover their real property, including agricultural lands. (art. 12)
UNMIK, in cooperation with the PISG, should intensify efforts to ensure safe conditions for sustainable returns of displaced persons, in particular those belonging to minorities. In particular, it should ensure that they may recover their property, receive compensation for damage done and benefit from rental schemes for property temporarily administered by the Kosovo Property Agency.

19. The Committee is concerned about the restricted freedom of movement and access to essential services, such as judicial remedies, health care and education, and personal documents, of minority communities living in micro-enclaves. (art. 12)
UNMIK, in cooperation with the PISG, should ensure freedom of movement and access to essential services to minority communities, including those living in microenclaves.

12. The Right to a fair trial (Article 14) (127)

Violations of the right to a fair trial have been extensively documented by the OSCE LSMS in a series of reports from 1999 to 2006. In this context, Amnesty International wishes to concentrate on the following two concerns:

12.1 Accountability of the judiciary

International judges and prosecutors in Kosovo remain unaccountable to any regulatory body which might investigate allegations of misconduct. Despite repeated concerns expressed by the Ombudsperson (128) and the OSCE LSMS (129) no action has been taken to introduce such a mechanism. Under UNMIK Regulation 2005/52, *On the Establishment of the Kosovo Judicial Council*, promulgated on 20 December 2005, measures were introduced to appoint, regulate and, where necessary, discipline members of the local judiciary. However, the regulation did not empower the Kosovo Judicial Council to recruit, appoint or discipline members of the international judiciary or prosecutors.(130)

In May 2006, the Deputy Director of the DoJ and Chief International Prosecutor, Annunziata Ciaravolo (a former international judge) informed Amnesty International that she did not consider it appropriate for international judicial personnel to be subject to a council consisting of members of the local legal community.(131)

However, in April 2006 officials at the UNMIK Office of the Legal Affairs informed Amnesty International that they considered the Kosovo Judicial Council to be the appropriate regulatory body, and that they failed to understand why this had not been implemented.

12.2 Independence of the judiciary

Neither the international nor the local judiciary may be considered fully independent from the executive, in particular due to the lack of separation of powers between the executive and the judiciary, which Amnesty International considers unacceptable in terms of judicial independence.

International judiciary and prosecutors are recruited as UN employees on short-term contracts, subject to renewal by UNMIK DOJ or the SRSG. This is contrary to the recommendations of the Special Rapporteur on the Independence of Judges and Lawyers, who notes in his 2006 report: "The task of judicial renewal may be approached in different ways, but in all cases with due regard for the Basic Principles on the independence of the judiciary".(132)

Security of tenure is regarded as a key safeguard of judicial independence. However, international judges and prosecutors in Kosovo are issued with six-month contracts (in some cases three month contracts), with the possibility of extension, subject to the approval of the DOJ or SRSG.

According to international judges interviewed by Amnesty International, their independence has been further undermined by the process of case allocation adopted by UNMIK. Despite denials by UNMIK of allegations of interference in the allocation and progress of cases,(133) international judges informed Amnesty International of cases where pressure had been placed on them by the Department of Justice to adopt a specific course of action.(134)

Measures to ensure the impartiality of the domestic judiciary have not been put in place. The regulatory body, the Kosovo Judicial Council, includes the PISG Minister of Justice. Further, the absence of remuneration commensurate with their responsibility renders members of the local judiciary vulnerable to corruption and subject to threats to their person. Members of the domestic judiciary were last awarded a 5 per cent salary increase in 2002; in March 2006 received a monthly net income of between €538 (Supreme Court judges) and €420.06 (Municipal Court judges). Further some members of the local judiciary are reportedly not even regularly paid.(135)

The Serb community continues to doubt the impartiality of the predominantly ethnic Albanian judiciary in cases involving Serb defendants or in cases where the defendant is Albanian and the victim Serbian.(136) On the other hand, a Serbian former judge in north Mitrovica/ë informed Amnesty International that ethnic Albanian prosecutors and judges had made requests to their Serb counterparts asking them to take their "dangerous cases", including cases of trafficking and other crimes involving Albanian perpetrators.

HRC Concern and Recommendations
20. The Committee is concerned about the absence of adequate guarantees for the independence of international judges and prosecutors. It is concerned about the low remuneration of local judges and prosecutors, the low representation of ethnic minorities in the judiciary, the excessive length of civil court proceedings and court backlogs and the frequent failure to enforce judgements. (art. 14)
UNMIK, in cooperation with the PISG as required, should establish independent procedures for the recruitment, appointment and discipline of international judges and prosecutors, ensure adequate terms and conditions for local judges and prosecutors whereby they are shielded from corruption, increase the representation of ethnic minorities in the judiciary, assign additional judges to courts with case backlogs, and ensure enforcement of judgments without delay.

13. The right to take part in the conduct of public affairs (Article 25)(137)

Roma, Ashkali and Egyptian and other non-Serb minority communities (but including Serbs living in enclaves in Kosovo) are denied access to meaningful participation in public life.(138) In particular, Amnesty International is concerned that RAE and other minority communities have been excluded from direct participation in the talks on the future status of Kosovo.

Notwithstanding the appointment of a respected senior ethnic Albanian politician to represent minorities, UNMIK and the PISG otherwise have otherwise failed to include or encourage the participation of members of minority communities in the delegations to the talks, in the Working Groups informing the talks or to consult with representatives of minority communities on the rights of all communities in Kosovo.
In a shadow report to the CoE Framework Convention for the Protection of National Minorities a coalition of minority groups stated, "all minority communities stress their dissatisfaction and feeling of disconnection from the negotiation of finals status talks on Kosovo".(139)The Advisory Committee to the Framework Convention, in their Opinion on UMMIK's report, identify this as one of the most crucial issues with regard to the participation of minorities in public life in Kosovo, stressing that "the effective involvement of all communities in Kosovo… must be ensured in this process". (140)

Further and recalling UN SC Resolution 1325 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", and despite repeated lobbying of the SRSG, the UN Secretary General's Special Envoy and other bodies, representatives of women's organizations in Kosovo have not been included in the delegations or in the working groups to the final status process.(141)

HRC Concern and Recommendations
21. The Committee notes with concern that members of minority communities only have limited access to the conduct of public affairs, as well as to public service, and that discrimination against minorities, including the Roma, is widespread in Kosovo. (arts. 2, 25 and 26)
UNMIK should ensure that the PISG increase the employment of members of minorities at the central and municipal levels of the Kosovo Civil Service, guarantee their equal enjoyment of the rights protected under the Covenant, and ensure the effective participation of all minorities in the conduct of public affairs, including in the ongoing negotiations on the future status of Kosovo.

14. The right to be equal and equality before the law (Articles 2, 26)(142)

14.1 Discrimination against minorities(143)

Discrimination in access to both civil and political rights (see above for discrimination in access to justice), to economic, social and cultural rights, on the basis of ethnicity, continues to be widespread in Kosovo.

The prohibition of discrimination is enshrined in all international standards incorporated into applicable law in Kosovo, in Section 1.4 of UNMIK Regulation 1999/24 and Chapter 4 of the Constitutional Framework. In addition UNMIK has by agreement with the CoE and on behalf of the PISG "affirmed … that their respective responsibilities will be exercised in compliance with the principles contained in the Framework Convention", and submitted a report to the CoE's Framework Convention for the Protection of National Minorities (Framework Convention), in June 2005.(144)

However, in their Opinion on the implementation of the Framework Convention, the CoE's Advisory Committee noted that "the implementation of practically all of the principles of the framework convention is made extremely difficult by the fact that inter-ethnic violence has seriously eroded trust between communities". They noted that the perceived impunity of perpetrators of violent crime against Serbs, Roma and others was a particularly serious problem and should be addressed as a high priority.(145)

The Anti-Discrimination Law (ADL) has been described as one of the most progressive anti-discrimination laws in Europe, providing guarantees against both direct and indirect discrimination, including by both public and private persons. It guarantees equality before the law in the enjoyment of rights guaranteed by the ICCPR and the CERD, and covers the majority of rights guaranteed under the ICESCR, giving the right of adjudication before administrative bodies, competent courts and the Office of the Ombudsperson.

However, he PISG has been slow to implement the ADL, and both UNMIK and the PISG have failed to informed people of the ADL as a mechanism to protect against discrimination. Neither has UNMIK taken measures to address structural problems within the judiciary, including the lack of legal aid and backlog of cases in the courts, which negatively affect access to justice, or to build confidence in the judicial system by members of minority communities.(146) The Ombudsperson's Office has processed investigations into complaints including in employment and gender discrimination, but the number of complaints has been small and reportedly the ADL has rarely been invoked before the courts by minorities.

As noted above, discrimination is also faced by forcible returnees to Kosovo, who are not provided with assistance by UNMIK, the PISG, UNHCR or any of their implementing partners. (147)

14.2 Discrimination against women and girls

In law, including the Framework Constitution, women are guaranteed equality with men. However, in reality women from all ethnic groups in Kosovo suffer massive gender-based discrimination, including in employment and education.

The prevalence of violence against women (as noted above, Sections 4 and 8) is of particular concern in the context of General Recommendation 19 of the Committee on the Elimination of Discrimination against Women which states that "Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men".(148)

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(1) Report Submitted By The United Nations Interim Administration Mission In Kosovo To The Human

Rights Committee On The Human Rights Situation In Kosovo Since June 1999, CCPR/C/UNK/1, 3 March 2006, (including the Core Common Document "CCD" and the Treaty Specific Report "TSR"), henceforth UNMIK Report. http://www.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/CCPR.C.UNK.1.pdf.

(2) This briefing aims to provide the HRC with a summary of the concerns expressed by Amnesty International since July 1999, where UNMIK has continued to fail to guarantee rights set out in the ICCPR, and responds to the list of issues raised by the Human Rights Committee in their consideration of the report, 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.

(3) CCPR/C/UNK/CO1, Concluding observations of the Human Rights Committee, Advance non edited version, Kosovo (Republic of Serbia).

(4) Ibid., para.4.

(5) UNMIK Report, CCPR/C/UNK/1, paras.123- 124.

(6) (3). It is reported that UNMIK Regulations and Administrative Directives sometimes fail to specify which provisions of the formerly applicable laws are being replaced. If this is so, how is the need for legal certainty addressed?

(7) Regulation No. 2003/25, On the Provisional Criminal Code of Kosovo, 6 July 2003; Regulation No. 2003/26, On the Provisional Criminal Procedure Code of Kosovo, 6 July 2003.

(8) For example, in 2005, following the shooting of an ethnic Albanian by members of the Kosovo Police Service (KPS), the international prosecutor failed to inform the relatives of the deceased within 15 days, [as required by Article 398 of the Provisional Criminal Procedure Code of Kosovo (PCPCK)], of their right under Article 408 to initiate an appeal procedure within eight days of the decision of the court. The Ombudsperson's Office had on behalf of the

family contacted the international prosecutor for a copy of the decision, but received instead an "evaluation" of the case, which failed to inform the applicant of the substance of the decision or their right to a remedy, Amnesty International interview with both Deputy Ombudspersons, April 2006.

(9) Promulgated by UNMIK Regulation 2004/32, 20 August 2004.

(10) Section 1.2 (g) The KPS law also provides in Section 1.3 that: In the performance of their duties, Kosovo Police Service Officers (Police Officers) shall be obliged to act in accordance with: (a) The applicable law; (b) Internationally recognized human rights standards as reflected in the instruments referred to in section 1.3 of UNMIK Regulation No. 1999/24 of 12 December 1999, as amended, on the Law Applicable in Kosovo and the Constitutional Framework.

(11) In early 2006, following a complaint to the KPS, the police officer responsible was apparently removed from his post, and officers given training on the applicable law.

(12) (4) To what extent is UNMIK in a position to ensure full respect for human rights in all parts of Kosovo, including the north?

(13) International Crisis Group, Bridging Kosovo's Mitrovica Divide, Europe Report 165, 13 September 2005, p. 26.

(14) UNMIK official interviewed by ICG,26 August 2005, Bridging Kosovo's Mitrovica Divide, p. 5.

(15) Following pressure from Belgrade, some 500 teachers from Mitrovica/ë reportedly requested that they be removed from the PISG Ministry of Education, see for example, Kosovalive, 5 April 2006.

(16) 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 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."

(17) Please comment on the impact of the decision to remove the Ombudsperson's competence to review the compatibility of acts of UNMIK with international human rights standards. Please provide information on the level of cooperation and compliance by UNMIK and the Provisional Institutions of Self-Government (PSIG) with reports, recommendations and interim measure requests of the Ombudsperson.

(18) Ombudsperson Institution in Kosovo, Fifth Annual Report 2004-2005, OIK, 2005, p.31.

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

(20) 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".

(21) (8) Please provide statistical information on the incidence of domestic violence in Kosovo, the nature of criminal charges brought against perpetrators, the number of convictions and the sentences imposed, as well as on the types of assistance provided to victims of domestic violence. What measures is UNMIK taking to combat the practice, and how effective are these measures?

(22) Amnesty International with head of VAAU, April 2006.

(23) UNMIK Police Daily Press Updates.

(24) AI interview with Nikola Kabašić, former Deputy Ombudsperson, who also provided NN's statement to the police and other documents.

(25) Amnesty International makes a distinction between "disappearances" and abductions, the former being perpetrated by agents of the state and the latter by non-state actors.

(26) Some 53 investigations have been opened in total, International Centre for Transitional Justice.

(27) Regulation 2000/6, On the Appointment and Removal from Office of International Judges and International Prosecutors, 16 February 2000; amended 27 May 2000, extending these provisions to all courts in Kosovo).

(28) As the presence of one international judge on a three-person panel was deemed insufficient to ensure a lack of

the SRSG in December 2000 promulgated Regulation 2000/64, On Assignment of International Judges/Prosecutors and/or Change of Venue, 15 December 2000.

(29) See, for example, Prisoners in our own Homes, pp. 19-20.

(30) See also, Human Rights Watch, Not on the Agenda: The Continuing Failure to Address Accountability in Kosovo Post-March 2004, Volume 18, No. 4 (D), May 2006, p. 20.

(31) District Court of Pristina, P. No. 215/04, 12 May 2005.

(32) See for example, OSCE Mission in Kosovo (OMiK), Department of Human Rights and Rule of Law Section, Legal System Monitoring Section, Case Report: The Public Prosecutor's Office vs. Latif Gashi, Rrustem Mustafa, Naim Kadriu and Nazif Mehmeti, The "Llapi case", http://www.osce.org/documents/mik/2003/12/1724_en.pdf

(33) See also Not on the Agenda, p. 19-20.

(34) Amnesty International interview with Wayne Hissong, Director of Criminal Investigations, UNMIK Police, April 2006.

(35) "Jessen-Peterseni rikujton gjyqësinë serbe për Rezolutën 1244", Koha Ditore, 4 April 20o6.

(36) According to a report by Radio Television Serbia on 7 June 2006, the UNMIK judiciary had agreed that both defence and prosecution witnesses in the case might be questioned in Pristina, although the prosecution witnesses had reportedly refused to testify or could not be found.

(37) See OSCE and UNHCR, Ninth Assessment of the Situation of Ethnic Minorities in Kosovo, May 2002, p.17.

(38) Under UN SC 1244/99, and until a subsequent UN SC Resolution, Kosovo remains part of Serbia.

(39) Amnesty International believes that States should ensure that their national courts exercise universal jurisdiction on behalf of the international community over grave crimes under international law when a person suspected of such crimes is found in their territories or jurisdiction. If they do not do so, they should extradite the suspect to a state able and willing to do so or surrender the suspect to an international court with jurisdiction. When a state fails to fulfil this responsibility, other states should request the suspect's extradition and exercise universal jurisdiction. Among the human rights violations and abuses over which national courts may exercise universal jurisdiction under international law are genocide, crimes against humanity, war crimes (whether committed in international or in non-international armed conflict), other deliberate and arbitrary killings and hostage-taking, whether these crimes were committed by state or by non-state actors, such as members of armed political groups, as well as extrajudicial executions, "disappearances" and torture.

(40) Amnesty international interviews conducted in August 2000 with Romani refugees from Kosovo then living in Podgorica. Their testimonies are in part included in Federal Republic Of Yugoslavia (Kosovo), A Broken Circle (Update): "Disappeared" and abducted in Kosovo province, AI Index 70/038/00, (16 August 2000), and in a series of internal Amnesty International membership actions.

(41) The Human Rights Committee has consistently held in determinations on individual complaints that "disappearances" violate the right to life (Article 6), the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 7), and the right to liberty and security of person (Article 9). Furthermore "disappearances" can deprive the "disappeared" person (and their family) of the right to respect for family life, and violate the victim's rights to a fair trial, to recognition as a person before the law and to be afforded equal protection by the law. As "disappearances" can violate several human rights simultaneously, they have been referred to as "multiple" or "cumulative" human rights violations.

(42) The Human Rights Committee expressed their concerns in 2004 at the failure of the Serbian authorities to similarly investigate and prosecute those responsible for the "disappearance" of ethnic Albanians, including those whose mortal remains were believed to have been transported in refrigerated trucks to Serbia proper ; in the majority of cases the mortal remains have been returned to their families for burial, Concluding Observations of the Human Rights Committee: Serbia and Montenegro, CCPR/CO/81/SEMO. (Concluding Observations/Comments), adopted 28 July 2004.

(43) The OMPF is responsible for exhumations, the return of positively identified bodies (including those identified by DNA analysis) to their families for burial and the reburial of unidentified bodies. Following the return of the identified body to the family for burial, the case is considered closed, and responsibility for any further investigation passes to the Central Criminal Investigation Unit (CCIU) within UNMIK police.

(44) http://www.unmikonline.org/justice/ompf/reports/OMPF_Stat2005_Eng.pdf

(45) Letter to Amnesty International from Kai Vittrup, UNMIK Police Commissioner.

(46) (9) Please provide information on the measures taken to prosecute perpetrators of ethnically motivated crimes, the ethnicity of victims, the number of convictions, the sentences imposed, and the compensation of victims for such

crimes? (Paras. 87-90 TSR).

(47) Serbia and Montenegro (Kosovo/Kosova): Amnesty International's concerns for the human rights of minorities in Kosovo/Kosova, AI Index EUR 70/010/2003, April 2003; see also Amnesty International, Serbia and Montenegro (Kosovo), The Legacy of Past Human Rights Abuses, AI Index: EUR 70/009/2004, April 2004.

(48) On 23 May 2003, UNMIK Police announced the creation of "a special squad to re-examine unsolved murders that occurred years before", which was "expect[ed] to make progress in some of the still-unsolved crimes committed during 1999 and 2000□, although it later transpired that this unit would address only murder cases mainly from 2000-2001, and not "disappearances" and abductions which took place mainly in 1999.

(49) See for example, monthly reports by the UN Secretary-General to the UN SC: the report covering the period for August noted that inter-ethnic murders had "resulted in an escalation in inter-ethnic aggressiveness". UN SC S/ 2003/855 and S/2003/931 of 3 September and 3 October 2003, respectively.

(50) See, for example, UNMIK's failure to investigate the killings of six members of the minority ethnic Albanian community in Mitrovica/ë, in riots which followed a rocket attack on a bus in February 2000, Ex officio Registration No. 8/01/I, concerning the right to life of V.S. and V.N, 29 January 2002; similar observations were made by the Ombudsperson in: Ex officio Registration No. 8/01/II, Concerning the right to life of R.C., 29 January 2002; Ex officio Registration No. 8/01/IV, Concerning the right to life of S.B., 29 January 2002; Ex officio Registration No. 8/01/V, Concerning the right to life of S.A., 29 January 2002.

(51) On the problem of reliable figures in investigations and prosecutions for the March violence, see HRW, Not on the Agenda, p. 23-28, 48-49.

(52) One injured person subsequently died.

(53) He was also charged with responsibility for a separate incident in which UNMIK and KPS officers were murdered.

(54) UNHCR attributed a decline in returns during 2001 to the bombing and other incidents at around the same time, UNHCR/OSCE Ninth Minorities Assessment, May 2002, p.45-6.

(55) The former head of the UNMIK Regional Crimes Squad alleged that, despite being technically in charge of the investigation, information had been withheld by KFOR, and that attempts to interview the suspects were obstructed both before and after their transfer to the Bondsteel Detention Facility, The Times, 14 May 2002. This was confirmed by a former UNMIK police officer, who wishes to remain anonymous, in a conversation with Amnesty International.

(56) CRP/K Monthly Report, March 2005; email to CRP/K, May 2006.

(57) For a detailed chronology of the violence see, The International Crisis Group, Collapse in Kosovo, 22 April 2004.

(58) Amnesty International interview with Deputy Commissioner Robbie Pedlow, May 2004.

(59) OSCE LSMS, The Response of the Justice system to the March Riots, December 2005

(60) The investigative role of the prosecutor was introduced in the PCCK which came into force in April 2004.

(61) In 2002 UNMIK police spokespersons told Amnesty International that they believed that that the lack of prosecutions for ethnically motivated crimes could be attributed the lack of capacity within the detention system, particularly in cases where they had compelling evidence of threats made against the victims of such crimes, Amnesty International interview with UNMIK police spokespersons, Priština/Prishtinë, March 2002. For Amnesty International's concerns on witness protection in another context, see also Does that mean I have rights, pp. 36-39.

(62) Human Rights Watch, Not on the Agenda, p. 3.

(63) Ibid., p. 26.

(64) Do KFOR rules of engagement permit the use of force for the protection of ethnic minorities? What lessons have been learned from the March 2004 incidents?

(65) For example Swedish KFOR troops successfully protected the 13th century Gračanica monastery and another Serbian church – see Forum 18 News Service, 'Kosovo: Nobody charged for destruction of Orthodox Churches and monasteries', 6 May 2004.

(66) ICG, Collapse in Kosovo, p. 20.

(67) For the failure to protect, and alleged use of excessive force by members of the Kosovo Police Service, see section 7.3 below.

(68) 11. Please provide information on the measures taken to protect the life and health of Roma, Ashkali and Egyptian IDPs, especially children, living in lead contaminated settlements in north Mitrovica. Please report on the

effects of lead contamination on the health of the individuals concerned. Why was there a substantial delay in evacuating the inhabitant of these settlements? (paras. 9-11 TSR)

(69) Amnesty International, (Confidential TG, Ref.: TG 70.05/02. An accompanying Memorandum was copied to the Special Rapporteurs on the right to health, the right to housing and on internally displaced persons. See also UA 204/05, Serbia and Montenegro (Kosovo): Health concern, AI Index: EUR 70/012/2005, 4 August 2005.

(70) "(11) The MH and National Institute of Public Health (NIPH), which was assisted by Office of Minorities within the PISG, have established direct contacts with experts from Belgrade of the Institute for Mother and Children who have provided hospital treatment for persons who live in these camps.", para 11. TSR, p.85.

(71) (12). Please provide information on the measures taken to investigate the whereabouts or to locate the remains of the 1700 persons who have been reported as missing by the ICRC in mid-June 2005.

(72) See Human Rights Committee, Quinteros v. Uruguay, Communication No. 107/1981, 21 July 1983.

(73) (10). Please provide information on the number and nature of claims that KFOR and UNMIK police have used undue force. How are these cases investigated, and have any alleged perpetrators been brought to justice?

(74) Discharge of a Weapon and Investigation of Officer- Involved Shootings. Policy Number: P-4.17, 15 April, 2001 (Revised 16 January, 2003);

(75) UNMIK Police Daily Press Update, 20 April 2005; UNMIK Police Daily Press Update, 24 May 2005; UNMIK Police Daily Press Update, 3 January 2006.

(76) Letter received from Kai Vittrup, UNMIK Police Commissioner, in response to letter sent by Amnesty International on 27 May 2005 to Deputy SRSG, (TG 70.05/01).

(77) Amnesty International, The March Violence, pp. 13-18; Human Rights Watch, Failure to Protect: Anti-Minority Violence in Kosovo, March 2004, at http://hrw.org/reports/2004/kosovo0704/7.htm#_Toc77665992

(78) The ICG also reported that it had "heard of at least two instances in which KPS officers threw petrol bombs". ICG o c p. 20.

(79) Ombudsperson Institution in Kosovo, Quarterly Information Sheet, January to March 2004; communication from Ombudsperson Institution in Kosovo, 11 June 2004.

(80) OSCE, Department of Human Rights and Rule of Law, Human Rights Challenges following the March riots, 25 May 2004, p 7.

(81) In a letter received 17 March 2005, UNMIK police spokesperson Neeraj Singh stated that none of the 69 investigations conducted into allegations against members of the KPS, had produced sufficient evidence to bring a criminal prosecution, reportedly because of inconsistent witness statements or the apparent failure of witnesses to appear.

(82) E-mail communication from Gjylbehare Murati, 31 August 2005.

(83) Amnesty International interview with Albin Kurti, April 2006.

(84) Balkan Insight Report "Kosovo Radicals Rally Against UN "Occupation", 14 June 2006.

(85) For the relevant part of the indictment against Odjanic and others, see para 75. c in Militunović et al (IT-05-87).

(86) E-mail communication from the chair of Kosova Women's Network (KWN), 29 May 2006.

(87) Op. cit.

(88) UNMIK/PR/1555, SRSG condemns incident in a village of Prizren municipality, 25 May 2006; UNMIK/PR/1561, SRSG announces findings of initial investigation into events at Krushe e Vogel/Mala Krusa on 25 May 2006, 7 June 2006.

(89) (14). Please provide information on the number of reported cases of trafficking in human beings, including enforced prostitution, as well as the involvement of international staff in, and the penalties imposed on perpetrators of, such acts. Please also provide information on the measures taken to implement the Action Plan to Combat Trafficking in Human Beings in Kosovo (2005) and the results achieved. (paras. 31-34 TSR)

(90) 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 70/010/2004, May 2004.

(91) The "off limits" list, initially issued in January 2001, and now updated on a monthly basis, lists night bars, night clubs and dancing clubs, motels, hotels, restaurants and cafés suspected of being involved in prostitution.

(92) In the same context the organization notes that although UNMIK report (TSR paragraph 32, pp. 91-2) the arrest of three UN police officers and four foreign citizens at the end of August 2005 in connection with the trafficking of persons, no charges were brought against the UN police officers, telephone conversation with Neeraj Singh, UNMIK spokesperson, September 2005.

(93) Kosovo Action Plan to Combat Trafficking in Human Beings: Supporting Framework, May 2005.

(94) Personal communication, L. W., January 2006.

(95) 15. Please comment on reports that numerous persons have been detained by UNMIK police and KFOR without an arrest warrant and that consideration of habeas corpus applications have often involved undue delays. Please provide information on available habeas corpus remedies and their application in practice.

(96) Amnesty International, Federal Republic of Yugoslavia (Kosovo): Setting the standard? UNMIK and KFOR's response to the violence in Mitrovica, AI Index: EUR 70/13/00, March 2000.

(97) OSCE LSMS, The Criminal Justice System in Kosovo March 2002 – April 2003.

(98) Later published as, Federal Republic of Yugoslavia (Kosovo): International officials flout international law, AI Index: EUR 70/008/2002, 1 September 2002.

(99) Later published in, 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; replies were also received from two NATO member states. See also Opinion no. 280 / 2004, European Commission For Democracy Through Law (Venice Commission), Opinion on Human Rights in Kosovo : Possible establishment of review mechanisms, CDL-AD (2004)033, Adopted by the Venice Commission at its 60th Plenary Session (Venice, 8-9 October 2004), paras. 129-133 , 139.

(100) Even before 2004 Memoranda of Understanding signed between KFOR and UN police, within each of the KFOR Multi-National Brigade (MNB) Boundaries, had transferred investigative primacy, including the power of arrest and detention, from KFOR to CIVPOL in each of the KFOR Multi-National Brigade areas.

(101) According to the Detention Directive, "Detainees may submit petitions regarding their detention." These petitions may only be submitted to COMKFOR , and not to an independent judicial body.

(102) Avdi Behluli, Qele Gashi, Jusuf Veliu and Florim Ejupi were arrested by UNMIK Police, and subsequently detained on the order of the investigating judge at Priština/Prishtinë District Court on 23 March in connection with the Niš Express bombing. An appeals court panel of international judges ordered the investigative detention of Florim Ejupi for one month and the immediate release of the other three men. In violation of the court order, Avdi Behluli, Qele Gashi, Jusuf Veliu - along with Florim Ejupi – were subsequently detained on the order of the SRSG at the Bondsteel Detention Facility (BDF) without charge or trial (see above, Section 5.4)

(103) "… deprivations of liberty under Executive Orders are inherently unlawful in the sense of para. 1 of Article 5 [of the ECHR]", Ombudsperson's Institution in Kosovo, Special Report No. 3, paras. 9-16.

(104) The appointed of members of the SRC by the UN SRSG constructs an apparent dependency of a tribunal on the executive which the European Court of Human Rights has frequently held disqualifies such a body from being independent. See, for example, Findlay v. the United Kingdom, (Application no. 22107/93), (25 February 1997), para. 73.

(105) OSCE LSMS, Review of the Criminal Justice System 1999-2005, Reforms and Residual Concerns, March 2006, pp. 51-53. This observation was repeated to Amnesty International delegates in April 2006 interviews with the current Ombudspersons and local defence lawyers, who were able to provide Amnesty International with court decisions in which the OSCE's observations were reflected.

(106) Amnesty International interview with local defence lawyer, April 2006; Pristina District Court documents, for example, PP. nr. 99-1/2006, Dt10.03.2006; PPH nr. 72/2006, 10 March 2006; Kp.nr.75/2006, 20 March 2006.

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

1) There is a grounded suspicion that such person has committed a criminal offence; 2) One of the following conditions is met: i) He or she is in hiding, his or her identity cannot be established or other circumstances indicate that there is a danger of flight; ii) There are grounds to believe that he or she will destroy, hide, change or forge evidence of a criminal offence or specific circumstances indicate that he or she will obstruct the progress of the criminal proceedings by influencing witnesses, injured parties or accomplices; or iii) The seriousness of the criminal offence, or the manner or circumstances in which it was committed and his or her personal characteristics, past conduct, the environment and conditions in which he or she lives or other personal circumstances indicate a risk that he or she will repeat the criminal offence, complete an attempted criminal offence or commit a criminal offence which he or she has threatened to commit; and 3) The other measures listed in Article 268 paragraph 1 of the present Code would be insufficient to ensure the presence of such person, to prevent re-offending and to ensure the successful conduct of the

criminal proceedings.

(108) Amnesty International interview with defence lawyer, and with R.E. for whom A.K. worked, April 2006; telephone call with R.E, June 2006.

(109) (16). Please provide information on the internal inspections of conditions of detention in correctional facilities and police stations (Paras. 26, 51-52 TSR) and on the measures taken to address the lack of space in such facilities.

(110) 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.

(111) Serbia and Montenegro (Kosovo/Kosova) "Prisoners in our own homes": Amnesty International's concerns for the humans rights of minorities in Kosovo/Kosova , AI Index: EUR 70/010/2003, April 2003.

(112) 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, 2 March 2006, (adopted on 25 November 2005), paras. 40-1, p.15.

(113) Amnesty International interview with Randel Nojkic, April 2006

(114) 17. What accounts for the low rate of return of persons belonging to Serb or other minorities who were forced to leave Kosovo, as well as those who were displaced inside Kosovo? Comment on the effectiveness of steps taken to ensure adequate conditions for the sustainable return of returnees, in particular those belonging to minorities, to their habitual places of residence, or to find other durable solutions. What measures have been taken to guarantee their personal security, freedom of movement and access to personal documents, enabling them to seek employment and to access education and health or social services, as well as to address instances of discrimination by local authorities? (para. 59 et seq. TSR)

(115) 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".

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

(117) See Prisoners in our own Homes, op. cit; The March Violence, op cit; the organization's concerns have also been expressed in internal documents, provided for the guidance of Refugee Coordinators in Amnesty International sections.

(118) Specific Groups and Individuals: Mass Exoduses and Displaced Persons, Report of the Representative of the Secretary-General on the Human Rights of Displaced Persons, Walter Kälin, Addendum, Mission to Serbia and Montenegro, E/CN.4/2006/71/Add.5, 9 January 2006. UNHCR figures quoted at para.9.

(119) Figures quoted in CRP/K Monthly Report, May 2006.

(120) Kälin, op.cit.

(121) Kälin, op.cit.

(122) Amnesty International interview with UNMIK ORC official, April 2006.

(123) Amnesty International interview with CRP/K Legal Manager, April 2006.

(124) 19. What concrete measures have been taken to implement the 2005 Strategic Framework on Communities and Return of the SRSG, the concept papers formulated by a number of Municipal Working Groups, as well as Municipal Return Strategies, with a view to addressing the specific needs of returnees and IDPs and to strengthening the involvement of municipalities in the return process? (paras. 95-111 TSR)

(125) Amnesty International interview with UNMIK ORC official, April 2006.

(126) Amnesty International interview with UNMIK official, April 2006.

(127) 20. What measures have been taken to strengthen the independence and impartiality of the judiciary, e.g. by introducing fixed terms of office for judges, increasing salaries of local judges and prosecutors, and by establishing a regulatory body empowered to investigate allegations of misconduct of international judges and prosecutors?

(128) See for example, Correspondence between the Office of the Ombudsperson and the Head of the DoJ. On 28 February 2005, Thomas Monaghan replied to the Ombudsperson, "Upon due consideration of all legal and procedural aspects of the matter and following consultation with KJPC, the Department of Justice is currently considering the establishment of such a regulatory body. This body would submit its recommendations to the authority that is competent to take appropriate disciplinary action against the IJPs, which could be either the SRSG, the UN

Administration, or the national jurisdiction of the respective IJPs".

(129) The OSCE also recommended that international judiciary be subject to the same requirements of tenure, accountability and discipline as the locals, including investigation by the Judicial Inspection Unit ('JIU') and the KPJC (see for example Marshall & Inglis 2003, p122; or most recently, add).

(130) This superseded the Kosovo Judicial and Prosecutorial Council (KJPC), established by UNMIK Regulation 2001/8 on 6 April 2001.

(131) Amnesty International interview with Chief International Prosecutor, Annuziata Ciaravolo, UNMIK DoJ, May 2006 .

(132) Special Rapporteur on Independence of Judges and Lawyers report 23/01/2006, para. 54; see also OHCHR, Rule-of-Law Tools for Post-Conflict States, "Mapping the Justice Sector", p.10.

(133) Jean-Christian Cady and Nicholas Booth, DSRSG for Police and Justice and Senior Adviser to DSRSG for Police and Justice, quoted in "Internationalized Courts in Kosovo: An UNMIK Perspective" in Romano, Nollkaemper & Kleffner (eds.), Internationalized Criminal Courts and Tribunals, p.76.

(134) Amnesty International, forthcoming report on international prosecutors and judiciary in Kosovo; see also Tom Perriello and Marieke Wierda, Lessons from the Deployment of International Judges and

Prosecutors in Kosovo, International Center for Transitional Justice, March 2006.

(135) Members of the international judiciary are paid $100,000 per annum and a per diem of $350.

(136) This is reflected in concerns expressed by the OSCE in relation to in adequate charges and sentencing below the legal guidelines in proceedings conducted by local prosecutors and judiciary in relation to the March violence, see OSCE, pp. 22-33

(137) (26). Please provide updated statistical information, disaggregated by minority group, gender and age, on the representation of minority groups in the civil service, including in the judiciary. Have any affirmative action measures, such as measures envisaged under UNMIK Regulation 2001/36 and Administrative Direction No. 2003/2 and educational measures to qualify members of minority groups, in particular Roma, for civil service posts been implemented? What results have been achieved with regard to the appointment of Equal Opportunities Officers and the implementation of equal opportunity policies in each ministry, municipality and executive agency? (para. 211 CCD)

(138) Four seats are reserved for representatives of Roma, Ashkali and Egyptian parties in the Kosovo Assembly.

(139) Shadow Report on the Implementation of the Framework Convention for the Protection of National Minorities, Executive Summary, p. 3.

(140) Opinion, Executive Summary, p. 4; paras 109 & 164.

(141) 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.

(142) (27). Please comment on the degree of discrimination still faced by the Serb, Roma, Ashkali and other minorities and the impact of such discrimination for the daily lives of such members. What measures are being taken to address the systematic nature of such discrimination? What have been the effects of such measures?

(143) The committee also concluded with reference to Article 27 of the Covenant:

22. The Committee is concerned about the selective use of certain official languages in

official dealings and the lack of opportunities for minority children, in particular Roma children, to receive instruction in, and of, their languages. (art. 27)

UNMIK should ensure that the PISG respect the right of minority communities to use any official language of Kosovo in correspondence with public authorities, that all official documents are translated into these languages, that minority children have adequate opportunities to receive instruction in, and of, their language, and that sufficient funds are allocated and teachers trained for that purpose.

(144) Article 1, Agreement between the United Nations Interim Administration Mission in Kosovo (UNMIK) and the Council of Europe on technical arrangements related to the Framework Convention for the Protection of National

Minorities, 30 June 2004; 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 on the Protection of National Minorities, ACFC (2005)003, 2 June 2005.

(145) Advisory Committee On The Framework Convention For The Protection Of National Minorities, Opinion, p. 5

(146) Opinion, op.cit.

(147) For further information on the situation of IDPs in Kosovo, see Report of the Representative of the Secretary General on the human rights of internally displaced persons, Walter Kälin, Addendum, Mission to Serbia and Montenegro, 9 January 2006, E.CN.4/2006/71/Add.5.

(148) General Recommendation No. 19, CEDAW llth session, 1992.

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