



Better Late Than Never

Enhancing the Accountability of International Institutions in Kosovo

I. Executive Summary	1
Key Recommendations.....	5
II. Background.....	7
A Critical Moment.....	7
Kosovo’s Accountability Gap	8
III. Current Accountability Arrangements in Kosovo.....	13
Ombudsperson Institution	13
Human Rights Advisory Panel.....	15
Human Rights Oversight Committee	17
UNMIK Claims Commission	18
UNMIK Police Accountability Mechanisms	19
KFOR Accountability Mechanisms.....	22
OSCE Monitoring.....	24
Council of Europe Monitoring in Places of Detention.....	25
IV. Possible Future Accountability Arrangements	28
International Civilian Presence “Review Mechanism”	28
Constitutional Court Jurisdiction over International Institutions	29
Restored Ombudsperson	31
EU Police and Justice Mission.....	32
International Military Presence.....	34
Independent OSCE Monitoring	35
Council of Europe: Continued Monitoring of Detention	36

V. Detailed Recommendations.....	37
International Organizations with a role in Kosovo’s Incoming Institutions.....	37
To the Council of the European Union	37
To NATO member states and other governments contributing to the International Military Presence	37
To the Council of Europe Committee for the Prevention of Torture.....	37
Incoming Institutions in Kosovo	38
To the International Civilian Representative	38
To the EU Police and Justice Mission to Kosovo	38
To the International Military Presence	39
To the Government of Kosovo	39
Continuing Institutions in Kosovo.....	40
To the OSCE Mission in Kosovo.....	40
To the European Commission’s Liaison Office in Kosovo	40
To the Ombudsperson Institution.....	40
Outgoing Institutions in Kosovo	40
To the United Nations Mission in Kosovo (UNMIK).....	40
To UNMIK Police	40
To KFOR Headquarters	41
Human Rights Watch Reports on Kosovo.....	42

Glossary

ESDP	European Security and Defence Policy
ICR	International Civilian Representative
IMP	International Military Presence
KFOR	NATO-led Kosovo Force
KPC	Kosovo Protection Corps
KPI	Kosovo Police Inspectorate
KPS	Kosovo Police Service
OSCE	Organization for Security and Co-operation in Europe
SRSB	Special Representative of the United Nations Secretary-General
UNMIK	United Nations Interim Administration Mission in Kosovo

Note on Place Names

For the sake of clarity and consistency, in this report Human Rights Watch provides both the Serbian and Albanian place name at first mention. Subsequent references use the Serbian version only, since this is the English-language practice (for example, Pristina rather than Prishtinë).

I. Executive Summary

2007 is a crucial year for Kosovo. After eight years of UN rule and ambiguity about its legal relationship to Serbia, the province's status finally appears to be on the road to resolution. That resolution will be accompanied by an international "change of guard" in Kosovo, with a central role for the European Union (EU), as outlined in the status proposal by UN Special Envoy for Kosovo Martti Ahtisaari.

Nowhere is change needed more than in the area of accountability. After eight years of governing Kosovo, the United Nations interim administration in Kosovo (UNMIK) faces what can only be described as a crisis of legitimacy. Some of that crisis reflects frustration among Kosovo's Albanian majority about the slow progress toward resolving status, and among Serbs and other minorities about UNMIK's failure to secure their rights. But the lack of accountability among UNMIK and other international institutions in Kosovo has played an important role in undermining public confidence in the actions of those institutions.

Accountability—the extent to which an institution, and the officials within it, are held responsible for their actions—is a key element of good governance, together with transparency in decision making and the rule of law. It is also essential to the enjoyment of human rights.

Complaints against UNMIK and NATO-led peacekeepers (Kosovo Force, KFOR) include that their actions have violated property rights, and allegations of arbitrary detention, sexual and other criminal misconduct, and a range of failures relating to the protection of minorities. While concerns about sexual and criminal misconduct are not uncommon in international peace operations, the breadth of concerns in Kosovo reflects the far-reaching powers of the UN mission in an international protectorate, and heightens the importance of accountability.

The accountability gap in Kosovo was starkly illustrated in February 2007. When a protest in Pristina/Prishtinë on February 10 turned violent, UNMIK police responded with teargas and rubber bullets, resulting in the death of two protesters. UNMIK's

much-criticized handling of the aftermath (including the necessary reliance on ad hoc solutions) highlighted the lack of independent mechanisms for oversight of UNMIK police, and the potential for lasting damage to the reputation and legitimacy of international institutions in the absence of effective accountability.

At first glance there appears to be a wealth of accountability mechanisms in Kosovo. The province has an Ombudsperson Institution, a Human Rights Advisory Panel, and is monitored by the Organization for Security and Co-operation in Europe (OSCE), nongovernmental organizations (NGOs), and the media. There are also a variety of internal systems within UNMIK and KFOR. In reality, however, these mechanisms are either weak, unable to investigate international institutions, or limited in their impact.

The Ombudsperson Institution was stripped of its mandate to investigate UNMIK and KFOR in 2006. The Human Rights Advisory Panel, whose creation was intended to bridge this accountability gap on the civilian side, has yet to be constituted. No external mechanism to investigate KFOR now exists. Monitoring by the OSCE Mission in Kosovo has helped bring problems to light, but its recommendations have often been ignored.

UNMIK's internal oversight structures, with the notable exception of financial oversight, are either dormant or improperly constituted. The Human Rights Oversight Committee, supposedly comprising senior representatives of UNMIK and KFOR, has not met for several years, while a Claims Committee set up to address individual claims against UNMIK in practice considers only disputes involving UNMIK contractors.

With the Ombudsperson out of the picture, the limited accountability for UNMIK police and KFOR is particularly stark. The OSCE mission, the Council of Europe, and the UN Human Rights Committee have all been critical about the limited remedies available to those who allege abuse at the hands of UN police or NATO peacekeepers. UNMIK police and KFOR personnel are covered by immunity agreements that mean that action can only be taken by the sending country, generally after the accused personnel are sent home, making it virtually impossible for a complainant to learn the outcome (if any) of an investigation.

To date, UNMIK and NATO have been largely unresponsive to criticism about the lack of accountability for international institutions in Kosovo. But it is not too late to take action. While UNMIK looks set to be wound up by the end of 2007, there is still scope for positive steps, including operationalizing the Human Rights Advisory Panel.

The case is even stronger for NATO. It will lead the new International Military Presence that according to the status proposal will replace KFOR as the sole security guarantor for Kosovo. That makes it imperative that NATO works with its member states to begin developing common rules and procedures within KFOR that can be continued in its successor.

The urgent need to develop functional accountability mechanisms applies equally to the EU, the United States, and other governments that will form the future international civilian presence in Kosovo. The civilian elements under the status proposal comprise an International Civilian Representative (ICR)¹ with executive powers to oversee the settlement, and an EU police and justice mission under the auspices of European Security and Defence Policy (ESDP), which will include a large contingent of police officers from EU states, as well as prosecutors and judges.

The status proposal is short on detail about accountability mechanisms. It proposes that the ICR should create a review mechanism to examine the exercise of his or her powers, but does not specify what sort of mechanism. The proposal suggests that the future Constitutional Court, with six national and three international judges, should have the jurisdiction to hear complaints from individuals who claim that their rights guaranteed by the constitution have been violated by public authorities. It indicates that the Ombudsperson Institution's mandate should remain unchanged, and requests the OSCE to maintain its presence in Kosovo. The proposal is silent on accountability mechanisms for the EU police but proposes maintaining KFOR's privileges and immunities for the NATO-led military presence.

Creating effective accountability mechanisms for incoming international institutions will require going beyond the Ahtisaari proposal. It also demands straightforward solutions that build as much as possible on existing structures. That is why this

¹ At the current stage of planning, this new institution is widely referred to as the International Civilian Office (ICO).

briefing paper makes as its key recommendations that the two most important national accountability mechanisms in the future Kosovo—the Constitutional Court and Ombudsperson Institution—are also given responsibility for overseeing international institutions. Specifically, the jurisdiction of the future Constitutional Court should be extended to ensure that allegations about violations of constitutionally protected human rights by international civilian and military institutions can be heard. This would be consistent with an earlier recommendation of the Council of Europe. The Ombudsperson Institution should also have its original mandate restored so that it has the jurisdiction to investigate complaints involving the ICR, the EU police and justice mission and the NATO-led military presence. These two measures would undoubtedly enhance the legitimacy of international institutions in the eyes of the public, by subjecting them to oversight by independent Kosovo institutions, and would in turn empower those bodies to hold Kosovo’s government to account.

NATO should work with its member states to develop more effective and consistent internal investigation and coordination mechanisms. The EU police and justice mission should do the same, and invite the Kosovo Police Inspectorate to oversee any internal investigations. And the OSCE and the Council of Europe’s Committee for the Prevention of Torture should continue to perform their monitoring of the justice system and places of detention, respectively. The OSCE’s independent role in the future Kosovo should make it easier for it to assert itself and voice its concerns.

The success of Kosovo’s new international institutions will rest upon their ability to maintain their legitimacy and the confidence of the public even in the face of unpopular decisions. That will depend on those institutions demonstrating transparency, accountability, and respect for the rule of law. Concretely, the office of the International Civilian Representative, the EU police and justice mission, and the NATO-led military presence must ensure that they adhere to the highest human rights standards, that allegations of wrongdoing are promptly and transparently investigated, and that they subject themselves to independent, external judicial and other oversight. Doing so would greatly increase the likelihood of success in Kosovo, and could serve as a blueprint for future peace operations around the world.

Key Recommendations

To the future International Civilian Representative (ICR)

- In consultation with the International Steering Group, subject the office of the International Civilian Representative, as a public authority, to the jurisdiction of the future Constitutional Court, so that victims who have a claim that their human rights have been violated by the office can have access to a remedy before the court.
- Subject the office of the International Civilian Representative to the jurisdiction of the Ombudsperson Institution, in consultation with the International Steering Group.

To the Council of the European Union

- Subject the EU police and justice mission in Kosovo to the jurisdiction of the future Constitutional Court, so that victims who have a claim that their constitutionally protected human rights have been violated by actions of the mission can have access to a remedy before the court.
- Subject the EU police and justice mission in Kosovo to the jurisdiction of the Ombudsperson Institution.

To NATO members and other governments contributing to the International Military Presence (IMP)

- Enter into bilateral agreements with the government of Kosovo accepting the jurisdiction of the Constitutional Court over forces deployed in Kosovo, so that victims who have a claim that their constitutionally protected human rights have been violated by the IMP can have access to a remedy before the court.
- Enter into bilateral agreements with the government of Kosovo accepting the jurisdiction of the Ombudsperson Institution over forces deployed in Kosovo.
- Cooperate with the IMP headquarters to establish standardized mechanisms for responding to individual complaints, and a central IMP database for such complaints.

To the future Government of Kosovo

- Support and take steps to call for the extension of the Constitutional Court's jurisdiction to hear claims that actions of the office of the International Civilian Representative and the EU police and justice mission have resulted in human rights violations, and enter into bilateral agreements on such jurisdiction with states participating in the International Military Presence.
- Support and take steps to call for the restoration of the Ombudsperson Institution's jurisdiction to investigate complaints against international civilian and military institutions, including by entering into bilateral agreements on such jurisdiction with states participating in the International Military Presence.

II. Background

A Critical Moment

After eight years of UN rule and ambiguity about its legal relationship to Serbia, Kosovo's status finally appears to be on the road to resolution. The final status recommendation by Martti Ahtisaari, the UN special envoy to Kosovo, created the momentum to wind up stalled negotiations between Pristina and Belgrade and refer the issue back to the UN Security Council.

Ahtisaari's recommendation generated strong reactions from radical elements among the Kosovo Albanian majority, notably among the Kosovo Albanian Self-Determination Movement (*Lëvizja Vetëvendosje*), which organized a large protest against the plan in Pristina on February 10, 2007. The demonstration turned violent, and international police responded with teargas and rubber bullets, killing two demonstrators and injuring many more. On February 19, unknown perpetrators detonated an explosion in the centre of Pristina, damaging several UN vehicles. In subsequent weeks, there were further acts of violence, including a rocket grenade attack on the Serbian Orthodox Dečan/Deçani monastery and two bomb attacks in the Bosniak district in Mitrovica/Mitrovicë.

The delayed and inconsistent reaction of UNMIK to the deaths of the protesters on February 10 prompted criticism from local and international human rights organizations, and in the local media.² Several days elapsed before senior UNMIK officials publicly expressed regret about the deaths and launched an investigation into the role of international police in the events. On February 14 UNMIK dismissed Steven Curtis as UN police commissioner, the head of UNMIK having endorsed him

²Amnesty International and the International Helsinki Federation for Human Rights issued statements condemning the police reaction, calling for a comprehensive investigation into the role of both local and international police as well as the protesters. See "Amnesty International Calls for Full Transparency in UNMIK Inquiry into Deaths of Mon Balaj and Arben Xheladini," Amnesty International public statement, February 15, 2007; "Official Reaction to the *Vetëvendosje* Protest of Saturday, 10 February 2007," International Helsinki Federation for Human Rights open letter, February 14, 2007. The Council for Defense of Human Rights and Freedoms, a local NGO, also condemned the police reaction.

just a day earlier.³ UNMIK's response stood in contrast to the rapid response from Kosovo's provisional government: it made an immediate public apology, Prime Minister Agim Çeku subsequently made a visit to the families of the protesters who were killed, and Minister of Interior Fatmir Rexhepi resigned on February 13.

The events of February 10 demonstrated the lack of standing accountability mechanisms for UNMIK police (see Section III: Current Accountability Mechanisms, below) and highlighted ongoing concerns about limited accountability and oversight of international institutions in Kosovo.

Accountability—the extent to which an institution, and the officials within it, are held responsible for their actions—is a key element of good governance, together with transparency in decision making and the rule of law. Some of the elements needed to create accountable institutions include: the presence of independent mechanisms to which victims can submit complaints; judicial and non-judicial remedies; external monitoring and oversight; and scrutiny by the media and nongovernment organizations.

The UN Human Rights Commission's resolution on the role of good governance in the promotion of human rights identifies accountability as a critical element to the enjoyment of human rights.⁴ Research by the World Bank indicates a positive correlation between good governance (including accountability) and respect for human rights.⁵

Kosovo's Accountability Gap

Since 1999 the United Nations Interim Administration Mission in Kosovo has effectively functioned as Kosovo's government. During its eight years, the mission has not succeeded in establishing itself as a model of good governance practices.

³ *Kosova Sot*, as quoted in UNMIK media clippings, February 15, 2007, and "UN Goes on the Defensive After Two Deaths in Kosovo," *International Herald Tribune*, February 13, 2007, <http://www.iht.com/articles/2007/02/13/news/kosovo.php> (accessed April 30, 2007)

⁴ UN Commission on Human Rights, "The Role of Good Governance in the Promotion of Human Rights," Resolution 2000/64, E/CN.4/2003/102. [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.RES.2000.64.En?Opendocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.RES.2000.64.En?Opendocument) (accessed April 12, 2007).

⁵ World Bank Institute, "Human Rights and Governance: The Empirical Challenge," <http://siteresources.worldbank.org/INTWBIGOVANTCOR/Resources/humanrights.pdf> (accessed April 12, 2007).

UNMIK has come under repeated criticism by international organizations, NGOs and the media for failing to establish a functioning system of checks and balances to its powers, despite recommendations to improve accountability by inter-governmental and nongovernmental organizations (the financial oversight systems introduced at the behest of the United Nations and European Union donor countries being a notable exception).

The lack of formal mechanisms to ensure international accountability is particularly problematic in Kosovo because local institutions, media, and civil society are weak, and have been largely unable to act as an effective check against the authority of international institutions.

In late January 2007 Human Rights Watch visited Kosovo to assess the mood prior to the announcement of the UN special envoy's final status recommendation. During discussions with representatives of the media, NGOs, political figures, and ordinary citizens, it was clear that there is widespread concern at the lack of accountability and the absence of effective oversight over international institutions in Kosovo.⁶

Impatience with delays in the resolution of Kosovo's final status has undoubtedly played a part in the poor perception of UNMIK, but the failure to establish effective oversight mechanisms over its actions has not helped UNMIK to win "hearts and minds," or to gain legitimacy in the eyes of those it has governed. During riots that took place in Kosovo in March 2004 and left more than 30 people dead,⁷ some of the violence was directed against UNMIK. According to a recent opinion poll, UNMIK's rate of approval hit a new low in April 2007, with a mere 24 percent of respondents reporting they were "satisfied" with the work UNMIK does.⁸

⁶ Human Rights Watch carried out its interviews between January 26 and February 3, 2007, in various locations (mainly in Pristina and Mitrovica/Mitrovicë regions), with 30 persons representing various ethnicities and professions, including some of the key local and international actors in the region. The sweeping criticism for the lack of accountability came out particularly strongly in discussions with Kosovo Albanian interlocutors, while Kosovo Serbs tended to emphasize particular areas in which the international community's actions negatively impacted human rights (returns, reconstruction, missing persons, conduct during and in the aftermath of the March 2004 riots, etc.).

⁷ See Human Rights Watch, *Failure to Protect: Anti-Minority Violence in Kosovo*, vol. 16, no. 6(D), March 2004, <http://hrw.org/reports/2004/kosovo0704/>.

⁸ "UN's Kosovo Rating at Fresh Low as it Readies Exit," Reuters, April 12, 2007, <http://uk.reuters.com/article/worldNews/idUKL1235427220070412> (accessed April 12, 2007).

Concerns over accountability in international peace operations are not unique to Kosovo. It has previously been brought to public attention mainly in the context of sexual abuse or other cases of gross personal misconduct by military or civilian peacekeepers in Bosnia, Haiti, Timor Leste, Burundi, Sierra Leone, Côte D'Ivoire, and, more recently, the Democratic Republic of Congo and Sudan.⁹ While the Kosovo mission has faced similar accusations, the Kosovo accountability debate is much more complex because of the extensive powers exercised by international civilian and military bodies in Kosovo.

In the past, the international Ombudsperson investigated complaints across the mandate of UNMIK and KFOR, from property rights to procedures of military arrests and weapon searches, but (as discussed below) that role was rescinded in early 2006.¹⁰ Recently, the German government reportedly commissioned a confidential report on the performance of UNMIK and KFOR since 1999, which was said to be extremely negative in its assessment of the performance of both institutions.¹¹ NGOs and international organizations have voiced concerns over the role of UN personnel in managing the return and reconstruction process, administering mental health facilities, or performance in the field of the criminal justice system.¹² As for KFOR, past areas of concern ranged from sexual misconduct to the failure to protect minority lives and property during the March 2004 riots.¹³ More routine criticism relates to the lack of clear procedures allowing for payment of compensation when international actions resulted in members of the public suffering damage or loss.

⁹ Refugees International, "Boys Must Be Boys? Ending Exploitation and Abuse in UN Peacekeeping Missions," October 2005, <http://www.refugeesinternational.org> (accessed March 13, 2007).

¹⁰ Ombudsperson Institution in Kosovo, Quarterly Information Sheets, <https://www.ombudspersonkosovo.org> (accessed March 13, 2007).

¹¹ Germany is a member of the Contact Group on Kosovo and plays an important role in shaping EU policy toward Kosovo. *The Sunday Telegraph* (London) reported on March 17, 2007, that the Berlin-based Institute for Europe Politics had been commissioned by the German government to prepare a confidential report assessing the role UNMIK and KFOR had played in Kosovo since 1999. According to the newspaper, the report accuses UNMIK and KFOR of systematically suppressing criticism in a bid to present Kosovo as a success. "Report Damns West's Revival of Kosovo," *Sunday Telegraph*, March 19, 2007, <http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2007/03/18/wkosovo18.xml> (accessed April 30, 2007).

¹² See, for example, Human Rights Watch, *Not on the Agenda: The Continuing Failure to Address Accountability in Kosovo Post-March 2004*, vol. 18, no. 4(D), May 2006, <http://hrw.org/reports/2006/kosovo0506/>; Amnesty International, "The UN in Kosovo-a Legacy of Impunity," EUR 70/011/2006, August 2006, <http://www.amnesty.org> (accessed March 13, 2007); Mental Disability Rights International, "Not on the Agenda: Human Rights of People with Mental Disabilities in Kosovo," August 2002, <http://www.mdri.org> (accessed March 13, 2007); Minority Rights Group International, "Minority Rights in Kosovo under International Rule," July 2006, <http://www.minorityrights.org/admin/Download/pdf/MRGKosovoReport.pdf> (accessed March 13, 2007).

¹³ Human Rights Watch, *Failure to Protect*. The report focuses on the performance of KFOR's national contingents, as well as UN Police, during the anti-minority riots that took place on March 17, 2004.

The lack of accountability for UNMIK's and KFOR's actions in Kosovo has been criticized by top human rights bodies. At the Council of Europe, the Venice Commission issued a report in 2004 expressing concern that international institutions in Kosovo function like a government yet lack the checks and balances that hold governments to account.¹⁴ The United Nations Human Rights Committee (which assesses compliance with the International Covenant on Civil and Political Rights, ICCPR) invited UNMIK in 2005 to submit a report on its efforts to secure the rights contained in the ICCPR. UNMIK agreed to submit a report, establishing a positive precedent. The concluding observations of the committee, however, were critical of the lack of accountability for the actions of UNMIK and KFOR.¹⁵

UNMIK and KFOR troop-contributing nations have been the subject of human rights claims in the European Court of Human Rights (ECtHR). A 2006 claim against UNMIK brought by Roma groups was ruled inadmissible by the court, on the ground that it lacks jurisdiction over an international administration that is not a party to the European Convention on Human Rights.¹⁶ Cases against French, German, and Norwegian troops, alleging failure to prevent the death and maiming of Kosovo children from the detonation of unexploded NATO cluster bombs in one case, and unlawful detention in other, awaited a ruling by the ECtHR Grand Chamber for over six years before being deemed inadmissible in May 2007.¹⁷ The German government is the subject of a pending claim, arising from alleged expropriation of property in Kosovo by German KFOR troops, without compensation to its owner, a displaced Kosovo Serb.¹⁸

¹⁴ Council of Europe, Venice Commission, "Opinion on Human Rights in Kosovo: Possible Establishment of Review Mechanisms," Opinion No.280/2004, [http://venice.coe.int/docs/2004/CDL-AD\(2004\)033-e.asp](http://venice.coe.int/docs/2004/CDL-AD(2004)033-e.asp) (accessed March 13, 2007).

¹⁵ United Nations Human Rights Committee, 87th Session, Consideration of the Report of the United Nations Interim Administration in Kosovo "On the Human Rights Situation in Kosovo Since June 1999," CCPR/C/UNK/CO/1, August 14, 2006, <http://www.unhcr.ch/tbs/doc.nsf> (accessed April 30, 2007).

¹⁶ European Roma Rights Centre, "European Court of Human Rights Has No Jurisdiction in Kosovo Lead Poisoning Case," *Roma Rights Quarterly*, March 2006, <http://www.errc.org> (accessed March 13, 2007).

¹⁷ *Behrami v. France* (no. 71412/01) and *Saramati v. France, Norway and Germany* (no. 78166/01). See European Court of Human Rights press release, November 15, 2006, <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=UNMIK&sessionid=9995331&skin=hudoc-pr-en> (accessed May 20, 2007). The inadmissibility ruling is available at <http://cmiskp.echr.coe.int/tkp197/viewhbkm.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=62605&sessionId=10384301&skin=hudoc-en&attachment=true> (accessed June 5, 2007).

¹⁸ European Court of Human Rights, *Gajić v. Germany*, case No. 31446/02. Human Rights Watch correspondence with the Belgrade-based Praxis NGO, April 2, 2007.

Despite the volume of existing analysis and recommendations on the international accountability gap in Kosovo, there has been little progress toward closing that gap. The transition from UNMIK to a new slimmed down International Civilian Representative and an EU police and justice mission provides an opportunity to finally put in place effective accountability mechanisms for international institutions, including the NATO-led military presence. In order to determine how best to establish such mechanisms, it is important first to analyze the current accountability, to see what lessons can be learned from its functioning and impact.

III. Current Accountability Arrangements in Kosovo

Ombudsperson Institution

The Ombudsperson Institution currently has a mandate to “provide accessible and timely mechanisms for the review of actions constituting an abuse of authority by the Kosovo Institutions and provide recommendations for redress.”¹⁹ From its establishment in 2000 until February 2006, the mandate of the Ombudsperson included human rights violations arising from the acts of international institutions in Kosovo, including UNMIK, the international police, and KFOR.²⁰ During the period when the institution had an international mandate, it also had an international ombudsperson, Polish human rights lawyer Marek Antoni Nowicki. The current acting ombudsperson is a Kosovo Albanian former deputy to Nowicki, Hilmi Jashari, a former NGO activist.

During the “international” phase of the existence of the Ombudsperson’s Institution, satellite offices were established throughout Kosovo in order to reach out to remote communities and minority communities living in “enclaves.” Moreover, “open days,” during which the ombudsperson travelled to various regions of Kosovo, resulted in a wide variety of cases (varied both in terms of institutions in question and the issues themselves) being brought to the Ombudsperson’s attention.²¹ Complaints related to property rights and conditions of displacement were among the most common. The institution was praised by the Council of Europe’s Advisory Committee on the Framework Convention for the Protection of National Minorities as “the most accessible option for alleged victims of discrimination,” and “an essential and trusted institution for persons belonging to minority communities.”²²

¹⁹ UNMIK Regulation No. 2006/6 “On the Ombudsperson Institution in Kosovo,” amending UNMIK Regulation No. 2000/38 “On the Establishment of the Ombudsperson Institution in Kosovo.”

²⁰ According to UNMIK Regulation No. 2000/38, art. 3.4, the Ombudsperson’s jurisdiction encompassed international civil administration, central and local institutions, as well as KFOR “based on an agreement with the Commander of the Kosovo Forces-COMKFOR.”

²¹ Ombudsperson Institution Annual Reports 2001-2005, <https://ombudspersonkosovo.org> (accessed March 13, 2007).

²² Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities, “Opinion on the Implementation of the Framework Convention for the Protection of National Minorities in Kosovo,” ACFC/OP/I(2005)004, http://www.coe.int/t/e/human_rights/minorities/2._framework_convention_%28monitoring%29/2._monitoring_mechanism/4._Opinions_of_the_Advisory_Committee/1._Country_specific_opinions/1._First_cycle/1PDF_1st_OP_Kosovo_eng.pdf (accessed May 25, 2007), art. 4: “Anti-discrimination legislation and remedies.”

According to the Ombudsperson's annual reports, the international community's level of cooperation with the institution varied "depending on different factors, including the political character of the particular issue involved."²³ Procedural complaints, such as those about excessive length of time taken to make decisions or the failure to respond to requests, tended to be addressed in due time, while complaints that touched upon political decisions that UNMIK had made tended to be more difficult to pursue. For example, UNMIK restrictions on property sales in the so-called special zones (in which property sales had to be approved by UNMIK, in order to ensure that they were not made under intimidation or duress²⁴) proved highly controversial both for the Kosovo Serb sellers and the Kosovo Albanian potential buyers alike. The Ombudsperson received multiple complaints from buyers and sellers about the impact on their property rights, and also raised questions about the sustainability of such regulations in the long term. On this topic, the Ombudsperson found that official UNMIK responses to complaints were late or were never received by the institution.

While there was widespread agreement that the institution should eventually become a local rather than a mixed local-international institution, there was strong criticism by NGOs, including Human Rights Watch, of the decision to remove the mandate of the Ombudsperson to investigate human rights abuses committed by international institutions.²⁵

UNMIK's Regulation 2006/6 clearly states that the Ombudsperson can only deal with cases in which human rights violations occur as a result of actions of Kosovo institutions.²⁶ While the regulation leaves some room for following up on existing cases involving UNMIK, based on the "bilateral agreement with the Special Representative of the Secretary-General," the Ombudsperson Institution lost its capacity to intervene in cases involving KFOR.

²³ Ombudsperson Institution Fourth Annual Report 2003-2004, July 12, 2004, http://www.ombudspersonkosovo.org/reports_annual.htm (accessed May 22, 2007).

²⁴ UNMIK Regulation 2001/17 "On the Registration of Contracts for the Sale of Real Property in Specific Geographic Areas in Kosovo," October 19, 2001.

²⁵ Human Rights Watch addressed this concern in a private letter to UN Secretary-General Kofi Annan dated August 16, 2004.

²⁶ UNMIK Regulation No. 2006/6, art. 3.1.

After the departure of the international ombudsperson in December 2006, the Kosovo Assembly (Kosovo's elected parliament) failed to nominate a national one, eventually agreeing on Hilmi Jashari to take over as acting ombudsperson. Jashari has brought energy to the post, but his effectiveness is hampered by the temporary nature of his position. There has also been confusion about whether the institution is covered by the old or new regulation (since it is arguable that the new regulation will apply only once the Assembly appoints a permanent new ombudsperson).²⁷

The acting ombudsperson sought to intervene following the February 2007 deaths of two protestors at the hands of UNMIK police, notwithstanding the lack of a clear mandate for him to do so. He publicly raised concerns about the proportionality of force used, and official responses to the incident, and attempted to open an investigation.²⁸ But the limited cooperation the Ombudsperson has received from UNMIK on the case underscores the limitations of the institution's new mandate.

In summary, the decision by UNMIK to strip the Ombudsperson Institution of its mandate to investigate alleged human rights violations arising from the actions of international institutions has deprived Kosovo's inhabitants of one of their principal mechanisms for redress against UNMIK and KFOR.

Human Rights Advisory Panel

The Human Rights Advisory Panel is to be established by virtue of UNMIK Regulation 2006/12 and is mandated to examine individual and group complaints on human rights violations resulting from the actions of UNMIK.²⁹ In accordance with the regulation, members of the panel are nominated by the president of the European Court of Human Rights and appointed by the head of UNMIK. The three nominees are Marek Antoni Nowicki, the previous international ombudsperson, Belgian professor Paul Lemmens, and French judge Michele Picard. The three individuals received their appointment letters from the head of UNMIK on January 12, 2007, specifying the duration of their assignment as one year.³⁰

²⁷ Human Rights Watch telephone interview with Hilmi Jashari, February 20, 2007.

²⁸ "Acting Ombudsperson calls for Swift, Thorough and Independent Investigation into Protest Deaths," Ombudsperson Institution in Kosovo press release, February 11, 2007.

²⁹ UNMIK Regulation No. 2006/6, para. 1.2.

³⁰ Human Rights Watch telephone interview with Marek Antoni Nowicki, February 16, 2007.

The panel was initially supposed to begin its work in the second half of 2006, in order to complement the work of the Ombudsperson Institution. However, at this writing, and despite the nominations, the panel is still not operational.³¹ The main reasons currently cited for the failure to constitute the Advisory Panel are the short timeframe left for UNMIK's operations, and logistical difficulties (including budget shortages, support staff deployment, and lack of office space.)³²

The panel does not have a mandate to examine cases involving KFOR. Moreover the panel's mandate specifies that its temporal jurisdiction encompasses cases in which the alleged violation took place on or after April 23, 2005, thereby excluding any matters relating to the March 2004 riots and their aftermath.³³ The panel's authority is limited: its recommendations are not binding on UNMIK and it cannot compel UNMIK to hand over documents or require UNMIK staff to cooperate with its investigations.³⁴ Since the panel is created by UNMIK regulation, its members are appointed by UNMIK, and its procedures subject to amendment by UNMIK, it is hard to see how the panel can be considered independent.³⁵

It is notable that when the Venice Commission proposed an advisory panel in 2004 to examine possible human rights violations by UNMIK, it saw such a panel as a complement to, rather than a substitute for, the Ombudsperson's oversight of UNMIK.³⁶ The UN Human Rights Committee's 2006 review of UNMIK's compliance with the ICCPR, "expresse[d] 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."³⁷

The regulation mandating the panel does not specify what kind of support staff or field presence it will have. But it appears that the staff will be limited to a small

³¹ UNMIK Regulation No.2006/12 "On the Establishment of the Human Rights Advisory Panel." March 23, 2006.

³² Human Rights Watch telephone interview with an UNMIK official (name withheld), March 7, 2007.

³³ UNMIK Regulation 2006/12, Section 2.

³⁴ *Ibid.*, Sections 15 and 17

³⁵ *Ibid.*, Sections 5 and 19

³⁶ Council of Europe, Venice Commission, "Opinion on Human Rights in Kosovo: Possible Establishment of Review Mechanisms," Art 124.

³⁷ United Nations Human Rights Committee, 87th Session, Consideration of the Report of the United Nations Interim Administration in Kosovo "On the Human Rights Situation in Kosovo Since June 1999," Comment # 44 from Ms. Wedgewood.

Pristina-based secretariat of legal and administrative staff, in contrast to the field offices and larger staff of the Ombudsperson Institution.³⁸ Moreover, it appears unlikely that the panel members will be based permanently in Kosovo.

In sum, while the panel is intended to fill the gap created after the removal of the Ombudsperson's mandate to examine abuses by international institutions, it appears unlikely it will be able to play the role previously held by the international Ombudsperson, given its mandate, dependence on UNMIK, limited staff and budget, and lack of field presence. Even if the Human Rights Advisory Panel is eventually constituted, its limited mandate and resources and lack of independence mean that, at best, it can be considered a "band-aid" structure.

Human Rights Oversight Committee

UNMIK established the Human Rights Oversight Committee (HROC) in 2002 to make recommendations to the Special Representative of the Secretary-General regarding human rights issues, including the compatibility of regulations with international human rights laws, and high-profile individual cases, and to address criticisms directed towards UNMIK by other organizations. The members of the committee included the principal deputy SRSG, the heads of the OSCE and EU missions, the UNMIK legal adviser, the UNMIK director of the Office of Returns and Communities, the head of office of the UN High Commissioner for Human Rights, the chief of the UNMIK Office of Gender Affairs, the head of the OSCE Department of Human Rights and Rule of Law, and the deputy commander of KFOR.

Because the committee met behind closed doors and its reports were not made public, it is unclear whether it ever exercised the role of an internal review body.³⁹ The Venice Commission in 2004 deemed the committee unsuitable to act as an independent review body, suggesting that instead it could be a useful mechanism for mainstreaming human rights into all UNMIK and KFOR policies. Even though the HROC still formally exists, it has not met since 2004.⁴⁰

³⁸ Human Rights Watch telephone interview with an UNMIK senior official (name withheld), March 7, 2007.

³⁹ Council of Europe, Venice Commission, "Opinion on Human Rights in Kosovo: Possible Establishment of Review Mechanisms."

⁴⁰ Human Rights Watch interview with a Pristina-based UNMIK senior official (name withheld), March 7, 2007.

UNMIK Claims Commission

The UNMIK Claims Commission was supposed to be established in 2000 on the basis of an UNMIK regulation to address “third party claims for property loss or damage and for personal injury, illness or death arising from or directly attributed to KFOR, UNMIK or their respective personnel and which do not arise from ‘operational necessity’ of either international presence.”⁴¹ The commission was intended to enable individuals who incurred damages or were harmed due to UNMIK’s actions to claim compensation.

It is difficult to determine whether the commission has ever been properly established and whether it has ever exercised such a function. There is no public information as to its activities.⁴² In its 2004 report, the Council of Europe Venice Commission pointed to the UNMIK Claims Commission’s lack of transparency, saying that this made it impossible to determine what cases had been referred to the Claims Commission in the past, and the outcomes of those cases.⁴³ Few people interviewed by Human Rights Watch even knew that the body existed, including the majority of the UNMIK staff Human Rights Watch spoke to.

From what Human Rights Watch has been able to learn, it appears that the Claims Commission now deals only with liabilities incurred through formalized contacts with the UNMIK administration, effectively narrowing its scope to contract disputes involving UNMIK.⁴⁴

The Claims Commission could have been a positive example of a working accountability mechanism, giving members of the public in Kosovo an avenue for pursuing civil claims against UNMIK. It appears instead to have become a little-known vehicle for resolving disputes with UNMIK contractors.

⁴¹ UNMIK, Regulation No. 2000/47 “On the Status, Privileges and Immunities of KFOR and UNMIK and Their Personnel in Kosovo,” August 18, 2000, <http://www.unmikonline.org/regulations/2000/reg47-00.htm> (accessed May 2, 2007), Section 7: “Third Party Liability.”

⁴² Council of Europe, Venice Commission, “Opinion on Human Rights in Kosovo: Possible Establishment of Review Mechanisms.”

⁴³ *Ibid.*, art. 61.

⁴⁴ Human Rights Watch telephone interview with an UNMIK official (name withheld), March 7, 2007.

UNMIK Police Accountability Mechanisms

UNMIK police has a far wider mandate than other UN police missions deployed in peace operations.⁴⁵ It has served as a temporary law enforcement unit, rather than simply monitoring the activities of the local police. Its other main function has been to establish a local Kosovo Police Service (KPS) to assume responsibility for policing tasks. While the KPS has assumed increasing responsibility for policing in Kosovo, the Kosovo police commissioner remains an international post, and the KPS Commander continues to report to him. The Kosovo Police Inspectorate (KPI) is an independent institution established to investigate allegations of misconduct of the KPS. It has no authority in relation to UNMIK police.

Despite acting as Kosovo's police force, UNMIK police lacks the accountability mechanisms that one would expect if international standards and best practice in policing and human rights were implemented. UNMIK police currently relies on its internal disciplinary procedures and investigations when complaints against it are made, and results are not made public. Written and verbal complaints from members of the public are forwarded to the UNMIK police internal affairs department, which is in charge of investigating them.⁴⁶ Where behavior is deemed to be a case of disciplinary misconduct, punishments range from verbal or written warnings to dismissal with exclusion from serving in future UN missions. In cases of criminal conduct, UNMIK police officers can be prosecuted in Kosovo courts, provided that their immunity is waived by the UN secretary-general (or national government in the case of those deployed as part of national contingents).⁴⁷

Investigations in Kosovo into disciplinary or criminal complaints involving UNMIK police can be frustrated if the officers who are either the subject of those investigations or witnesses in the cases are sent home by their governments. The withdrawal from Kosovo of the Romanian police officers implicated in the February 2007 deaths of protestors (discussed below) provides an illustration. UNMIK has no

⁴⁵ UNMIK police's mandate is defined by UN Security Council Resolution 1244. Its two main tasks have been designated as 1) temporary provider of law enforcement, 2) developer of professional, impartial, and independent local police.

⁴⁶ Human Rights Watch interview with Mark Miller, UNMIK police deputy crime commissioner, March 14, 2007.

⁴⁷ Ibid. Human Rights Watch contacted the UNMIK Office of Legal Affairs (OLA) and Department of Justice (DOJ), including the unit dealing with the issue, to determine how many immunity waiver requests have been made, and how many of them have been granted. The response was that neither OLA nor DOJ are in possession of that information.

jurisdiction enabling it to compel the return to Kosovo of officers in those circumstances or to ensure that the cases are dealt with properly in the home country.

These mechanisms have been criticized as insufficient, especially in the context of investigations into the failure to protect minority communities during the March 2004 riots and in relation to deaths that occurred allegedly as a result of police actions in the riots,⁴⁸ and also in relation to the isolated allegations of ill-treatment in detention centres and prisons.⁴⁹

The limitations of UNMIK police accountability mechanisms are highlighted by the deaths of the two protesters in February 2007. At a press conference in March upon taking up his post, Acting Police Commissioner Trygve Kalleberg promised to conduct a full and proper investigation into the February protest and to inform the public about its outcome.⁵⁰ But the absence of effective accountability mechanisms necessitated reliance on ad hoc solutions. A special investigative team was established consisting of senior UNMIK prosecutors and police officers unconnected with the policing decisions made during the protest. The Kosovo Police Inspectorate was given a formal oversight role in the process (the first time a Kosovo police body had been given such a role vis-a-vis international police officials).⁵¹ Separate interim reports by the KPI and an international prosecutor were subsequently issued. In addition, the Ombudsperson took steps to open an investigation into the events (see above), a decision implicitly accepted by UNMIK.

The case illustrates a key impediment to accountability for UNMIK police, namely that effective investigations depend on the cooperation of national contingents. The Romanian police contingent accused of firing the fatal rubber bullets initially

⁴⁸ Amnesty International, "The March Violence: One Year On", EUR 70/006/2005, March 17, 2005, <http://web.amnesty.org/library/index/engEUR700062005> (accessed March 13, 2007); Human Rights Watch, *Not on the Agenda*.

⁴⁹ See, for example, US State Department, Bureau of Democracy, Human Rights, and Labor, "Country Reports on Human Rights Practices – 2006: Serbia (includes Kosovo)," March 6, 2007, <http://www.state.gov/g/drl/rls/hrrpt/2006/78837.htm> (accessed March 30, 2007).

⁵⁰ Mr. Kalleberg has since been appointed police commissioner.

⁵¹ Email communications from then-UN Police Commissioner Steven Curtis to Human Rights Watch, February 12 and 13, 2007. As already noted, the KPI has no authority in relation to UNMIK police.

complied with UNMIK's request to remain in Kosovo, delaying their departure by a month.⁵² But they left Kosovo and returned to Romania in March 2007, while the investigation was still ongoing, despite a promise from the Romanian government to "fully cooperate" with the investigation.⁵³ UNMIK protested,⁵⁴ but was powerless to reverse the decision. The departure of the Romanian police officers provoked some angry reactions in the local media.⁵⁵ Subsequent reports suggest that the Romanian government is not cooperating in the ongoing investigation, shielding its servicemen from responsibility.⁵⁶

The KPI published its interim report on March 1, 2007. Despite previous expectations to the contrary, the interim report's contents indicate that the inspectorate's inquiry is unlikely to shed light on possible misconduct by UNMIK police or the KPS.⁵⁷ The interim report does not assess the UNMIK internal investigation into alleged misconduct by UNMIK police and the KPS. Instead it provides a reconstruction of what occurred on February 10, and the operational responses of the two police forces, apparently with a view to analyzing the procedures followed so that they could be improved for future operations.

At this writing, the internal investigation undertaken by the UNMIK prosecutor Robert Dean was ongoing. On April 17 Dean discussed his interim report on the investigation at a press conference in Pristina.⁵⁸ According to Dean, the interim report indicates that Romanian police officers were responsible for the two deaths and two woundings under investigation. It finds that "there is a reasonable suspicion that

⁵² "Departure of Romanian FPU from Kosovo," UNMIK press release, March 23, 2007, [http://www.unmikonline.org/DPI/PressRelease.nsf/o/3BD36903607C6CE5C12572A7002E2D1A/\\$FILE/pr1654.pdf](http://www.unmikonline.org/DPI/PressRelease.nsf/o/3BD36903607C6CE5C12572A7002E2D1A/$FILE/pr1654.pdf) (accessed May 9, 2007).

⁵³ Balkan Investigative Network, "Romanian Police Officers Blamed for Pristina Deaths," April 19, 2007, <http://kosovo.birn.eu.com/en/1/70/2669/> (accessed April 30, 2007).

⁵⁴ On March 23, 2007, UNMIK issued an official statement expressing its regret about the departure of 75 Romanian policemen, indicating its wish for them to have stayed in Kosovo while investigation is still ongoing. http://www.unmikonline.org/pub/focuskos/apro7/FK_32_ENG_WEB.pdf (accessed June 5, 2007).

⁵⁵ For its part, *Lëvizja Vetëvendosje* drew attention to the fact that while police officers suspected of involvement in the deaths were free to leave Kosovo, some of the protesters, including protest leader Albin Kurti, remained in detention facing criminal charges.

⁵⁶ UNMIK, "Transcript of press briefing by Special Prosecutor Robert Dean on his Interim Report to the SRSB regarding the deaths and serious wounding of protestors during the 10 February 2007 demonstration in Pristina," April 17, 2007.

⁵⁷ Police Inspectorate of Kosovo, Extraordinary Inspection Report, "An Inquiry into the Conduct of KPS during the Civil Disturbances in Prishtine/Pristina on Saturday 10th of February, 2007," March 1, 2007.

⁵⁸ UNMIK, "Transcript of press briefing by Special Prosecutor Robert Dean on his Interim Report to the SRSB regarding the deaths and serious wounding of protestors during the 10 February 2007 demonstration in Pristina," April 17, 2007.

three of the shootings constitute crimes under Kosovo law,” and concludes that “at this point the shootings in question appear to be unwarranted and unjustified” and the two deaths and the wounding of one of the protestors “appear to be unnecessary and avoidable.” But the interim report failed to conclude which of the Romanian officers was likely to have fired the shots, and absent a finding that the entire contingent acted unlawfully, is unable to establish criminal responsibility. It also failed to examine the responsibility of UNMIK police commanders who directed the February 10 operation.

KFOR Accountability Mechanisms

KFOR’s presence in Kosovo, mandated by the UN Security Council’s resolution 1244, was tasked with establishing a secure environment and ensuring public safety. It operates independently of the UN-led civilian mission.⁵⁹ The KFOR structures rest under the commander of KFOR (COMKFOR) and report directly to the NATO Headquarters in Brussels. Nevertheless, KFOR consists of sections of the armed forces of participating states, and as such, constitutes a sum of national contingents.

KFOR national contingents are bound by the international human rights obligations to which their governments are party (although not every action of a national contingent may engage the responsibility of its government).⁶⁰ In each case the enforcement of standards of discipline and conduct, and compliance with those obligations, rests with national contingents. Even though contributing states are obliged to investigate allegations involving their troops, any action generally takes place only once the soldier or soldiers in question have returned to their home

⁵⁹ UN Security Council Resolution 1244, June 10, 1999, <http://www.un.org/Docs/scres/1999/sc99.htm> (accessed March 13, 2007).

⁶⁰ It is a long established principle of the ECHR that military or security forces of states party operating extra-territorially are bound by the ECHR. See European Court of Human Rights, *Loizidou v. Turkey*, judgment of March 23, 1995 (preliminary objections), Series A no. 310; *Loizidou v. Turkey*, judgment of December 18, 1996 (Merits), Reports of Judgments and Decisions 1996-VI, no. 26; *Cyprus v. Turkey* [GC], no. 25781/94, ECHR 2001; *Issa and Others v. Turkey*, (dec.), no. 31821/96, November 16, 2004; and *Marković and Others v. Italy* [GC], no. 1398/03, ECHR 2006. However the state to which forces belong may only be liable where a jurisdictional link can be established between the victims and the specific state, for example because in practice the state is exercising effective control over the victims in another area either directly, through its armed forces, or through a subordinate local administration. The state will also be held accountable for violation of the ECHR vis-a-vis persons who are in the territory of another state but who are found to be under the former state's authority and control through its agents operating—whether lawfully or unlawfully—in the latter state. In *Banković and Others v. Belgium and 16 Other Contracting States* (dec.) [GC], no. 52207/99, ECHR 2001-XII, the European Court of Human Rights declared inadmissible a complaint against NATO member states by victims of a NATO bombing of a television station's offices in Belgrade, reaching the conclusion that the victims of the bombing in Serbia were not under the jurisdiction or authority of the individual member states.

country.⁶¹ The lack of a mechanism to ensure that affected persons in Kosovo are informed of the proceedings means that many do not know the outcome of these processes.

KFOR's principle internal oversight mechanisms are national military police units, which investigate and follow up on cases of alleged misconduct on the basis of the national procedures of particular contingents.⁶² The decision to act on allegations of violations against members of the public rests with the relevant national contingent. KFOR soldiers accused of alleged criminal conduct are investigated and, where appropriate, prosecuted in their home countries.⁶³ In the infamous case of a US KFOR soldier raping and killing an 11-year-old local girl in 2000, the perpetrator was tried in the US and sentenced to life imprisonment.⁶⁴ In the case of less serious offenses, such as causing vehicle damage while drunk driving, the perpetrators tend to be punished by losing rank, being sent home, or both.⁶⁵

The OSCE has published a Human Rights Remedies Catalogue (see below) that outlines the limited remedies in cases involving KFOR⁶⁶ With regard to claims for compensation, the procedure is handled by troop-contributing nations according to their own standard operating procedures. The insufficiency of accountability mechanisms KFOR offers has been pointed out by the Council of Europe's Venice Commission, which drew attention to an inconsistent response to individual complaints, with effective remedies for complainants dependent on which national contingent they happen to be dealing with.⁶⁷

⁶¹ Human Rights Watch interview with a diplomat at a European member states' delegation to NATO (name withheld), Brussels, February 13, 2007.

⁶² Human Rights Watch telephone interview with a member of a KFOR Liaison and Monitoring Team national contingent, March 9, 2006.

⁶³ Human Rights Watch telephone interview with a soldier from a KFOR national contingent (name withheld), March 2, 2007.

⁶⁴ "US Soldier Gets Life for Kosovo Rape and Murder," CBC News, August 1, 2000, http://www.cbc.ca/world/story/2000/08/01/soldier_sentence000831.html (accessed March 30, 2007).

⁶⁵ Organization for Security and Co-operation in Europe (OSCE), Mission in Kosovo, Department for Human Rights and Rule of Law, "Remedies Catalogue," September 2004, http://www.osce.org/documents/mik/2004/09/3457_en.pdf (accessed May 1, 2007), Part III, art. D1: "KFOR-Violation of the Relevant State's Military Criminal Code-Both Administrative and Criminal Remedy."

⁶⁶ OSCE Mission in Kosovo, Remedies Catalogue.

⁶⁷ Council of Europe, Venice Commission, "Opinion on Human Rights in Kosovo: Possible Establishment of Review Mechanisms."

Lack of transparency compounds the problem. Human Rights Watch had difficulty obtaining information from KFOR in Kosovo and NATO Headquarters about KFOR standard operating procedures in relation to individual complaints, despite multiple requests over a period of several months.⁶⁸

OSCE Monitoring

The OSCE Mission in Kosovo has played an important role in monitoring human rights. Its mandate, as expressed in the UN Security Council's resolution 1244 and an OSCE Permanent Council decision,⁶⁹ has given the organization possibilities of non-executive "soft interventions" with local and central levels of Kosovo's government. Over the years it acquired the strongest field presence of all civilian international organizations, deploying human rights experts in ministries and municipalities since 2004, followed by five-person municipal teams to advise police and monitor trials and prisons.

Even though the OSCE's mandate⁷⁰ limits its activities and interventions to Kosovo institutions, some of its reporting has covered the actions of international institutions, including UNMIK (of which it is formally part), UNMIK police and KFOR. In particular, the Legal System Monitoring Section (LSMS) in the Human Rights and Rule of Law department issued a series of reports on the criminal justice system pointing to key structural and performance weaknesses of UNMIK and KFOR, and issued recommendations to those bodies (albeit with mixed success in terms of their implementation).⁷¹

In May 2003 the OSCE mission published a "Remedies Catalogue" listing mechanisms available in Kosovo for redress of human rights violations relating to exercise of policing powers, failures in due process, discrimination, property, and for

⁶⁸ KFOR Headquarters in Pristina were unable to provide any information, and referred Human Rights Watch to NATO Headquarters in Brussels. The response from NATO HQ, which came two months later, did not address the main issues on which clarification was sought.

⁶⁹ Organization for Security and Co-operation in Europe, Permanent Council, Decision No. 305, PC.DEC.305, July 1, 1999.

⁷⁰ Ibid.

⁷¹ Organization for Security and Co-operation in Europe, Mission in Kosovo, Department for Human Rights and Rule of Law, Legal System Monitoring Section, "Kosovo: Review of Criminal Justice System 1999-2005," Reforms and Residual Concerns, March 2006. This document was revised the following year, but retained its analysis about the limited remedies for violations arising from the actions of international institutions.

victims of crime.⁷² The catalogue explains what remedies and compensation are available for those who claim that their human rights have been violated as a result of the actions of UNMIK, KFOR, and UNMIK police, including extrajudicial detention by KFOR, SRSG executive detention orders, and service code of conduct violations. While many of the potential human rights violations analyzed in the catalogue relate to the actions of UNMIK police and KFOR, there are often no legal remedies available, especially in cases involving military personnel (see above).

The most recent publication by the mission, “Report on the Administrative Justice System in Kosovo,” contains a critique of the lack of judicial review for UNMIK and KFOR’s administrative decisions.⁷³ The OSCE has recommended that UNMIK immediately constitute the Human Rights Advisory Panel, in order to fill the currently existing accountability vacuum.

Despite its commendable monitoring efforts, however, the mission’s ambiguous status—as both a part of UNMIK and a regional organization separate from it—has impeded its willingness and ability to publicly criticize its international partners, and diminished its capacity vigorously to press them to implement its human rights-related recommendations. Other UNMIK institutions have not always treated the OSCE’s suggestions and recommendations with the attention they deserved. Moreover, there are concerns that the OSCE’s increasing focus on capacity building has decreased emphasis on the importance of monitoring as a core activity.⁷⁴

Council of Europe Monitoring in Places of Detention

The monitoring of detention facilities is both a safeguard against abuse and a mechanism of accountability. In Kosovo, in addition to regular police and prison custody, UNMIK and KFOR are endowed with powers that enable the head of UNMIK and the KFOR commander to make extraordinary detention orders without reference

⁷² OSCE Mission in Kosovo, Remedies Catalogue.

⁷³ Organization for Security and Co-operation in Europe, Mission in Kosovo, Department of Human Rights, Decentralization and Communities, “Report on the Administrative Justice System in Kosovo,” April 2007, <http://www.osce.org/item/23984.html> (accessed April 12, 2007).

⁷⁴ Human Rights Watch telephone interview with an international official (name withheld), April 24, 2007.

to a court.⁷⁵ These powers were used in the initial few years of the mission, although their exercise has since declined.

The OSCE and some local NGOs (primarily the Council for the Defence of Human Rights and Freedoms) entered into informal agreements with UNMIK from the beginning of the mission in 1999 to carry out ad hoc monitoring of detention facilities managed by the Kosovo provisional government. At present the OSCE monitors detention facilities sporadically, while the Council for the Defence of Human Rights and Freedoms has had intermittent access to detention facilities since 2003.⁷⁶ Access by other NGOs has been inconsistently granted.⁷⁷

The International Committee of the Red Cross (ICRC) has monitored detention centres in Kosovo since 1999, including those maintained by KFOR. The ICRC's methodology does not allow it to release any information publicly. Instead it engages directly with relevant institutions to intervene on behalf of individuals visited.⁷⁸

The Council of Europe pressed UNMIK and KFOR to grant its Committee for the Prevention of Torture (CPT) access to their detention facilities. The negotiations were lengthy; reaching agreement on access to NATO facilities proved particularly difficult. In January 2006 Council of Europe Secretary General Terry Davis called for immediate access to all KFOR facilities, stating that "if there are skeletons in the KFOR cupboard, the eve of the talks on the future status of Kosovo provides a last-minute opportunity to get them out."⁷⁹ The reluctance of NATO to grant the CPT access to its detention facilities in Kosovo, including the one located in the US military base Camp Bondsteel, may have been linked in part to a separate Council of Europe

⁷⁵ OSCE Mission in Kosovo, "The Criminal Justice System 1999-2005. Reforms and Residual Concerns," Part IV B: "Extrajudicial Detentions."

⁷⁶ Human Rights Watch telephone interview with Behxet Shala, executive director, Council for the Defense of Human Rights and Freedoms, May 2, 2007.

⁷⁷ The International Helsinki Federation for Human Rights (IHF) and the Norwegian Helsinki Committee have not received permission to visit Albin Kurti in detention, despite repeated requests to UNMIK. At the same time, the Council for Defense of Human Rights and Freedoms was able to visit him. Human Rights Watch telephone interview with an IHF official (name withheld), May 24, 2007.

⁷⁸ Human Rights Watch telephone interview with an ICRC Kosovo official (name withheld), May 24, 2007.

⁷⁹ "Secretary General of the Council of Europe Demands Access to All Detention Facilities in Kosovo," Council of Europe press release, January 10, 2006, [http://press.coe.int/cp/2006/005a\(2006\).htm](http://press.coe.int/cp/2006/005a(2006).htm) (accessed May 1, 2007).

investigation into alleged secret detention of dozens of terrorism suspects at the base.⁸⁰

While the Council of Europe reached agreement with UNMIK on CPT access in 2004,⁸¹ the implementation of that agreement did not take place until July 2006, when NATO finally granted access for the CPT to all NATO-run detention facilities.⁸² It is Council of Europe's standard practice to proceed with CPT inspections only after it is granted access to all detention facilities in the place of the visit.⁸³ The CPT most recently visited detention facilities in Kosovo in April 2007. Whether CPT findings on UNMIK and NATO detention facilities will be made public depends on the consent of UNMIK and NATO, respectively.⁸⁴ Without such consent, the public impact of CPT monitoring will be limited, notwithstanding its importance as a safeguard against abuse in detention.

⁸⁰ Council of Europe, Committee on Legal Affairs and Human Rights, "Alleged Secret Detentions in the Council of Europe Member States," AS/Jur (2006) rev, January 22, 2006.

⁸¹ 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, <http://www.cpt.coe.int/documents/srp/2004-08-23-eng.htm> (accessed April 4, 2007). Agreement with KFOR was finalized by exchange of letters.

⁸² "Council of Europe Anti-Torture Committee gains access to NATO run detention facilities in Kosovo," Council of Europe press release, July 19, 2006, <http://www.cpt.coe.int/documents/srp/2006-07-19-eng.htm> (accessed May 1, 2007).

⁸³ Human Rights Watch telephone interview with a Kosovo-based Council of Europe official, June 7, 2007.

⁸⁴ Agreement between the United Nations Interim Administration Mission in Kosovo and the Council of Europe, art. 7.

IV. Possible Future Accountability Arrangements

The upcoming international “change of guard” that will follow the resolution of Kosovo’s status provides a unique opportunity to establish mechanisms to ensure that international institutions in the new Kosovo are properly held to account. Special Envoy Martti Ahtisaari’s 58-page “Comprehensive Proposal for the Kosovo Status Settlement” contains several elements that could help lay the foundation for an effective system of international accountability in Kosovo.

There is a consensus among officials in the key international institutions interviewed by Human Rights Watch that the future oversight mechanisms should draw on existing structures wherever possible, and that because of a relatively short expected lifespan of the International Civilian Representative and European Security and Defence Policy missions, any proposed mechanism should be simple and straightforward.⁸⁵

International Civilian Presence “Review Mechanism”

The Ahtisaari proposal provides the framework for the future oversight of the International Civilian Representative and his or her office in a general clause, which states that “[t]he International Civilian Presence (ICR) shall have the authority to establish a mechanism to allow the review of the use of his/her powers and those of the European Union Special Representative (EUSR) without prejudice to the privileges and immunities enjoyed by the ICR and EUSR under the Settlement.”⁸⁶ This clause has been added in light of the Venice Commission’s recommendation to constitute an appropriate oversight mechanism over UNMIK.⁸⁷

The clause is vague, leaving the choice of the appropriate oversight mechanism to the discretion of the International Civilian Representative (presumably in

⁸⁵ Human Rights Watch telephone interview with the EU International Civilian Office (ICO) Planning Team, March 2, 2007, and in-person interview with the European Union’s Planning Team (EUPT), Pristina, February 3, 2007.

⁸⁶ UNOISEK, *Comprehensive Proposal for the Kosovo Status Settlement*, Annex. IX, art. 2.6.

⁸⁷ Email communication from UNOISEK official to Human Rights Watch, February 27, 2007. Council of Europe, Venice Commission, “Opinion on Human Rights in Kosovo: Possible Establishment of Review Mechanisms,” Part VI, “The Human Rights Situation in Kosovo: Proposals as to Possible Institutional Solutions.”

consultation with a new International Steering Group envisaged by the proposal). But it provides a clear opportunity to bridge the accountability gap by establishing both internal and external oversight mechanisms. The new mechanism should take on the internal oversight functions that should currently be performed (but are not—see above) by the Human Rights Oversight Committee and UNMIK Claims Committee.

Nevertheless, as of the end of May 2007 no specific arrangements for any such review mechanisms have been made. According to the head of the EU planning team for the ICR, movement on the issue awaits a UN Security Council resolution and a green light to deploy staff on the ground, although the planning team is aware of the importance of the issue and the earlier recommendations made by the Council of Europe.⁸⁸

Constitutional Court Jurisdiction over International Institutions

Ahtisaari's final status proposal provides for the creation of a Constitutional Court endowed with the right to assess the constitutionality of any law or decision referred to it.⁸⁹ Among the constitutional principles reflected in the proposal is a requirement that "the constitution will allow individuals whose rights have been violated by a public authority to introduce a claim in the Constitutional Court, following the exhaustion of other remedies."⁹⁰

The court is to be composed of six national and three international judges. National judges will be nominated by the president of Kosovo on the proposal of the Kosovo Assembly, and international appointments will be made by the president of the European Court of Human Rights, in consultation with the International Civilian Representative.⁹¹ The latter nomination process underscores the human rights role for the court.

There is a strong argument for extending the jurisdiction of the Constitutional Court to include human rights claims involving international institutions. Such jurisdiction

⁸⁸ Human Rights Watch phone interview with Thorbjorn Sohlstrom, head of EU International Civilian Office (ICO) Planning Team, March 2, 2007.

⁸⁹ UNOSEK Proposal, Annex I, art. 6.1.

⁹⁰ Ibid., Annex I, art. 2.4.

⁹¹ Ibid.

would be a civil jurisdiction, not a criminal one, applicable in relation to an action by an institution or office (or its agents) exercising a public function, and would not involve personal liability of individuals. If the court were granted such jurisdiction, it could become an important mechanism for oversight over international structures, and help uphold respect for human rights in Kosovo. The Constitutional Court will have to establish its rules of procedures and methods of working, including any process of initial screening for admissibility of cases or claims.

The idea of judicial review for alleged human rights violations by international institutions in Kosovo is not new. In October 2004 the Venice Commission recommended the creation of a Human Rights Court for Kosovo that would review the actions of international institutions.⁹² The recommendation was modelled on the now-defunct Human Rights Chamber in Bosnia and Herzegovina.⁹³ The Venice Commission proposed a mixed national and international panel with jurisdiction to consider complaints related to violations of the European Convention of Human Rights. The Venice Commission report noted,

The Commission views the setting up of a Human Rights Court as an appropriate and necessary step towards ensuring an adequate level of human rights protection in Kosovo in the medium-term. Such setting up should be planned in the context of the foreseen restructuring of the provisional administration of Kosovo and amendment of the Constitutional Framework. At the moment when UNMIK and KFOR are replaced by other international institutions, the foregoing recommendation also applies, *mutatis mutandis*, to such other institutions.⁹⁴

Extending the human rights jurisdiction of the court to cover the actions of the ICR, EU police and justice mission, and the International Military Presence would require special arrangements, including agreeing to give the court the power to annul decisions and to award compensation. But, crucially, it would not require the

⁹² Council of Europe, Venice Commission, “Opinion on Human Rights in Kosovo: Possible Establishment of Review Mechanisms.”

⁹³ The mandate of the Human Rights Chamber expired in 2003. Human rights cases are now decided by the Constitutional Court in Bosnia.

⁹⁴ Council of Europe, Venice Commission, “Opinion on Human Rights in Kosovo: Possible Establishment of Review Mechanisms,” para. 111.

creation of a new or temporary body, and it would enhance both the legitimacy of the court and the international institutions that submitted to its jurisdiction.

The Constitutional Court would play a particularly useful role in oversight of police powers and the administration of justice—where the role of international structures is going to be particularly strong—by providing an independent check on the exercise of those powers.

The International Civilian Representative, in consultation with the International Steering Group, could agree to submit the office of the ICR to the jurisdiction of the court. In the case of the European Security and Defence Policy operation, a decision by the Council of the European Union could provide consent for all EU member states contributing police officers to the operation. Extending the court’s jurisdiction to the IMP would probably require the bilateral consent of each troop-contributing country. Cases could be referred to the court directly by individuals who claim to be victims, or indirectly by the Human Rights Advisory Panel or its successor, or the Ombudsperson’s Institution.

Restored Ombudsperson

The Ahtisaari proposal says little about the future role of the Ombudsperson. The only reference is a clause stating that “[t]he current powers and role of the Ombudsperson shall remain in place.”⁹⁵ Even though the current status of the Ombudsperson’s Institution is temporary, the language in the proposal suggests that the institution will be a national organization without a mandate to investigate international bodies. In the assessment of Human Rights Watch, that would be a wasted opportunity. It is preferable to restore the authority of what was Kosovo’s most effective mechanism of accountability over international institutions.

Restoring the mandate of the Ombudsperson Institution over international institutions is supported by the current Kosovo government, and by the acting ombudsperson.⁹⁶ Subjecting international institutions to the jurisdiction of the

⁹⁵ UNOSEK Proposal, Annex IX, art. 6.7.

⁹⁶ Human Rights Watch telephone interviews with Hilmi Jashari, February 20, 2007. Human Rights Watch telephone interview with Ulpiana Lama, government spokesperson, February 23, 2007.

Ombudsperson's Institution would not only send a positive signal to Kosovo's government and population, but it would enhance the legitimacy of those international institutions that it would oversee, and be a practical example of how to increase respect for human rights.

Constituting the Human Rights Advisory Panel should be a priority for UNMIK during the transition phase, not least to ensure that those with claims against UNMIK have some form of remedy. But the Panel's lack of independence, narrow mandate, and limited presence make it far from ideal as an effective mechanism for international accountability. By contrast, the Ombudsperson Institution—a body that enjoys public confidence, a multi-ethnic character, a good track record, and a robust field presence—is far better suited to performing non-judicial independent external oversight.

Restoring the mandate of the Ombudsperson Institution requires positive international action. The key international institutions in Kosovo could voluntarily submit to its jurisdiction: the International Civilian Representative (in consultation with the Steering Group); the Council of the European Union for the ESDP operation; and individual troop contributing countries (with assistance from the NATO Headquarters).

If the future national authorities in Kosovo are serious in their support for the restoration of the mandate, they should demonstrate it by making it a priority in their agenda when they are established. The current Kosovo Assembly should also move to end the uncertainty about the institution by appointing a permanent Ombudsperson and ensuring that his or her recommendations are fully implemented by the relevant Kosovo institutions.

EU Police and Justice Mission

Effective accountability is particularly important to the success of the EU police and justice mission, given the expectations about its size and mandate, and the accountability concerns surrounding UNMIK police. Current plans envisage the deployment of 1,000 police officers and around 40 judges and prosecutors,

operating within the first ever ESDP mission to be endowed with executive powers.⁹⁷ The Ahtisaari status recommendation is silent on accountability mechanisms for the police and justice mission.

The mission's civilian and police employees (other than national staff) are likely to enjoy the same diplomatic immunities as their UN predecessors. EU officials told Human Rights Watch that EU Member States would be reluctant to second their police officers to the mission in the absence of such immunity.⁹⁸

According to EU officials involved, planning for the mission involves demarcating "stricter than ever" personal and professional codes of conduct, as well as rules of engagement for EU police.⁹⁹ The mission will have an internal inspection unit to conduct enquiries into allegations of both professional and personal misconduct by its staff, while the head of mission (the EU Special Representative/ICR) will have a mandate to look into "minor misdemeanors."¹⁰⁰

An internal inspection unit and a limited mandate for the head of mission to look into minor incidents are insufficient to create the necessary framework of accountability for the EU police and justice mission. As noted above, external oversight is critically important, and the Ombudsperson Institution and the Constitutional Court are best placed to provide it. Oversight of internal investigations would also be helpful. An obvious solution would be to formally invite the Kosovo Police Inspectorate to oversee all investigations. To minimize the risk that the rotation and removal of officers undermines accountability, it would be useful to create a tracking mechanism within the EU police and justice mission to keep complainants in Kosovo informed about investigations in police officers' countries after they are sent home, and facilitate ongoing cooperation with investigations in Kosovo.

⁹⁷ Human Rights Watch interview with national experts and civil servants from the EU Rule of Law Planning Team, Council Secretariat, Brussels, February 15, 2007.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

International Military Presence

There is every indication that the shortcomings in KFOR's accountability mechanisms are likely to be replicated in the new International Military Presence in Kosovo. The status proposal maintains for the military presence the privileges and immunities for KFOR contained in UNMIK Regulation 2000/47.¹⁰¹ That would imply the preservation of broad immunities for both civilian and military personnel serving in Kosovo and the continuation of a claims commission, in cases involving property loss, damage, personal injury, illness, or death (although, as noted above, the existing UNMIK Claims Commission apparently has in practice dealt only with contract disputes).¹⁰²

Discussions with KFOR officers in Kosovo and diplomats in NATO Headquarters in Brussels familiar with planning for the IMP indicate that it is highly unlikely it will differ significantly from KFOR.¹⁰³ The language in the status proposal also suggests that it is unlikely any major changes will occur in the ways in which the future NATO-led force responds to individual complaints.

That does not mean, however, that the status quo is desirable. The future military presence in Kosovo will play a major role in reinforcing the status settlement. It will take over KFOR's role as the guarantor of Kosovo's security, notwithstanding the proposal to establish a small national defence force from the current Kosovo Protection Corps.

In this context, it is crucial that the IMP has properly functioning mechanisms of accountability. Encouraging troop-contributing countries to accept the jurisdiction of the Constitutional Court and the Ombudsperson would be particularly useful, both in practical and symbolic terms. Renewing the agreement with the Council of Europe for access by the Committee for the Prevention of Torture to any detention facilities operated by the IMP is another important step.

¹⁰¹ UNOSEK Proposal, Annex XI, art. 2.3.

¹⁰² UNMIK Regulation No. 2000/47 "On the Status, Privileges and Immunities of KFOR and UNMIK and Their Personnel in Kosovo," Section 7: "Third Party Liability."

¹⁰³ This message was conveyed to Human Rights Watch by a number of KFOR officials interviewed in Kosovo, including KFOR Chief of Staff Gen. Albert Bryant, interviewed by Human Rights Watch in Pristina on February 29, and at a series of Human Rights Watch meetings with diplomats at NATO delegations in Brussels between February 12 and 16, 2007.

The IMP also needs to develop more effective internal accountability mechanisms. In this context, the two main points to address are the harmonization of oversight procedures of the IMP's national contingents, as well as ensuring institutional memory, continuity, and follow up on cases referred to national contingents and dealt with in the home country. This would require a certain level of centralization of the case management in the IMP headquarters in Pristina, and in practical terms putting in place agreements between IMP command and troop-contributing nations.

Finally, the IMP also needs to be more transparent and accessible to the public than its predecessor in cases of complaints about the conduct of its forces.

Independent OSCE Monitoring

In future the OSCE Mission in Kosovo is likely to be a free-standing and independent institution, distinct from the international civilian presence. The status proposal requests that the OSCE maintains its presence in Kosovo, “to support the democratic development of Kosovo and the work of the International Civilian Representative (ICR) and his/her Office” and refers to consultation with the OSCE, but makes no reference to a formal relationship.¹⁰⁴

As noted above, the present structure of the OSCE mission within UNMIK has hindered its role as a neutral outside voice. But the new independent role for the OSCE in Kosovo creates an opportunity for the mission to take up a more robust and assertive role in monitoring (leveraging its significant field presence and large staff) and advising international and national actors on the ground on human rights issues, as OSCE missions have done elsewhere in the region.¹⁰⁵

Once status is determined, the OSCE Mission in Kosovo will need a new mandate from the OSCE Permanent Council. And, if Kosovo acquires some form of independence, there will also be a need for the Kosovo authorities to agree on the continuation of the OSCE mission on its soil.¹⁰⁶ There appears to be little scope for the OSCE to acquire any formal role in overseeing the performance of the ICR, ESDP,

¹⁰⁴ UNOSEK Proposal, Annex IX, art. 3.2.

¹⁰⁵ The OSCE Mission to Croatia is a notable example.

¹⁰⁶ Human Rights Watch telephone interview with a senior OSCE official based in one of the regions, March 5, 2007.

or IMP, because even if the institutions were to invite such a role, the indications are that there is little will within the OSCE to assume such responsibility.¹⁰⁷

But that leaves plenty of room for an informal oversight role for the OSCE, particularly in the areas of policing and justice. The OSCE has to date been engaged in monitoring trials involving international judges and prosecutors and is going to preserve this function in the future.¹⁰⁸ It could also enter into formal agreements to have a complementary role to the ICRC in monitoring detention facilities in police stations, prisons, and other places of detention. It is currently performing this task only on an ad hoc basis. To make the most of its new independence, the OSCE must be willing to be publicly critical when necessary.

Council of Europe: Continued Monitoring of Detention

Having finally negotiated the access it has long requested, the Council of Europe's Committee for the Prevention of Torture now plays an important role in monitoring places of detention in Kosovo. It should continue this role, which will depend on consent from the ICR, EU police and justice mission, IMP, and future Kosovo authorities to monitor all detention centers. In order to maximise its effectiveness, the parties who give it authority to monitor should agree to the prompt publication of the reports of the CPT's visits.

¹⁰⁷ *Ibid.*

¹⁰⁸ Human Rights Watch telephone interview with a Pristina-based OSCE Mission in Kosovo senior official, March 12, 2007.

V. Detailed Recommendations

International Organizations with a role in Kosovo's Incoming Institutions

To the Council of the European Union

- Subject the EU police and justice mission in Kosovo to the jurisdiction of the future Constitutional Court, so that the court can hear complaints that actions of the mission or its agents have resulted in constitutionally protected human rights being violated.
- Subject the EU police and justice mission in Kosovo to the jurisdiction of the Ombudsperson Institution.

To NATO member states and other governments contributing to the International Military Presence

- Enter into bilateral agreements with the government of Kosovo accepting the human rights jurisdiction of the Constitutional Court over forces deployed in Kosovo, so that it can hear complaints that actions of members of the IMP or its agents have resulted in constitutionally protected human rights being violated.
- Enter into bilateral agreements with the government of Kosovo accepting the jurisdiction of the Ombudsperson Institution over forces deployed in Kosovo.
- Cooperate with the International Military Presence (IMP) headquarters to establish standardized mechanisms for responding to individual complaints, and a central IMP database for such complaints.

To the Council of Europe Committee for the Prevention of Torture

- Continue to monitor places of detention in Kosovo, including those under the jurisdiction of the future IMP and ESDP operations.

Incoming Institutions in Kosovo

To the International Civilian Representative

- In consultation with the International Steering Group, subject the office of the International Civilian Representative to the human rights jurisdiction of the future Constitutional Court, and support the extension of the court's jurisdiction to the EU police and justice mission and states participating in the International Military Presence.
- In consultation with the International Steering Group, subject the office of the International Civilian Representative to the jurisdiction of the Ombudsperson Institution and support the extension of that institution's jurisdiction to the EU police and justice mission and states participating in the International Military Presence.
- Establish, in consultation with the Venice Commission of the Council of Europe, adequate internal oversight mechanisms to allow individual complaints against international personnel to be adequately investigated and any violations redressed;
- Cooperate and provide access to international human rights organizations, mechanisms, and NGOs;
- Investigate and follow up, in a timely manner, any individual complaints referred either directly or indirectly to the ICR;
- Communicate with the individual complainants in a timely manner.

To the EU Police and Justice Mission to Kosovo

- Formally invite the Kosovo Police Inspectorate to oversee all internal investigations.
- Create a tracking mechanism within the mission to keep complainants in Kosovo informed about investigations in police officers' countries after they are sent home, and facilitate their ongoing cooperation with investigations in Kosovo.
- Harmonise operating procedures and equipment of all national police contingents;

- Promulgate clear rules for operational modalities and use of force in riot control situations that comply with all relevant international standards on the use of force by law enforcement officers;
- Put in place adequate and transparent internal oversight mechanism for the police;
- Raise public awareness of the existence of oversight mechanisms and channels of redress for human rights complaints;
- Promptly investigate individual complaints and report the results back to the complainants in a timely manner;
- Ensure access for the Committee for the Prevention of Torture to all places of detention, and consent to the publication of any reports issued by the committee on Kosovo.

To the International Military Presence

- Draft agreements with troop-contributing nations to set up standardized mechanisms for dealing with individual complaints;
- Establish a central database of all third-party complaints to keep track of cases referred and to prevent discontinuity arising from frequent troop rotation;
- Ensure access for the Committee for the Prevention of Torture to all places of detention, and consent to the publication of any reports arising from that access.

To the Government of Kosovo

- Take steps to encourage the extension of the Constitutional Court's jurisdiction to the office of the International Civilian Representative and the EU police and justice mission, and encourage states participating in the International Military Presence to enter into bilateral agreements with the government of Kosovo accepting the jurisdiction of the Constitutional Court over forces deployed in Kosovo;
- Support the restoration of the Ombudsperson Institution's jurisdiction to investigate complaints against international civilian and military institutions, including by entering into bilateral agreements on such jurisdiction with states participating in the International Military Presence;

- Ensure access for the Committee for the Prevention of Torture to all places of detention, and consent to the publication of any reports arising from that access.

Continuing Institutions in Kosovo

To the OSCE Mission in Kosovo

- Systematically monitor the future international presence in Kosovo, especially its role in the criminal justice system, and make public any findings.

To the European Commission's Liaison Office in Kosovo

- Critically assess the human rights performance of the international civilian and military actors in Kosovo while monitoring Kosovo within the framework of the Stabilization and Association Process Tracking Mechanism (STM).

To the Ombudsperson Institution

- Thoroughly investigate all allegations of human rights abuse against national and—subject to mandate—international institutions, and make public the findings of those investigations.

Outgoing Institutions in Kosovo

To the United Nations Mission in Kosovo (UNMIK)

- Immediately operationalize the Human Rights Advisory Panel;
- Promptly and publicly respond to allegations of human rights abuse caused directly or indirectly by UNMIK's actions;
- Consent to the publication of any report on Kosovo by the Committee for the Prevention of Torture.

To UNMIK Police

- Establish standardized oversight procedures by endowing the Kosovo Police Inspectorate with a formal mandate to oversee UNMIK internal investigations;
- Harmonise operating procedures and equipment of all national police contingents, particularly in relation to riot and crowd control, to ensure that

- they comply with all relevant international standards on the use of force by law enforcement officers;
- Promptly and publicly investigate alleged cases of police abuse, including by following up when suspect or responsible police officers return to their home country, and make public the findings of any investigation and follow up;
 - Respond in an accurate and timely manner to public queries related to police abuse;
 - Take all necessary steps to identify any individual criminal responsibility on the part of UNMIK police officers and their commanders involved in the deaths and wounding of protestors on February 10, 2007, compensate the victims or their families, and make public the conduct and outcome of investigations as a whole.

To KFOR Headquarters

- Put in place agreements with troop-contributing countries to set up standardized mechanisms to investigate complaints involving KFOR, to ensure uniform standards for investigation, prosecutions, and compensation;
- Task Liaison and Monitoring Teams to be the points of contact for complaints by members of the public;
- Establish a centralized database to ensure that complaints are adequately investigated and followed up, particularly when peacekeepers are sent home;
- Promptly inform complainants about the outcome of the investigation;
- Consent to the publication of any report on Kosovo by the Committee for the Prevention of Torture.

Human Rights Watch Reports on Kosovo

Not on the Agenda: The Continuing Failure to Address Accountability in Kosovo Post-March 2004, 5/2006

Failure to Protect: Anti-Minority Violence in Kosovo, March 2004, 7/2004

Under Orders: War Crimes in Kosovo, 10/2001

Kosovo: Rape as a Weapon of “Ethnic Cleansing,” 3/2000

Civilian Deaths in the NATO Air Campaign, 2/2000

A Village Destroyed: War Crimes in Kosovo, 10/1999

Abuses against Serbs and Roma in the New Kosovo, 10/1999

“Ethnic Cleansing” in the Glogovac Municipality, 7/1999

NATO’s Use of Cluster Munitions, 5/1999

Kosovo Flashes 1-50, 3-6/1999

A Week of Terror in Drenica, 2/1999

Detentions and Abuse in Kosovo, 12/1998

Humanitarian Law Violations in Kosovo, 10/1998

Persecution Persists: Human Rights Violations in Kosovo, 12/1996

Human Rights Abuses of Non-Serbs in Kosovo, Sandzak and Vojvodina, 10/1994

Open Wounds: Human Rights Abuses in Kosovo, 3/1994

Abuses Continue in the Former Yugoslavia: Serbia, Montenegro and Bosnia-Herzegovina, 7/1993

Human Rights Abuses in Kosovo, 10/1992

Human Rights in a Dissolving Yugoslavia, 1/1991

Yugoslavia: Crisis in Kosovo, 3/1990