



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-seventh session

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Concluding observations of the Human Rights Committee

KOSOVO (SERBIA)

1. The Committee considered the report submitted by the United Nations Interim Administration Mission in Kosovo on the human rights situation in Kosovo since June 1999 (CCPR/C/UNK/1) at its 2383rd, 2384th and 2385th meetings (CCPR/C/SR.2383, 2384 and 2385), held on 19 and 20 July 2006, and adopted the following concluding observations at its 2394th meeting (CCPR/C/SR.2394), held on 27 July 2006.

A. Introduction

2. The Committee welcomes the submission by the United Nations Interim Administration Mission in Kosovo (UNMIK) of a report on the human rights situation in Kosovo since 1999, pursuant to a request formulated by the Committee in its concluding observations on the initial report of Serbia and Montenegro (CCPR/CO/81/SEMO, para. 3) in 2004. The Committee notes with appreciation that UNMIK, on the basis of its obligations under Security Council resolution 1244 (1999) to protect and promote human rights in Kosovo, prepared its report in general conformity with the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents, as well as the Committee's own reporting guidelines.

3. The Committee regrets the lack of statistical data and of information on the practical implementation of the Covenant on Civil and Political Rights in Kosovo since 1999. It appreciates the dialogue with the UNMIK delegation. The Committee acknowledges with appreciation the efforts undertaken by Serbia to facilitate this dialogue and takes note of its introductory statement.

4. The Committee notes that certain problems resulting from the role of UNMIK as an interim administration and, at the same time, a United Nations body whose staff members enjoy privileges and immunities, the gradual transfer of competencies from UNMIK to the Provisional Institutions of Self-Government (PISG), the existence of Serbian parallel court and administrative structures in some parts of Kosovo, and the uncertainty about the future status of Kosovo raise questions of accountability and impede the implementation of the Covenant in Kosovo. However, the Committee recalls general comment No. 26 (1977) on continuity of obligations which states that the rights guaranteed under the Covenant belong to the people living in the territory of a State party, and that once the people are accorded the protection of the rights under the Covenant, such protection devolves with territory and continues to belong to them, notwithstanding changes in the administration of that territory. The protection and promotion of human rights is one of the main responsibilities conferred on UNMIK under Security Council resolution 1244 (1999). Moreover, as part of the applicable law in Kosovo and of the Constitutional Framework for the Provisional Institutions of Self-Government, the Covenant is binding on PISG. It follows that UNMIK, as well as PISG, or any future administration in Kosovo, are bound to respect and to ensure to all individuals within the territory of Kosovo and subject to their jurisdiction the rights recognized in the Covenant.

B. Positive aspects

5. The Committee notes that the Covenant was made part of the applicable law in Kosovo, as defined in UNMIK Regulation 1999/1, and amended in UNMIK Regulation 1999/24, *On the Law Applicable in Kosovo*, binding on all persons undertaking public duties or holding public office in Kosovo, and that it was subsequently included in the Constitutional Framework for the Provisional Institutions of Self-Government, promulgated by UNMIK Regulation 2001/9.

6. The Committee welcomes the efforts made by the Ombudsperson Institution in Kosovo, which was created in 2000 by UNMIK Regulation 2000/38 as an independent institution reporting to the Special Representative of the Secretary-General, until its replacement by UNMIK Regulation 2006/6 providing for the appointment of a local Ombudsperson by the Assembly of Kosovo.

7. The Committee welcomes the promulgation on 6 July 2003 of a Provisional Criminal Code which includes chapters on crimes under international law (i.e. war crimes and crimes against humanity, as defined in the Rome Statute of the International Criminal Court, and torture, as defined in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment), on sexual offences, and on new forms of alternative punishment such as orders for community service, as well as of a Provisional Criminal Procedure Code which seeks to strengthen the judicial oversight of detention, e.g. by allowing detainees or their defence counsel to petition a judge at any time to determine the lawfulness of detention.

C. Principal subjects of concern and recommendations

8. The Committee is concerned about the legal uncertainty resulting from the failure to specify which provisions of the formerly applicable law are being replaced by those UNMIK Regulations and Kosovo Assembly laws which merely state that they supersede any inconsistent

laws or provisions. It is also concerned by the legal uncertainty created by the existence of a parallel court system administered by the Ministry of Justice of Serbia, in certain parts of Kosovo (arts. 2 and 4).

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

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

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

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

UNMIK should ensure that full cooperation is extended to the new Ombudsperson, in particular by PISG, and should reconsider arrangements for the authoritative human rights review of acts and omissions by UNMIK.

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

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

12. The Committee is concerned about the continuing impunity enjoyed by some perpetrators of war crimes and crimes against humanity committed prior to the UNMIK mandate and about ethnically motivated crimes perpetrated since June 1999, including those committed in March 2004, as well as the failure to effectively investigate many of these crimes and bring perpetrators to justice. The Committee regrets the failure of UNMIK to fully cooperate with the International Tribunal for the Former Yugoslavia (arts. 2 (3), 6 and 7).

UNMIK, in cooperation with PISG, should investigate all outstanding cases of war crimes, crimes against humanity and ethnically motivated crimes committed before and after 1999, including where the perpetrators may have been Kosovo Albanians, ensure that the perpetrators of such crimes are brought to justice and that victims are adequately compensated. It should provide effective witness protection programmes, including by means of witness relocation, and extend full cooperation to International Criminal Tribunal for Yugoslavia prosecutors.

13. The Committee, while acknowledging the work done by the Office of Missing Persons and Forensics, is concerned that some 1,713 ethnic Albanians and 683 non-Albanians, including Serbs, Roma, Ashkali and Egyptians, continued to be reported as missing as of May 2006, that low priority has been given to investigations of disappearances and abductions by the Missing Persons Unit of the UNMIK police and, since 2003, by the Central Criminal Investigative Unit, and that in closed cases of disappearances and abductions perpetrators were rarely, if ever, prosecuted and brought to justice (arts. 2 (3), 6 and 7).

UNMIK, in cooperation with PISG, should effectively investigate all outstanding cases of disappearances and abductions and bring perpetrators to justice. It should ensure that the relatives of disappeared and abducted persons have access to information about the fate of the victims, as well as to adequate compensation.

14. The Committee, while acknowledging the progress made in the past few months, notes with concern that Roma, Ashkali and Egyptian internally displaced persons (IDPs) living in camps in lead-polluted areas in north Mitrovica since 1999 have been relocated only recently, although the negative effects on the health of the communities concerned were known since mid-2004. The Committee is also concerned about the limited extent of consultation with the IDP communities prior to their relocation, the proximity of the temporary relocation camp Osterode to one of the contaminated sites, and the failure to provide medical follow-up treatment to the affected persons (art. 6).

UNMIK should ensure that the remaining inhabitants of lead-contaminated IDP camps, as well as those temporarily transferred to the Osterode camp, are relocated to environmentally safe areas, following their consultation in accordance with the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), and that the victims of lead contamination are provided with adequate medical treatment and access to effective remedies to seek and obtain compensation for any damage caused to their health.

15. The Committee is concerned about allegations of excessive use of force by UNMIK, the Kosovo Force (KFOR) and the Kosovo Police Service (KPS) and the reported failure to investigate, prosecute and convict many of those responsible for such acts (arts. 2 (3), 6 and 7).

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

16. The Committee is concerned about the incidence of trafficking in human beings, especially women and children, and about reports that traffickers are rarely prosecuted and convicted. It is also concerned that victims of trafficking are often not informed of their rights and denied access to a lawyer or interpreter upon arrest, and that the Action Plan to Combat Trafficking in Human Beings fails to incorporate adequate measures for victim assistance and support (art. 8).

UNMIK, in cooperation with PISG, should ensure the effective investigation and prosecution of persons involved in trafficking, including UNMIK and KFOR personnel. It should also ensure protection as well as adequate access by victims to lawyers and interpreters, health care and counselling, and to other forms of assistance and support, and review its Action Plan to Combat Trafficking in the light of the Covenant.

17. The Committee notes with concern that criminal suspects have been arrested solely under a detention directive of the Commander of KFOR and under executive orders of the Special Representative of the Secretary-General without being brought before a judge promptly and without access to an independent judicial body to determine the lawfulness of their detention (arts. 9 and 14).

UNMIK should revoke the Regulation conferring power on the Special Representative of the Secretary-General to detain and expel individuals, seek the cessation of detentions under Commander of KFOR Detention Directive 42, and ensure that all persons arrested under the discretionary powers of UNMIK police or under a court order are informed of the reasons for their arrest and of any charges against them, brought promptly before a judicial authority, granted access to a lawyer and to proceedings before a court to determine the lawfulness of their detention, and are tried without undue delay.

18. The Committee is concerned about the very low number of minority returns and the inability of displaced persons to recover their real property, including agricultural lands (art. 12).

UNMIK, in cooperation with PISG, should intensify efforts to ensure safe conditions for sustainable returns of displaced persons, in particular those belonging to minorities. In particular, it should ensure that they may recover their property, receive compensation for damage done and benefit from rental schemes for property temporarily administered by the Kosovo Property Agency.

19. The Committee is concerned about the restricted freedom of movement and access to essential services, such as judicial remedies, health care and education, and personal documents, of minority communities living in microenclaves (art. 12).

UNMIK, in cooperation with PISG, should ensure freedom of movement and access to essential services to minority communities, including those living in microenclaves.

20. The Committee is concerned about the absence of adequate guarantees for the independence of international judges and prosecutors. It is concerned about the low remuneration of local judges and prosecutors, the low representation of ethnic minorities in the judiciary, the excessive length of civil court proceedings and court backlogs and the frequent failure to enforce judgements (art. 14).

UNMIK, in cooperation with PISG as required, should establish independent procedures for the recruitment, appointment and discipline of international judges and prosecutors, ensure adequate terms and conditions for local judges and prosecutors whereby they are shielded from corruption, increase the representation of ethnic minorities in the judiciary, assign additional judges to courts with case backlogs and ensure enforcement of judgements without delay.

21. The Committee notes with concern that members of minority communities have only limited access to the conduct of public affairs, as well as to public service, and that discrimination against minorities, including the Roma, is widespread in Kosovo (arts. 2, 25 and 26).

UNMIK should ensure that PISG increase the employment of members of minorities at the central and municipal levels of the Kosovo Civil Service, guarantee their equal enjoyment of the rights protected under the Covenant, and ensure the effective participation of all minorities in the conduct of public affairs, including in the ongoing negotiations on the future status of Kosovo.

22. The Committee is concerned about the selective use of certain official languages in official dealings and the lack of opportunities for minority children, in particular Roma children, to receive instruction in, and of, their languages (art. 27).

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

23. The Committee requests that the text of the present report and these concluding observations be made public and broadly disseminated throughout Kosovo, and that the next periodic report be made available by relevant authorities to civil society and to non-governmental organizations operating in Kosovo.

24. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, UNMIK, in cooperation with PISG, should submit within six months information on the follow-up given to the Committee's recommendations in paragraphs 12, 13 and 18.