

TREATY BODY MONITOR

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Information submitted to the Committee

UNMIK supplementary document

The United Nations Interim Administration Mission in Kosovo (UNMIK) submitted information to the Committee for Economic, Social and Cultural Rights (the Committee) on 16 October 2007.¹ These

¹ E/C.12/UNK/1, available at www2.ohchr.org/english/bodies/cescr/cescrs41.htm.

documents were submitted as an addendum to the State report of Serbia, which was considered by the Committee in May 2005.²

The **core document** provided information the geographic, demographic and economic structures in Kosovo before and after the conflict of 1998 to 1999. A brief history of past events was given which was followed by a detailed outline of the political and legal structures which have been put in place since UNMIK took over the administration of the province in June 1999.

The **treaty specific document** provided details on the efforts made to overcome social, economic and cultural problems and meet the obligations stipulated in the *International Covenant on Economic, Social and Cultural Rights* (the Covenant). UNMIK also recognises that there is still much progress to be made. Among the key areas of concern are: poverty³ and unemployment; the damaged education system;⁴ ongoing problems relating to property ownership; and the many thousands of displaced persons. Discrimination against minority communities, most notably Roma, Ashkali and Egyptians (RAE), and Kosovo Serbs, is a recurrent issue present in most of the problems raised, reflecting the complicated ethnic composition of the territory.

List of issues

The most significant issue raised in the Committee's list of issues,⁵ also mentioned by numerous non-governmental organisations (NGOs), is the absence of the Covenant in domestic law.⁶ The Committee also asked about the involvement of civil society organisations in the preparation of the report, since details of the process are not included therein. The Committee requests up-to-date statistics on certain issues such as the representation of women in Government. Other questions relate to the results of certain programmes which were outlined in the report, such as the process of return of refugees and internally displaced persons (IDPs) and the new community-based approach to mental health. The Committee also requests further information on the system of data collection which is a widely-acknowledged problem and one which is also pointed out by NGOs.

The list of written replies was submitted on 2 October 2008. In its replies, UNMIK notes that the Covenant can be directly applied under UNMIK *Resolution 1999/24*. It was nevertheless unable to comment on the official reason behind the omission of the Covenant from the new Constitution of Kosovo. The replies expose a significant lack of reliable statistics; much of the information requested by the Committee is not available or disaggregated. Some answers provide substantial replies to the questions posed, including on efforts made to encourage returns of refugees and IDPs and measures to target the high rate of unemployment. However, a large number of questions are left unanswered. Among these are the issues of: measures to regularise the situation of persons working in the informal economy; minimum wages; measures to prevent and provide support for victims of domestic violence; measures to combat trafficking; child labour; poverty reduction strategies; and high school drop-out rates.

NGO information

One individual NGO⁷ and three coalitions of NGOs⁸ submitted **written reports** to the Committee.⁹

² During the examination of Serbia in May 2005, Serbia claimed it was unable to provide information on the implementation of the *International Covenant on Economic, Social and Cultural Rights* (the Covenant) in Kosovo and Metohija after June 1999, when the area was brought under United Nations administration (UNMIK) and Serbia lost jurisdiction over the territory. Serbia therefore suggested that UNMIK should present information on the implementation of the Covenant in Kosovo and Metohija. Documents related to the examination of Serbia are available at www2.ohchr.org/english/bodies/cescr/cescrs34.htm.

³ The poverty rate was quoted in the report at 37 percent.

⁴ During 1999, schools were deliberately targeted; over two thirds of schools were destroyed or severely damaged.

⁵ E/C.12/UNK/Q/1, available at www2.ohchr.org/english/bodies/cescr/cescrs41.htm.

⁶ The Covenant was not included in UNMIK legislation and was not one of the treaties mentioned as directly applicable under Chapter 3.1 of Kosovo's new Constitution of 2006.

⁷ Centre on Housing Rights and Evictions (COHRE).

The Kosovo Women's Network and UNIJA questioned why the Covenant was omitted from domestic law. UNIJA also expressed concern about discriminatory practices against IDPs and minorities, including Kosovo Serbs. Wages among these groups were reportedly much lower than among Kosovo Albanians and as many of 70 percent of Roma, Ashkali and Egyptian (RAE) communities did not continue school past the age of 12. The anti-discrimination law was deemed by NGOs to be just a 'law on paper' which was not properly enforced, particularly as the judiciary and population of Kosovo were not adequately aware of its existence.¹⁰ UNIJA also complained that no NGOs, representatives of civil society or minority groups were involved in the preparation of the report. The Union of Independent Trade Unions of Kosovo raised the issue of the privatisation of socially owned enterprises (SOEs), which has left tens of thousands of people, in particular Kosovo Serbs, unemployed and without compensation.¹¹

Housing issues were the main cause for concern, in particular the slow rate of returns of refugees and IDPs, and widespread discrimination against RAE communities, ethnic Serbs, and other minorities. The Centre on Housing Rights and Evictions (COHRE) and UNIJA raised the issue of the ethnic cleansing which has allegedly taken place since 1999. Since the beginning of the UNMIK mandate, tens of thousands of RAE families have been expelled from their homes and have faced violence, rape, arson, and the destruction of their property. According to UNHCR figures in 2007, nearly 230,000 minority members had been displaced since 1999. Other housing related problems mentioned included lead poisoning in IDP camps and the authorities' allegedly inadequate reaction to it,¹² and the efforts of authorities to regularise informal settlements.

The Kosovo Women's Network expressed concern about the position of women and children with regard to employment, housing, social insurance and economic exploitation. This group, together with the Union of Independent Trade Unions of Kosovo raised concerns about the high rate of female unemployment.¹³ Child labour and a lack of protection for victims of domestic violence were also highlighted as pressing issues affecting women and children.

Themes and issues

The delegation of UNMIK was led by Mr Roque Raymundo,¹⁴ Senior Human Rights Advisor, UNMIK. He was supported by a small but high-level delegation consisting of representatives from UNMIK, the Organization for Security and Cooperation in Europe (OSCE) and the newly formed Kosovo Government.¹⁵

⁸ Kosovo Women's Network (KWN), representing over 80 women's organisations; UNIJA, a federation of 6 IDP associations; Union of Independent Trade Unions of Kosovo (UITUK).

⁹ The NGO reports are available at www2.ohchr.org/english/bodies/cescr/cescrs41.htm.

¹⁰ There has been no registered court verdict invoking the anti-discrimination law between 2004 and 2007.

¹¹ The means by which this process was carried out meant that employees were only reinstated in the company if they were employed at the time of privatisation. Since many non-Albanians had been discriminated against and dismissed before this process began in 2003, many thousands have been left unemployed.

¹² Lead contamination in an IDP camp in 2005 affected many Roma Mahalla whose homes had been destroyed and who were placed in camps by UNMIK/UNHCR in 1999/2000. After the lead contamination, these people were de facto abandoned until 2006 which was put down to a lack of funding. Subsequent attempts to re-house these people have been met with opposition since the authorities tried to relocate them in newly-built apartments when most of them had previously owned much larger houses.

¹³ Women's participation in the labour market is just 30 percent, compared to 68 percent in the case of men.

¹⁴ According to the information provided by UNMIK on 3 November 2008.

¹⁵ The delegation included heads of offices, as well as directors and chiefs of department: Mr Shahzad Bangash, Head of the Office of Communities Returns and Minority Affairs; Mr Habit Hajredini, Director of the Advisory Office on Good Governance and Human Rights (AOGG) in the Office of the Prime Minister; Ms Sadete Demaj, representative from the AOGG in the Office of the Prime Minister; Mr Christopher Decker, Director of the Department of Monitoring, OSCE; Mr Wolff-Michael Mors, Chief of the Governance Section/ Department of Monitoring and Mr Ernest Tschoepke, Chief of the Office of Judicial Affairs of UNMIK.

Mr Philippe Texier, the Chairman of the Committee, made an introductory statement explaining why UNMIK was presenting to the Committee. He stressed the fact that CESCR is a human rights body, not a political body. As such, it was not competent to comment on the status of Kosovo and Metohija and would not accept any political statements during the session. The Serbian Ambassador was permitted to make a short introductory statement but was not allowed to participate in the dialogue.

Mr Feodor Stracević, Assistant Minister at the Ministry of Foreign Affairs of Serbia, made a short introductory speech on behalf of Serbia. He thanked UNMIK for submitting its information but claimed the report did not accurately represent the real situation on the ground and that little progress had been made since 1999. He categorised the human rights situation in Kosovo and Metohija as very grave and claimed that, as a result of the politicisation of human rights in the province since 2003, standards were not being respected. His major criticism was that the Covenant had not been included in the new constitution. Among the human rights concerns he highlighted were: discrimination against non-Albanians, in particular Serb and Roma communities; the failure to properly apply the law, leading to an environment of impunity; the very slow process of returns; the privatisation of SOEs; and the lack of protection of the area's cultural heritage.

Mr Tschoepke, Chief of the Office of Judicial Affairs of UNMIK, presented UNMIK's document to the Committee. He began by explaining the situation of authority in Kosovo and Metohija: namely, UNMIK continues to operate under Security Council Resolution 1244.¹⁶ It was noted, however, that since Kosovo's declaration of independence in February 2008, the situation on the ground had changed and UNMIK had to evolve accordingly. Mr Tschoepke noted various efforts that had been made in the field of human rights, including the establishment of the Human Rights Advisory Panel, an independent mechanism mandated to review human rights complaints. The UNMIK delegation also recognised that challenges remained. Key priorities included the need to focus on marginalised groups and the return of IDPs.

Initially the atmosphere was slightly tense between the Serbian representative, the UNMIK delegation and the Committee, but Mr Texier was strict in not allowing any political statements to be made, and the session was mainly constructive. The Committee appeared confused as to who was actually in control in Kosovo in terms of the protection and promotion of human rights: despite the fact that UN Resolution 1244 was still in place, there were substantial areas where UNMIK was unable to act as others had taken over control. Mr Tschoepke, who led the discussion, was very clear in responding to the questions posed, assigning them to relevant members of the delegation.

Constitutional and legislative framework for the implementation of the Covenant

The Committee was very critical of the fact that the Covenant was not expressly included in Kosovo's new Constitution. Mr Eibe Riedel commented that while UNMIK was still operating under UN Resolution 1244, it had a responsibility to ensure the realisation of economic, social and cultural rights. In the concluding observations the Committee recommended that the Covenant be included in the Constitution's list of directly applicable treaties.

The *Anti-Discrimination Law* was the subject of much discussion. Ms Barbara Elaine Wilson questioned the lack of effective remedies¹⁷ to invoke the law before the courts and emphasised the need for an awareness-raising campaign. The delegation suggested that efforts were being made to increase public awareness of the law; for example the law had been published in the Roma languages as well as in Bosnian and brail. Mr Tschoepke acknowledged that the court system was still developing and that awareness of the *Anti-Discrimination Law* within the judiciary was not high enough, though this was put down to a lack of training

¹⁶ The independence of Kosovo and Metohija, as declared in February 2008, has not been recognized by the UN Security Council. As such, Resolution 1244 which gave UNMIK the authority to administer the territory, still remains active.

¹⁷ There has been no registered court verdict on discrimination between 2004 and 2007.

rather than will. In the concluding observations the Committee suggested that training be given to judges and civil servants on the *Anti-Discrimination Law*, and that the law be translated into Serbian.

The Committee urged UNMIK to encourage the appointment of a permanent Ombudsperson. Questions were also asked with regards to the Human Rights Advisory Panel which was set up in 2006 to deal with complaints against UNMIK. The Committee remarked in the concluding observations that the independence of the Panel was questionable since its office was located within UNMIK's headquarters, and that it needed more funds to deal with its increasing caseload.

Unemployment

One of UNMIK's key objectives was to reduce unemployment, though the rate remained very high.¹⁸ Ms Bras Gomes commented that in some Serbian communities the unemployment rate was as high as 70 percent and in RAE communities this figure even reached 98 percent. This was put down to a lack of positive action by the authorities. The delegation recognised the very high level of unemployment, especially among women, and agreed that not enough affirmative action had been taken. However, it added that huge efforts had been exerted to create new jobs and to train employees, including those from 31 minority groups.

The privatisation of socially owned enterprises (SOEs) was also an issue of concern. Ms Bras Gomes deemed the process discriminatory since it adversely affected many returnees who were former SOE employees. Ms Wilson asked what efforts had been made to reverse this discrimination by helping IDP returnees to regain employment in SOEs. The delegation said that UNMIK's regulations guarantee compensation to employees who would have been entitled to compensation and continued employment if they had not been discriminated against. It also assured that provisions existed in the Kosovo legislation to protect persons who had been discriminated against in private companies. However, there was no mention of any positive action taken.

The Committee urged in its concluding observations that UNMIK, in cooperation with the Kosovo authorities, intensify efforts to promote employment opportunities, especially for vulnerable groups such as women, youth, non-Albanians, returnees and IDPs. It was also suggested that legislation on SOEs be reviewed with regards to IDPs and refugees.

Adequate standard of living

The great challenge of poverty reduction was highlighted in the introductory presentation by Mr Tschoepke. Mr Pillay asked whether UNMIK had adopted a human rights-based approach to poverty. The delegation reported that decreasing poverty was a key priority for 2008 to 2011 and noted the foundation of a working group in 2008 to address political and social issues as well as an initiative led by the Ministry of Work and Welfare to find seasonal employment in other countries; a move supported by other European Union countries. Ms Bras Gomes also touched on social security, questioning the lack of information provided. She suggested that RAE communities had problems accessing services since many of them were unregistered. The delegation confirmed that although a pension fund was universally available, discrimination by social workers did occur on the ground, preventing the de facto application of this principle.

Regarding the prevention of HIV/AIDS, the delegation noted that the Ministry of Health, together with several international organisations including UNICEF, had launched a campaign to raise awareness of the need for preventive measures. The delegation also addressed the high prenatal and stillborn death rates,¹⁹ claiming that measures had been taken to combat these, including the establishment of the office for the Health of Mother and Child. Discrimination against minorities with regards to healthcare was raised but no direct response was given.

¹⁸ The unemployment rate stated in UNMIK's report, as quoted by the IMF, was 55 percent.

¹⁹ In 2007, 556 prenatal deaths and 319 stillborn deaths were recorded.

In the concluding observations, the Committee recommended that UNMIK help Kosovo authorities to effectively implement the Poverty Eradication Plan 2008-2011 as well as advise the Kosovo Assembly to adopt the draft bill on minimum wages. The need to improve poor infant and maternal mortality rates was also stressed. With regards to social security, the Committee recommended that efforts be made to solve the problem of the lack of documentation among RAE communities, as well as to ensure that pensions, disability benefits and social assistance payments are sufficient to allow for an adequate standard of living.

Housing

The Serbian representative suggested that returns of refugees and IDPs had virtually halted since Kosovo's declaration of independence. Ms Wilson followed up by asking how safe returns were being encouraged and what was being done to help forced returnees to integrate. Mr Raydini, Director of the Advisory Office on Good Governance and Human Rights (AOGG) in the Office of the Prime Minister, acknowledged that the rate of returns was very low but claimed that the successful and permanent reintegration of returnees was very high at 84 percent. Regarding forced returns, the delegation confirmed that a program exists which includes helping returnees with documentation and access to facilities.

The lack of documentation, especially among minority communities, was highlighted as a problem which prevented de facto access to basic rights. The delegation claimed that the Civil Rights Programme Kosovo together with the UNHCR had facilitated 4,300 people to get documentation, but added that further technical assistance was needed.

Mr Pillay raised an issue of concern to many NGOs regarding the poor housing conditions of minority communities, many of whom live in illegal settlements. There was no comment made on this by the delegation.

The Committee suggested in its concluding observations that UNMIK, in cooperation with the Kosovo authorities, intensify its efforts to ensure the safe and stable return of IDPs and refugees as well as assist RAE communities to gain documentation.²⁰ The Committee also urged UNMIK, in cooperation with the Kosovo authorities, to safely relocate and reintegrate RAE families who were moved into IDP camps, back into their old communities.

Education

In the opening presentation, Mr Tschöepke highlighted education as a top Government priority. The Committee expressed concern about the high dropout rates, especially among RAE children. Mr Kerdoun asked whether there was any consideration of making all levels of education accessible to minority groups in their mother tongue. Ms Wilson was interested in the the delegation's views on encouraging inter-cultural and inter-ethnic dialogue in schools. The delegation responded that addressing the issue of dropouts, especially among ethnic minorities, was considered a priority. It affirmed that the Ministry of Education, Technology and Science had implemented 'Intensive Catch up Classes'²¹ and that minorities were able to learn in their mother tongue at all levels of education. Regarding inter-cultural dialogue the delegation claimed that a new campaign, similar to the one which successfully targeted violence in schools in 2007, was being prepared and would focus on inter-ethnic and inter-cultural dialogue. However the lack of funding would remain a challenge, given that these campaigns were donor-reliant.

In the concluding observations, the Committee noted the need to sensitise parents on the importance of education for their children. Increased catch-up and Albanian language classes for RAE children as well as

²⁰ An estimated 20-30% of RAE individuals do not have official documentation

²¹ A programme of catch-up classes was initiated between 2002-2003, targeting minority groups, which allowed students aged 6-19 to catch up on up to two years of schooling.

the need to allow non-Albanian children adequate opportunities at all levels of education, were also recommended.

Gender equality

The Committee expressed concern about persisting patriarchal stereotypes in Kosovo. The poor representation of women in decision-making positions, especially at the municipal level was raised by Ms Riera, who also questioned the limited budget of 180,000 Euros for programs addressing equality. The delegation claimed that the implementation of laws in general remained a problem²² and accepted that further work needed to be done to encourage gender equality in municipalities.²³

In the concluding recommendations, the Committee suggested that UNMIK, in cooperation with the Kosovo authorities, intensify efforts to increase the representation of women (especially from non-Albanian communities) in management positions at the municipal level and in central government bodies in order to comply with the 40 percent quota contained in the *Gender Equality Law*.

Other issues

Regarding **domestic violence**, the Committee expressed concern that, although there existed a protection mechanism, there was a lack of clarity as to what constituted a crime, and no criminal penalty for the perpetrators. The delegation claimed that successful work had been carried out in this regard; assistance was provided to victims²⁴ and police investigations of domestic violence were accorded a high priority. There was no specific response to the queries regarding what constituted a crime under domestic violence and what the penalties were. In the concluding observations, the Committee noted with concern the high incidence (yet low number of complaints) of domestic violence cases. Mandatory training for law enforcement personnel as well as the review of sentencing policies, the strengthening of protection and the criminalisation of spousal rape were recommended by the Committee.

On **child labour**, the delegation reported that the issue was being addressed by the recently established Committee for the Prevention of Child Labour. However, the Committee concluded that more needed to be done to effectively prevent and reduce the incidence of child labour.

Another recurring issue was the **lack of reliable data** which limited the authorities' ability to develop effective, targeted policies. The delegation claimed that census pilot projects were currently underway, but added that this process would take time. The Committee recommended that disaggregated data be collected on many of the issues mentioned during the session.

The Committee also engaged the delegation in a discussion on the following themes: trafficking in persons, especially children; the lack of respect for and protection of the cultural heritage of non-Albanian minority groups; the right to strike and to conduct collective bargaining; and government action on sexual health, especially HIV/AIDS awareness initiatives.

²² The 2004 Gender Equality Law defines a 40 percent quota for the representation of women at all levels in executive, legislative and judicial bodies.

²³ At the managerial level 79.27 percent of the workforce is male, whereas just 26.3 percent is female.

²⁴ Assistance has been provided to 50 percent of victims of domestic violence. Six orphanages/shelters have also been set up to receive child victims, which was deemed sufficient to fulfil needs.

Conclusions and next steps

The Serbian representative was permitted to make a short statement at the end of the session. He concluded that Serbia was dissatisfied with the replies given by the UNMIK delegation, suggesting that while the latter constantly claimed initiatives were being planned, little information was provided on what was actually being done in reality. Nevertheless he thanked the Committee for its helpful questions and UNMIK for the information it had provided. He added that the position on the ground in Kosovo could not officially change unless the Security Council passed a resolution to revoke UNMIK's mandate. Since this had not yet happened, he appeared to insinuate that the area officially remained part of Serbia

In the concluding recommendations the Committee welcomed recent positive developments including the establishment of the Ombudsman Institution (2000), the Anti-Discrimination Law (2004) and the Gender Equality Law (2004). The lack of disaggregated statistical data was regretted. The Committee noted that the population of Kosovo remained deeply divided along ethnic lines and urged UNMIK to encourage the relevant Kosovo authorities to encourage inter-cultural dialogue and tolerance through educational initiatives and community projects. It recommended that the concluding recommendations be widely disseminated in Albanian and Serbian as well as in minority languages if possible.

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