

**Summary Record of the dialogue between the Human Rights
Committee and the Official Delegation of the United Nations Interim
Administration Mission In Kosovo (UNMIK)
Geneva, 19-20 July 2006
NON-OFFICIAL VERSION**

This summary highlights the concerns of the Human Rights Committee that were raised during their dialogue with the UNMIK Delegation at the 87th session in Geneva, held from 19-20 July 2006. This dialogue focused on the list of issues (CCPR/C/UNK/Q/1 ref) that had been prepared by the Human Rights Committee and submitted beforehand to the UNMIK Delegation with the aim of obtaining complementary information to the initial report of the UNMIK (CCPR/C/UNK/1).

The consideration of the UNMIK report marked the first time that a United Nations mission reported to a treaty body on measures taken to implement the provisions of a treaty. The delegation and the experts agreed that this could be an important precedent for future administration missions. The delegation of Serbia was also present and the meeting began with a declaration given by the Assistant Minister of Foreign Affairs of Serbia.

Declaration of the Assistant Minister of Foreign Affairs of Serbia

The Assistant Minister of Foreign Affairs of Serbia said that the report was important for the situation of human rights in Kosovo and for future of United Nations missions. UNMIK and KFOR have been administrating the Province for 7 years and there has not been a lot of progress. In the past 7 years, human rights were very much politicised and international standards were not implemented. The human rights of members of minority ethnic communities were not always respected, especially those belonging to the Serbian community. He noted that negotiations on the status of the province were under way and that human rights were used as bargaining tools: human rights will improve only if the province is guaranteed a certain status. He said that it was unacceptable that human rights were submitted to such conditions. He added that the report did not present the situation in the field, not addressing the measures taken to implement international standards but only focussing upon legislation.

The Serbian delegation also submitted that the human rights situation was very serious and that the UNMIK failed in several areas concerning the right to life, the security and economic issues and discrimination. The international community failed to properly investigate cases of abduction of Serbs, Roma and other communities properly. He noted that the freedom of movement of minorities was very restricted and despite the efforts of the UNMIK, sustainable returns had not occurred. Sexual abuse of women and trafficking are also great concerns.

Presentation of the report:

The legal adviser of the UNMIK said that the UNMIK was given an international mandate to protect and promote human rights. He noted that the report was undertaken under the authority of the UN, independent of Serbia. In 1999, there was a need for the promulgation of new laws. New codes and legislation brought the law to conformity with international and European standards. He explained that there was no functioning court in 1999 and that since then UNMIK regulations had established a court system. UNMIK had tried to create a multi-ethnic judiciary and had provided for positive discrimination in reappointing judges and prosecutors. UNMIK is currently transferring responsibilities to local institutions and assisting their establishment. It allowed, for example, the establishment of the Ministry of Justice and the Ministry of Local Affairs.

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

The delegation submitted that there was only one recorded case in which the International Covenant on Civil and Political Rights was applied by the courts. Between 1999 and 2005, there were 20 examples of instances where the courts applied articles of the European Convention on Human Rights.

Concerning their relations with the Provisional Institution of Self-Government (PSIG), the delegation said that there has always been a consistent UNMIK policy to transfer as many responsibilities as possible to local authorities when they permitted capacity. However, the cooperation with the representatives of PSIG varied across local governments. Some were very cooperative while others were dismissive, like the President of the municipality of Pristina.

Addressing the decision to remove the Ombudsperson's competence to review the compatibility of acts of UNMIK with international human rights standards, the delegation said that, following the regulation establishing a Human Rights Advisory Panel under the authority of the PSIG, complaints of human rights violations against UNMIK were transferred to that body. Answering the concern of an expert relating to pending complaints, UNMIK said that the present arrangement still allows the Ombudsperson to receive complaints against UNMIK while the transfer to the Human Rights Advisory Panel is progressively effected. Therefore, there was no gap in the protection in human rights. The delegation added that the Human Rights Advisory Panel will provide means of redress for the violation of human rights and mechanisms of protection in accordance with European and international standards.

Answering the Committee on why the report of the ombudsman was disregarded, the delegation said that the Ombudsman's recommendations relating to the sale of property between interethnic groups was rejected because they interfered with property rights,

However, the delegation asserted that there has been legal certainty since 1999 on which former Yugoslav laws were applicable in Kosovo. Information on legislation was provided to the authorities and courts which had to apply the law. The PSIG would like to set up an independent legislative review body to evaluate if any gaps exist therein.

On the issue of UNMIK's position to ensure full respect for human rights in all parts of Kosovo, the delegation said that parallel structures, particularly Serbian governmental bodies, had functioned since the beginning of UNMIK's establishment, especially in the northern municipalities. This created legal uncertainty which affected respect for human rights. The delegation gave the example of the Serbian land registry which continues to impede property rights. The delegation said that the Kosovo Serbs must participate in their institutions and that there was no justification for their isolation in the legislation.

Concerning the situation of human rights in the North of Kosovo: the delegation stated that UNMIK had very few resources and the local authorities have tried to challenge the UNMIK's authority. This problem needs to be solved by the international community.

Violence against women and domestic violence (articles 2 (1), 3, 7, 26)

The delegation noted that UNMIK took different measures to promote gender equality in Kosovo. To this end, the Office for Gender Equality in the Prime Minister's Office was created. UNMIK also set up mechanisms to monitor activities and enhance the capacities of local authorities. Additionally, they adopted gender-sensitive legislation. The delegation

acknowledged that prior to 2003, domestic violence was not defined as an offence. It had been confused with the minor offence of violation of public peace and order. They organised training activities for the judiciary, the municipalities, and social services on the new legislation. They also organised special training programmes for police to raise awareness among public officials. However, the delegation explained that it will take more time to institute a proper policy to eliminate domestic violence and provide better protection for victims, both women and children.

The delegation noted progress regarding the increase of public awareness of domestic violence as a crime in Kosovo. According to statistics, the number of reported cases was increasing which is a positive sign that victims have begun to speak out and report their cases, as opposed to a rise in the number of incidents. There is social protection at the municipal level in collaboration with NGOs. NGOs pursued activities to assist women but there remain unreported cases. It was further highlighted that the incidence of domestic violence was higher in rural communities than in urban ones.

Regarding education, there is still discrimination against girls, especially married girls who are denied their right to education. UNMIK has been trying to develop a programme to enable all girls to exercise their right to education regardless of their status.

Right to life, and prohibition of torture and cruel, inhuman or degrading treatment (articles 6 and 7)

The delegation noted that KFOR authorised the use of force to protect ethnic minorities but they did not want to speak on their behalf. There was no data available concerning claims against KFOR and UNMIK for having exercised undue force.

In addressing the problem of lead contamination of Roma, Ashkali and Egyptian internally displaced persons in settlements, an extensive analysis was undertaken. Pollution had been caused by the fumes of illegal car batteries but UNMIK remarked that it did not affect the entire population of IDPs. UNICEF and the World Health Organisation provided assistance sending materials and food. There was progress in reconstruction; some have moved out of the contaminated camps but others have remained of their own choice.

Regarding to the 1700 missing persons recorded by the ICRC, the Committee reiterated that NGOs have observed that investigations on missing persons have been given priority by the police.

Elimination of slavery and servitude (article 8)

In relation to trafficking, one person among international staff was prosecuted and sentenced in Kosovo. The Kosovo Anti-trafficking Plan of Action addressed prevention, protection and prosecution activities. The number of successful prosecutions of traffickers was very low due to the lack of protection for witnesses. There was an increase in Kosovo of victims of trafficking and foreign victims of trafficking.

Liberty and security of the person and treatment of prisoners (articles 9 and 10)

The delegation remarked that there was no fully functioning law enforcement body after the NATO intervention in 1999. KFOR had been given the responsibility for law enforcement until the establishment of a new body. A distinct habeas corpus remedy was introduced in 2004. Habeas corpus included, amongst others, the right not to be arbitrarily detained, the right to be informed of the reasons for detention and the right to have access to a lawyer of one's choice. The delegation said that these were all attempts to give immediate access to legal representation as soon as the proceedings became criminal. More information will be

requested from the ministry of Justice and the UNMIK police. The delegation added that the powers of the prosecutor were extended and, at the same time, the rights of the defendants strengthened.

According to internal inspections of conditions of detention, UNMIK said that there were mechanisms in place to review police detention. There are numerous NGOs with full access to the facilities. Inspectors must be independent and are expected to begin their work in 2007. Reports on detention conditions will be issued.

Freedom of movement (article 12)

The delegation noted that UNMIK promotes a rights-based approach making important efforts to facilitate a safe return. All refugees have the right to return but not all of them wanted to do so, mainly because of economic factors, not only because of security concerns. Statistics reveal that ethnically motivated crimes have declined. The return of refugees is a complex issue combining socio-economic, security and political factors and the low rate of employment, which explain low returns. Moreover, following the riots of March 2004, reconstruction and the restitution of property were still incomplete. The delegation acknowledged that there were two programmes developed to aid the return of refugees: Government Assistance to Returns for organized returns and the Rapid Response Return Facility providing housing to specific categories of returnees.

Addressing the issue of removing occupants from owned property, the Kosovo Property Agency has begun to process and adjudicate claims over property, which must be effected before people can be removed. Ownership must be determined.

Right to a fair trial (article 14)

Different institutions have been established to increase the functionality and independence of the judiciary. Reaffirming a remark of the Committee, the delegation said that the independence of the judiciary was critical. However, there are jurisdictional problems. The delegation highlighted the increased representation of minorities within the judiciary, effected by employing minorities in the court system. The delegation also encouraged more Kosovo Serb applications.

Despite this, the delegation stated that there is still a lack of judges. Adjustments need to be made in this regard. As of May 2006, there were eight Court Liaison Offices providing assistance to over two-thirds of Kosovo.

In relation to witness protection, different measures have been adopted. They allow witnesses to give testimony outside the Court if they are unable to attend. Specialist witness protection measures were introduced in 2001 and a witness protection unit is now operating.

Legal aid was provided to help individuals bear court costs. Under the Regulation for Court Legal Aid, individuals are provided legal advice and assistance without discrimination. Parties are also guaranteed the right to use their own language before the court and language translations are provided at the court's expense.

Right to be equal and equality before the law (articles 2, 26)

UNMIK has accepted external scrutiny of the situation of minorities by the Council of Europe. They reported to the Council on that situation in June 2005 and were preparing a strategy to implement the ensuing recommendations.

Rights of persons belonging to minorities (art 27)

The delegation said that the educational system has been reformed. Today in Kosovo, there are various mixed schools welcoming Albanians, Turks, Roma, Ashakali and Egyptian communities without the outbreak of incidents.

However, large numbers of Roma children have no access to education because of the distance from their homes to schools and they do not have access to public transportation. Language barriers are also frequent as they do not speak Albanian.