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HUMAN RIGHTS COMMITTEE

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

**Comments by the United Nations Interim Administration Mission in Kosovo
(UNMIK) on the Concluding Observations of the Human Rights Committee
(CCPR/C/UNK/CO/1)***

[11 March 2008]

Recommendation in paragraph. 12

1. **War crimes and crimes against humanity** – Since 2004, UNMIK Department of Justice (DOJ) international prosecutors have investigated and brought to trial fourteen cases, ten of which resulted in convictions. The sentences imposed ranged from two years and five months to twenty years imprisonment. In terms of pending cases, thirty-seven cases (involving 119 suspects) are under pre-indictment. There are nine post-indictment cases (involving 35 suspects).

2. **Inter-ethnic crimes** - DOJ international prosecutors have investigated and brought to trial eight cases, resulting in six convictions. Sentences have ranged from an eight months suspended sentence to six years and six months imprisonment. In terms of pending cases, there are five pre-indictment cases involving nine suspects and three cases with unknown suspects. Post-indictment there are three cases involving five suspects.

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

3. **March 2004 riots** - The number of defendants prosecuted by international prosecutors and convicted in relation to the March 2004 riots is thirty, convicted of a total of 70 crimes (including Aggravated Murder, Inciting Ethnic Hatred, and Causing General Danger, among other offences). Of these 30 defendants, 12 received prison sentences and 18 received suspended sentences. One defendant prosecuted by an international prosecutor in relation to the March 2004 riots was acquitted, and an appeal against that acquittal filed by the international prosecutor is pending. Of those convicted, 12 defendants have announced or filed appeals. The verdicts against the remaining 19 defendants are final. A further 5 defendants are awaiting trial, and international prosecutors are continuing investigations against several additional defendants.

4. Local **prosecutors** have brought criminal charges against over 300 people, resulting in convictions for 145 persons in Municipal and District Courts. There are 21 unsolved cases. In respect to Minor Offences Courts there have been 157 persons charged, resulting in convictions for 116 persons. There are no more unsolved cases within the Minor Offences Courts.

5. As evidenced above, a substantial number of charges linked to the March 2004 riots have been brought by both local and international prosecutors.

6. In addition, any assessment of what has been, and what can be, achieved in establishing criminal responsibility for crimes committed, must bear in mind the difficulties inherent in prosecuting these types of cases. One of the biggest obstacles in establishing criminal responsibility is the gathering of evidence. These crimes generally involved large crowds within a chaotic situation. As a result, many witnesses have been unable to identify perpetrators, which is clearly a major obstacle when there has been no admission of responsibility. Unfortunately, even where witnesses can identify perpetrators, most of them are afraid or unwilling (or both) of coming forward and testifying.

7. **ICTY** – Under UN Security Council resolution 1244 of 10 June 1999, UNMIK is required to cooperate with the ICTY. UNMIK is strongly committed to cooperation with the Tribunal. The ICTY has itself verified that UNMIK's exercise of its duties with regard to cooperation with the Tribunal in general and, in particular with regard to the case against Ramush Haradinaj, has been in full conformity with ICTY judicial decisions.

8. On 17 January 2006, a Trial Chamber of the ICTY described UNMIK's actions as "diligent and responsible." On 10 March 2006, an Appeals Chamber of the ICTY dismissed allegations by the Prosecutor of preferential treatment by UNMIK toward Mr. Haradinaj and found that "UNMIK has been scrupulous about its responsibilities" regarding the provisional release of Mr. Haradinaj, and "has shown the Accused no special favours." And as recently as 20 July 2007, a Trial Chamber of the ICTY stated its satisfaction with UNMIK's "compliance with any conditions that may be imposed by the Trial Chamber."

9. On a regular basis, UNMIK coordinates closely with the Tribunal's Registry, Chambers, Office of the Prosecutor, and defence counsel. UNMIK strives to provide any, and all, assistance requested by the Tribunal in a timely and comprehensive manner. This is particularly true for requests for assistance or information from the Office of the Prosecutor. With regard to UNMIK DOJ its record of cooperation with

the ICTY is borne out in its timely and complete responses to all ICTY Office of the Prosecutor and defence counsel requests for assistance.

10. Witness protection - A Witness Protection Task Force was established on 2 August 2007 by the Principal Deputy to the Special Representative Secretary-General (PDSRSG) of UNMIK. The reason for its establishment was that witness protection services in Kosovo were insufficient. Many attempts were made in the past to improve this service, but the results were varied and often short-lived. These attempts to improve were rarely successful mainly because of the high turn-over of personnel in UNMIK Police, due to contingent rotation, but also because an effective witness protection service requires specialist knowledge and skills rarely available amongst mission personnel. Other complicating factors were -and are - the need for funding (since the Kosovo budget is severely limited) and a complete lack of international agreements with other jurisdictions to (permanently or temporarily) relocate protected persons from Kosovo, which results in difficulties to find jurisdictions willing and able to receive such persons. So far, all cases relocated to foreign jurisdictions have been done on an *ad hoc* and informal basis.

The most important part of the mandate of the Task Force is to make recommendations towards structural improvements of witness protection in Kosovo. These structural improvements include legislation, particularly the preparation of an UNMIK Regulation establishing a Witness Protection Programme; the drafting of new guidelines for the judiciary and police; and the design of new Standard Operating Procedures. The final report of the Task Force will also include a project-plan for the establishment of a Witness Protection Programme, including a recommended organizational structure and minimum resource requirements for the start-up and running of the Programme. The Task Force is expected to produce a full report on its activities and recommendations (to the PDSRSG) in the first quarter of 2008.

11. Compensation. UNMIK has established a mechanism for compensation for victims of trafficking, but for various reasons, in particular a lack of financial resources, it has not been implemented. A general compensatory scheme has not been established, again in particular due to the lack of financial resources.

Recommendation in paragraph. 13

12. Missing persons - In an attempt to correct the lack of results with respect to bringing perpetrators to justice in relating to disappearances and abductions, the UNMIK Office of Missing Persons and Forensics (OMPF) was provided with a number of international staff members with investigating and law enforcement experience. They have been invaluable in obtaining information on the whereabouts of missing persons; however, they have a purely humanitarian mandate and do not have the authority of police officers. Regarding compensation, please refer to the comments provided under paragraph 12.

13. ICTY have provided information to OMPF, including over 85,000 documents which ICTY agreed to hand over upon condition that OMPF assumes exclusive legal custody. Additionally, OMPF as part of the Sub-working group on Forensic within the Pristina - Belgrade Dialogue Working Group on Missing Persons, is refining the methodology to match and double check DNA results. This is an effort to obtain further matches and close a more files

14. The most serious problem in progressing with the missing persons' files (and consequently the prosecution of the relevant cases) appears to be the strong reluctance of potential witnesses to provide information. The total number of missing persons has decreased (it is currently 1,998). However, at present, there are virtually no further leads to explore.

15. The War Crimes Investigations Unit (WCU) was created in late 2004 and includes the former Missing Persons Unit (MPU) and the War Crimes Investigation Section (WCIS) of the former Central Criminal Investigations (CCIU). The WCU is responsible for the investigations of Crimes Against Humanity that occurred during the period of conflict including the investigation of Missing Persons cases where there are indicia of criminality.

16. The Ante Mortem & Exhumations Section (AMES) of the WCU is focused on the missing persons issue including locating grave sites and assisting the Office of Missing Persons and Forensics (OMPF) in exhuming those sites and recovering mortal remains. When there is a Missing Persons case, with indicia of criminality, a case will be opened in both the AMES and the WCIS.

17. The WCU is involved in a continuing project to update its databases in order to provide more accurate reporting information and, while a large portion is yet to be completed, the information below is the best information available at this time.

18. **Ante-mortem and Exhumations Section (AMES):** between 01 January 2007 and 31 December 2007, AMES has conducted a total of approximately 67 assessments/exhumations. From these field operations, 183 bodies and body parts have been recovered, secured and transferred to the mortuary for autopsy and identification.

| | 2004 | 2005 | 2006 | 2007 | TOTAL |
|--|------|------|------|------|-------|
| Field operations (exhumations, assessments, human remains found on surface) | 81 | 61 | 59 | 67 | 268 |
| Sets of human remains recovered (complete and incomplete bodies) | 176 | 118 | 59 | 183 | 536 |

Ante-mortem investigation cases to date

| | |
|----------------------|------|
| Total Cases | 1894 |
| Found Alive | 22 |
| Closed | 466 |
| Pending | 1366 |
| Database Not Updated | 40 |

Post-mortem investigation cases to date

| | |
|-----------------------------------|------|
| Total Cases | 1547 |
| Closed | 208 |
| Pending (Remains to OMPF for ID) | 55 |
| To OMPF for Exhumation/Assessment | 514 |
| Database Not Updated | 770 |

War Crimes Investigation Section

| | |
|------------------------------------|-----|
| Total WCU cases: | 801 |
| Under Investigation: | 35 |
| Pending Invest / Assignment: | 670 |
| Referred to DOJ: | 21 |
| Turned over to ICTY: | 28 |
| Tried and Decided: | 10 |
| Dismissed by Article 208: | 3 |
| Current suspects under indictment: | 7 |
| Suspended by prosecutor: | 8 |
| Unfounded: | 47 |

Recommendation in paragraph. 18

19. The period 2006-2007 has witnessed dynamic changes in the returns process in Kosovo, as UNMIK together with the Provisional Institutions of Self-Government (PISG) introduced a comprehensive policy framework to ensure the safety and sustainability of minority returns in Kosovo. This revised returns strategy has simplified the steps necessary for returns, while firmly orienting all returns processes within a rights-based approach to returns. Key policy milestones during this period included the PISG's promulgation of updated returns policies on 24 May 2006, the signing of a protocol of cooperation on returns between Prishtinë/Priština and Belgrade on 6 June 2006, and the subsequent revision of the Manual for Sustainable Return. These three documents, which came out in quick succession in a short span of about six weeks, significantly altered the minority returns landscape in Kosovo, leading to the recognition of IDPs' right to free and informed choice of residence, along with greater financial assistance to support that choice.

20. The Revised Manual for Sustainable Return simplifies the steps for return and delivery of social services for minority returnees, while reaffirming international standards and best practices. Extensive briefing sessions about the revised Manual were conducted in all five regions of Kosovo for the key field staff members of UNHCR and UNMIK. The training session for PISG (including The Ministry of Communities and Returns (MCR), the Ministry of Local Government Administration (MLGA) and municipalities), simultaneously conducted in Albanian and Serbian languages, was attended by Municipal Returns Officers (MROs), Municipal Community Officers (MCOs) and Standard Coordination officers of Pejë/Peć, Gjakovë/Đakovica, Istog/Istok, Klinë/Klina, Kaçanik/Kaçanik, Shtime/Štimlje, Ferizaj/Uroševac, Rahovec/Orahovac, Dragash/Dragaš, Prizren, Gjakovë/Đakovica, Malisheve/o, Skenderaj/Srbica, Vushtrri/Vučitrn, Mitrovicë/Mitrovica, Prishtinë/Priština, Obiliq/Obilić, Podujeve/o, Lipjan/Lipljan, Fushë Kosovë/Kosovo Polje Gjilan/Gnjilane, Kamenicë/Kamenica, and Viti/Vitina municipalities.

21. Below are some of the key principles guiding the returns process in Kosovo. Most important is the fundamental guiding principle of returns as a rights-based process.

Rights-based Return

22. A rights-based approach to returns, which allows free and informed decisions for all displaced populations of Kosovo, remains the best approach to ensuring voluntary and sustainable returns. Every individual displaced person has a right to make a free and informed choice about the return options available. This approach empowers the most affected people to take decisions best suited to them and de-politicise the returns issue. This right applies to all ethnic communities and all places of displacement, be it within Kosovo, within Serbia, or in other countries.

23. Updated PISG Policies on Voluntary Returns affirm the right of IDPs to freely choose where to live and to receive assistance in that regard. The process for returning has been simplified with IDPs taking a central role throughout and removing extraneous structures that are outdated.

24. The Returns Protocol between Prishtinë/Priština and Belgrade likewise recognizes the IDP's right to choose where to live. It also paves the way for direct dialogue between municipalities of displacement and return and PISG guarantees that returnees will have full rights.

25. The Comprehensive Policy Framework for Minority Returns introduced by UNMIK together with PISG in 2006 has effected instrumental changes at the institutional level within Kosovo, as the capacity of municipalities to execute returns projects has been strengthened and as key competencies have been transferred to the MCR. These achievements, together with the establishment of simplified reporting lines between municipal and ministerial representatives, has facilitated a results-driven landscape for minority returns projects in which safety and sustainability are universally recognized as the key indicators of success.

26. The Kosovo Property Agency has established a rental scheme with the support of the Provisional Institutions in order to enable property rights holders to receive rental payments from those currently occupying the property.

Establishment of Dual Reporting Lines to Strengthen Cooperation and Coordination on Returns and Minority-related Matters

27. Dual reporting lines for the MROs to MLGA and MCR were established with the signing of Letter of Intent in September 2006 by the two ministries. While MROs and MCOs are within the municipal structures, and thus under the MLGA chain of command, their work mostly relates to the MCR. The dual reporting line will strengthen the cooperation and coordination on returns and minority related matters.

Capacity Building of Local Institutions to Facilitate Minority Returns

28. In 2007, a total of twenty-two municipalities developed and endorsed 2007 Municipal Returns Strategies (MRS) and another four have prepared such strategies, which are pending endorsement. Two municipalities, Dragash/Dragaš and Kamenicë/Kamenica, have prepared the 2008 MRS.

29. Implementation of the strategies is, however, incomplete, in part because of a lack of financial resources. The planning and implementation processes of MRS would also benefit from intensified coordinating activities between central and local institutions and greater involvement by representatives of the internally displaced community.

30. Nevertheless, despite these challenges, municipalities are demonstrating the capacity to directly implement components of minority returns projects, such as construction, infrastructure, income generation, dialogue, and this makes them more sustainable and less expensive.

31. Eighteen Concept Papers for returns initiatives, worth more than €11.3 million, were approved by the Central Review Mechanism (CRM), chaired by MCR following the transfer of this competency from UNMIK to MCR in 2006. Six projects, costing €3.7 million for the return of 140 families, were undertaken in 2007 in Lipjan/Lipljan, Abdullah Presheva/Presevo (Gjilan/Gnjilane), Vushtrri/Vucitrn, Berkovë/Berkovo (Klinë/Klina), Lismir/ Dobri Dub and Nakaradë/e (Fushë Kosovë/Kosovo Polje), with a project in Klinavc/Klinavac (Klinë/Klina) expected to be completed in Spring 2008. The Vushtrri/Vucitrn project was directly implemented by MCR.

32. While ever more returns projects are being developed by municipalities, lack of funding remains the single most important obstacle to returns. The funding gap currently (as of 1 January 2008) stands at €18 million for 23 approved organized returns projects alone. Additional funding will be needed for Individual Returns and Community Development and Stabilization projects. UNMIK put in place a system whereby funding for returns is allocated in a transparent manner, after consultation with all relevant stakeholders. This has increased the confidence of the donor community in allocating funds for returns.

Transfer of Competencies

33. In line with UNMIK's policy of transfer of competencies to the PISG, which is also required by UNSCR 1244, most of the competencies in voluntary returns have already been transitioned by UNMIK's Office of Communities, Returns and Minorities Affairs (OCRM) to the Provisional Government, primarily to the MCR, which is increasingly being empowered to take over minority returns and community stabilization related responsibilities.

34. The management of the CRM, which reviews all voluntary return projects and other initiatives by the Municipal Working Groups (MWGs), was transferred to MCR in 2006. The transfer was in accordance with the provisions of the Revised Manual for Sustainable Return, which specifies that the MCR should take over functions of Chair and Secretariat of the CRM from UNMIK and UNDP, respectively.

35. Based on the same manual, the Chair, as well as secretariat functions of the Communities Outreach and Communication Group (COCG), were handed over to the MCR. Formed in November 2004, the COCG is mandated to implement the outreach and communication strategy regarding returns related issues, projects and activities, as well as to enhance coordination between all information providers in the returns process.

36. MCR was also enabled to take over functions related to communities and returns, such as the planning and implementation of Community Development and Stabilization (CDS) projects. In 2007 the Ministry, in consultation with the international community, approved 51 CDS projects worth €2.08 million to facilitate

equitable integration of all communities and their members currently residing in Kosovo.

37. MCR is also being assisted by UNHCR to take over functions related to data collection about returnees. The Ministry has appointed a Returns Information Coordinator (RIC) to work with the UNHCR on returnee registration and the creation of an IDP database. MCR, together with the Ministry of Finance and Economy (MFE) has also been monitoring the implementation of Fair Share Financing (FSF) requirement by the Municipalities.

38. The competency on humanitarian transportation, including the budget line of €2.675 million, was transferred to the Ministry of Transportation and Communication (MTC). To date, the humanitarian transport service carries an estimated 32,000 beneficiaries on trains and 25,000 beneficiaries on bus lines monthly. The service, which promotes the freedom of movement of minority communities in Kosovo, is crucial for enabling minority access to essential services, institutions, and opportunities.

Safety and Sustainability of Minority Returns in Kosovo

39. The number of minority returns to Kosovo continues to remain low, although some marginal improvements have occurred. More internally displaced persons returned to Kosovo between January and November 2007 than during the corresponding period last year. UNHCR estimates that, as of 30 November, 1,561 minority community members had returned in 2007, with the highest number of returns in the regions of Mitrovicë/Mitrovica and Gjilan/Gnjilane. As of November 2007, the total number of minority returnees since 1999 is estimated at 17,698.

| MINORITY RETURNS TO KOSOVO FROM INTERNAL AND EXTERNAL DISPLACEMENT (as per UNHCR) | | | | | | | | |
|--|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|----------------------|
| Returns 2000 | Returns 2001 | Returns 2002 | Returns 2003 | Returns 2004 | Returns 2005 | Returns 2006 | Returns 2007 | Total Returns |
| 1,906 | 1,453 | 2,756 | 3,801 | 2,469 | 2,126 | 1,627 | 1,561* | 17,698 |

*1,561 figure - as of Nov. 2007 (pending UNHCR's returns statistics update for the whole of 2007)

40. Thus, while remaining steady, the number of minority returns to Kosovo is nevertheless unsatisfactory. The primary factors affecting the willingness of minority IDPs to return continue to include lack of economic opportunities, uncertainty about the status of Kosovo, and, to a much lesser degree than in the past, security. At the same time, however, the attitude of receiving communities continues to improve. Cooperation on returns between the PISG and Belgrade, via the Coordination Centre for Kosovo (CCK), has continued at the local level, particularly on matters of humanitarian concern. Crucially, freedom of movement and security for minority returnee communities has also improved.

41. At the policy level, UNMIK has carried out a comprehensive revision of the returns process for Kosovo, placing the rights of displaced persons and the role of Kosovo institutions at the centre of this process. This new approach has created a fundamentally rights-based process, simplifying the steps for returns and clearly

setting out the guiding principles for safe and sustainable returns projects. The safety and sustainability of minority returns in Kosovo is directly linked to the recognition of IDPs' right to free and informed choice of residence, along with greater financial assistance to support that choice.

42. This comprehensive policy framework for returns has begun to be realized 'on the ground' by Kosovo institutions – both central and local. Most instrumental in this process has been UNMIK's oversight of the transfer of many key returns-related competencies to the MCR, as well as capacity-building for Kosovo's municipalities.

43. It is clear that this revised policy framework, including new and simplified mechanisms for minority returns, has started to bear fruit. With the continuing guidance and funding support of the international community, actual implementation of minority returns projects by Kosovo institutions will continue to expand, as will the capacity of Kosovo institutions to facilitate the safe and sustainable returns for all displaced persons, particularly those belonging to minority communities, who are willing to return to Kosovo.
