



**OBSERVATIONS ON THE OPINION OF THE ADVISORY COMMITTEE
ON THE FRAMEWORK CONVENTION FOR THE PROTECTION OF
NATIONAL MINORITIES (ADOPTED ON 25 NOVEMBER 2005)**

General Observations

1. UNMIK appreciates the opportunity to participate and present its observations in proceedings under the auspices of the Council of Europe related to the Opinion on the Implementation of the Framework Convention for the Protection of National Minorities in Kosovo (the Opinion), which was adopted on 25 November 2005 by the Advisory Committee on the Framework Convention for the Protection of National Minorities (Advisory Committee).
2. The Opinion of the Advisory Committee is of valuable assistance to UNMIK in developing the further legislative and other measures needed to give effect to the principles set out in the Framework Convention for the Protection of National Minorities (Framework Convention). UNMIK welcomes the cooperation, established with the Advisory Committee during the latter's visit to Kosovo during the period 11-15 October 2005.
3. We agree with the Advisory Committee that the Agreement between UNMIK and the Council of Europe of 23 August 2004 on Technical Arrangements Related to the Framework Convention for the Protection of National Minorities (UNMIK/CoE Agreement) is "of great significance"¹. The Opinion states that it is a "unique step in improving the international accountability of the authorities in Kosovo in the field of the protection of national minorities and [the Advisory Committee] applauds the pragmatic approach pursued by everyone concerned in reaching the agreement"². UNMIK also appreciates the Advisory Committee's recognition of the important precedent set by UNMIK with the assistance of the Provisional Institutions of Self-Government (PISG) in preparing the Report pursuant to Article 2.2 of the UNMIK/CoE Agreement.
4. The Advisory Committee states that the implementation of almost all principles of the Framework Convention is made extremely difficult by the fact that inter-ethnic

¹ Opinion of the Advisory Committee, paragraph 7.

² Ibid., paragraph 7.

violence has seriously eroded trust between communities.³ It finds that various advanced norms and a commendable standards implementation plan have been introduced, but the reality in Kosovo "remains disconcertingly far from these laudable norms and plans". The Advisory Committee identifies this discordance in the fields of discrimination⁴, the framework for combating ethnic hatred⁵, access to information and media⁶ and the use of minority languages⁷. On the positive side, the Opinion states that there has been some progress in the implementation of the Framework Convention in such fields as education, the use of languages in public and private life and participation.⁸

5. We acknowledge that the legacy of inter-ethnic violence continues to be a major impediment to the full implementation of the principles of the Framework Convention at this stage. However, it should also be acknowledged that there have recently been developments that will have a positive effect on the position of minority Communities within Kosovo. A number of examples can be given. A comprehensive legislative and institutional framework, which provides clarity and certainty in many areas of governance affecting the lives and well-being of Kosovo's inhabitants, continues to be put in place. The Kosovo Police Service (KPS), which has played and will continue to play a critical role in the security of minority Communities, now fully reflects the ethnic diversity of Kosovo. More than 10% of the strength of the KPS is made up of Kosovo Serbs, out of a total minority representation of 16.2%. At senior levels the proportion of minorities rises to approximately 20%. On 20 December 2005 UNMIK Regulation No. 2005/54 on the Framework and Guiding Principles of the Kosovo Police Service was promulgated. It provides a legal and ethical framework for the KPS and, in particular, entrenches community guarantees, including participation of municipalities in the nomination of KPS station commanders, and the establishment of local Police Substations, Municipal Community Safety Councils and Local Public Safety Committees. There has also been a progressive increase in the minority representation in the Civil Service. Minority employment in the central ministries is 10.68%; seventeen of the 30 municipalities met or exceeded their targets; and seven achieved or exceeded 70% of the target goal.⁹

Detailed Observations

6. The remainder of this Note consists of observations on the Opinion which outline developments since the visit of the Advisory Committee, planned actions that will implement recommendations of the Opinion and points of disagreement with the Opinion.

³ Ibid., Executive Summary.

⁴ Ibid., paragraphs 35ff.

⁵ Ibid., paragraph 53.

⁶ Ibid., paragraphs 65-66.

⁷ Ibid., paragraphs 71ff and 78ff.

⁸ Ibid., Executive Summary.

⁹ Technical Assessment of Progress in Implementation of Standards for Kosovo. Prepared by the Special Representative of the Secretary-General 20 December 2005 in the Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo of 25 January 2006 (S/2006/45), paragraph 8.

7. Title. While paragraph 2 indicates correctly the legal basis for the submission of the Opinion to the Committee of Ministers, this is not reflected on the title-page. The title of the UNMIK Report made clear that it was being submitted pursuant to the Agreement between UNMIK and the Council of Europe on Technical Arrangements Related to the Framework Convention for the Protection of National Minorities (UNMIK/CoE Agreement), and not directly pursuant to the Framework Convention. The title of the Opinion should be equally clear on this point and it is of the utmost importance that the conclusions and recommendations of the Committee of Ministers should be expressly issued pursuant to Article 2.4 of the UNMIK/CoE Agreement.

8. Paragraph 8 (Framework Convention). The Advisory Committee attaches undue importance to the fact that the Framework Convention is not included in the list of human rights conventions in section 1.3 of UNMIK Regulation No. 1999/24 of 12 December 1999, as amended, on the Law Applicable in Kosovo. Pursuant to paragraphs 3.2(h) and 3.3 of the Constitutional Framework, the Framework Convention shall be directly applicable as part of the Constitutional Framework. It is therefore adequately entrenched in the legal system of Kosovo. Moreover it should be noted that significant actions have been taken in Kosovo which are consistent with and promote the Framework Convention, even if it is not expressly mentioned by name in each case. For example, the newly elected President, Fatmir Sejdiu, has underlined the importance of the participation of all Communities and of reaching out to minority Communities, especially the Kosovo Serbs and this has been consistently advocated by the Kosovo Government.

9. Efforts are being made to promote knowledge and use of the Framework Convention by the PISG. Significant UNMIK Pillar III/OSCE assistance will be provided this year to the Assembly Committee on the Rights and Interests of Communities in order to enhance its capacity to review draft legislation for compliance with the principles of the Framework Convention and, where appropriate, to formulate recommendations with a view to ensuring that Community rights and interests are adequately addressed and safeguarded.

10. Paragraph 16 (Restructuring of UNMIK). UNMIK is being restructured in response to the changing political situation in Kosovo and the transfer of competencies to the PISG, including the establishment of new Ministries. This restructuring has taken the form of downsizing of UNMIK Pillar II, which has been converted into an UNMIK Department of Civil Administration (DCA), and the creation of municipal teams within UNMIK Pillar III/OSCE whose purpose is to conduct effective monitoring and reporting to ensure accountability. These actions are being taken on the basis of operational arrangements that have been agreed between UNMIK Pillar III/OSCE and DCA.

11. Paragraph 23 (UNMIK's Reporting on Human Rights). In commenting on Article 1 of the Framework Convention, the Advisory Committee applauds UNMIK's plans for reporting on the implementation of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights to the UN treaty bodies concerned. In this context it should be noted that, even though not under an obligation to do so since UNMIK as the interim administration is

not a party to the Covenants, on 7 February 2006 UNMIK submitted to the Chairperson of the Human Rights Committee a report on the situation of human rights in Kosovo since June 1999. This was in response to a request of 30 July 2004 from the then Chairperson of the Human Rights Committee. In fact, in coordination with the Chairperson, UNMIK piloted a Common Core Document and a treaty-specific document in accordance with the revised Proposed Common Guidelines on Reporting to the International Human Rights Treaty Monitoring Bodies, that were agreed to in principle by the 17th Meeting of the Chairpersons of Human Rights Treaty Bodies on 23-24 June 2005.

12. Paragraph 37 (Anti-Discrimination Law). With regard to awareness of the Anti-Discrimination Law adopted by the Assembly of Kosovo and promulgated by UNMIK, we should stress that the Government recently endorsed a comprehensive action plan for its implementation.¹⁰ In this context it should also be noted that Human Rights focal points have been appointed in all Ministries and equal opportunity officers have been appointed in the Office of the Prime Minister, five ministries and 24 municipalities.¹¹ This is a positive and commendable development.

13. Paragraph 39 (Ombudsperson Institution in Kosovo). We note the position of the Advisory Committee with regard to the transfer of responsibility for the continuing operation of the Ombudsperson Institution to the PISG. This transfer is being implemented on the basis of a policy decision at the highest level after careful deliberation in the context of progressive transfer of competencies to the local institutions. It should be borne in mind that pursuant to paragraph 1.5(e) and Chapter 10 of the Constitutional Framework the Ombudsperson Institution is an independent body which is part of the PISG institutional structure. On 16 February 2006 UNMIK Regulation No. 2006/6 on the Ombudsperson Institution in Kosovo was promulgated. The Regulation will make the necessary adjustments in the legislation to reflect the transfer of responsibility for the Institution to the Assembly of Kosovo.

14. Paragraphs 46-48 (Roma Camps). While the health situation in the three Roma camps in northern Mitrovicë/Mitrovica and Zvečan/Zvečan remains extremely serious, UNMIK, together with the PISG, specialized international agencies and other international stakeholders, is giving the highest priority to addressing the crisis of lead contamination. To implement a Risk Management Program in the camps, as developed and budgeted by WHO, the SRSG provided €150,000 from his Contingency Fund, the PISG committed €211,000 and contributions have been made by several donor Governments. To ensure that camp residents, especially children, pregnant women and the elderly, are properly diagnosed and treated, a medical team of two doctors, 3 nurses has been recruited to provide medical services inside the camps. Two containers have been obtained from the Serbian and Montenegro Red Cross Society to facilitate these services.

¹⁰ Ibid., paragraph 74.

¹¹ Ibid., paragraph 72.

15. Considerable progress has been made in recent months in UNMIK's 'Return To Roma Mahalla Project' (RRMP). Funds have been raised for the construction of about 77 private homes to be built by NGOs beginning in the spring of 2006 and for the commencement of construction of two apartment buildings. Significant contributions have been made by Norwegian Church Aid (NCA) and the Irish and German Governments. The Danish Refugee Council and the American Refugee Council will also be participating in the implementation of the RRMP by construction of homes that will promote returns. However, the RRMP is still constrained by limited resources and, if substantial progress is to be made, further generous assistance from the donor community will be needed.

16. Paragraph 52 (Cultural and Religious Heritage). With regard to the repair and protection of the Serbian Orthodox cultural and religious heritage, work has proceeded well and has become one of the principal areas of contact between the PISG and representatives of the Serbian Orthodox Church and the Kosovo Serbs. UNESCO held the first session of the Experts Committee on the Rehabilitation and Safeguarding of Cultural Heritage in Kosovo in Paris on 9 December 2005. The Principal Deputy Special Representative of the Secretary-General represented UNMIK at this important expert meeting. The Committee decided to implement 14 projects totaling over \$3 million and to coordinate its work closely with the Reconstruction Implementation Commission, UNMIK and the PISG. On 21 December 2005 the Reconstruction Implementation Commission announced that the completion of the works of protection and consolidation against further deterioration before the arrival of winter had been carried out in 30 Orthodox religious sites damaged in March 2004. A UNESCO delegation subsequently visited Kosovo and as a result productive collaboration has been established between UNESCO's expert committee and the Reconstruction Implementation Commission.

17. Paragraph 64 (Legislation on religious freedom and religious communities). Since the visit of the Advisory Committee to Kosovo from 11 to 15 October 2005, there has been progress in the development of legislation on religious freedom and the legal status of religious communities within the PISG and a draft Law is at an advanced stage of consideration by the Assembly of Kosovo. The Austrian Ministry of Foreign Affairs and the University of Vienna organized a very productive meeting in Austria from 4 to 6 December 2005 on the draft Law with a view to broaden consensus on this important legislation. Representatives of the principal religious communities in Kosovo, including the Serbian Orthodox Church, the Islamic Community and the Roman Catholic Church, participated and engaged in substantive discussions with representatives of the PISG and UNMIK. Appropriate efforts are being made to urge the Government and the Assembly of Kosovo to incorporate in the draft Assembly Law the important proposals agreed to by the participants in the meeting held in Austria.

18. Paragraph 73 (Legislative Framework on the Use of Languages). We do not share the opinion of the Advisory Committee that the current legal framework concerning the use of minority community languages is "overly complex and.... fails to spell out sufficiently clearly the operative regulations concerning language use" and that the "existing legislation does not define the conditions attached to the use of

languages other than Albanian and Serbian in contacts with authorities". The Constitutional Framework provides a comprehensive set of principles in regard to the use of minority community languages: under paragraphs 3.2(g) and 3.3 the provisions set forth in the European Charter for Regional or Minority Languages are directly applicable as part of the Constitutional Framework; and paragraphs 4.4(a)- 4.4(c), 4.4(j) and 4.4(o) set forth important rights of Communities and their members in relation to language use. Furthermore the Assembly of Kosovo is actively considering a comprehensive Law on Languages that addresses satisfactorily all aspects of the use of languages in full conformity with established European principles and standards. It is expected that this Law, which has been revised to take into account concerns expressed by UNMIK and the Communities with valuable inputs from OSCE and the Council of Europe, will soon be adopted by the Assembly and promulgated by UNMIK.

19. Paragraph 116 (Agricultural and Commercial Property). UNMIK is committed to introducing, as a priority, an effective way of resolving claims relating to private immovable property including agricultural and commercial land. UNMIK, with the full support of the Government, is in the final stages of promulgating legislation that will transform the Housing and Property Directorate into the Kosovo Property Agency, which will be composed of an Executive Secretariat and a new Property Claims Commission and will be guided by a Supervisory Board in which both UNMIK and PISG would participate. The Kosovo Property Agency, which will operate under the authority of the Kosovo courts with the required safeguards to ensure impartiality, would have a mandate to receive, register and assist the courts in resolving conflict-related claims with respect to private immovable property, including agricultural and commercial property. The draft Regulation on the Resolution of Claims Relating to Immovable Property, Including Agricultural and Commercial Property is currently being finalized. At the same time practical arrangements for its implementation are already far advanced.

20. Paragraph 131 (The situation of the Roma, Ashkali and Egyptian communities). In 2006, UNMIK Pillar III/OSCE will offer the PISG support for the development of a Kosovo-wide Strategy for the Improvement of the Situation in Kosovo of persons belonging to the Roma, Ashkali and Egyptian communities. Two international consultants designated specifically for this purpose will facilitate the development of the Strategy by the PISG, in close cooperation with the Roma, Ashkali and Egyptian communities.

21. Paragraph 133 (Judicial system). UNMIK is currently introducing substantial structural and other reforms in the judicial system in tandem with a transfer of responsibilities. As part of this process on 20 December 2005 the Special Representative of the Secretary-General promulgated UNMIK Regulation No. 2005/53, which established the Ministries of Justice and Internal Affairs, and UNMIK Regulation No. 2005/52 on the Establishment of the Kosovo Judicial Council. Basic principles governing the judicial system which provide protections for minority Communities are currently being developed and will be reflected in legislation to be promulgated by UNMIK.

22. Paragraph 136 (Integration in schools). Initiatives have recently been taken to promote integration of minority Communities in schools. The Ministry of Education Science and Technology with the assistance of Save the Children Kosovo has developed a project for mixed (Kosovo Serb, Kosovo Albanian, Turkish) pre-primary classes in six municipalities.¹²

23. Paragraphs 137 and 164 (Status Negotiations). There have been significant developments in the status negotiations since the adoption of the Advisory Committee's Opinion. The Kosovo Negotiating Team has met with the Special Envoy of the Secretary-General for the future status process, Mr. Martti Ahtisaari, and submitted a document outlining its platform for status negotiations, reflecting its firm commitment to equal rights for the majority and minority communities based on the rule of law. On 9 December 2005, the Kosovo Negotiating Team established a Consultative Committee for Minorities to provide advice on minority issues. The Special Representative of the Secretary-General has repeatedly emphasized the critical importance of involving civil society, women's groups and, in particular, minority community representatives in the status process to ensure that they have a say in designing the future of Kosovo. To this end, UNMIK Pillar III/OSCE is currently conducting a series of workshops for potential members of the Kosovo delegation and other participants and contributors to the final status negotiation process. Participants in these trainings include parliamentary representatives of Kosovo's Serb and non-Serb minority communities.

24. Paragraph 155 (Municipal Compliance with Legislation on Language Use). The new field structure of UNMIK Pillar III/OSCE being developed in coordination with DCA as part of UNMIK's restructuring allows for the more effective monitoring of municipal compliance with language use in order to assess compliance with UNMIK Regulation No. 2000/45 on Self-Government of Municipalities in Kosovo and to identify capacity-building and training needs. This will ensure that a qualified international presence is in place at the municipal level throughout Kosovo.

25. Paragraphs 158, 161 and 162 (Roma, Ashkali and Egyptians in the Educational System). In July-August 2004, UNMIK Pillar III/OSCE initiated a project to support the Ministry of Education, Science and Technology (MEST) in addressing the lack of qualified Romany language teachers in Kosovo. Approximately thirty persons, predominately Roma, participated in the six-week course on the Romany language, linguistics, literature and history. Twenty successfully completed the course and were duly accredited by MEST.

26. The joint OSCE/MEST Roma, Ashkali and Egyptian 2004 "Catch-up Class" initiative was expanded to include nine municipalities across Kosovo (comprising those with the largest concentration of Roma, Ashkali and Egyptian community members) for the 2005/06 school year. The total number of students currently involved is approximately 700. To date, approximately 115 students from the 2004/05 school year have successfully been integrated into regular classes alongside their

¹² Ibid., paragraph 73.

Kosovo Albanian peers. The remaining students continue to participate in the catch-up class programme.

27. Paragraph 167 (Municipal Communities and Mediation Committees). The new UNMIK Pillar III/OSCE field structure that will function in close coordination with DCA is intended to enhance the capacity for increased monitoring of and assistance to the Municipal Communities and Mediation Committees. While the effectiveness of the Committees varies significantly between Municipalities, considerable capacity-building, negotiation and mediation training is required to bring the functioning of the Committees in line with their role as specified in the relevant legislation (i.e. UNMIK Regulation No. 2000/45 on Self-Government of Municipalities in Kosovo). At the same time, UNMIK Pillar III/OSCE will continue to promote the importance of the Committees as a safeguard for the rights and interests of minority Communities in its day to day work with the legislative and executive branches of the Municipal Institutions.



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