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COMMITTEE ON ECONOMIC, SOCIAL
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLES 16 AND 17 OF THE COVENANT**

**Document submitted by the United Nations Interim Administration Mission in
Kosovo (UNMIK)**

Concluding Observations of the Committee on Economic, Social and Cultural Rights

1. The Committee on Economic, Social and Cultural Rights considered the document submitted by the United Nations Interim Administration Mission in Kosovo on the implementation of the International Covenant on Economic, Social and Cultural Rights in Kosovo since 1999 (E/C.12/UNK/1) at its 37th and 38th meetings, held on 10 November 2008 (E/C.12/2008/SR.37 and 38), and adopted, at its 49th and 50th meetings held on 18 November 2008, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission by the United Nations Interim Administration Mission in Kosovo (UNMIK) of a document containing information on the implementation of the Covenant in Kosovo since 1999, pursuant to a request based on the Committee's concluding observations on the initial report of Serbia and Montenegro (E/C.12/1/Add.108, para. 9), adopted in May 2005, and on the basis of the mandate of UNMIK under Security Council resolution 1244 (1999) to protect and promote human rights in Kosovo.

3. The Committee welcomes the detailed information contained in the document submitted by UNMIK and in the written replies to most of the questions raised in its list of issues, as well as the focused answers provided by the delegation of UNMIK to the Committee's oral questions.

4. The Committee regrets the lack of disaggregated statistical data in the document, which would have enabled the Committee to better assess the implementation of the Covenant in Kosovo. It

also regrets that civil society and non-governmental organizations were not involved in the preparation of the document and that it was translated into Albanian and Serbian only in July 2008.

B. Positive aspects

5. The Committee welcomes the efforts to protect and promote economic, social and cultural rights undertaken by the Ombudsman Institution, which was established 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.

6. The Committee notes with appreciation legislation promulgated by UNMIK to eliminate discrimination against disadvantaged and marginalized individuals and groups, including the Anti-Discrimination Law (2004), which prohibits direct and indirect discrimination in the public and private spheres and provides special protection for minority communities, and the Gender Equality Law (2004), which defines a 40 percent quota for the representation of women at all levels in executive, legislative and judicial bodies.

7. The Committee notes with appreciation that UNMIK, in cooperation with the Kosovo authorities, increasingly focuses on the sustainability of returns of internally displaced persons and refugees.

C. Factors and difficulties impeding the implementation of the covenant

8. The Committee considers that the armed conflict in 1998/1999 and the uncertainty about the final status of Kosovo have adversely affected since 1999 the enjoyment in Kosovo of the rights recognized in the Covenant.

D. Principal subjects of concern and recommendations

9. Notwithstanding that the Covenant is part of the applicable law in Kosovo by virtue of UNMIK Regulation 1999/24, the Committee is concerned that the Covenant has been omitted from the lists of directly applicable human rights treaties in Chapter 3.1 of the Constitutional Framework for Provisional Self-Government in Kosovo (UNMIK Regulation 2001/9) and in article 22 of the "Constitution" adopted by the Kosovo Assembly on 9 April 2008.

The Committee recommends that UNMIK include the Covenant in the list of directly applicable human rights treaties in Chapter 3.1 of the Constitutional Framework for Provisional Self-Government in Kosovo and advise the Kosovo authorities to take appropriate measures to ensure that the Covenant is directly applicable.

10. The Committee notes with concern that since the end of the mandate of the international Ombudsperson in 2005, the Ombudsman Institution has been entrusted to an Acting Ombudsperson, in the absence of the appointment of an Ombudsperson by the Assembly of Kosovo under UNMIK Regulation 2006/12.

The Committee recommends that UNMIK take adequate steps to prevent further delays in the appointment of an Ombudsperson by the Kosovo Assembly under UNMIK Regulation 2006/16 and to ensure that all authorities subject to oversight by the Ombudsperson Institution in Kosovo give effect to its recommendations.

11. The Committee notes with concern that the Human Rights Advisory Panel established under UNMIK Regulation 2006/16 to examine complaints against UNMIK is physically located within the UNMIK Headquarters and that it has not adopted a single opinion on the merits of any of the cases pending before it, including cases relating to economic, social and cultural rights.

The Committee recommends that UNMIK provide the Human Rights Advisory Panel with adequate office space outside its premises to fully guarantee its independence, as well as with sufficient financial and human resources to cope with its growing caseload.

12. The Committee is concerned about the lack of enforcement in practice of the Anti-Discrimination Law (2004), the poor quality, especially of Serbian language versions, of administrative instructions for its implementation, and the lack of judgements based on the Law. (art., para. 2)

The Committee recommends that UNMIK, in cooperation with the Kosovo authorities, provide systematic training on the application of the Anti-Discrimination Law to judges and civil servants, ensure that administrative instructions for the implementation of the Law are clearly and comprehensibly formulated and accurately translated into Serbian, and that victims of discrimination in the area of economic, social and cultural rights have adequate access to judicial remedies, and indigent complainants to legal aid, to invoke provisions of the Anti-Discrimination Law in the courts.

13. The Committee notes with concern that 20 to 30 percent of the Roma, Ashkali and Egyptian communities are not registered as habitual residents or lack personal documents such as birth and marriage certificates, in the absence of civil status registration, both of which are necessary to access employment, social security, housing, health care and education. (art. 2, para. 2)

The Committee recommends that UNMIK, in cooperation with the Kosovo authorities, further intensify efforts to (a) facilitate the registration of members of Roma, Ashkali and Egyptian communities as habitual residents, by promoting a flexible approach to fee exemptions and residence documentation in all municipalities; (b) simplify civil status registration procedures, especially with regard to “subsequent/late” registration and home births; (c) educate Roma families on the importance of registration for the enjoyment of economic, social and cultural rights; and (d) promote the adoption of the Integration Strategy for the Kosovo Roma, Ashkali and Egyptian communities.

14. The Committee is concerned about the absence of a law on the rights of persons with disabilities in Kosovo. (art. 2, para. 2)

The Committee recommends that UNMIK advise the Kosovo Assembly on the urgent need to adopt a law on the rights of persons with disabilities and that it assist the

Kosovo authorities in identifying sufficient resources for its implementation.

15. The Committee is concerned about the low representation of members of Roma, Ashkali and Egyptian and other non-Albanian communities in the public service and in the judiciary, especially in senior positions. (art., para. 2)

The Committee recommends that UNMIK, in cooperation with the Kosovo authorities, intensify efforts to promote adequate representation and effective participation of non-Albanian communities in the public service and in the judiciary, including in senior positions, e.g. by requiring municipalities to comply with the numerical targets defined in the Fair-Share Financing Policy, adopting equal opportunity policy statements and implementing strategies, appointing Equal Opportunity Officers, and systematically collecting disaggregated data to ascertain whether non-Albanian communities are proportionately represented in the municipal civil service, including in senior positions.

16. The Committee notes with concern that women, especially from non-Albanian communities, are underrepresented in management positions at the municipal level, as well as in high-level positions in legislative, judicial and central and local government bodies. (art. 3)

The Committee recommends 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, e.g. by requiring municipalities to establish Gender Equality Offices, as well as in high-level positions in legislative, judicial and central and local government bodies, in line with the 40 percent quota in the Gender Equality Law.

17. The Committee notes with concern that 30 to 40 percent of Kosovans are unemployed, in particular women, young persons, non-Albanian communities, returnees and internally displaced persons, and that there are no specific measures to regularize the situation of persons working in the informal economy. (art. 6)

The Committee recommends that UNMIK, in cooperation with the Kosovo authorities, intensify efforts to promote employment opportunities, especially in the formal sector, including for women, young persons, non-Albanian communities, returnees and internally displaced persons, e.g. through job training, the adoption of the Active Labour Market Programme for youth employment and increased incentives and subsidies for private businesses. It also recommends that UNMIK, in cooperation with the Kosovo authorities, regularize the situation of workers in the informal economy by progressively including them in social security schemes and by adopting a plan of action for the informal economy.

18. The Committee notes with concern reports that UNMIK has failed to provide adequate safeguards during the privatization of former Socially Owned Enterprises aimed at preserving the pre-armed conflict ethnic composition of the workforce, and that it has set discriminatory deadlines precluding many internally displaced persons and returnees from applying for inclusion in the list of former employees eligible to participate in the distribution of the proceeds from the sale of such

enterprises, and from appealing to the Special Chamber of the Supreme Court in case of their non-inclusion. (art. 6)

The Committee recommends that UNMIK consider reviewing its Regulations 2005/48 and 2004/45 in order not to perpetuate the effects of forced migrations during and after the armed conflict in 1998/1999 on the ethnic composition of the workforce of former Socially Owned Enterprises and to provide internally displaced persons and refugees with adequate time and information to obtain the documents required for applying for inclusion in the list of eligible employees entitled to payments from the sales proceeds of former Socially Owned Enterprises, or otherwise to appeal to the Special Chamber of the Supreme Court.

19. The Committee is concerned that the wage levels in Kosovo are insufficient to provide workers with an adequate standard of living for themselves and their families, especially for women who reportedly earn 20 percent less than men on average, and that there is no legislation defining minimum wages. (art. 7)

The Committee recommends that UNMIK, in cooperation with the Kosovo authorities, take appropriate steps to ensure wage levels that provide all workers with an adequate standard of living for themselves and their families, in accordance with article 7, paragraph (a) (ii) of the Covenant, and to implement the principle of equal remuneration for work of equal value. It also recommends that UNMIK advise the Kosovo Assembly to adopt the draft Bill on Minimum Wages.

20. The Committee is concerned that the right to form and join trade unions and the right to strike are not explicitly guaranteed by law in Kosovo. (art. 8)

The Committee recommends that UNMIK advise the Kosovo Assembly to adopt the draft Labour Law and the draft Laws on the Right to Freedom of Association and on the Right to Strike.

21. The Committee is concerned that the minimum levels of basic and contribution-based old-age pension benefits, disability pension benefits, war invalidity and survivor benefits and social assistance payments are insufficient to ensure an adequate standard of living to recipients and their families. The Committee is also concerned that the exclusion from such benefits of, inter alia, persons who own more than 0.5 hectares of arable land may have a discriminatory effect on returnees who are unable to repossess their lands because of illegal occupation or security concerns. (art. 9)

The Committee recommends that UNMIK, in cooperation with the Kosovo authorities, ensure that the minimum levels of basic and contribution-based old-age pension benefits, disability benefits, war invalidity and survivor benefits and social assistance payments are sufficient to ensure an adequate standard of living to recipients and their families. It also recommends that it review any discriminatory eligibility requirement for such benefits based on, inter alia, land ownership.

22. The Committee notes with concern reports about difficulties, such as the absence of application forms in Serbian prior to 2005 or the requirement that death certificates must be issued by UNMIK, which members of non-Albanian communities have been facing when applying for war invalidity and survivor benefits under UNMIK Regulation 2000/66. (art. 9)

The Committee recommends that UNMIK, in cooperation with the Kosovo authorities, ensure that members of non-Albanian communities enjoy equal access to war invalidity and survivor benefits, in law and in practice.

23. The Committee notes with concern the high incidence of domestic violence in Kosovo, the low number of complaints to the police and victim advocates, the absence of legislation specifically criminalizing spousal rape, the low prosecution and conviction rates, and the lack of adequate victim assistance and protection. (art. 10)

The Committee recommends that UNMIK, in cooperation with the Kosovo authorities, ensure (a) that spousal rape is specifically criminalized; (b) that judges, prosecutors and the police receive mandatory training on the strict application of UNMIK Regulation 2003/12 on Protection against Domestic Violence; (c) that health workers and the public are educated on the need to report cases of domestic violence; (d) that sentencing policies are reviewed and time limits for issuing protection orders enforced; (e) that the number and capacity of shelters are increased and victim assistance and protection strengthened, including through adequate financial support for NGOs; and (f) that the next report on the implementation of the Covenant in Kosovo includes updated data on the number and nature of reported cases of domestic and sexual violence, convictions and on the sanctions imposed on perpetrators.

24. The Committee notes with concern that prosecutors and judges in Kosovo often resort to the minimal charges of, and conviction for, the facilitation of prostitution in cases of trafficking in persons, and that abused and exploited children without parental care or street children are often categorized as “anti-social” children by social service officers and deprived of the special protection available for children who are victims of trafficking. (art. 10)

The Committee recommends that UNMIK, in cooperation with the Kosovo authorities, ensure (a) that the police, prosecutors and judges receive mandatory training on the strict application of article 139 of UNMIK Regulation 2003/26 and other criminal law provisions against trafficking in persons; (b) that sentencing policies are reviewed; (c) that the concept of “anti-social” children is immediately repealed and special protection provided, without discrimination, to all children who are victims of trafficking; and (d) that the next report on the implementation of the Covenant in Kosovo includes updated data on the (estimated) number of persons trafficked to, from, within and through Kosovo, as well as on the number of prosecutions, convictions and on the sentences imposed on traffickers.

25. The Committee is concerned about the lack of coordinated measures to prevent and reduce child labour, which is reportedly common in family businesses and in the informal economy. (art. 10)

The Committee recommends that UNMIK advise the relevant authorities, including the

Labour Inspectorate, the Centres for Social Work and the recently established Committee for the Prevention of Child Labour, on the urgent need to adopt and effectively implement coordinated measures for the prevention and reduction of child labour, including through increased labour inspections and measures to support poor families, and to monitor the situation by including in the next report on the implementation of the Covenant in Kosovo updated data on the number of children still engaged in child labour.

26. The Committee notes with concern that approximately 45 percent of Kosovans live in poverty, i.e. on less than 1.42 Euro per day, and that around 15 percent live in extreme poverty, i.e. on less than 0.93 Euro per day. (art. 11)

The Committee recommends that UNMIK identify funds and encourage the Kosovo authorities to effectively implement the Poverty Eradication Plan 2008-2011, as well as to ensure the full integration of economic, social and cultural rights and specifically address the needs of unemployed persons, female headed households, Roma, Ashkali and Egyptian and other non-Serbian ethnic minority communities and internally displaced persons in the Plan. In this regard, reference is made to the Committee's statement on "Poverty and the International Covenant on Economic, Social and Cultural Rights" (E/C.12/2001/10).

27. The Committee is concerned about the low number of internally displaced persons and refugees, in particular those belonging to minority communities, who have returned to their pre-armed conflict homes in recent years, despite the efforts undertaken to facilitate sustainable returns. (art. 11)

The Committee recommends that UNMIK, in cooperation with the Kosovo authorities, intensify efforts to ensure the repossession of property, physical safety and sustainable return of internally displaced persons and refugees, in particular those belonging to minority communities, to their pre-armed conflict places of residence, e.g. by increasing income generation assistance for returnees, ensuring that the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2) are fully taken into account during the revision of the Revised Manual for Sustainable Returns (2006), and directly involving affected IDPs at all stages of adoption and implementation of Municipal Return Strategies.

28. The Committee notes with concern that the deadline for the submission of immovable property claims to the Kosovo Property Agency reportedly precluded many internally displaced persons with limited access to information about that deadline from filing their claims. It is also concerned about the backlog of some 18,000 civil claims for compensation of property damage allegedly caused by the lack of protection from KFOR, UNMIK, the Provisional Institutions of Self-Government or the municipalities during civil unrest, which have not been processed by the courts pursuant to an instruction by the UNMIK Department of Justice in August 2004. (art. 11)

The Committee recommends that UNMIK review Section 8 of its Regulation 2007/8, with a view to making transitional arrangements for displaced claimants who were

unable to comply with the December 2007 deadline for submitting immovable property claims to the Kosovo Property Agency due to limited access to information about such deadline. It also recommends that UNMIK, in cooperation with the Kosovo authorities, strengthen the human resources of and instruct courts to process all civil claims for compensation of property damage allegedly caused by KFOR, UNMIK, the Provisional Institutions of Self-Government or the municipalities during civil unrest and to prioritize cases involving discrimination.

29. The Committee notes with concern that a number of Roma, Ashkali and Egyptian families, who were relocated to the IDP camp at Cesmin Lug/Çesmin Llug after the demolition in 1999 of the “Roma Mahalla” in Mitrovicë/Mitrovica, prefer to remain in Cesmin Lug/Çesmin Llug, despite high levels of lead contamination, due to their lack of trust in a durable housing solution and because they fear that the IDP camp at Osterode, to which most Roma, Ashkali and Egyptian families have been relocated from lead contaminated IDP camps, is itself located near a lead contaminated site. It is also concerned that, according to some sources, children at the Osterode camp show high blood-lead levels and that the medical treatment for lead poisoning was discontinued in 2007. (art. 11)

The Committee recommends that UNMIK, in cooperation with the Kosovo authorities, ensure (a) that Roma, Ashkali and Egyptian families who prefer to stay at the IDP camp at Cesmin Lug/Çesmin Llug are adequately informed about the health risks involved and offered adequate alternative housing solutions which are culturally acceptable; (b) that the blood-lead levels of persons, especially children, living in the IDP camps at Cesmin Lug/Çesmin Llug, Osterode and Leposavić/Leposaviq are continuously monitored and that follow-up medical treatment is available in all three camps; (c) that phase 2 of the reconstruction of the “Roma Mahalla” is implemented and completed as soon as possible; and (d) that all Roma, Ashkali and Egyptian families who were relocated to IDP camps are progressively reintegrated into the “Roma Mahalla” and provided with adequate housing with legal security of tenure.

30. The Committee is concerned about the high infant and maternal mortality rates in Kosovo, as well as about the estimated high number of clandestine abortions. (arti. 12)

The Committee recommends that UNMIK identify funds and advise the relevant Kosovo authorities on the need to take immediate measures to ensure that all pregnant women have access to adequate maternal health services, including skilled birth attendance and monitoring of the health of the newborn, and that adolescents and adults have access to comprehensive sexual and reproductive health services and information, as well as to contraceptives and safe abortion services, including in rural areas.

31. The Committee notes with concern the low enrolment of girls, especially from non-Serbian minority communities, in secondary schools, the low school attendance and high dropout rate among Roma, Ashkali and Egyptian children, especially girls, and the very limited opportunities for children from non-Serbian minority communities, in particular Roma, Ashkali and Egyptian children, to receive instruction in or of their mother tongue and on their history and culture. (art. 13)

The Committee recommends that UNMIK identify funds and advise the relevant Kosovo authorities on the urgent need to (a) sensitize parents on the importance of education for their children, including for their daughters; (b) increase the number of catch-up classes and Albanian language classes for, in particular, Roma, Ashkali and Egyptian children; and (c) ensure that children from non-Serbian minority communities, in particular Roma, Ashkali and Egyptian children, have adequate opportunities at all levels of education to receive instruction in or of their mother tongue and on their history and culture, that sufficient teaching staff and textbooks are available for that purpose, and that the cultures and traditions of minority communities are adequately reflected in the revised curriculum.

32. The Committee is concerned that the population of Kosovo remains deeply divided along ethnic lines, as reflected by recurring incidents of inter-ethnic violence and a climate of intolerance among ethnic communities in Kosovo. (art. 15)

The Committee recommends that UNMIK encourage the relevant Kosovo authorities to foster inter-cultural dialogue and tolerance through school education, community level projects and Kosovo-wide campaigns.

33. The Committee recommends that UNMIK ensure that the next report on the implementation of the Covenant in Kosovo includes updated statistical data on the enjoyment of each right in the Covenant, disaggregated by age, gender, ethnic origin, urban/rural population and other relevant status, on an annual comparative basis over the past five years.

34. The Committee requests UNMIK to disseminate the present concluding observations widely among all levels of society, particularly among public officials, the judiciary and civil society organizations, to translate them into Albanian and Serbian and, to the extent possible, into minority languages such as Romani, and to ensure that the Committee is informed about the steps taken to implement them in the next report on the implementation of the Covenant in Kosovo. It also encourages UNMIK, or any future administration in Kosovo, to engage non-governmental organizations and other members of civil society in Kosovo in the process of discussion prior to the submission of the next report.
