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HUMAN RIGHTS COMMITTEE

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

**Further information received from the United Nations Interim  
Administration Mission in Kosovo (UNMIK) on the implementation of the concluding  
observations of the Human Rights Committee  
(CCPR/C/UNK/CO/1)\***

[12 November 2009]

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\* 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.

1. The following information is compiled in response to the letter dated 3 June 2009 from Sir Nigel Rodley, Special Rapporteur for Follow-up on Concluding Observations of the Human Rights Committee and a follow-up letter dated 27 August 2009 from his successor Mr Abdelfattah Amor, requesting additional information on paragraphs 13 and 18 of the Concluding Observations, in particular: (a) the prosecution and sentencing of perpetrators and the compensation scheme for victims, including the establishment of a compensation fund for families or relatives of missing persons and legal aid schemes available to indigent claimants; and (b) on the safe return of displaced persons, in particular minorities, the measures taken to improve the socio-economic conditions for returnees and their recovery of their properties or compensation for the loss, as well as on the inclusion of returnees in the rental scheme established by the Kosovo Property Agency.

### **Prosecution and sentencing of perpetrators**

2. UNMIK retains one forensic expert at the Office of Missing Persons and Forensics (OPMF) who serves, among others, as the focal point for Serbian authorities on all issues related to missing persons, and represents UNMIK in the Sub-Working Group on Missing Persons. The expert is also responsible for planning and execution of assessment and exhumation of potential grave sites of Serbian cases, autopsies and identification of suspected Serbian remains, and coordination of handover to the families of identified Serbian remains.

3. The War Crimes Investigation Unit (WCIU) handles the investigation and prosecution of cases, and along with OMPF, have been handed over to EULEX. On 9 December 2008 EULEX Kosovo reached its Initial Operational Capacity and officially took charge of relevant UNMIK case files and evidence.

4. EULEX OMPF has since identified 30 human remains and is currently working on the identification of 28 additional cases. There are 1895 persons still missing from the conflict<sup>1</sup>.

5. EULEX Kosovo Police Component inherited 1049 war crimes cases from UNMIK Police. As at 12 October 2009, the status of these cases is as follows: cases dismissed 153; cases with request to investigate 854; new cases opened 5; active inherited cases 44; cases tried and decided 3; cases transferred to district prosecutors 3. (Please note that once EULEX Kosovo has received and reviewed an UNMIK case, files have been rearranged in two or more distinct reporting categories, hence all the categories do not necessarily add up to the total.)

### Ante-mortem and Exhumation Statistics 09 December 2008 to 12 October 2009

6. In this period, 98 field operations were conducted, resulting in 71 exhumations and recovery of 67 sets of human remains.

<i>Ante mortem investigation:</i>	
Total case	1911
Found alive	0
Closed	20

<sup>1</sup> This means that 68% of some 5989 cases of missing persons initially recorded has been solved.

Pending	1855
Investigations	36
<i>Post mortem investigations:</i>	
Total number of cases	76
Waiting for assessment and/or court order	7
Waiting for exhumation	4
Waiting for autopsy/DNA	40
Waiting for a reply/additional information	4
Closed	20

7. By February 2009 the handover from UNMIK to EULEX Kosovo Prosecutors of approximately 275 cases was completed. This included cases at the preliminary investigation, pre-trial, trial, or appeal stage. Some cases were handed over to the district courts (where EULEX Kosovo prosecutors were deployed) and a further 178 were checked by the Special Prosecution Office of Kosovo to verify whether they fell under its competence. The prosecution office took over 51 war crimes cases.

#### **Establishment of a compensation fund for families or relatives of missing persons**

8. To date there is no "victim's compensation fund" established in Kosovo for families or relatives of missing persons. Although claims for compensation by family members of victims can be addressed to the Kosovo courts, as a practical matter the judges handling criminal cases usually do not resolve compensation issues on the basis that doing so would "considerably prolong criminal proceedings (PCPCK Article 107, paragraph 1, and PCPCK Article 111). Generally the criminal courts state in criminal judgments that injured parties can pursue property claims in civil litigation. However, many families of missing persons do not have the financial resources to hire private attorneys to represent them in compensation claims. These shortcomings are expected to be addressed in the Draft Law on Missing Persons with the Ministry of Justice. As it stands, it proposes a framework that includes the creation of missing person status and a fund for victim compensation. For the time being there is only the Law on Martyrs and War Victims which provides for compensation; however, this law is highly discriminatory as minority communities are unable to benefit from it.

#### **Legal aid schemes available to indigent claimants**

9. The Legal Aid Commission (LAC) and legal aid scheme was established pursuant to UNMIK Regulation 2006/36 as an independent body responsible for providing free legal aid in criminal civil and administrative cases to those who would otherwise be denied effective access to justice because they lack sufficient resources. On 24 June 2008, the LAC assumed full responsibility for the functioning of legal aid from UNMIK's former Department of Justice. Although the LAC has a mandate to provide legal aid in criminal matters the LAC is not yet in a position to completely fulfill that mandate as the Kosovo Judicial Council is still managing the "Criminal Defense Fund". LAC may provide legal information and advice regarding criminal proceedings in which the applicant has standing as a victim pursuant to section 9.1 of UNMIK

Reg. 2006.36. Families of missing persons may obtain legal aid pursuant to this provision if they satisfy the criteria for recipients under the scheme<sup>2</sup>.

10. In 2008 legal aid was provided in a total of 1384 cases, 454 civil cases, 833 administrative cases and 97 criminal cases. More detailed statistics are not kept by the LAC. However, we are advised that few if any families of missing persons have applied for legal aid.

11. The Victims Advocacy and Assistance Unit (VAAU) was established following the promulgation of UNMIK Reg. 2005/53 which expanded the role of the Ministry of Justice as a Provisional Institution of Self-Government, to include, amongst other things, providing assistance to victims of crime, and in particular victims of domestic violence and trafficking in human beings. The (VAAU) has 14 regional offices providing services and advice to victims of crime. The VAAU helps victims with legal advice, information about available public services and NGO provided services and in some cases, protection from further crime.

### **Safe returns of displaced persons and measures taken to improve the socio-economic conditions for the returnees**

12. During 2008 and 2009, Kosovo authorities (including the President and Prime Minister) continued to officially encourage returns, including through reaching out to communities, displaced persons and their associations. However, it was only on the insistence of UNMIK that return-related activities were included in Kosovo's medium-term budget expenditure framework in 2008, which formed the basis for a donor conference in July 2008, pointing to the need for increased efforts by the Kosovo government to promote and implement returns and reintegration of non-majority communities. While more returns projects are being developed by Kosovo's municipalities, continued adequate funding needs to be secured.

13. As per the revised Manual for Sustainable Return of the Ministry for Communities and Return, following an assessment of the beneficiaries' skills, interests and local market demand, tailor-made assistance is rendered to the returnee in several ways including agricultural income generation grants, vocational skills training, tools for small handiwork businesses and contributions in kind, e.g. cattle or poultry. Relevant UN agencies and other international partners provide appropriate support to the GoK to ensure access to essential services for all communities including displaced persons and returnees, as well as broad support to enhance safe and sustainable returns of all displaced persons.

14. UNDP continues to manage the Sustainable Partnerships for Assistance to Minority Returns to Kosovo (SPARK) Programme which provides an integrated umbrella mechanism for delivering the full spectrum of multi-sectoral assistance for returns. The Programme is financed

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<sup>2</sup> The criteria set the following requirements for applicants. Namely, that they are: habitual residents of Kosovo, temporary residents of Kosovo from jurisdictions that provide reciprocal legal aid to habitual residents of Kosovo, or other persons determined by law or international agreement. And they satisfy the financial criteria, namely: persons who are receiving social assistance or are in an equivalent financial position. And that the merits of the case warrant a grant of legal aid, considering: the relative value of the claim or property involved; the reasonableness of the applicant's case / arguments in support of compensation in the case of victims; the probability of succeeding in the action; the complexity of the case; and the ability of the person to represent themselves.

by the Government of Kosovo and the British Government to the value of 20 million US dollars. Operational since October 2005, SPARK combines support to both Individual/Spontaneous and Organised/Group Returns. SPARK was further complemented by the launch in November 2008 of a new initiative, the Return and Reintegration in Kosovo (RRK) budgeted at 7 million euros and funded jointly by the European Commission and UNDP.

15. SPARK Organised Returns provides specific holistic assistance to support larger organised and group returns of minority IDPs displaced in Serbia and Montenegro as well as within Kosovo using a community based, multi-sectoral approach which may include, but is not limited to: housing assistance; socio-economic assistance; community mobilization and development; inter-ethnic tolerance building and dialogue activities to support reconciliation. Furthermore, vital infrastructure support is provided in many areas including the rehabilitation of entire water, electrification and sanitation systems, as well as social development and access to vital services through the rehabilitation of schools and health centres. Strong focus is placed on designing specific economic sustainability strategies with the returnees for their communities, to further prospects of a sustainable return.

16. In March 2009, the authorities in Serbia in co-ordination with UNHCR, have initiated a thorough survey of displaced persons from Kosovo to identify those interested in returning to Kosovo. The information collected will be transferred by UNHCR offices in Belgrade and Prishtinë/Priština for incorporation into the MCR database for further action.<sup>3</sup>

17. In order to provide displaced persons with first-hand information on the current situation in their places of origin, as well as on procedures that need to be followed for return, UNHCR/DRC and other relevant partners continued to organize "go and see visits" and "go and inform visits".<sup>4</sup> In this regard, the Municipal Returns Officer, Municipal Communities' Officer and UNHCR coordinate with KPS and KFOR to assist potential returnees assess returns-related concerns including safety and access to public services and economic opportunities.

18. Many of the municipalities have developed municipal return strategies in 2008 and 2009, while encouraging the participation of displaced persons and their representatives. The implementation of these strategies needs further support, including allocation of funds. In an attempt to improve the co-ordination of return activities between central authorities and the municipalities, a "Localization Co-ordination Team" was set up in the Office of the Deputy Prime Minister in November 2008, composed of four permanent staff seconded by UNHCR.

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<sup>3</sup> The MCR database finally became operational in February/March 2009. The database was earlier demonstrated to staff of the MCR on 19 December 2008. Municipal Return and Communities Officers have been trained in the use of the database in March/April 2009.

<sup>4</sup> In 2008, a total of 64 "go and see visits" and eight "go and inform visits" were undertaken, with 692 and 143 beneficiaries respectively funded by UNHCR and the Bureau of Population Refugees and Migration, while 26 "go and see visits" and 17 "go and inform visits" were organized as of end of May 2009 by all relevant stakeholders. The arrest of a Kosovo Serb internally displaced person from Serbia on 12 March 2008 for alleged war crimes (after the declaration of independence) and an attack against a Kosovo Serb returnee on 21 May 2008 may have seriously hampered return-related activities, including "go and see visits".

### **Recovery of properties or compensation for the loss of property**

19. The establishment of the Kosovo Property Agency (KPA) in March 2006 represented a significant step in creating an environment conducive to sustainable return, by providing for a mechanism for resolution of claims relating to private immovable property, including agricultural land and commercial property. However, the closure of the KPA offices outside Kosovo, following the political developments in 2008, has created a gap in effective access to this mechanism by displaced persons. To address this, UNMIK has been and continues to work closely with relevant international agencies to develop contacts with Belgrade to encourage returns in general, as well as to develop practical institutional arrangements to fill this gap and develop other measures necessary to ensure respect for the right to property of displaced persons.

### **KPA Rental scheme**

20. As previously reported, agreement was reached in principle for the KPA to temporarily administer presently vacant reconstructed living units at Mitrovica/e's Roma Mahala RAE returns site for the temporary relocation of willing and eligible RAE IDPs. However, the conditions required for this scheme to work proved difficult to obtain and its implementation was hampered by lack of donor support, lack of consent by property owners, including Roma beneficiary/owners of the vacant units, and reluctance of eligible IDPs to move south of the Ibar river. International and local actors committed to a sustainable relocation of the RAE IDPs currently living in Cesmin Lug and Osterode camps in northern Mitrovica are discussing alternative solutions to the KPA rental scheme to secure conditions, especially consent of the property owners, to allow the vacant units to be utilized for the return of IDPs.

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