

HUMAN RIGHTS COMMITTEE

87th session (Geneva, 10 July to 28 July 2006)

Consideration of country report – United Nations Interim Administration Mission in Kosovo (initial report)

Information submitted to the Committee

Following the agreement between the Yugoslav National Army and NATO regarding their withdrawal from Kosovo, United Nations Security Council *Resolution 1244*¹ established the United Nations Interim Administration Mission in Kosovo (UNMIK) on 10 June 1999. For the past seven years, UNMIK has been performing Kosovo's basic civilian administrative functions with the goal of promoting the establishment of substantial autonomy and self-government. In 2004, during its 81st session, the Human Rights Committee (the Committee) determined that Serbia and Montenegro was unable to report on the discharge of its own responsibilities in regards to the human rights situation in Kosovo, due to the fact that civil authority is exercised by UNMIK. As the Committee decided that the provisions of the *International Covenant on Civil and Political Rights* (ICCPR) were still applicable in Kosovo, UNMIK was requested to report to the Committee on the implementation of the ICCPR in Kosovo. UNMIK submitted its initial report in February 2006². It was the first time that a United Nations mission had reported to a treaty body.

The report detailed the structure of UNMIK, its relationship with the Provisional Institution of Self-Government (PISG) in Kosovo, and relevant legislative changes that have occurred in the past seven years. It included an account of a situation concerning the right to health, where numerous displaced persons were settled on contaminated land, causing a number of persons to suffer from lead poisoning. The report was criticised by the Assistant Minister of Foreign Affairs of Serbia, Mr. Dejan Sahovic, who addressed the Committee, claiming that the focus on legislative reform fails to accurately describe the situation “on the ground”. Committee member Mr. O’Flaherty also commented that the report inadequately described how UNMIK complied with obligations under the ICCPR relating to non-discrimination³, gender equality⁴, and equality before the law⁵.

Although UNMIK presented the report and is ultimately accountable to the Committee in relation to civil and political rights in Kosovo, both the PSIG and the Department of Foreign Affairs of Serbia were also represented during the Committee sessions and participated in the dialogue with the Committee. Appearing before the Committee were Mr. Dejan Sahovic, Assistant Minister of Foreign Affairs for Serbia; Mr. Alexander Borg-Oliver, Legal Adviser to UNMIK; and Mr. Vedat Gashi, Chief Legal Adviser to the Prime Minister of the PISG. Several NGOs submitted parallel reports to the Committee.

¹ <http://daccessdds.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement>.

² CCPR/C/UNK/1 (<http://www.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/CCPR.C.UNK.1.pdf>).

³ Article 2 of the ICCPR.

⁴ Article 3 of the ICCPR.

⁵ Article 16 of the ICCPR.

These reports addressed, amongst other issues, the rights of internally displaced persons⁶, property rights⁷, and impunity⁸.

Themes and issues

As this was the first appearance of a United Nations mission before a treaty body, the Committee and the delegation spent a significant amount of time establishing the parameters of the review. Several Committee members accused the delegation of ignoring the infractions that had occurred shortly after the mission began in Kosovo. The delegation agreed that the infractions of the past were significant, but commented that UNMIK was focusing on the current problems in Kosovo and the potential for an optimistic future. The Committee also raised the issue of the legal uncertainty that has arisen from contradictions between Yugoslavian and UNMIK laws and the lack of oversight and accountability for the actions of UNMIK.

Implementation of human rights standards and the status of Kosovo as a State

The issue of whether Kosovo's adoption and implementation of human rights standards is a pre-condition of statehood was discussed with the delegation. The representative from Serbia expressed frustration that the original intention of the UN mission at the commencement of its mandate was to facilitate the implementation of international human rights standards, as this was considered to be a necessary step before Kosovo sought to obtain recognition of its statehood. Now, he explained, it appears the priority has shifted to achieving statehood first, and implementation of international human rights standards was not being treated as imperative. The Committee also suggested that the human rights situation in Kosovo seems to be "in a state of suspension", which makes it appear as though UNMIK is waiting for statehood before addressing these issues. The delegation disagreed with this assessment, reminding the Committee that, since 1999, Kosovo has seen miraculous changes, such as elections, the creation of a municipal structure, and a constitutional framework. While acknowledging that more work still needs to be done by the international community, the UNMIK delegates asserted that the progress made in Kosovo is still significant.

The security situation in the North of Kosovo

The Committee expressed concern regarding the security situation in the north of Kosovo. The Committee requested information on what UNMIK and PISG intended to do to ensure that human rights are enjoyed by all people residing under their authority, including those in the north. The delegation admitted that there were parallel administrative, judicial and security structures operating in the northern municipalities. These are primarily Serbian governmental bodies that have assumed jurisdiction over, or are operating within, the territory of Kosovo. This has created legal confusion and uncertainty and has prevented the people living in these areas from gaining access to the rights afforded by UNMIK regulations. The delegation submitted that there are certain realities that cannot be changed: UNMIK has limited control over these municipalities.

⁶ Internal Displacement Monitoring Centre (<http://www.ohchr.org/english/bodies/hrc/docs/ngos/IDMC.pdf>).

⁷ PRAXIS (<http://www.ohchr.org/english/bodies/hrc/docs/ngos/Praxis.pdf>).

⁸ Amnesty International (<http://www.ohchr.org/english/bodies/hrc/docs/ngos/AI.pdf>).

Right to health

The Committee was particularly concerned about an instance of internally displaced persons (IDP) being settled on lead-polluted ground, resulting in lead contamination and poisoning. The delegation explained that this was a "sad and tragic" situation that came to UNMIK's attention when certain families in three settlements in northern Kosovo had increased lead blood levels. It was ascertained from available evidence that the pollution was caused by the illegal smelting of car batteries by some IDPs. To minimise the damage, the World Health Organization (WHO) and the United Nations Children's Fund (UNICEF) provided nutrients and hygiene supplies to the people in the affected communities.

The Committee appeared to be skeptical of both that explanation and UNMIK's response, as they asked the delegation to disclose the evidence that implicated the IDPs in polluting the land. The Committee also questioned the delegation as to why the IDPs were only recently resettled when UNMIK has been aware of the contamination since 2004. The delegation did not present any evidence supporting their claims that the IDPs had caused the pollution, and explained that the evacuation had been delayed by winter and the distrust of a number of displaced persons who were wary of yet another resettlement.

Potential conflicts between UNMIK and Yugoslavian legislation

The Committee also expressed concern at the potential conflict between the laws written before and after the mission's period of administration commenced. The delegation conceded that the legal structure was complex, but disagreed that uncertainty existed. If the courts face any difficulties in establishing which laws from the Former Yugoslavia still apply, an application can be made to the Special Representative of the Secretary General (SRSG) for a determination. The PISG stated its desire to establish an independent legislative review body to ascertain and rectify any protection gaps.

The Committee agreed that Kosovo faced a complex legal situation, but was more concerned that the people of Kosovo are uncertain of the laws, rather than the courts. The delegation simply commented that Kosovo has layered legislation from the Former Yugoslavia, as well as treaties and laws enacted by UNMIK, and that difficulties with integrating new laws with old ones is one of the realities faced by a UN mission mandated to administer a State.

Policing and maintenance of peace and security

The delegation was questioned on the actions of UNMIK police, citing accounts by Human Rights Watch that there is a tendency for police not to attend trials and that police occasionally lose witnesses. One Committee member, Ms. Wedgewood, recommended the creation of a civilian police review board to examine and investigate any accusations of excessive force by UNMIK police.

The Committee was also concerned by the delegation's admission of an expulsion that occurred soon after the Interim Administration was established. The delegation explained that it wasn't an expulsion, but an order preventing a particular individual from returning

to a specific area in Kosovo. They rationalised that Security Council *Resolution 1244* allowed the administrator to be creative in the maintenance of peace and security.

This answer did not satisfy the Committee, who reminded the delegation that the obligations of UNMIK do not simply originate from *Resolution 1244*, but also from the *Charter of the United Nations* and international law in general. The delegation was told by Ms. Wedgewood that if they wanted Kosovo to become a State, then they needed to act like a State.

Detention

The Committee stated their concern for the UNMIK and Kosovo Force (KFOR) detentions that took place immediately after the mission was established in 1999. They were particularly worried that these bodies did not have the appropriate authority to detain these people and that there were inadequate review processes in place.

The delegation reminded the Committee that, following the NATO intervention in 1999, there was no fully functioning law enforcement body in Kosovo. Security Council *Resolution 1244* gave KFOR the responsibility for law and order until an international civil law enforcement presence could be established. Under this power, KFOR detained 3,600 people. Without a functioning criminal justice system, these detentions were made without a warrant.

Human Rights Advisory Panel

The Committee was curious as to the impact of the UNMIK decision to remove the Ombudsperson's competence to review the compatibility of acts of UNMIK with international human rights standards. The delegation commented that the Ombudsperson was never intended to be a permanent position, but rather a transitory post established until such a responsibility could be transferred to the Human Rights Advisory Panel, a body of three international jurists with proven experience in the European human rights system. This transfer was authorised in March 2006. The Committee referred to the numerous recommendations made by different organisations to keep the Ombudsperson, as this mechanism was more effective than the Human Rights Advisory Panel. The delegation reiterated their comments that the Ombudsperson was only a temporary mechanism. While admitting that the Human Rights Advisory Panel has limited capacities, they stated that the body is both new and creative and will do its best to protect human rights in Kosovo.

Human Rights Oversight Committee

This Committee questioned the delegation on why the Human Rights Oversight Committee had not met for several months. The delegation responded that the Human Rights Oversight Committee is no longer required to meet regularly, as UNMIK have begun a process of implementing human rights standards in Kosovo. The Committee commented that the delegation appears to have fundamentally misunderstood the nature of human rights: the Human Rights Oversight Committee should not just review crises, but continuously review the performance of politicians, police, military and other

elements of government. The Committee expressed its surprise that a United Nations mission appeared not to fully understand this concept.

Conclusions and next steps

The Committee members seemed generally confused by UNMIK's approach to human rights. Mr. O'Flaherty commented that the United Nations are meant to be the "guardian of best practices" in human rights, yet a field institution has set up a system that falls below what the UN expects of States.

The delegation was also reluctant to discuss incidents that occurred in the years immediately following 1999. The Committee suggested that it is impossible to move forward without acknowledging the abuses of the past, especially if UNMIK wishes to remain credible, both domestically and internationally. The UNMIK and PISG representatives were eager to stress the complex nature of the situation that they are administering and frequently reminded the Committee of the impressive work that has been achieved in the past seven years.

The Committee Chairperson, Madame Chanet, ended the session stating that, despite the differences in opinion, both the delegation and the Committee agreed that the people of Kosovo were entitled to their rights under the ICCPR. The international community has accepted a difficult task in administering Kosovo and shepherding the people to independence, which is a goal that may take many years to achieve.

The Concluding Observations⁹ acknowledged the difficulties that arise from a UN body whose staff members enjoy certain privileges and immunities, and which is responsible for gradually transferring authority to a provisional government, with parallel Serbian judicial and administrative structures still in place. The Committee addressed the issue of legal clarity, recommending that UNMIK and the PISG specify and advertise the specific law that has been overridden by any new legislation. The Concluding Observations also recommended that claims of excessive force be investigated by the competent body and that all inhabitants of lead-contaminated IDP camps are eventually relocated to environmentally safe areas, following the *Guiding Principles on Internal Displacement*. The Committee also recommended that UNMIK revoke the SRSG's power to detail or expel individuals.

UNMIK, in cooperation with the PISG, is requested to provide follow-up information to the Committee within six months on their recommendations regarding impunity for war crimes, outstanding cases of missing persons, and the return of IDPs.

⁹ CCPR/C/UNK/CO/1 (<http://www.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/CCPR.C.UNK.CO.1.pdf>)