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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

List of issues to be taken up in connection with the consideration of the document on Kosovo (Serbia) submitted by the United Nations Interim Administration Mission in Kosovo (UNMIK) concerning the rights covered by articles 1 to 15 of the International Covenant on Economic, Social and Cultural Rights (E/C.12/UNK/1) and the common core document (HRI/CORE/UNK/2007)

I. PREPARATION AND DISSEMINATION OF THE DOCUMENT

1. Please explain to which extent civil society organizations, including organizations of minority communities, have been involved in the preparation of the document on Kosovo (Serbia) submitted by the United Nations Interim Administration Mission in Kosovo (UNMIK) (E/C.12/UNK/1, hereafter referred to as the "treaty-specific document"). Please also indicate whether the treaty-specific document and the common core document submitted by UNMIK have been translated into Albanian, Serbian and, to the extent possible, into the languages of minority communities in Kosovo, in particular theRoma, Ashkali and Egyptian communities. If not, what urgent measures are being taken to ensure the timely translation of the documents mentioned above, with a view to enabling the effective participation of civil society prior to the consideration of the treaty-specific document at the Committee's forty-first session in November 2008?

II. GENERAL FRAMEWORK WITHIN WHICH THE COVENANT IS IMPLEMENTED

2. Please clarify why the Covenant has been omitted from Chapter 3 of the Constitutional Framework for Provisional Self-Government in Kosovo[1] (HRI/CORE/UNK/1, para. 124) and from article 22 of the "Constitution" as adopted by the Kosovo Assembly on 9 April 2008 (hereafter referred to as the "Constitution"), specifying the international human rights treaties which are directly applicable in Kosovo, despite the criticism expressed by the Ombudsman Institution and by non-governmental organizations. Are there any plans to include the Covenant in the list of directly applicable human rights treaties in article 22 of the "Constitution"? If not, will the Covenant be directly applicable in the courts of Kosovo as an international treaty that has been ratified by the former Yugoslavia?[2]

3. What measures have been taken to ensure that the recommendations of the Ombudsperson Institution concerning alleged human rights violations by public authorities are being implemented by the Provisional Institutions of Self-Government (PISG) and the Kosovo Police Service (KPS)? Please indicate the steps taken to remedy the protection gap that existed between 2006, when the jurisdiction of the Ombudsperson Institution over UNMIK was revoked by UNMIK Regulation No. 2006/6 on the Ombudsperson Institution in Kosovo (HRI/CORE/UNK/1, para. 167), and January 2008, when the UNMIK Office of the Legal Adviser retroactively restored the Ombudsperson's jurisdiction over UNMIK.

4. Please clarify how the independence of the Human Rights Advisory Panel appointed by the Special Representative of the Secretary-General to issue non-binding determinations relating to complaints of violations of human rights by UNMIK (HRI/CORE/UNK/1, paras. 138-141) is guaranteed, and provide information on any cases concerning alleged violations of economic, social and cultural rights by UNMIK considered by the Panel, and on their outcome.

5. What measures have been taken to address the lack of reliable demographic data (HRI/CORE/UNK/1, para. 8) and of updated statistical data on the equal enjoyment of the Covenant rights by, in particular, women, children, minorities, persons living in rural and deprived urban areas, persons with disabilities and other disadvantaged and marginalized groups (HRI/CORE/UNK/1, para. 202; E/C.12/UNK/1, para. 38)? In particular, are there any plans to carry out a new census and to establish a systematic method of data collection?

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[1] UNMIK Regulation No. 2001/9.

[2] See Section 1.1 of UNMIK Regulation No. 1999/24 on the Law Applicable in Kosovo read in conjunction with article 210 of the 1974 Constitution of the Socialist Federal Republic of Yugoslavia (HRI/CORE/UNK/1, para.121).

III. ISSUES RELATING TO THE GENERAL PROVISIONS OF THE COVENANT (arts. 1 – 5)

Article 2, paragraph 2 – Non-discrimination

6. Please provide information on the progress achieved in establishing an internal oversight mechanism to monitor the implementation of the Anti-Discrimination Law (E/C.12/UNK/1, para. 39; HRI/CORE/UNK/1, para. 203), and describe the main features of such mechanism. Please specify which sub-legal acts for the implementation for the Anti-Discrimination Law (ADL) have been enacted by the working group mentioned in paragraph 41 of the treaty-specific document, and clarify whether systematic training on the application of the ADL is provided to judges and civil servants. Please also provide information on any cases where the ADL has been invoked in the courts to challenge discrimination in the area of economic, social and cultural rights.

7. Please provide detailed information on measures taken to ensure that legal provisions on affirmative action for recruitment of members of minority communities in the civil service, as well as the methodology for establishing proportional community representation in the civil service, are being implemented, and that posts reserved for minorities are being filled, including at senior management levels and in the judiciary (E/C.12/UNK/1, paras. 43-49; HRI/CORE/UNK/1, paras. 205-210).

8. What measures are being taken to provide members of the Roma, Ashkali and Egyptian communities and internally displaced persons who are not registered or lack important personal documents with the required documents, e.g. by waiving application fees and simplifying bureaucratic procedures, with a view to ensuring their equal access to employment, social security, housing, health care, education and other public services?

9. Please indicate whether the Kosovo Assembly is considering the adoption of a specific law on the rights of persons with disabilities. What legal provisions are in place requiring the accessibility of public buildings for persons with disabilities and how are they enforced in practice (E/C.12/UNK/1, para. 701)?

Article 3 – Equal rights of men and women

10. Please provide updated statistical data on the representation of women in legislative, judicial and executive bodies, including in central and local government bodies. Please describe the concrete measures taken to increase the participation of women in the public service, including at senior management levels (E/C.12/UNK/1, table 24), and to implement the equal gender participation requirement of 40 percent in the Law on Gender Equality[3] (para. 60), as well as the Kosovo Action Plan for the Achievement of Gender Equality (paras. 79-83). Please

[3] Law No. 2004/2 on Gender Equality, promulgated by UNMIK Regulation No. 204/18, Section 3.2.

also provide information on any cases where the Gender Equality Law has been invoked in the courts to challenge gender-based discrimination in the area of economic, social and cultural rights.

IV. ISSUES RELATING TO SPECIFIC PROVISIONS OF THE COVENANT (arts. 6 – 15)

Article 6 – The right to work

11. Please provide more detailed information on specifically targeted measures, and their results, taken to reduce the unacceptably high unemployment rate (E/C.12/UNK/1, paras. 204 and 208) and to promote the employment of women, youth and minority communities, including the Roma, Ashkali, Egyptian and Serb communities, in the formal economy (paras. 187, 226 and tables 13, 19, 21, 27, 28 and 29).

12. Please provide additional information on the privatization process (E/C.12/UNK/1, paras. 167-170). What measures have been implemented to ensure an ethnically proportionate composition of the workforce following the privatization of former socially owned enterprises (para. 169)? What measures have been implemented to prevent any discrimination in the distribution of 20 percent of the sale proceeds from the liquidation and privatization of such enterprises to "eligible" workers and what are the criteria for defining such eligibility (para. 168)?

13. What measures are being taken to regularize the situation of persons working in the informal economy?

Article 7 – The right to just and favourable conditions of work

14. Please indicate the current minimum wage levels and whether such levels are sufficient to ensure an adequate standard of living for workers and their families (E/C.12/UNK/1, para. 248).

15. Please specify how the principle of equal remuneration for work of equal value is being enforced in practice, especially as regards women and members of minority communities (E/C.12/UNK/1, para. 246).

Article 8 – Trade union rights

16. Please indicate whether the right to strike is explicitly guaranteed by law (E/C.12/UNK/1, para. 291) and whether the draft laws on strike and on freedom of association in trade unions in Kosovo (para. 262) have been promulgated. Please describe the specific guarantees and restrictions of these laws regarding the right to strike and the establishment and operation of trade unions for the different categories of employees.

17. Please specify when the General Collective Agreement of September 2004 entered into force (E/C.12/UNK/1, para. 266) and whether a new collective agreement has been adopted or is currently being discussed to replace the General Collective Agreement after its expiry (para. 238). Please provide detailed information on the content and implementation of the General Collective Agreement currently in force.

Article 9 – Social Security

18. Please indicate whether the minimum levels of war invalids and survivors benefits (E/C.12/UNK/1, table 36), basic old-age pension benefits (para. 332) combined with contribution-based old-age pension benefits (para. 324), disability pension benefits (para. 341), as well as social assistance payments (table 52), are sufficient to ensure an adequate standard of living for recipients and their dependents, and how these amounts relate to average salaries in Kosovo.

19. Please provide more detailed information on the impact of the loss of pension entitlements that Kosovo Albanians who lost their jobs within the public, publicly-owned and socially-owned sectors of employment had accrued under Yugoslav law (E/C.12/UNK/1, para. 304). Please also indicate whether any habitual residents of Kosovo receive pensions from the Serbian authorities.

20. Please indicate whether there are any groups, such as the Roma, Ashkali, Egyptian or other minority communities, who are not covered by existing social security schemes, or are covered by those schemes to a significantly lesser percentage than other groups of the population. What measures are being taken to ensure that such disadvantaged groups are provided with adequate access to social security, in particular social assistance?

Article 10 – Protection of the family, mothers and children

21. Please provide information on measures taken to prevent acts of domestic violence, e.g. by intensifying public awareness campaigns and training for judges, prosecutors and the police on the strict application of criminal law provisions punishing acts of domestic violence, reviewing sentencing policies and ensuring that the statutory time limits for issuing protection orders are being enforced. Please also indicate the measures taken to enhance the assistance provided to victims of domestic violence, e.g. by increasing the capacity of existing shelters and by opening new shelters and strengthening rehabilitation and victim protection programmes (E/C.12/UNK/1, paras. 102-110).

22. Please provide more detailed and updated information on the number of reported cases of women and children who are trafficked to, from, within and in transit through Kosovo for purposes of forced labour, sexual exploitation and organ trafficking, and indicate the measures

taken to ensure the strict application of article 139 of the Provisional Criminal Code of Kosovo[4] by judges and prosecutors who "often resort to minimum charges and subsequent convictions for facilitation of prostitution, instead of opting for charges of trafficking" (E/C.12/UNK/1, para. 112). Please also clarify the concept of "anti-social" children and why such children are deprived of the special forms of protection available for children victims of trafficking (para. 456).

23. What concrete measures have been taken by the Labour Inspectorate, the Centres for Social Work and other child protection institutions to combat child labour and what have been their results (E/C.12/UNK/1, paras. 400-419)?

Article 11 – The right to an adequate standard of living

24. Please describe in detail the programmes in place to reduce the poverty rate of 37 percent (E/C.12/UNK/1, paras. 464 and 474), especially among families with numerous children, unemployed persons and non-Serb ethnic minority communities (para. 469). In particular, what steps are being taken to achieve the aim for the period 2007-2013 of eradicating extreme poverty (paras. 493 and 479), which is most prevalent in rural areas (para. 469) and particularly affects female-headed households (para. 480), internally displaced persons (para. 483) and the Roma, Ashkali and Egyptian communities (para. 484)?

25. Please comment on reports that Category A claims submitted by Kosovo Albanians have frequently been recognized prima facie, while residential property claims by Kosovo Serbs (predominantly Category C claims) have been treated less favourably by the Housing and Property Claims Commission (E/C.12/UNK/1, paras. 518-522). Please specify whether a deadline has been set for the submission of claims to the Kosovo Property Agency and whether the need to inform potential claimants has been taken into account in determining such deadline. Please also provide information on the progress achieved in the resolution of the civil claims for compensation of property damage allegedly caused by KFOR, UNMIK, the PISG or the municipalities during the March 2004 riots, which have been suspended upon request by the UNMIK Department of Justice in August 2004 (paras. 534-536).

26. Please provide a detailed assessment of the impact of the strategies and programmes designed to create the necessary social and economic conditions for the voluntary and sustainable return of internally displaced persons and refugees belonging to minority communities (E/C.12/UNK/1, paras. 563-584). Please also provide information on the impact of measures taken to enable minority returnees to safely access their illegally occupied land, including agricultural land.

[4] UNMIK Regulation No. 2003/25 on the Provisional Criminal Code of Kosovo.

27. Please provide updated information on the numbers of forced returnees, as well as on the measures taken to enable them to return safely, ensure their economic and social reintegration in Kosovo and protect their rights under the Covenant (E/C.12/UNK/1, para. 563).

28. Please provide data, including the number of women and children, on the remaining 272 individuals living in the lead-contaminated camps in Northern Mitrovicë/Mitrovica and Zvečan/Zveçan, as well as detailed information on the process of providing information to those individuals causing them to remain "by their choice" in the camps concerned (E/C.12/UNK/1, para. 560). Please indicate whether those individuals have meanwhile been relocated to environmentally safe sites and whether all victims of lead poisoning, especially children, have received follow-up medical treatment and compensation for the damage caused to their health (E/C.12/UNK/1, para. 558). Please also provide information on the measures taken to provide adequate long-term accommodation for the inhabitants of the Osterode camp (para. 559).

29. What progress has been achieved in reconstructing the Roma "Mahalla" on the south bank of the Ibar river in Mitrovicë/Mitrovica, which was destroyed in 1999, and in regularizing and upgrading existing informal settlements of Roma, Ashkali and Egyptian communities (E/C.12/UNK/1, para. 553)?

30. What measures have been taken to prevent any form of discrimination in the rationing of the supply of electricity, including through the "ABC policy" (E/C.12/UNK/1, para. 606)?

Article 12 – The right to the highest attainable standard of physical and mental health

31. Please provide detailed information on the measures taken to reduce the high infant and maternal mortality rates (E/C.12/UNK/1, paras. 712-715) as well as the estimated high number of clandestine abortions (para. 734).

32. Please provide an assessment of the impact of the community-based approach to mental health (E/C.12/UNK/1, paras. 754-755), as well as information on any legal provisions which regulate the process of committing mental health patients to psychiatric or social care institutions and protect their rights within such institutions, and on their enforcement.

Articles 13 and 14 – The right to education

33. Please provide more detailed information on school attendance and dropout rates at the primary and secondary levels, disaggregated by gender, rural/urban areas and ethnic communities.

34. What measures are being taken to address the lack of classrooms and transport in rural areas to ensure that pupils do not travel long distances, often by foot (E/C.12/UNK/1, para. 765), to attend school, in particular after the introduction of an additional compulsory ninth grade which is frequently taught in the facilities of secondary schools in urban areas (para. 786),

"resulting in many females leaving the school due to the difficult economical and social conditions, lack of transportation and lack of safety" (paras. 803 and 100)? Please also describe the impact of measures taken to mitigate the effects of running schools in up to four shifts per day and to ensure an adequate electricity supply to schools (paras. 769 and 786).

35. Please provide information on the reasons why some ethnic communities rely on "parallel" education institutions (HRI/CORE/UNK/1, para. 233) in Kosovo and indicate the measures taken to ensure the quality of education in such institutions.

36. Please provide detailed information on the availability and quality of mother tongue education and of instruction of Albanian as a non-native language for minority children, including Bosniak, Gorani, Turkish and Roma children, at the primary, secondary and tertiary levels. To what extent are the cultures and traditions of minority communities reflected in school curricula (E/C.12/UNK/1, para. 857)?

Article 15 – The right to take part in cultural life

37. Please provide information on the measures taken to protect, preserve, promote and disseminate minority cultures, and to promote the use of minority languages, including in official communications.

38. What measures are being taken to promote a culture of tolerance and mutual respect among the different ethnic groups in Kosovo?
