

13 February 2012

Dear Ms. Chanet,

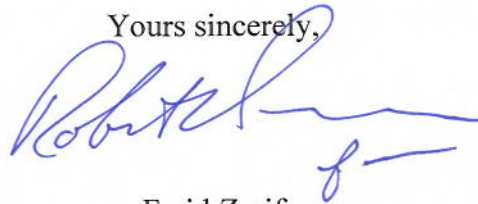
I refer to your letters of 28 September 2010, 10 May 2011, and 10 December 2011 regarding follow-up to examination of the report submitted by the United Nations Interim Administration Mission in Kosovo on the human rights situation in Kosovo since June 1999.

UNMIK is pleased to provide the Human Rights Committee with additional information about follow-up to its recommendations in paragraphs 13 and 18 of the Committee's concluding observations.

As previously communicated by my representatives, the emergence of new political realities on the ground in Kosovo has effectively removed UNMIK's authority and capacity to implement these recommendations. However, UNMIK has liaised and shared information with other actors involved in the promotion of human rights in Kosovo and prepared the following comments.

Allow me to reassure you that UNMIK, in accordance with its mandate, remains committed to full cooperation with the Human Rights Committee.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Farid Zarif', with a stylized flourish at the end.

Farid Zarif

Special Representative of the Secretary-General

Ms. Christine Chanet
Special Rapporteur for Follow-up on Concluding Observations
Human Rights Committee
Palais des Nations
Geneva

Updates on Kosovo responding to the Concluding observations of the Human Rights Committee on the examination of the report submitted by UNMIK on the human rights situation in Kosovo since June 1999.

Introduction

1. The United Nations Interim Administration Mission in Kosovo (UNMIK) is pleased to provide the Special Rapporteur for Follow-up on Concluding Observations (the Special Rapporteur) with this response to the Human Rights Committee (the Committee) concerning the implementation of the concluding observations of the Committee in Kosovo.¹
2. On 7 February 2006, UNMIK submitted a report to the Committee on the human rights situation in Kosovo since June 1999 (the report). Between July 2006 and September 2010, the Special Rapporteur requested that UNMIK provide additional information on the report.
3. Between 11 March 2008 and 28 September 2010, UNMIK provided additional information on paragraphs 13 and 18 of the report. Paragraph 13 addresses the prosecution and sentencing of perpetrators and the compensation schemes for victims, including the establishment of a compensation fund for families or relatives of missing persons and legal schemes available to indigent claimants. Paragraph 18 addresses 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.
4. In July 2008, the Committee noted that the information provided by UNMIK on paragraphs 13 and 18 remained incomplete. Ms. Christine Chanet, the Special Rapporteur, requested a meeting with the SRSB during the 102nd session of the Committee held from the 11th - 29th July 2011 in Geneva to discuss UNMIK's outstanding obligations. At that meeting, UNMIK, represented by the Director of its Office of Legal Affairs, informed Ms. Chanet that the realities on the ground in Kosovo have effectively removed UNMIK's authority and capacity to implement the recommendations contained in the Committee's concluding observations.
5. On 9 September 2011, UNMIK further informed Ms. Chanet that in particular, UNMIK is not in a position any longer to implement a compensation scheme for victims as referred to in paragraph 13 of the report, as UNMIK has lost all control over the Kosovo budget and the use of funds from it. In so far as recommendations for compensation made by the UNMIK Human Rights Advisory Panel (HRAP) are concerned, by the time HRAP started issuing recommendations in November 2008, UNMIK was no longer in a position to make allocations for compensation in the Kosovo Consolidated Budget or undertake to address the issues raised through corrective action by the local Kosovo institutions. In addition, current United Nations General Assembly instructions on compensation do not permit UNMIK to pay compensation from its own budget, other than for material damage or physical harm

¹ All reference to Kosovo, whether to the territory, institutions or population, in this document shall be understood in full compliance with United Nations Security Council resolution 1244 (1999) and without prejudice to the status of Kosovo.

caused directly by the Mission or its personnel. UNMIK undertook to liaise and share information with other international actors involved in the promotion and protection of human rights in Kosovo, given that these actors interact directly with the local Kosovo institutions, in order to coordinate mechanisms for the implementation of the Committee's concluding observations.

6. To that effect, UNMIK, on 15 September 2011, contacted the key international actors to request their input on the information required by the Special Rapporteur, namely, the UN Kosovo Team through the UN Development Coordinator, the European Union Rule of Law Mission in Kosovo (EULEX), the Kosovo Property Agency, the Organisation for Security and Cooperation in Europe Mission in Kosovo (UNMIK Pillar III), United Nations High Commissioner for Refugees (UNHCR) and Office of the High Commissioner for Human Rights (OHCHR). These institutions all interact with those Kosovo agencies that act as the main local coordinating mechanisms and drivers of the process of implementing human rights commitments in Kosovo. UNMIK received positive written responses from all the institutions, with a number of them appointing focal points. On 7 December 2011, UNMIK chaired a meeting of the above-mentioned international actors who agreed to provide relevant information.
7. The Committee should note that realities on the ground in Kosovo have effectively removed UNMIK's authority and capacity to implement the recommendations contained in the Committee's concluding observations and have impacted on UNMIK's ability to compile and provide information on implementation of human rights conventions in Kosovo.
8. Notwithstanding this fact, UNMIK has prepared the following report based on inputs from the above-mentioned international actors. UNMIK underlines that it submits the report only in respect of information pertinent to establishing the actual situation vis-à-vis the implementation of the observations of the Committee.
9. UNMIK takes note of references to certain institutions and laws used in various parts of the document that do not conform to the status-neutral stance of the United Nations. Where the institutions and laws referred to in this report depart from the status-neutral stance of the United Nations in relation to Kosovo, these references should be seen as reflecting only the de facto situation in Kosovo.
10. Accordingly, UNMIK, in submitting this report, does not in any way purport to make any comments on the status of Kosovo, and does so on a voluntary basis, in the spirit of cooperation between UNMIK and the Committee, in line with UNMIK's mandate under United Nations Security Council resolution 1244 (1999).

Paragraph 13 (the prosecution and sentencing of perpetrators and the compensation schemes for victims, including the establishment of a compensation fund for families or relatives of missing persons and legal schemes available to indigent claimants)

Missing persons

11. As at 17 January 2012, the International Committee of the Red Cross (ICRC) reported 1,795 cases of missing persons remaining from the conflict in Kosovo. A total of 4,225 cases have been closed since tracing work began, including 2,640 persons confirmed dead and buried by their families.
12. EULEX and Kosovo forensic experts work in partnership in the Ministry of Justice's Department of Forensic Medicine (DFM). This office, formerly known as the Office of Missing Persons and Forensics, continues to pursue investigations into the fate of persons missing since the 1998-1999 conflict. UNMIK's direct involvement in these efforts ended in April 2010, although UNMIK retains high-level participation in the Prishtinë/Pristine Delegation of the Working Group on Missing Persons.
13. EULEX's forensic team comprises 13 staff, national and international, including the co-Head of the DFM, forensic pathologists, a forensic anthropologist, archaeologist and photographer, investigations coordinator, civil society and language assistants. EULEX also monitors, mentors and advises its local counterparts, helping to build a sustainable Department of Forensic Medicine at international standards.
14. EULEX and the DFM work to clarify the fate of missing persons through exhumations, forensic analyses and scientific identification; and to provide medico-legal services within Kosovo through autopsies, medical examinations and death- and crime-scene analyses.
15. From 9 December 2009, when it officially assumed charge of UNMIK's case files and evidence, through 31 December 2011, EULEX DFM carried out 230 field missions, recovering the remains of 199 missing persons. It returned the bodies of 278 victims to families. Of this number, 207 had been missing persons, while the remainder involved scientific (mainly DNA) confirmation of the identity of already buried victims, whose families were unsure of their identity. EULEX DFM is currently working on identification of more than 200 remains held at the DFM Mortuary.

Investigations, prosecution and sentencing of perpetrators

16. EULEX Police Component inherited 1045 war crimes investigation files from UNMIK Police. As of 31 December 2011, 803 files were with the Special Prosecution Office of Kosovo (SPRK), approximately 203 at the pre-trial stage and 600 at the preliminary investigation stage. Most of these cases are entrusted to the EULEX Police War Crimes Investigation Unit (WCIU), 62 cases were transferred to district prosecutors and 180 cases had been dismissed.
17. In 2009, EULEX Prosecutors/SPRK inherited 179 cases from UNMIK Kosovo Special Prosecutor's Office (KSPO). Of these, 114 cases have been concluded and 65 are ongoing

as of 31 December 2011. A further 69 UNMIK cases were referred from the UNMIK Pejë/Peć District Prosecution Office later in 2009 and are ongoing at the pre-trial stage.

Compensation to families of missing persons

18. Under the Law on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of Kosovo Liberation Army, Civilian Victims of War and their Families², close family members of a civilian who “based on reliable information was reported missing between 1 January 1998 and 31 December 2000, as a consequence of the war in Kosovo during 1998-1999” are entitled to a pension of €135 per month. The law also grants varying pensions to other parties, as indicated by the Law’s title. It replaces a 2006 law (which never entered into force) that authorized pensions only for families of civilians who went missing up to 20 June 1999, the date that Serbian forces withdrew from Kosovo and NATO ended its bombing campaign. While most Kosovo Albanian missing persons disappeared before that date, many Kosovo Serbs are believed to have gone missing after it. This new law, if implemented would represent a major step forward toward compensation for the families of missing persons.
19. The Kosovo Assembly approved the Law on Missing Persons on 31 August 2011. Its framework also covers civilians who were reported missing during the period 1 January 1998 – 31 December 2000. The law provides that expenses of reburial after the identification of mortal remains of missing persons shall be borne by the Governmental Commission on Missing Persons. Indeed, Kosovo authorities have been funding reburials for some time. According to the 2011 Annual Work Report of the Governmental Commission on Missing Persons, the remains of 68 persons were buried in 2011 at a cost of €17,000.

Paragraph 18 (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).

Property claims resulting from 1998-1999 conflict

20. The Kosovo Property Agency (KPA)³ has registered 41,687 claims resulting from the 1998-1999 conflict, some 90% of them for agricultural land, 8% for residential property and 2%

² Enacted by the Kosovo Assembly on 28 December 2011.

³ Established as an independent agency by UNMIK Regulation No. 2006/10 on the Resolution of Claims Relating to Private Immovable Property, including Agricultural and Commercial Property. The KPA assumed certain activities of the Housing and Property Directorate (HPD) established under UNMIK Regulation No. 2000/23, whose closure coincided with the establishment of the KPA. These included the implementation of Housing and Property Claims Commission (HPCC) decisions that were pending enforcement and management of properties under the administration of the HPD. Since 31 December 2008, the Agency operates under The Assembly of Kosovo Law No. 03/L-079 amending UNMIK Regulation No. 2006/50. The KPA is mandated to receive, register and, through the Kosovo Property Claims Commission (KPCC), resolve claims resulting from the armed conflict that occurred between 27 February 1998 and 20 June 1999. Decisions taken by the KPCC are subject to a right of appeal only to the Supreme Court of Kosovo.

for commercial properties; in 98.9% of the claims, the claimants assert ownership rights over the claimed property. The KPA has produced a verification report in 40,576 of these claims. For some 1,110 claims, KPA has verified submitted documents but deemed them insufficient to support the claims. KPA has contacted the claimants in these cases and asked them to submit additional substantiating documentation.

21. Adjudicated claims through 2011 stand at 30,953. Of these, the KPA's Kosovo Property Claims Commission (KPCC) has overturned 18,400 claims based mainly on incorrect notification (18,301) and for other technical reasons (99). Overturned claims numbering 11,090 have been re-adjudicated, leaving the number of valid adjudicated claims at 23,647. The Commission has decided 760 out of the total 2,386 contested claims.

Compensation scheme

22. Section 19 of UNMIK Regulation No. 2006/50 as amended by Law 03/L-079 states: "The Kosovo Property Agency shall succeed to the responsibilities of the Housing and Property Directorate under Section 4 of UNMIK Regulation No. 2000/60 on the restitution of occupancy rights to socially owned apartments lost as a result of discrimination. It shall implement its provisions in accordance with criteria and procedures adopted by the Kosovo Property Agency for the calculation of the amounts referred to in Section 4 of UNMIK Regulation No. 2000/60.
23. At its 13 July 2011 meeting, the KPA Supervisory Board approved the criteria and procedures referred to at Section 19 aforesaid. A subsequent assessment has been undertaken to determine the exact cost of the scheme and the way that it is to be funded. The Kosovo Ministry of Finance has established a Trust Fund for the scheme. On 26 September 2011, KPA wrote to prospective donors and to UNMIK with a proposal for funding the scheme.
24. As stated in the introduction to this response, UNMIK is not in a position, any longer, to implement a compensation scheme, as UNMIK has lost all control over the Kosovo budget and the use of funds from it. As noted above, KPA has addressed prospective donors to fund the compensation scheme and requested assistance from UNMIK in finding adequate funding. UNMIK has informed KPA that it will assist in seeking funding for the compensation scheme.

Declaratory orders

25. UNMIK's Housing and Property Directorate (HPD)⁴ originally certified some 11,000-12,000 residential properties as destroyed during the conflict or in some cases, in the post-conflict period. As such, the Housing and Property Claims Commission (HPCC) issued declaratory orders stating that claimants had some form of property right over the now non-existent property. However, the HPD and HPCC mandate did not provide for compensation to be paid to these property right holders. KPA provided the EULEX War Crime Unit with the full list of these properties. While some property right holders have received redress through various reconstruction programmes, an undetermined number of others, mainly

⁴ Established by UNMIK Regulation No. 1999/23 [1] On the Establishment of the Housing and Property Directorate of 15 November 1999.

those still in displacement, have never received redress. Kosovo institutions should continue to address the issue of destroyed properties through returns activities, housing assistance and other policies aimed at ameliorating the damage caused by the conflict.

KPA rental scheme

26. At the end of 2011, KPA was administering 4,898 abandoned properties; 2,318 placed under KPA administration following a request from a successful HPCC claimant; 443 placed *ex officio* under administration due to the intervention of the KPA and its predecessor, the HPD.
27. The voluntary rental scheme operated by the KPA⁵ supervises the rental of properties under the administration of the KPA upon the request of the owner/property right holder. It makes it possible for these persons to receive a fixed income from their property by authorizing the KPA to rent it out until he or she decides to utilize the property in any other way.
28. A total of €3,122,433.66 has been collected under the voluntary rental scheme: €2,328,079.80 has been transferred to identified landlords, €190,294.61 is held on deposit for unidentified landlords, and €129,378.29 is being held as security deposits. The amount of €113,334.77 has been retained for administrative overheads incurred from operating the scheme.
29. Only properties that come under the KPA's administrative authority may be included in the scheme. These are either 1) on the request of successful KPA claimants, or 2) properties that were under the administrative authority of the HPD on the date that UNMIK Regulation No. 2006/10, which established the KPA, came into force. The KPA has no authority to act in cases of any other property and as such cannot include in it its voluntary rental scheme properties of displaced persons except as described above.

Minority returns

30. Despite important and ongoing efforts by local Kosovo institutions and international and regional organizations working in Kosovo, voluntary minority returns to Kosovo have remained low throughout the post-conflict period. According to UNHCR, only 23,284 persons from minority communities (including Kosovo Albanians who are a minority in their local community) have returned to Kosovo since 2000. This is about ten percent of the overall estimated 240,000 persons who remained displaced at the end of 1999. In contrast, virtually all the Kosovo Albanians displaced during the conflict had returned before 2000 - some 841,000 people, most of them spontaneously but some 147,000 with assistance.

⁵ Referred to in Paragraph 18 of the Concluding observations and Paragraph 20 of CCPR/C/UNK/CO/1/Add.3).

MINORITY RETURNS TO KOSOVO FROM INTERNAL AND EXTERNAL DISPLACEMENT
(as per UNHCR)

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011 ⁶	TOTAL
1,906	1,453	2,756	3,802	2,469	2,126	1,669	1,799	679	1,153	2,314	1,177	23,284

31. The sustainability of these returns continues to be an issue of debate and discussion. No official survey has been undertaken but informal assessments of returnee housing projects indicate that many units are abandoned or inhabited seasonally by the owners.

32. Considering that returns projects worth millions of Euros have been implemented over the past decade, the numbers are disappointing. According to UNHCR, the majority of the displaced, particularly in Serbia proper and northern Kosovo, have indicated their wish to integrate locally, that is not to return to central Kosovo. However, many are still seeking settlement for property in Kosovo that has been destroyed, damaged or appropriated.

Legal and policy framework supporting returns

33. The local Kosovo authorities, with support from international partners, have developed a strong framework of laws and policies aimed at facilitating returns and reintegration. The President and the Prime Minister's offices encompass structures dedicated to assisting non-majority communities. The Kosovo Action Plan on the Implementation of the Strategy for the Integration of Roma, Ashkali and Egyptian Communities (2009-2015) provides for the return of displaced persons belonging to these communities to either their place of origin or to a freely chosen alternative place. It also foresees specific assistance measures targeting these three communities. The Strategy for Communities and Returns (2009-2013) developed by the Ministry of Communities and Returns puts greater emphasis on economic development and the stabilization of non-majority communities.

34. At the municipality level, minority and community-related bodies include Municipal Communities' Committees, Municipal Community Safety Councils, Municipal Working Groups on Returns, and Municipal Offices of Communities and Returns. Kosovo's 38 municipalities are required to develop and implement municipal strategies, policies and programmes based on these national strategies. Municipalities have the primary role in implementation of returns initiatives and projects, such as promoting dialogue and encouraging tolerance and supporting socio-economic reintegration and community development. They have a duty to engage in information and outreach activities and to inform displaced persons about the situation in their places of origin and on the assistance available to them upon return.

⁶ Subject to change pending retroactive registration

Programmes supporting sustainable returns

35. The local Kosovo authorities, the United Nations, regional bodies and bilateral organizations have provided robust support to return and reintegration of refugees and internally displaced persons for well over a decade, including through the following current and recent programmes:
- 2008–2009: Sustainable Partnerships for Assistance to Minority Returns to Kosovo programme (SPARK), funded by Kosovo authorities and implemented by the United Nations Development Programme (UNDP);
 - 2009–2010: Return and Reintegration to Kosovo (RRK), jointly funded by the European Commission (EC) and the Kosovo Ministry of Communities and Returns (MCR) and implemented by UNDP;
 - 2010–2011: RRK II, jointly funded by the EC and the MCR and implemented by the Danish Refugee Council;
 - 2010: European Union–Mitrovicë/Mitrovica RAE Support Initiative Project;
 - 2010: Roma, Ashkali and Egyptian Economic, Social, Transition, Advocacy and Resettlement/Reintegration (RESTART), funded by USAID;
 - 2010–2011: Supporting durable solutions for returnees and repatriated persons, OSCE;
 - 2011–2012: RRK III, jointly funded by the EC and MCR and implemented by the International Organization for Migration (IOM);
 - 2011: Project to enhance sustainable returns to Prizren, UK Department for International Development (DFID);
 - 2012: Project to enhance sustainable returns to Prizren II, UK DFID;
 - 2012: Strengthening the capacities of central and local institutions to facilitate the sustainable return and reintegration of refugees and displaced persons and to support the development and stabilization of communities, OSCE.

Challenges to sustainable returns

36. Local progress in carrying out the obligations of relevant Kosovo laws and policies has been limited and uneven. Just over half of Kosovo's municipalities had developed and endorsed municipal returns strategies by 2009. Where they were adopted, the strategies and programmes for displaced persons and returnees were often only partially implemented, due to weak political commitment by some officials, insufficient planning and allocation of financial resources, a lack of co-ordination and co-operation between the central and local level institutions, and limited capacity for policy-making, project planning and project implementation at the municipal level.
37. Challenges that affect Kosovo society as a whole -weak rule of law, a struggling economy, poor infrastructure and inadequate delivery of basic services impact more strongly on non-majority communities, contributing significantly to low levels of minority returns. Socio-economic opportunities for many minorities are especially limited. Non-majority communities in Kosovo face high levels of unemployment and particularly limited access to public services. Many face ongoing difficulties in the resolution of property disputes and blocked or delayed property restitution proceedings. This is particularly true of members of Kosovo Roma, Ashkali and Egyptian communities who have often resided in informal settlements with lack of property titles. Members of non-majority communities – notably

Kosovo Roma, Ashkali and Egyptians – often face additional challenges due to lack of civil status registration and personal documents.

38. Lack of progress on reconciliation, particularly between the majority Kosovo Albanian community and the Kosovo Serb minority, and real and perceived security concerns, are another inhibiting factor. There has been resistance to the returns process on the part of some receiving communities. In one example, the returns process to a village in Ferizaj/Uroševac municipality came to a halt in early November 2011 when the receiving Kosovo Albanian community prevented a go-and-see visit by displaced Kosovo Serbs with a protest alleging some potential returnees were responsible for war crimes. The OSCE issued a press release strongly condemning “any action that impedes the return process,” adding that “war crimes allegations should be dealt with through proper investigation, prosecution and adjudication by the appropriate authorities.”
39. Although the Kosovo Law on the Protection and Promotion of the Rights of Communities and their members in Kosovo affirms the right of communities “to receive public education at all levels in one of the official languages of Kosovo of their choice” currently there are no Kosovo-administered schools providing education in the Serbian language. The Serbian government supports Serbian language schools in Kosovo’s Serbian enclaves while Kosovo-administered schools teach in Albanian. No schools offer instruction in the other official language, which is creating a younger generation that will be only able to communicate with each other in English or other third languages.
40. Returnee settlements continue to be subject to occasional thefts and vandalism. Unoccupied properties are particularly vulnerable. In a 7 October 2011 press release, the OSCE Mission in Kosovo called on local institutions to provide security for returnees, voicing “concern over the recent spate of burglaries and looting in the returns site of Bablak/Babljak village in the central municipality of Ferizaj/Uroševac.” In one week, four properties were reported looted, and the local Orthodox cemetery was damaged by a fire, while a further ten properties were burglarized and looted in August and September 2011. “Such incidents create a feeling of insecurity and vulnerability among this small returnee community... [and] have a negative impact on the overall returns process in Kosovo.”
41. According to a December 2011 OSCE study “Municipal Responses to Security Incidents Affecting Communities in Kosovo and the role of Municipal Community Safety Councils”; there is a lack of coordination between central and municipal level structures. Municipal-level problems are often unknown to the central-level authority and central authorities only rarely intervene when incidents affecting minorities occur.