

# **Application of the Framework Convention for the Protection of National Minorities in Kosovo: Opportunities for NGO Advocacy**

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## **Abstract**

The signing of the Technical Agreement on the monitoring of the implementation of the Framework Convention for the Protection of National Minorities between the Council of Europe and the United Nations Interim Administration Mission in Kosovo in August 2004 provided an unprecedented opportunity for Kosovo minority communities to make their voices heard on issues of their concern. A precondition for the legitimacy and validity of this process and the ultimate outcome lays in their local ownership and full participation, both as regards the Kosovo and Serbian Governments' involvement in the preparation of the official report and the local NGO's drafting of the shadow report. If local stakeholders are bypassed once again, it will be yet another missed opportunity to start constructive and sustainable dialogue in this troubled province. This paper discusses the role and the application of the FCNM within the entity's legal system and its implications for minority protection, as well as the opportunities for NGO advocacy around the FCNM monitoring process. Special attention is paid to the role assumed by the international organisations and the opportunities and pitfalls arising from it.

## **1. Introduction**

In August 2004, the United Nations Interim Administration Mission in Kosovo (UNMIK) and the Council of Europe signed a technical agreement which stipulated the arrangements for monitoring the implementation of the Council of Europe's premiere instrument for the protection of minority rights, the Framework Convention for the Protection of National Minorities (FCNM). Under the Agreement, the Council of Europe will monitor UNMIK's compliance with the Framework Convention while the ultimate governing institution in Kosovo has the responsibility to supply the relevant information in the form of an official report.<sup>1</sup> This development has provided an unprecedented opportunity for the application of the FCNM at its best: affording protection to groups which may benefit from it, without prejudice to the status of the reporting entity. It also makes it possible for minority communities in Kosovo to make their voice heard through the participation in the monitoring process and instigate a process of change. The aim of this paper is to present an overview of the minority situation in Kosovo, the role and the application of the FCNM within the entity's legal system and its implications for minority protection, as well as the opportunities for

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<sup>1</sup> Normally, the report submitted by the state pursuant to Article 25(1) of the FCNM is called a 'state report.' In the case of Kosovo, the term has been changed to 'official report' so as not to make any implications for the unresolved status of Kosovo.

NGO advocacy around the FCNM monitoring process. Special attention will be paid to the role the international organisations have assumed in the monitoring process and the opportunities and pitfalls arising from it.

## **2. Kosovo, its Status and the Legal Framework for the Protection of Minorities**

The present position of Kosovo has been defined by UN Security Council Resolution 1244.<sup>2</sup> Adopted in June 1999 to bring an end to the conflict and the NATO intervention, the Resolution authorised the Secretary General to establish the UN Interim Administration in Kosovo. The Resolution laid down the general principles for a political solution to the Kosovo crisis, called for the withdrawal of the Serb military forces and the demilitarisation of the Kosovo Liberation Army (KLA). It provided for the deployment of international civil and security presences and the establishment of an interim administration which was to ensure the people of Kosovo the enjoyment of substantial autonomy within what was then the Federal Republic of Yugoslavia (FRY). Indeed, the Resolution reaffirmed the commitment to the territorial integrity of FRY but also, pending a final settlement, to establishing and overseeing the development of provisional democratic self-governing institutions in Kosovo guaranteeing substantial autonomy in accordance with the Rambouillet Accords. Currently, the implementation of UNMIK's mandate rests on four pillars: Pillars I and II deal with police and justice affairs, and civilian administration, respectively, and are placed under the leadership of the United Nations; Pillar III, Democratisation and Institution Building, is led by the Organisation for Security and Co-operation in Europe (OSCE), while Pillar IV, Reconstruction and Economic Development, is lead by the European Union (EU).<sup>3</sup>

A major impetus for the establishment of local self-governance came in May 2001 with the signing of the Constitutional Framework for Provisional Self-Government in Kosovo. Pursuant to the Constitutional Framework, provisional institutions of self-government were established in the legislative, executive and judicial fields. Although the responsibilities of the Kosovo Government, referred to as the Provisional Institutions of Self-Government (PISG), cover virtually every aspect of life, the SRSB has retained the ultimate governing authority to ensure compliance with Resolution 1244.<sup>4</sup>

As most analysts point out, substantial work has been carried out to stabilise Kosovo and introduce a functioning administration. The most burning issue, however, the status of Kosovo, which lies at the heart of the conflict, has been set aside for a long time, adding to the frustration which culminated in the March 2004 violence directed against Kosovo's minorities and the international mission itself.<sup>5</sup> Embraced in 2002, UNMIK's policy of 'standards before status' espoused the principle that discussions

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<sup>2</sup> Available at: <http://www.unmikonline.org/press/reports/N9917289.pdf>.

<sup>3</sup> Available at: <http://www.unmikonline.org/intro.htm>.

<sup>4</sup> SC Res. 1244, 10 June 1999, S/RES/1244 (1999), available at: <http://www.un.org/Docs/scres/1999/sc99.htm>; Constitutional Framework for Provisional Self-Government in Kosovo, available at: [http://www.unmikonline.org/pub/misc/FrameworkPocket\\_ENG\\_Dec2002.pdf](http://www.unmikonline.org/pub/misc/FrameworkPocket_ENG_Dec2002.pdf).

<sup>5</sup> See, for instance, International Crisis Group, *A Kosovo Roadmap (I). Addressing Final Status*. Balkans Report No. 124 (Pristina/Brussels: ICG, 1 March 2002), available at: <http://www.crisisweb.org>, and European Stability Initiative, *The Lausanne Principle: Multiethnicity, Territory and the Future of Kosovo's Serbs* (Berlin/Pristina: ESI, 7 June 2004), available at: <http://www.esiweb.org>.

over the final status of Kosovo would be put on the agenda only after the province had provided evidence it was capable of respecting the human and minority rights of all its inhabitants.<sup>6</sup> The standards were, in fact, spelled out in December 2003 in a document supposedly agreed by the UN, the local institutions and the international community.<sup>7</sup> The standards, addressing the areas of functioning democratic institutions, rule of law, freedom of movement, sustainable returns and the rights of communities and their members, economy, property rights, dialogue and Kosovo Protection Corps, are intended to prepare Kosovo for negotiations on its final status.<sup>8</sup>

It is generally agreed that tensions might rise in 2005, as talks on the province's final status approach and the review of the implementation standards promulgated in 2003 gets underway. Interestingly, the Kosovo Standards Implementation Plan, a 100 plus page document, teeming with often unintelligible acronyms, was launched in March 2004, only two weeks after the riots which were a major setback for the efforts of the international community. The Plan is a governmental program of sorts, a list of policies, goals, deadlines and assigned responsibilities.<sup>9</sup> Against this backdrop, the signing of the technical agreement between the Council of Europe and UNMIK on the monitoring of the implementation of the provisions of the Framework Convention for the Protection of National Minorities, bears particular relevance. According to the Agreement, UNMIK is to submit its official report on the implementation of the FCNM to the Convention's monitoring body within six months of its signature, by February 2005.<sup>10</sup>

The Framework Convention enjoys a particular status in Kosovo. Unlike in any other state signatory in which its provisions must be transposed into national legislation to become applicable, in Kosovo the FCNM is in itself law having, along with several other major international instruments for the protection of human rights, been included in Chapter 3 the Constitutional Framework as directly applicable.<sup>11</sup> Moreover, the Constitutional Framework<sup>12</sup> contains explicit commitments to protecting and upholding the rights of communities and facilitating the return process, respecting property rights and the freedom of movement. Chapter 4 spells out a wide range of rights of minority communities and their members as regards the use of mother tongue and alphabet in

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<sup>6</sup> Available at: <http://www.unmikonline.org/radio/scripts/English/february04/022704.htm>.

<sup>7</sup> Standards for Kosovo, available at: <http://www.unmikonline.org/press/2003/pressr/pr1078.pdf>.

<sup>8</sup> Ibid.

<sup>9</sup> Kosovo Standards Implementation Plan, available at: [http://www.unmikonline.org/pub/misc/ksip\\_eng.pdf](http://www.unmikonline.org/pub/misc/ksip_eng.pdf).

<sup>10</sup> Full text of the Agreement is available at:

[http://www.coe.int/t/e/human\\_rights/Minorities/1.\\_GENERAL\\_PRESENTATION/1.\\_News/Agreement\\_UNMIK.asp](http://www.coe.int/t/e/human_rights/Minorities/1._GENERAL_PRESENTATION/1._News/Agreement_UNMIK.asp)

<sup>11</sup> To date, no suit has been brought before the courts alleging violations of the Framework Convention so no case law was developed which could reveal how its application would work in practice. The reasons for this apparently lie in the general lack of information and knowledge of the FCNM.

<sup>12</sup> In addition to the Framework Convention, the Constitutional Framework also makes explicit reference to the following international human rights instruments: Universal Declaration of Human Rights, GA Res. 217 A (III), 10 December 1948, A/810 at 71; European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, ETS No. 5 and its Protocols; International Covenant on Civil and Political Rights 1966, 999 UNTS 171 and the Optional Protocols thereto; Convention on the Elimination of All Forms of Racial Discrimination 1966, 660 UNTS 195; Convention on the Elimination of All Forms of Discrimination Against Women 1979, 1449 UNTS 13 ; Convention on the Rights of the Child 1989, 1577 UNTS 3; European Charter for Regional or Minority Languages 1992, ETS No. 148. Constitutional Framework for Provisional Self-Government in Kosovo, available at: [http://www.unmikonline.org/pub/misc/FrameworkPocket\\_ENG\\_Dec2002.pdf](http://www.unmikonline.org/pub/misc/FrameworkPocket_ENG_Dec2002.pdf).

official matters, access to education and information in their language, equal opportunities in employment in public services and access to public services, freedom of association, provision of information in their language, running religious institutions and others. Chapter 9 further specifies the languages to be used in the official proceedings and official documents of the Assembly and the Government.

The legal framework of Kosovo encompasses a number of other UNMIK regulations and laws which contain specific references to minority protection.<sup>13</sup> The areas of protection generally relate to non-discrimination, education, prevention of alteration of proportions of the population and prohibition of inciting ethnic hatred. Thus was UNMIK Regulation 2000/4 on the Prohibition against Inciting to National, Racial, Religious or Ethnic Hatred, Discord or Intolerance<sup>14</sup> adopted in response to the violence targeting non-Albanians following the establishment of UNMIK in 1999. The Anti-Discrimination Law<sup>15</sup> was adopted by the Kosovo Assembly in February 2004, but its entry into force was postponed due to the March events and a subsequent motion challenging the law submitted by the representatives of the Serbian community. The Law on Primary and Secondary Education in Kosovo (UNMIK Regulation 2002/19)<sup>16</sup> was promulgated in October 2002. The Law guarantees access to education in general, education in mother tongue in primary and secondary education, as well as non-discrimination in access and progression to higher levels of education. The Law on Higher Education in Kosovo (UNMIK Regulation 2003/14)<sup>17</sup> promulgated in May 2003 was more controversial because of issues related to the status of the University of Mitrovica, the Serbian language university in Kosovo, and the use of the Serbian language in education. The law was finally modified to allow the Serbian community to attend higher education in its mother tongue and enable members of other minority communities to choose in which of the two languages they wish to study.<sup>18</sup> UNMIK Regulation 2001/17 on the Registration of Contracts for the Sale of Real Property in Specific Geographical Areas of Kosovo<sup>19</sup> deals with the right of property and return, and aimed at curbing the flow of minorities from mixed communities thus altering the proportion of population in certain areas of the province. Of particular relevance is UNMIK Regulation 2000/45 on Self-Government of Municipalities in Kosovo<sup>20</sup> promulgated in August 2000. In addition to devolving to municipal self-governments a vast array of authorities ranging from primary and secondary education and primary healthcare to social services and public utilities and services, the Regulation contains provisions on the appointment of Communities Committees and Mediation Committees intended to ensure that all people enjoy civil, political, social and economic rights and to promote the rights and interests of the communities living in the municipality. Moreover, the institution of the Ombudsman was established in June 2000 with the task of investigating and mediating complaints from individuals, groups and organisations

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<sup>13</sup> For a more detailed overview, see Dimitrijević, *Minority Rights in the Context of Kosovo* (Pristina: Kosovo Law Center, 2004).

<sup>14</sup> UNMIK/REG/2004, 1 February 2000. UNMIK regulations are available at: <http://www.unmikonline.org/regulations/index.htm>.

<sup>15</sup> UNMIK/REG/2004/32, 20 August 2004 adopted by the Assembly of Kosovo in Kosovo Assembly Law No. 2004/3 On Anti-Discrimination.

<sup>16</sup> UNMIK/REG/2002/19, 31 October 2002.

<sup>17</sup> UNMIK/REG/2003/14, 12 May 2003.

<sup>18</sup> Dimitrijević, *supra* n. 13 at 20.

<sup>19</sup> UNMIK/REG/2001/17, 22 August 2001.

<sup>20</sup> UNMIK/REG/2000/45, 11 August 2000.

about possible abuses of power by international and local authorities. As the following sections of this paper will show, in spite of a number of legal provisions ensuring the protection of minority rights in Kosovo, the situation on the ground is dismal and their implementation is generally failing.

### **3. On the Margins: Minorities in Kosovo**

As in many parts of the world, being a minority today is an arduous feat in Southeast Europe. Kosovo is no exception. The stigma associated with the concept, distrust and the lack of a political framework protective of minority rights only exacerbates the position of minorities. Although the national legislation for the promotion and protection of minority rights and the related international commitments might be exemplary, their implementation is inadequate at best and usually non-existent. With the 1999 NATO intervention and the subsequent establishment of the UN Interim Administration, the framework of reference for determining who are minorities in Kosovo changed. Without prejudice to the final settlement of the status of the province, reality in Kosovo today indicates that there are eight minority communities sharing the broad definition of groups with certain subjective characteristics, and the wish to preserve them, who are numerically smaller and in a generally non-dominant position of power as compared to the majority of the population. The minority communities are the Serbs, Bosniaks, Gorani, Turks, Roma, Ashkalia, Egyptians and Croats.

In the attempts to find a solution to Kosovo's problems, the political discourse and the attention of the international community have overwhelmingly hinged on the two major groups, the Albanians and the Serbs. The 'smaller' minorities have remained largely excluded, disempowered and ignored, or a direct casualty in the conflict between the former, as was the case with the Roma, Ashkalia and Egyptian communities in the aftermath of the 1999 military intervention, and again in the violence of March 2004. The rights of minorities which in Kosovo are violated on a daily basis include security and freedom of movement, non-discrimination, property rights, participation in economic, social and cultural life, education and use of language, access to public, civil and political structures and access to justice.<sup>21</sup>

The four and a half years of building democratic institutions and peace could have been regarded as a relative success of the international community in Kosovo had their achievements not come tumbling down on 17 March 2004. Two days of anti-Serb and anti-UN violence resulted effectively in the ethnic cleansing of minority villages and neighbourhoods. It was a failure of UNMIK and KFOR as much as of the Provisional Institutions of Self-Government, Kosovo media and civil society.<sup>22</sup> Minorities today are confined to enclaves, physical, social and political ghettos, often unable to move without military escorts, and denied equal opportunities in education, employment and access to justice, among others. If minority rights in Kosovo are not effectively safeguarded, both by the local institutions and the UN administration, minority

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<sup>21</sup> See Dimitrijević, supra n. 13, and OSCE and UNHCR Assessments of the Situation of Ethnic Minorities in Kosovo, available at: <http://www.osce.org/kosovo/documents/reports/minorities>.

<sup>22</sup> See International Crisis Group, *Collapse in Kosovo* ICG Europe Report No. 155 (Pristina/Belgrade/Brussels: ICG, 22 April 2004), available at: <http://www.crisisweb.org>; Human Rights Watch, *Failure to Protect: Anti-Minority Violence in Kosovo, March 2004*, Vol. 16. No. 6 (HRW, July 2004), available at: <http://www.hrw.org>.

communities will perish and vanish through emigration and assimilation. Ethnic cleansing, then, will be complete.

#### **4. Monitoring the Application of the FCNM in Kosovo**

The year 2005 is raising the expectations among the various stakeholders in Kosovo, in particular the majority Albanian population. With the review of the achievements in the implementation of the Standards for Kosovo due in mid-2005, the discussions on the status of Kosovo will get high on the agenda, albeit with an uncertain outcome. After the blow suffered in March 2004, this is an opportunity which the international community cannot afford to miss. It must provide solid evidence of progress in all aspects of life in Kosovo. It is against this background that the monitoring of the implementation of the Framework Convention will be undertaken. Under the provisions of the FCNM technical agreement, UNMIK is to submit an official report on the province's implementation of the FCNM by February 2005. The submission of the official report will set in motion the FCNM monitoring mechanism. The Advisory Committee to the Council of Ministers will examine the report, in addition to an array of sources of supplementary information, most importantly the information submitted by minority NGOs in the form of a shadow report. At some point after the submission of the official report, a delegation of the Advisory Committee will also pay a field visit to Kosovo to conduct interviews with the relevant governmental, international and civil society actors, as well as minority communities. Based on this extensive investigation, the Advisory Committee will issue an opinion on Kosovo's implementation of the FCNM. After the official structures in Kosovo had been given an opportunity to supply their comments on the opinion, the Committee of Ministers will adopt a resolution which generally includes recommendations for future actions for the improvement of the implementation put forward by the Advisory Committee. This process is expected to take between one and two years.

Although pursuant to the provisions of the FCNM, state parties would have one year following the ratification of the instrument to prepare their report, in this case UNMIK was given only six months. This deadline is proving increasingly unrealistic if a meaningful process is to take place whereby effective dialogue is established among all the stakeholders. As it stands now, the official report is a hot potato the production of which has been shoved from UNMIK to the OSCE Human Rights Department without substantial involvement of the provisional government of Kosovo. This is an astonishing paradox as it is exactly the Kosovo government which should hold the greatest responsibility for the protection of minorities and which will, the final status notwithstanding, have the responsibility to carry out the recommendations and undertake the same exercise in five years during the second reporting cycle. Moreover, the preparation of the official report seems also not to envision any co-operation with the Government of the Republic of Serbia which, in reality runs the parallel institutions which are in place in Serbian enclaves throughout Kosovo and provide significant protection for non-Albanian communities there. This is another reality which is being ignored, limiting further the very narrow space for dialogue which still may exist. All this raises questions about the intentions of the international community in Kosovo, the credibility and legitimacy of its actions which have already been seriously jeopardised by the paternalistic and arrogant approach often taken in respect to the local actors, who

have since the beginning of the international intervention largely been excluded from any substantive participation in decision-making.

A further concern about the meaningfulness of the process is caused by the OSCE involvement in the preparation of the shadow report. The Democratisation Department has assumed the task to co-ordinate the activity of a group of minority NGOs in the production of the shadow report. Although separate arms of the OSCE Mission in Kosovo, it is one and the same institution preparing the official report and exerting unspecified influence in the preparation of the shadow report. The role and extent of the OSCE involvement in this NGO effort are not clear. It is indisputable that the OSCE can provide invaluable technical and logistical support to NGOs, however the direction which this process seems to be taking is entirely OSCE-centred. It is not clear who the lead organisation is, although it is imperative for this role to be assumed by one of the involved NGOs. Moreover, it has not been clarified how the actual writing of the report will occur, whether information will be supplied to the OSCE which will produce yet another report, or whether the participating NGOs will author their contributions which will then be put into a coherent format by the lead NGO.

## **5. Bringing About Change: Opportunities for NGO Advocacy**

Since it entered into force in 1998, the Framework Convention for the Protection of National Minorities has been ratified by 35 states. Acclaimed as the 'only legally binding international instrument for minority protection,' the Convention was nevertheless criticised for its framework nature and vague provisions, the lack of the definition of national minorities and the weak monitoring system which would hamper the Convention's ability to offer effective protection to minorities. In the 1990s, the Convention played a significant role in Southeast Europe as its ratification was a precondition for membership in the Council of Europe for the emerging states. This international commitment, moreover, provided an important push for the creation of often exemplary national legal frameworks for the protection of minorities. In some cases, the monitoring mechanism also assisted in the establishment of dialogue on minority issues between the relevant stakeholders, including the civil society. In general, however, the impact of this human rights instrument on the ground remains unclear at best and with the second monitoring cycle underway it also appears to be losing its momentum.

The inclusion of Kosovo, however, into the process of monitoring compliance with the provisions of the Framework Convention, has provided an unexpected window of opportunity to actually bring about change for minority communities. By participating in the FCNM monitoring process, minority NGOs have the possibility to engage in national and international advocacy which, given the province's status of an international protectorate, still retains particular relevance. On the one hand, since Kosovo is placed under direct international administration which holds the ultimate authority and thus also the responsibility for the protection of minorities, the monitoring of the implementation will reveal the inconsistency and double standards exercised by the international community. For what it is worth, this will be an opportunity to embarrass the international community on its own turf. On the other hand, the FCNM should hold even greater leverage with the national authorities, both the Government of Kosovo which has great expectations in the upcoming negotiations on the final status of

the province, and the Government of Serbia awaiting inclusion into the EU accession process.<sup>23</sup> A broad based grassroots initiative of minority NGOs engaged in the FCNM monitoring process should be used to establish constructive dialogue between all advocacy targets, most importantly, the governments of Kosovo and Serbia.

This NGO initiative should be construed as co-operation of equals, involving all minority communities, ideally even Albanian representatives from those areas in which the Albanian population constitutes a minority. Community-based divisions in the process should be kept to a minimum, while the co-operation, and ultimately the shadow report, should rather focus on shared issues wherever possible. NGOs should develop a joint advocacy strategy, both short term and medium term, which would be implemented at the national and international level following the submission of their shadow report and subsequently, reacting to each step of the monitoring process. Advocacy targets here include local authorities in areas where minority communities live, the governments of Kosovo and Serbia, UNMIK, the OSCE, the European Union and the governments exerting most influence on the region. A variety of international fora, particularly those under the auspices of the main international actors such as the UN and the OSCE, should be used for this purpose.

## **6. Conclusion**

The signing of the technical agreement between UNMIK and the Council of Europe whereby minority groups in Kosovo were placed under the protection afforded by the Framework Convention for the Protection of National Minorities has been an important development which could result in the initiation of a sound dialogue between minority groups and the relevant authorities. For the monitoring process to be meaningful and genuine, it has to be owned and carried out primarily by local actors. The most important are the Government of Kosovo, local authorities and the representatives of the minority communities. However, the Government of Serbia should also be included because it is perceived as a legitimate representative by the majority of Kosovo Serbs and its stake in the future of Kosovo must be given due recognition. The dual role of the OSCE in this respect, both as the agency responsible for the preparation of the official report and as the co-ordinator of the preparation of the shadow report might seriously jeopardise this undertaking. To avoid any pitfalls, this role should be rigorously delineated and most tasks devolved to local stakeholders. This can be possible only if reasonable time, longer than the presently set deadlines, is allowed. The civil society in Kosovo should join forces to make their voice heard and bring about positive change for the minority communities.\*\*

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\*\* As of early May 2005, the FCNM monitoring process in Kosovo has not been completed. Neither the official report nor the shadow report have been finalised and submitted to the FCNM Secretariat in Strasbourg. Both still remain respectively with

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<sup>23</sup> Declaratively at least, since the issue of minority protection seems to have borne very little relevance in Croatia's accession negotiations. The only explicit conditionality for Croatia's membership negotiation to start in March 2005 is its full co-operation with The Hague Tribunal. Moreover, the EC Opinion on the application of Croatia for membership of the European Union stated that Croatia had already fulfilled the Copenhagen Criteria for minority protection.

the Human Rights and the Democratisation Departments of the OSCE Mission in Kosovo. In spite of the NGO involvement in the preparation of the shadow report, the process hinging on excessive OSCE involvement is likely to have undermined the its credibility.