

SIGNATURE PAGE

UNDP Kosovo

Programme Impact (goal):	Governance meeting the highest standards of effectiveness, accountability and transparency
CP Outcome:	Strengthened capacities of rule of law and security institutions, to perform in an efficient, transparent, accountable and gender-sensitive manner
CP Outcome Indicator:	EWR, change (%) in public perception of effectiveness of rule of law and security institutions
Project Output:	Access to effective remedies is increased
Output Indicator:	Number of cases in the Human Rights Advisory Panel backlog is reduced
Implementing partner:	UNDP Kosovo
Other Partners:	Applicants that have filed claims before the Human Rights Advisory Panel, Ministry of Justice, Kosovo Chamber of Advocates, Ombudsperson Institution.

Programme Period: 2011
Programme Component: Crisis Prevention and Recovery
Project Title: Support to the Human Rights Advisory Panel
Project ID:
Project Duration: 8 months
Management Arrangement: DEX

Total Budget: USD 141,171.39

Allocated resources:
▪ Other

Un-funded budget: USD 0

Agreed by UNDP: 
Mr. Parviz Fartash, Director (Kosovo), UNDP Kosovo



<i>Project Title:</i>	Support to the Human Rights Advisory Panel Secretariat
<i>Proposed Duration:</i>	8 months
<i>Proposing UN Agency:</i>	UNDP Kosovo
<i>Total budget:</i>	USD 141,171.39
<i>Geographical Location:</i>	Kosovo
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<i>Local Counterparts:</i>	Human Rights Advisory Panel, Ombudsperson Institution.

Executive Summary

The Human Rights Advisory Panel (the Panel) is the only human rights accountability mechanism to have jurisdiction to hear complaints against the United Nations Interim Administration Mission in Kosovo (UNMIK), and the first of its kind within the United Nations system. However, the current staffing level of the Secretariat of the Panel is insufficient given the substantial rise in the caseload (from 66 pending cases at the end of 2008 to 406 pending cases at the end of 2009). In addition, the backlog of untranslated cases received in 2009 is approximately 161 cases and there is up to a six month delay in translating letters and submissions increasing the length of time required to close a case. UNMIK, while recognizing the problem, is unable to provide any further resources to assist the Secretariat of the Panel.

This purpose of the Support to the Human Rights Advisory Panel Secretariat project is to increase the effective functioning of the Panel as a whole by providing an additional staff attorney (legal officer) for the Secretariat of the Panel for a limited time. This will allow the Panel to increase its public pronouncements and make progress toward the completion of its mandate.

The additional staff would be embedded within the Panel Secretariat and report to the Executive Officer

The project's success will be judged by an increase of cases being completely processed during the 8 month period of the project. Based on the current state of cases, it can be safely judged that the increased staffing levels would allow the Panel to process approximately 25-50 additional cases during that time.

I. Background: The Human Rights Advisory Panel

The Panel examines complaints of alleged human rights violations committed by or attributable to UNMIK and makes recommendations to the Special Representative of the Secretary-General (SRSG) in Kosovo when appropriate.¹ The Panel is composed of three Panel Members who sit in Prishtinë/Priština each month to render determinations on complaints against UNMIK. The Presiding Member directs the work of the Panel and the Prishtinë/Priština-based Secretariat provides it with legal and administrative support.

Any person who believes that UNMIK is responsible for a violation of their human rights were able to complain to the Panel until 31 March 2010 to seek a determination of that allegation, if the alleged violation occurred within a specific period of time when UNMIK was acting as an interim administration. Such persons initiate the complaint procedure by submitting a complaint to the Panel. The Panel then determines whether that complaint is admissible based on the applicable legislation and renders a decision to that effect.

If a complaint is admissible, the Panel will then render an opinion on whether UNMIK is responsible for a violation of one of the various human rights treaties in force in Kosovo. If the Panel determines that a violation has occurred, the opinion may include recommendations to the SRSG. The SRSG must then publicly state how he/she will react to those recommendations.

The Human Rights Advisory Panel is the only human rights mechanism in existence that deals specifically with human rights violations allegedly committed by or attributable to a United Nations mission acting as an interim administration of a territory.

II. Background: The Secretariat

The Secretariat is currently processing over 400 active cases against UNMIK for decision by the Panel. As show below, the Secretariat is only able to deal with a relatively small percentage of cases each month due to the sheer volume of cases and the lack of staff.

The Panel is currently headed by an Executive Officer, with two case lawyers and two administrative assistants. The two case lawyers are tasked with preparing the 400+

¹ The alleged human rights violations are related to the implementation of Housing and Property Directorate decisions, other property issues, employment, missing persons, in particular, the right to an effective investigation (stemming from the right to life). Additionally, the Roma lead contamination case, which includes specific gender issues resulting from the particular affect of lead contamination on pregnant and nursing women, has currently been declared inadmissible due to the non-exhaustion of remedies; however, the HRAP, in its admissibility decision, considered the possibility of further examination of the complaints at the conclusion of the UN Third Party Claims process.

cases for determinations by the Panel, with each case requiring dedicated individual attention.

It should be noted moreover that the Secretariat's budget and staffing levels were set at a time when there were only 30 cases expected per year. However, the Secretariat received 351 cases in 2009 alone, although the cut-off date for the submission of new complaints in 2010 was 31 March 2010. However, at current staffing levels, it will still take a number of years for the Secretariat to finalize each case for determination by the Panel.

Currently, the Panel has approximately 410 pending cases. During the Panel's sessions², Legal Officers must be present at deliberations and meetings with the Panel members to discuss individual cases and/or legal issues, present drafts for discussion, finalize decisions and opinions for adoption, finalize more complicated communications to the SRSG or to the complainants, and engage in other ad hoc tasks on behalf of the Panel. In addition, Legal Officers must prepare each case for discussion at the session and prepare their portions of the case examination agendas.

The week the Panel is in session requires the Legal Officers to engage in the matters discussed in the preceding paragraph and to be prepared to discuss legal issues related to cases handled by the other Legal Officers. During the period following the Panel's sessions, the Legal Officers are required to follow-up on all matters decided by the Panel in the previous session and this provides a more quantifiable type of work for planning staffing needs.

From an analysis of the Panel sessions over four months³, the Panel deals with an average of 72 cases per month. An analysis of the types of matters dealt with by the Panel during its Examination of Complaints sessions reveals that approximately 63% of the cases (45 per session) are at the information and communication phase, 25% (18 per session) are at various stages of the preparation of the decision on admissibility phase and 12% (9 per session) of cases dealt with are at the various stages of finalization of the opinion on the merits.

Approximating the amount of time spent following up on each case action decided by the Panel is not easy since each case is unique and presents different problems. However, in determining the number of working hours required for follow up after each session, conservative averages based on experience over four months of analysis have produced the following⁴.

² Approximately one week per month.

³ From June 2009 through November 2009, noting that the Panel does not sit in August

⁴ These estimates do not include task such as organizing files, routine filing of case documents, general legal research assignments, any extraordinary requests nor any of the tasks listed under the Terms of Reference of the Executive Officer whom the Legal Officers also support.

For cases at the information and communication phase, approximately 1-2 hours are required per case action, resulting in an average of 45-90 hours of follow up work per session. For cases approaching the stage of preparation of the admissibility decision, between 4-8 hours is required per case, resulting in an average of 72-144 hours of follow up work per session. For cases at the merits stage, between 10 and 16 hours are required per case, resulting in an average of 90 to 144 hours of follow up work per session.

The range of working hours required for follow-up can therefore range from 207 to 378 hours per session with an average of 292 working hours required to complete all case actions between sessions. The average period of time between sessions is approximately 3 weeks per session. Since each Legal Officer should work approximately 100 hours during that time⁵ with the current level of two Legal Officers, approximately 200 hours per session are available (which does not include the range of non-quantifiable legal and administrative tasks). This is well short of the 292 average working hours required between sessions and furthermore does not reflect R&R, UN Holidays and other entitlements which can also be expected to impact the average number of working hours per week. The situation results in a significant shortfall each month and a number of cases that are 'rolled-over' until after the next session, creating a backlog of work for Secretariat's Legal Officers.

To deal with the shortfall of 92 hours per session of work⁶, at least two additional Legal Officers should be allocated for the Secretariat. Ideally, the Legal Officer would have experience dealing with cases before the European Court of Human Rights who could assist in dealing with the case load while also sharing their expertise with other Legal Officers at the Secretariat, thus improving the overall quality of the final work products.

Further attention should be paid to the fact that it is extremely likely that a very large percentage of the cases concerning missing persons are likely to be declared admissible, based on the applicable UNMIK Regulations and case law of the various human rights bodies. The Panel currently has 247 cases involving missing persons and/or murders and another 161 cases pending translation, of which a majority is likely to be missing persons cases. Without prejudicing the final outcome of the Panel's determination on the admissibility and/or merits in any such case, it should be noted that since such a significant number of cases are likely to advance to the merits stage of the proceedings, the work load is not likely to decrease in the near future.

⁵ 8 hours per day times 5 days per week equals 40 hours per week. Discounting for 2.5 annual leave days per month, which staff members do not take when the Panel is in session, resulting in 2 ½ weeks of working hours between each session (and not counting R&R or other entitlements) results 40 hours per week times 2 ½ weeks per session equals 100 hours.

⁶ Currently, Legal Officers work beyond working hours, during lunches, and often on UN Holidays and weekends.

The figures cited above will fluctuate as the cases progress, but since considerably more working hours are required per case as they progress, one can expect the needs of the Panel to maintain constant or increase as the cases progress from the information stage, through the adoption of the admissibility decision, to the Panel's finding on the merits. Knowing also that many cases will be disposed of at the admissibility stage does not necessarily impact this projection, given the attention and time required at the merits stage for those cases that progress and the large number of cases likely to progress to the merits stage.

Using the rough numbers above, the Panel is only able to undertake action for an individual case once every five to six months⁷. This is an extremely simplified estimation. Various factors impact how many cases are reviewed and processed each month and the rate of Panel review largely depends on the resources of the Secretariat. For example, the Panel reviews all new translations that arrive in a given month, which is usually approximately 15 new cases, if more translations were received each month, the Panel would direct the Secretariat to take more actions in relation to each "new" case. This in turn is constrained by the number of Legal Officers able to handle the requests of the Panel in relation to each case, thus, if resources were increased generally, cases would be able to be processed more quickly through the Panel. At the current staffing levels, one can better understand the limited progress of cases through the Panel to date.

III. Partnerships and coordination

UNDP works closely with UNMIK and the Office of the High Commissioner for Human Rights (OHCHR) which are the main supporters of the Panel. In particular, the Panel is part of Kosovo's overall transitional justice architecture, which UNDP is actively engaged in developing through its Global Rule of Law Programme. Kosovo, as a priority area for UNDP's Bureau for Conflict Prevention and Recovery is part of the Global Rule of Law Programme. Accordingly, through its Access to Justice Project, UNDP Kosovo has several outputs which would be advanced by supporting the Panel. These outputs include:

- Support legal empowerment, anti-discrimination and legal redress of disadvantaged communities especially women by increasing legal awareness and provision of legal aid through an institutional and systemic approach and various innovative mechanisms in collaboration with Legal Aid Commission (LAC), Kosovo Chamber of Advocates (KCA) and CSOs in selected municipalities;
- Support transitional justice in collaboration with OHCHR by improving rights awareness and mechanisms for supporting the victims' associations, victim's family members, association of the families of the missing and support women's

⁷ 72 cases being reviewed each session out of a total of 410 cases currently before the Panel reveals that on average, each case would receive a case action approximately once every five to six months. This is certainly not the case, especially considering that 161 cases remain un-translated at this time.

victims through their right to reparation and community reconciliation processes for peace and stability;

- Strengthen community's (especially women) access to human rights bodies, increased complaint registration and resolution of cases by improving the ability of the Ombudsperson Institution (OI) at regional/municipal level;

By supporting the Panel, UNDP contributes further toward the aims of one of its existing projects.

IV. Gender mainstreaming

In accordance with UNDP's global commitment to the promotion of gender equality and women's rights, and UNDP Kosovo's specific aim of mainstreaming UNSCR 1325 and the UNDP 8 Point Agenda for Women's Empowerment and Gender Equality in Crisis Prevention and Recovery, the following actions will be taken during project implementation:

- Consistent with the affirmative action employment policy, UNDP Kosovo will seek to encourage women to apply for the post. Selection of qualified female candidates will be prioritized.
- Support to the Panel will work toward achieving Point 2 of the agenda in advancing gender justice and Point 3 in expanding women's participation in decision making positions

V. Management arrangements

Envisioned project activities will be carried out by the UNDP Kosovo office in Prishtinë / Priština under the Direct Execution (DEX) modality to assist the Panel in administering this particular project, in line with UNDP's results-based management approach. UNDP Kosovo will take full responsibility for the achievement of immediate objectives as well as for the administration of financial and human resources.

The management of allocated funds will be carried out according to UNDP financial rules and regulations, based on a work plan with a detailed budget. UNDP Kosovo will be responsible for managing and reporting back to donors on the resources allocated to the work plan.

a. Project Board

The Project Board is responsible for making consensus management decisions for the project when guidance is required by the Project Manager, including recommending approval of project revisions. The Project Board will be consulted by the Project

Manager for decisions when the project exceeds tolerances, normally in terms of time and budget; reviews will also be conducted at designated decision points during rollout.

The Project Board has three roles:

- Executive (in this case, the UNDP Kosovo Director), representing project ownership to chair the group,
- Senior Supplier (in this case, the main bilateral partners), to provide guidance regarding the technical feasibility of the project; and,
- Senior Beneficiary to ensure realization of project benefits from the perspective of project beneficiaries.

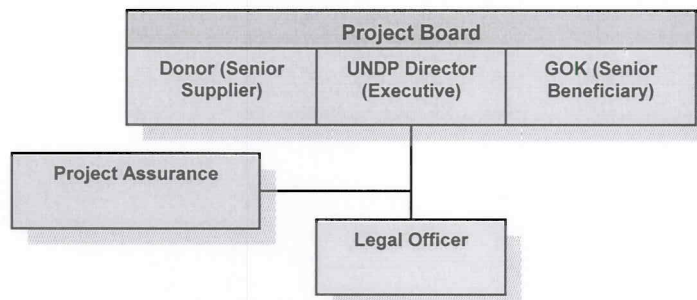
Senior Partner Representatives will be included as *ex officio* members of the Project Board. OHCHR will have a seat on the Project Board as Senior Partner Representatives.

In order to ensure UNDP Kosovo's ultimate accountability, final decision-making rests with the UNDP Kosovo Resident Representative in accordance with applicable regulations, rules, policies and procedures.

b. Project Assurance

The Project Assurance role carries out objective and independent project oversight and monitoring functions, ensuring that appropriate project management milestones are managed and completed. Project Assurance is the responsibility of each Project Board member; however, the role can also be delegated externally. The Project Assurance role will be assigned following launch of the initiative, most likely to another programme cluster team within UNDP Kosovo.

c. Project Organization Structure



VI. Monitoring and Evaluation

UNDP Kosovo will bear responsibility for ongoing monitoring of project implementation, in close cooperation with key stakeholders and partners. Further monitoring will be performed on the basis of work plans prepared by the Panel, Programme Coordinator and the Legal Officer, which will submit quarterly reports to UNDP Kosovo and the Project Board, enabling stakeholders to benchmark and assess progress on rollout of activities.

a. Monitoring

A Monitoring and Evaluation Plan will be forthcoming.

b. Evaluation

A general baseline of statistics concerning the backlog of cases has been provided above. A final review to the Donor will measure accomplishments of the Legal Officer in this context. This review will involve all key project stakeholders and focus on the extent to which progress is being made towards outputs, and that these remain aligned to appropriate outcomes; it will also include a mid-point reassessment of the baseline study. The review will be structured by a set of common standards, and will be subject to spot external quality assurance assessments. At the conclusion of the project, UNDP Kosovo will initiate a full external evaluation to be incorporated into the Final Review Report, utilizing the baseline study as the principal means of assessing accomplishment of project goals.

c. Financial reporting

The project will be subject to the internal and external auditing procedures provided for in the financial regulations, rules and directives of UNDP Kosovo. Should an Audit Report of the Board of Auditors of UNDP to its governing body contain observations relevant to the project's financial contributions, such information shall be made available to donors.

UNDP Kosovo will prepare an unaudited financial statement of receipts, disbursements and fund balance with respect to the project and forward a copy to each donor at project closure. In the event that donors request a financial statement audit to be performed by external auditors, the costs of such an audit, including the internal costs of UNDP Kosovo with respect to such an audit, will be charged to the project budget. UNDP Kosovo will provide each donor with a copy of the auditors' report.

VII. Legal Context

Kosovo is currently administered by UNMIK, established under UN Security Council Resolution 1244. UNDP project activities in Kosovo are coordinated with UNMIK,

pursuant to Resolution 1244, associated Security Council Resolutions, and administrative regulations promulgated thereunder.

UNDP Kosovo project activities shall be carried out in accordance with applicable UNDP regulations, rules, policies and procedures.

The following types of revisions may be made to this project document with the signature of the UNDP Resident Representative only, provided s/he is assured that the other signatories of the project document have no objections to the proposed changes:

- Revisions in, or addition to, any of the annexes of the project document
- Revisions which do not involve significant changes in the immediate objectives, outputs or activities of the project, but which are caused by the rearrangements of inputs already agreed to or by cost increases due to inflation.