

11 April 2008

To: His Excellency Fatmir Sejdiu, President of Kosovo

From: International Coalition for Human Dignity delegation to Kosova, Susan Yoshihara, Ph.D., President, International Organizations Research Group (IORG), New York, e-mail: deleted

Subject: Protecting Kosova sovereignty under UN human rights treaties

Need to protect sovereignty: As a newly sovereign state, Kosovo will soon become party to international treaties as mandated in its new constitution and will make periodic reports to UN human rights treaty bodies. In the last several years, these committees have increasingly overstepped their mandates and pressured sovereign states on a variety of controversial issues not required by the treaties. Because the committees act in their personal capacity and have no formal mechanism of State party oversight, they are essentially unaccountable. Furthermore, because members of the committee are often from non-governmental organizations (NGOs), periodic reviews have become venues where sovereign states report to NGOs. Nearly half of the 23-member CEDAW committee, for example, is made up of NGOs that advocate increasingly liberalized abortion rights even though the treaty is silent on abortion. States parties have an interest in ensuring their sovereignty is not eroded by treaty bodies by clarifying in a formal and enduring way the original intent and meaning of the treaties.

Need to defend against pressure to change moral positions on life and family. UN human rights treaty bodies routinely misinterpret the treaties they are entrusted with monitoring and pressure States parties to adopt policies and practices deliberately left out of the treaties by the States that negotiated them. For example, the CEDAW committee has pressed states to legalize prostitution, criticized Uzbekistan for honoring the noble role of motherhood, scolded Croatia for protecting the rights of doctors not to participate in abortion, and has pressured more than 93 States parties on 122 occasions to liberalize their abortion laws, according to Human Rights Watch.

Policy options. According to the UN Treaty Section Office of Legal Affairs (UN treaty office), a State party usually submits reservations or explanations of position to the treaty at the time of ratification. The treaty office makes a determination on whether to circulate them, and whether the communication will be circulated as a reservation according to the Vienna Convention of 1969. Other States parties have a period of time to oppose reservations. In this case, a reservation is not required since the treaties are silent on these moral issues. Rather, an explanation of position is appropriate since it is a matter of clarifying original meaning of the convention. Such a statement must be “specific, clear, and tangible” so that other States parties understand its relationship to the treaty, and must not take away or add any obligations.

Recommendation. Submit interpretive statements at time of signing international treaties that protect Kosova from encroachment on its sovereign right to protect human dignity and the family. Suggested statements for some of the treaties follow.

Suggested statements [CEDAW]:

“The government of Kosova understands that nothing in the Convention of the Elimination of Discrimination Against Women constitutes support for abortion, the legalization of abortion, the commodities or modalities associated with abortion.” [based upon U.S. State Department statement made at the General Assembly’s adoption of the UN treaty on persons with disabilities, December 2006.]

“The government of Kosova understands that nothing in the Convention of the Elimination of Discrimination Against Women constitutes support for prostitution or the decriminalization of prostitution, which undermines the dignity of women and fuels the tragedy of human trafficking, of which women and children are the primary victims.”

Suggested statements [ICCPR]:

“The government of Kosova understands that nothing in the International Covenant on Civil and Political Rights constitutes support for abortion, the legalization of abortion, the commodities or modalities associated with abortion.”

“The government of Kosova understands that nothing in the International Covenant on Civil and Political Rights constitutes support or legal sanction for same sex marriage or sexual acts that violates the dignity of the human person.”

Suggested statement [CRC]

“The government of Kosova understands that nothing in the International Covenant on the Rights of the Child undermines the natural rights of parents and the family, which is the basic unit of society according to the United Nations Declaration of Human Rights.”