A Targeted Analysis of the Implementation of the International Covenant on Civil and Political Rights (ICCPR) in the Republic of Macedonia

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I. Introduction

The American Bar Association Central European and Eurasian Law Initiative (ABA/CEELI) developed the ICCPR Legal Implementation Index to analyze a legal system's implementation of the human rights expressed within the International Covenant on Civil and Political Rights (ICCPR)[1]. The ICCPR is the most comprehensive and universally applicable statement of individual and collective human rights, and it provides the best criteria against which to measure a legal system's human rights protections. The assessment procedure also identifies specific points where rule of law development work is indicated, and it facilitates further analysis of basic civil and political rights. The goal of the Index is to identify a legal system's conformity with the ICCPR in a way that is accurate, consistent, and meaningful.

Background of the ICCPR

Prior to World War II, human rights were not an international priority. International law governed the interaction of states, not individuals, and what nations did within their borders was their business alone. This changed with the close of the war and the conclusion of the Charter of the United Nations.[2]

In 1949, operating pursuant to Article 1 of the United Nations Charter, the UN Commission on Human Rights drafted the ICCPR. The ICCPR is both a list of rights and a grant of authority to the Human Rights Committee (HRC) to interpret these rights and monitor their implementation. To date, 152 countries have acceded to the treaty.

The ICCPR contains both classic substantive rights and rights of general application that address the manner in which those substantive rights are realized. While rights of general application are more procedural in nature, they are no less fundamental; indeed, failure to realize these rights risks the emasculation of the substantive rights.

Parties to the treaty are required to submit a self-assessment in a Country Report that describes "the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights."[3] This Country Report is due within one year of the entry into force of the ICCPR within a country and thereafter when requested by the HRC. In response to each Country Report, the HRC provides feedback in its own report called Concluding Observations.

A legal system must conform not only to the ICCPR itself, but also to the ICCPR as interpreted by legitimate bodies and authorities. Such interpretations distill the ICCPR's broadly-stated rights into unambiguous requirements with which a State party must comply. This interpretation is done by: 1) the General Comments of the HRC; 2) the Concluding Observations of the HRC given on state Country Reports; 3) the decisions by the HRC on individual complaints submitted under the Optional Protocol; and 4) scholarly commentary and analysis, including comparison and reference with other international instruments.

In 1966, the ICCPR was supplemented with the first Optional Protocol, which allows individuals of States parties to submit individual complaints to the HRC alleging violations of the Covenant's provisions by the State party. There currently are 104 States party to the Optional Protocol, under which there have been 1,330 complaints from 77 of those 104 States. Roughly 27% of the complaints were found to disclose a violation.[4]

Purpose

The Index is designed to supplement existing reviews of ICCPR compliance in a manner that allows cross-country comparisons. Specifically, the Index is intended to provide a broader, more

advanced, and non-official view that is normally not captured in the signatory countries' own ICCPR-mandated Country Reports. As the HRC itself has stated:

> If domestic courts, legal practitioners, and human rights advocates were fully aware of the obligations that their States have undertaken, and how those obligations are interpreted and applied by independent monitoring bodies, they might well be able to do more to press for effective implementation and to ensure that the application of laws and policies was as far as possible consistent with treaty obligations.[5]

To this end, ABA/CEELI developed a rapid assessment process capable of providing the information and analysis needed for more effective implementation and increased consistency. The Index identifies those areas where signatory governments and NGOs must concentrate future resources and more comprehensive analyses.

ABA/CEELI does not intend for the ICCPR Index to be a system of rating countries on their compliance with the ICCPR, nor does it make an attempt to engage in statistically defensible polling.

Sources of Information

The ICCPR Index source information is gathered from professionals working within the following areas: judiciary; executive; NGO community; business community; and media. ABA/CEELI believes that such a diverse range of perspectives provides more complete, accurate and nuanced information than the single official perspective presented by the Executive Branch in its official ICCPR Country Report.

Distinguishing Other Assessments

The schematic approach of the ICCPR Index distinguishes it from narrative human rights assessments that rely heavily on anecdotal information and extensive narrative discourse. As such, the ICCPR Index will identify specific laws, regulations, and institutions that are inadequate or absent across a range of topics covered by the treaty rather than exhaustive coverage of a select few topics. Findings are reported in a compact form, providing general conclusions and supporting analysis. Unlike narrative structures that may complicate multiple-country comparisons, the ICCPR Index's presentation of systematic analysis by article will enable quick comparisons across multiple jurisdictions.

Additional Resources

ABA/CEELI's *The Practical Guide to the International Covenant on Civil and Political Rights (ICCPR)* provides an overview and explanation of the nature and scope of ICCPR rights and freedoms. It will inform and educate domestic and international non-governmental organizations, human rights advocates and defenders, and governments of signatory states about the specifics of the Covenant's provisions. The *Practical Guide* is also a convenient reference tool for academics and legal scholars. (Publisher: Transnational Publishers. ISBN: 1571053042, http://www.transnationalpubs.com/showbook.cfm?bookid=10249).

Applications of the Report

Only One Piece of the Assessment Puzzle: The issues identified in the assessment are not all strictly legal in nature, and frequently, they warrant more analysis of the practical, social, and cultural barriers to reform. While segments of the assessment do focus on these types of barriers, because of ABA/CEELI's expertise in legal issues, the drafters have intentionally

emphasized legal frameworks, actors, and institutions. This emphasis does not constitute a value judgment as to the relative importance of these other issues. ABA/CEELI considers the ICCPR Index to be an important piece in a larger analysis that should span disciplines.

Focused Assessments and Future Coordination: The ICCPR Index exposes specific areas that require more detailed analysis and additional resources. Consistent with this, ABA/CEELI has commissioned projects to address specific issues such as judicial reform and women's rights. In some of these areas, there are U.N. treaties, such as the Convention on the Elimination of Discrimination Against Women (CEDAW),[6] that can play a role similar to the ICCPR and act as criteria against which to analyze a country's performance.

Collateral Benefits: The results assembled also provide a foundation upon which to examine the compatibility of existing legal structures with regional human rights regimes, *e.g.*, the European Convention on Human Rights (ECHR).[7]

Acknowledgements

The concept for the ICCPR Index was initiated by Scott Carlson, then ABA/CEELI Program Director for Central and Eastern Europe, and Gregory Gisvold, then ABA/CEELI Country Director for Kosovo and Montenegro. They drafted much of the Index itself, with assistance from ABA/CEELI staff members Julie Broome, Sarah Churchill, and Andrew Solomon. Throughout drafting of the Index, two expert working groups were convened, and ABA/CEELI would like to thank Christian Ahlund, Kelly Askin, Donald Bisson, Elizabeth Bruch, Lisa Dickieson, Yael Fuchs, Michael O'Flaherty, Macarena Tamayo-Calabrese, Penny Wakefield, and Richard J. Wilson for their participation in that process.

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Assessment Team and Scope of Study

The Macedonia ICCPR Legal Implementation Index 2004 Analysis assessment team was led by Scott Carlson and benefited in substantial part from the efforts of Marilyn Zelin, Zarko Hadzi-Zafirov, and Julie Broome. Washington-based staff member Andrew Solomon coordinated implementation of this project with assistance from Sarah Churchill and Melissa Zelikoff. Courtney Bennett and Sarah O'Hare also provided research assistance. The conclusions and analysis are based on interviews conducted in Macedonia in May and June 2004 and relevant documents reviewed at that time. Records of relevant authorities and individual interviews are on file with ABA/CEELI. References to interviews are made without mention of names and titles, and all pronoun references default to the masculine to further mask identities.

This assessment only focuses on Articles 1, 4, 14, 15, 18, 25, 26, and 27. These articles were selected for their particular relevance to minority rights issues, which are of especial importance in the Macedonian political and legal context. This selection is not intended to discount or exclude the relevance of other articles, but these articles were selected because the Assessment Team determined that these articles provide a good overview of contemporary minority issues. This assessment is intended to stimulate and promote ongoing monitoring of both these articles and the other provisions of the ICCPR.

II. Macedonia Overview

In 1913, the land historically known as Macedonia was divided between Greece, Serbia, and Bulgaria. The portion under Serbian control eventually became a republic of the Socialist Federal Republic of Yugoslavia in 1944. Following a referendum in 1991, it became independent as the Republic of Macedonia. As an accommodation to Greek objections to its use of the name Macedonia and symbols Greece considered exclusively Hellenic, Macedonia agreed to use the name the Former Yugoslav Republic of Macedonia. In November 2004, the United States officially recognized the country as the Republic of Macedonia, which was a significant step toward acceptance of the name.

Macedonia is a parliamentary democracy governed by the Assembly, a president, the government (executive), the judiciary, and a Constitutional Court. The Constitution vests legislative authority in a unicameral Assembly (*Sobranie*) representatives, who are elected for four-year terms. By statute, the number of representatives was fixed at 120. The Assembly's authority includes adopting and amending the Constitution, adopting and giving authentic interpretations to laws, adopting the budget, electing the government, electing judges to the Constitutional Court, and electing and dismissing all other judges.

The president of the Republic of Macedonia is head of state and holds executive powers in conjunction with the government. The president is elected by direct election and serves up to two five-year terms. He or she appoints a political leader to constitute the government.

The government consists of the prime minister, deputy prime ministers, and ministers. Among other things, the government determines policy for implementing laws, is responsible for execution of laws, and proposes laws and the budget to the Assembly.

Macedonia's court system was established pursuant to the 1991 Constitution and subsequent laws, particularly the 1995 Law on Courts.

Macedonia's obligations to the United Nations Human Rights Committee under the ICCPR began with Yugoslavia's ratification in 1971. When Macedonia became independent in 1991, it assumed these obligations and reaffirmed them by governmental action in 1993. In 1995, Macedonia adopted both the Optional Protocol and the Second Optional Protocol. Six years following the reaffirmation, the Republic of Macedonia submitted its *1998 Initial Report of the Republic of Macedonia* as required under the ICCPR.

Ethnic Relations and Minority Rights in Macedonia

The ethnic breakdown of Macedonia, according to 2002 census figures, is 64.2% ethnic Macedonian; 25.2% ethnic Albanian; 3.8% Turks; 2.7% Roma; 1.8% Serb; 0.84% Bosniak; and 0.49% ethnic Vlach. There have been challenges to these figures both from Albanians, who claim to represent as much as 40% of the population, and Serbs, whose estimates of their number range as high as 11.5% of the total population. However, the 2002 census figures are generally regarded as credible estimates.

A dominant issue in Macedonia since independence has been ethnic tension between the Macedonian majority and the Albanian ethnic minority. From February to July 2001, militants of Albanian ethnicity clashed with ethnic Macedonians, particularly in the border area with Kosovo. NATO brokered a ceasefire and on August 13, 2001, with international facilitation by the United States and the European Union, ethnic Albanian and Macedonian leaders (including all Macedonian political parties) signed the Ohrid Framework Agreement. The Framework Agreement preserved a unified, multiethnic state, with greater rights for minority groups. On

November 16, 2001, the Macedonian Assembly (the national legislature) amended the Constitution as contemplated in the Framework Agreement.

The 2001 Ohrid Framework Agreement called for changes intended to decrease the sense of disenfranchisement of the minorities in the Republic of Macedonia. A number of these changes have proved difficult, and implementation of the Agreement is ongoing. The November 2001 constitutional amendments concern development of a decentralized government, non-discrimination and equitable representation, parliamentary procedures, education and the use of languages and expression of identity of the ethnicities. The specific provisions that affect minority representation and participation in the legal system are: "positive discrimination" in enrollment of minority candidates in the state university, translation of all proceedings and documents for accused persons or any party that belongs to a minority in criminal and civil proceedings. The most contentious issue has been administrative decentralization, especially where redistricting results in ethnic Albanian political control of areas where ethnic Macedonians previously held control, despite ethnic Albanian majorities.

Significant Developments Since the Assessment Interviews

When Hari Kostov took office as Prime Minister in June 2004, he pledged to complete implementation of the 2001 Ohrid Framework Agreement. The final legislative changes to be made were the decentralization of the state administration and redistricting to substantially reduce the number of administrative districts. A previous effort to address the issue, in December 2003, had failed and resulted in many districts calling for a referendum.

The government-proposed plan sought a reduction of administrative districts from 123 to 80, which would require some districts to merge with adjacent ones. The decentralization of the administration would also result in greater autonomy for the districts in planning their finances, health care, and educational institutions.

Opposition to the government-proposed plan emerged immediately. Conservative opposition parties complained that the initial talks about decentralization lacked transparency. Among coalition partners, disagreements over financial and administrative issues eventually shifted to a deadlock over administrative borders of districts with ethnically mixed populations. Under the peace accord, in any administrative districts where Albanians make up more that 20 percent of the population, Albanian will be an official second language.

The situation escalated quickly, with protestors taking to the streets in Struga, one of the districts potentially affected by the plan. Currently, ethnic Macedonians have a slight majority in the Struga District. Redistricting would result in a merger with neighboring, rural districts, and Albanians would become a majority. In a referendum held in January 2004, a majority of Struga residents voted against the merger, but the government argued that the referendum was not binding. Residents took to the streets July 22-23, 2004, and the police were forced to evacuate Defense Minister and Social Democratic Union (SDSM) Chairman Vlado Buckovski, one of the proponents of the plan, from SDSM headquarters in Struga. Police also clashed with protestors, resulting in 40 injuries.

Following the events in Struga, there was a demonstration outside the parliament building in Skopje on July 26. The demonstration was organized by a broad coalition of ethnic Macedonian opposition parties, NGOs, the Macedonian Orthodox Church, and the nationalist World Macedonian Congress.

On August 11th, parliament approved the controversial plan, resulting in further demands for a referendum. Calls for a referendum had first emerged following the failed December 2003 talks, but the government had dismissed them as non-binding. By mid-August, ethnic Macedonian

opposition parties had succeeded in collecting 150,000 signatures on a petition calling for a referendum, enough to force parliament to hold the referendum. The referendum, which took place November 7, 2004, failed because less than half of the country's 1.7 million registered voters participated, falling short of the threshold required for validity.

III. Executive Summary

Since declaring independence from Yugoslavia, the Republic of Macedonia has reaffirmed its commitment to enforcement of the International Covenant on Civil and Political Rights (ICCPR). This commitment has been expressed most clearly in the adoption of a democratic constitution containing the vast majority of the protections contemplated in the ICCPR. Supplementing this constitution has been an array of implementing legislation that has served to give further content to the panoply of protections provided in the ICCPR.

Though these provisions establish a credible foundation for the realization of the associated rights, their implementation has not yet fulfilled the promise of the laws themselves. This gap has been particularly noticeable as applied to the minority populations, but the assessment of Articles 1, 4, 14, 15, 18, 25, 26, and 27 reveals that the shortcomings are in fact more general—adversely impacting all segments of the Macedonian population. Justice institutions frequently fail to maintain high professional standards and organization, and irregularities in procedure commonly rely for redress on centralized authorities, which has proven cumbersome and only marginally effective. Public confidence in these institutions is understandably low.

The limitations in the justice institutions themselves may explain the propensity for minority communities to seek political redress for their concerns, as opposed to other more individualized remedies. Particularly since 2001, the minority communities have been effective in obtaining protections through the political process. The 2001 Ohrid Framework Agreement has secured substantial advancements in the Article 1 rights to self-determination, Article 25 rights to participation in the political process and the civil service, and Article 27 minority rights. Some of these gains, such as the special parliamentary voting procedures, are creative and could even serve as models for other countries. However, each one of these rights remains a work in progress, and all citizens need further education on the legal changes that have taken place.

Macedonians of all ethnicities do not feel adequately empowered to pursue their own rights individually. While there exists considerable legal protections against inappropriate discrimination as contemplated in Article 26, almost no one interviewed could recall an instance where they had been employed, and few expressed an understanding and confidence that they could use these legal provisions for their own protection. The Ombudsman's deployment of regional resources with a new anti-discrimination mandate is the most notable commitment to pursuing the protections in Article 26, but non-governmental organizations have a potentially crucial role to play as well since enforcement of these rights cannot depend solely on government intervention.

However, both public and private enforcement actions still face considerable obstacles to enjoyment of the Article 14 right to a fair trial. Most Macedonian legal professionals interviewed agreed that various aspects of trial procedure are dysfunctional, but they were not as clear on what would be required to remedy the situation. At the trial level, the lack of transparent and rigorous office administration makes it difficult to discern between administrative incompetence and intentionally inappropriate conduct. Moreover, checks and balances at the local level are inadequate, and centralized oversight of judicial officers has not compensated for this gap.

Despite these concerns, some rights have evolved in the legislature and the courts in a robust, productive manner. Article 18 rights to freedom of thought, conscience, and religion have been the subject of legislation, debate, litigation, and revision. The result has been that a progressive, inclusive approach has prevailed, effectively guaranteeing all Macedonians these important freedoms. The challenge facing the Macedonian citizenry is to understand how this process proved successful and what lessons this may provide for its replication with other rights.

IV. Macedonia ICCPR Legal Implementation Index 2004 Analysis

ARTICLE 1: RIGHT TO SELF-DETERMINATION

1. *All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

2. *All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.*

3. *The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.*

GENERAL COMMENTARY

Article 1 is common to both the ICCPR and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), a fact that highlights the importance of the right to self-determination for the attainment of other rights. Indeed, the concept of self-determination is one of the most important foundational precepts of modern human rights protections. Article 1(1) is the heart of the article. It provides that "peoples" have the "right" to self-determination and, thereby, the ability to freely determine their political status and pursue their own development. While this right is typically pursued collectively, related aspects may be pursued individually under Article 27's protections for minority rights. Accordingly, there will always be a special relationship between these two articles. Historically, the oppression of minority groups stimulates calls for self-determination for those minority groups, and vice-versa. Thus, an evaluation of the implementation of one necessitates an evaluation of the other.

Given that the Article 1 right of self-determination is not an individual right, but rather a collective right of a people, some analysis of historical and political factors is required to assess its domestic implementation. Collective rights typically find their expression through political, as opposed to judicial, structures, and consequently, their enforcement usually requires a relatively high level of political coordination. Thus, a politically polarized environment may compromise the effective realization of the right of self-determination, and an accurate assessment of implementation requires an examination of the definition and treatment of minority political concerns. However, the fact that Article 1 is not readily implemented through individual enforcement actions in no way diminishes the binding effect of Article 1 under international law. This distinction simply alters the mechanics of its implementation and ongoing enforcement.

CONCLUSIONS

The Republic of Macedonia has been slow to create the political conditions necessary to ensure that the right of self-determination is useful and accessible to the minority populations living within its territory. The failure to fully implement Article 1 appears due in substantial part to the fact that the majority population has been reluctant to recognize the relative importance of these issues to the minority populations. Complicating this situation is the fact that elements within the minority political structures have frequently adopted antagonistic responses to this neglect. This gulf in political understanding has led to substantial civil unrest and violence. Full and complete realization of the 2001 Ohrid Framework Agreement will be necessary to bridge this gulf and

ensure full protection of minority rights to self-determination. Though initial signs of progress are encouraging, proponents of the Agreement will need to vigorously address emerging political attacks from spoilers of both ethnicities if implementation is to be successfully completed.

IMPLEMENTATION ANALYSIS

The modern origin of the Republic of Macedonia derives at least in part from an exercise of the right of self-determination. On September 8, 1991, Macedonian citizens voted in a national referendum to assert statehood and sovereignty apart from Yugoslavia. Approximately one week later on September 17, the Parliament of Macedonia convened and pledged to follow relevant international standards. On November 17, 1991, the Parliament adopted a new Constitution for the Republic of Macedonia, and the following month, the Parliament submitted a request to the United Nations to be recognized as a sovereign and independent state. While this move for independence proceeded rapidly forward, ethnic Albanians residing within Macedonian territory began peacefully protesting the fact that the majority Macedonian population had not granted them equal status as a "constituent people." Albanians viewed this status as essential for the full enjoyment of their rights in this new state. ICG BALKANS REPORT NO. 38: THE ALBANIAN QUESTION IN MACEDONIA 3-4 (1998). Instead, the 1991 Constitution affirmatively pledges that "full equality as citizens and permanent coexistence with the Macedonian people is provided for Albanians, Turks, Vlachs, Roma, and other nationalities living in the Republic of Macedonia." CONSTITUTION OF THE REPUBLIC OF MACEDONIA, PREAMBLE, O.G.R.M. 52/91. While the legal effect of this approach may not have foreclosed an equal status, this language clearly did not satisfy their existing expectations.

The ethnic Macedonian political majority's refusal to fully engage on the ethnic Albanians' request to be recognized as a constituent people prompted the ethnic Albanian leadership to organize its own referendum on territorial autonomy on January 11, 1992. According to their tally of the results, three quarters of ethnic Albanians were in favor of this measure. The ethnic Macedonian political majority summarily dismissed this exercise as illegal, and the two sides hardened their political opposition to the positions of one another. ICG BALKANS REPORT NO. 38: THE ALBANIAN QUESTION IN MACEDONIA 3-4 (1998).

Six years later, when the Republic of Macedonia submitted its *1998 Initial Report of the Republic of Macedonia (1998 Initial Report)* as required under the ICCPR, the majority ethnic Macedonian attitude appeared to have progressed very little. Discussing implementation of Article 1, the government clumsily dropped the reference to ethnic Albanians when quoting the abovementioned section of the Preamble. Even more surprising is that there is no mention of ethnic Albanians at all in this section of the report. The question of internal self-determination is dealt with solely in general terms, citing Articles 1, 8, and 56 of the Constitution. Article 1 establishes the Republic of Macedonia as a democracy; Article 8 protects "free expression of national identity"; and Article 56 "guarantees the protection, promotion and enhancement of the historical and artistic heritage of the Macedonian people and of the nationalities and the treasures of which it is composed, regardless of their legal status." *See* CCPR/C/74/Add. 4, 18 May 1998, paragraphs 1-7.

Regarding Article 1, the *1998 Initial Report* does *not* cite any other specific provisions within the domestic legislation aimed at protecting minority interests in self-determination. Most notably, there was no reference to Article 48 of the Constitution, which guaranteed the right of "nationalities…to develop their identity and national attributes," nor the parliamentary Council for Inter-Ethnic Relations, which was established in 1993 to advise the parliament on minority related issues. *See* CONSTITUTION OF THE REPUBLIC OF MACEDONIA, at Arts. 48 & 78, O.G.R.M. 52/91, 1/92. These omissions were at best disconcerting. Furthermore, no effort was made to reconcile the freedoms cited with potentially conflicting constitutional provisions granting

preeminence to the Macedonian language and Orthodox Church. *See, e.g., Id*., at Art. 7, O.G.R.M. 52/91, 1/92.

This silence on self-determination for the ethnic Albanian community directly followed the most provocative period in post-independence ethnic relations to date. In the spring of 1997, the ethnic Albanian mayors of the towns of Tetovo and Gostivar instituted a practice of raising the Albanian flag of nationality (which is identical to that of the Republic of Albania) alongside the official Macedonian flag adopted in 1995. Ethnic Macedonians challenged this practice in the Constitutional Court, which declared the practice to be a violation of the 1995 flag law. O.G.R.M. 29/97. In response, the mayors of Gostivar and Tetovo challenged this decision, which was again affirmed. O.G.R.M. 35/97. The mayors continued the practice of raising the flags, ignoring these rulings. In the meantime, the government developed a compromise position in the parliament, which would permit this practice on special occasions, and this new approach gained support from influential ethnic Macedonian and ethnic Albanian parliamentarians. On July 8, 1997, the Parliament of the Republic of Macedonia passed the Law on Usage of the Flag, the Badge and Hymn, which asserts the primacy of the official Macedonian flag, but permits the raising of other flags alongside the Macedonian flag only on holidays and special occasions. O.G.R.M. 32/97. Early the following morning, Macedonian law enforcement officials forcibly removed the Albanian flags, which were hung in violation of the new law, and cordoned off the Tetovo and Gostivar municipal buildings. Protests ensued, and at least a couple of ethnic Albanians were shot and killed. Dozens were injured. A government commission later concluded that excessive force had been used. *See* ICG BALKANS REPORT NO. 38: THE ALBANIAN QUESTION IN MACEDONIA 8 (1998).

On July 10, 1998, the OSCE High Commissioner on National Minorities arrived to investigate these events. He concluded that it was clear after the incident that there existed divisions within the ethnic Albanian political community with some advocating potentially aggressive resistance to what they viewed as the imposition of illegitimate authority. One senior ethnic Albanian political leader stressed to him that his constituents considered it “intolerable that in Parliament persons of another nationality can decide on the interests of the Albanian nationality.” At the conclusion of his investigation, the High Commissioner issued a statement urging respect for the rule of law and the territorial integrity of the state while simultaneously calling upon all nationalities to “strive to find solutions for inter-ethnic problems.” REPORT OF THE HIGH COMMISSIONER ON NATIONAL MINORITIES TO THE CHAIRMAN-IN-OFFICE OF THE OSCE ON HIS MISSION TO THE FYR OF MACEDONIA, 10-13 JULY 1997, REF.HC/9/97.

During their 1998 review of the *1998 Initial Report*, the reality of this dangerous, heightened state of ethnic tension was not lost on the members of the ICCPR Human Rights Committee (HRC). One member pointedly expressed his concerns that “the problem of growing tensions between the different components of the population, and especially between the ethnic Albanians and others, was more serious than the delegation’s replies indicated.” CCPR/C/SR.1687, PARA. 17 (29 JULY 1998)(REMARKS OF MR. KLEIN). In fairness to the Macedonian government, the difficulty in defining the Article 1 right of self-determination is not unique to the Macedonian context, and the Human Rights Committee itself has offered sparse guidance as to its specific content. Nevertheless, both the omissions in the *1998 Initial Report* and the relatively limited responses of government officials to related questions raised serious doubts about whether the government was satisfying its legal duty under Article 2 of the ICCPR to fully implement all substantive provisions. Moreover, from a practical, political perspective, this failure to pursue the peaceful realization of self-determination reflected, and foreshadowed, a counterproductive stalemate on the underlying issues.

Between 1998 and 2001, internal political dialogue on various aspects of self-determination continued among some of the more moderate ethnic Albanian and ethnic Macedonian political leaders. However, a comprehensive package of reforms proved elusive, and the lack of political

progress fueled extremist positions on both sides. In early 2001, armed conflict broke out in a number of parts in Western Macedonia between government forces and extremists elements within the ethnic Albanian community. As the conflict escalated, calls for international mediation grew, but resistance within the ethnic Macedonian majority to the issue of constitutional amendments remained strong, and EU Foreign Minister Javier Solana's suggestion that these be considered was widely criticized and even mentioned as a reason to disqualify him as a mediator. KARINA JOHANSEN, PRESSURE MOUNTS FOR MACEDONIAN PEACE TALKS, I.W.P.R. (BCR NO. 231, 30-MARCH-01). Contemporaneously, the international community sought to reassure the Macedonian majority population that the issue of territorial partition was not a legitimate topic of discussion. The U.N. Security Council unanimously adopted Resolution 1345, which "[s]trongly condemns" extremist violence and "[r]eaffirms…the sovereignty and territorial integrity…of Macedonia." SECURITY COUNCIL PRESS RELEASE SC/7036 (21 MARCH 2001) SC RES. 1345, UN SCOR 4301ST MTG. (2001).

Throughout the first half of 2001, violence between ethnic Albanians and ethnic Macedonians continued, and the international pressure on all parties to come to the table to negotiate a peaceful solution increased significantly. On August 13, 2002, a national unity government consisting of two Albanian and two Macedonian political parties signed the Ohrid Framework Agreement. This agreement detailed legislative and constitutional changes designed to extend protections to minorities within Macedonia. CONSTITUTIONAL WATCH, MACEDONIA, 4 E. EUR. CONST. REV. (FALL 2001).

The Ohrid Framework Agreement called for the immediate passage of several constitutional amendments, which were designed to address the right of self-determination. First, the controversial language in the Preamble was to be changed to clarify that Macedonians did not enjoy primacy over other peoples. Second, the language provisions were to be altered so that the Albanian language could also enjoy status as an official language. Third, the religion provision was to be re-written so that it was clear that all religions were to be accorded equal respect and protection under the law. Finally, and most significantly, special parliamentary voting procedures were to be incorporated, which were designed to guarantee minority input on high-level executive appointments and legislation that affects local self-government, culture, use of language and symbols, personal documentation, and education. OHRID FRAMEWORK AGREEMENT, AUGUST 13, 2001, at Appendix A.

These proposed constitutional changes represented a watershed breakthrough in inter-ethnic relations, and not surprisingly, a number of politicians approached these changes with some trepidation. Complicating matters, ethnic Albanian and ethnic Macedonian extremist elements continued to engage in sporadic conflicts. The international community sensed the fragility of the situation and increased pressure to rapidly pass these constitutional amendments. On November 16, 2001, the Macedonian parliament ratified the full set of constitutional changes, introducing significant legal protections for the right of minorities to self-determination. VLADIMIR JOVANOVSKI, MACEDONIA: PEACE PROCESS BREAKTHROUGH, I.W.P.R. (BCR NO. 297, 16-NOV-01).

While it must be noted that full execution of the Ohrid Framework Agreement involves a number of measures beyond these constitutional amendments, the overwhelming majority of those interviewed agreed—regardless of their ethnicity—that the Agreement had introduced an entirely new dynamic in inter-ethnic relations. Optimism was higher among ethnic Albanian interviewees, but even among the more skeptical ethnic Macedonians, there was a high level of agreement that these new minority protections were beneficial. The question that did arise with some frequency was whether less influential minorities, such as the Roma, would realize benefits on par with the Albanians. Moreover, some ethnic Macedonian skeptics questioned whether the protections went too far. In one case, one influential scholar posited that minorities in Macedonia now enjoy more protections than those in Scandinavia.

Of the Ohrid measures that remain to be implemented, the most significant is clearly the issue of decentralizing government authority. A substantial number of minority interviewees expressed the belief that real self-determination depends on the actual devolution of power. Furthermore, there seemed to be broad agreement that there are groups within both the ethnic Albanian and ethnic Macedonian communities that find these changes threatening and will seek to sabotage their implementation. Though they did not generally make specific reference to it, these interviewees were doubtless referring to the political attacks that started in 2003 when several high-level politicians from both major ethnicities pronounced the Ohrid Agreement "dead." *See* ICG BALKANS REPORT NO. 149, MACEDONIA: NO ROOM FOR COMPLACENCY 29 (2003).

ARTICLE 4: LIMITATIONS ON DEROGATIONS BASED ON PUBLIC EMERGENCY

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion, or social origin.

2. No derogation from Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16, and 18 may be made under this provision.

3. Any State party to the present Covenant availing itself of the right of derogation shall immediately inform the other States parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

GENERAL COMMENTARY

Article 4 allows the state to derogate from its official obligations under the ICCPR in times of recognized public emergency. However, this provision is only to be invoked when two stringent conditions are met. First, there must be a situation prevailing throughout the country that constitutes a state of emergency which threatens the existence of the nation. Second, the state must officially proclaim the existence of a state of emergency. Any derogation that occurs without these conditions being satisfied constitutes a violation of the ICCPR.

A state's actions during an emergency have the potential to affect every ICCPR right and prohibition. Article 4 embodies the tension within the ICCPR between the rights of the individual and the right of a state to its own continued existence. A state has a legal obligation to protect the rights of individuals that competes with its own efforts to maintain its existence, and those instances when derogation may be necessary – states of emergency – are precisely those times when the protection of human rights are frequently most needed. The HRC has made clear that the ICCPR is not a relativist document to be interpreted and applied differently simply because a country is experiencing unrest. The HRC has indicated that full compliance with Article 4 requires protection for human rights despite the occurrence of a state of emergency. Any derogation from a human rights norm must be understood to be an exceptional and temporary step.

CONCLUSIONS

Several articles in the Constitution of the Republic of Macedonia directly incorporate the majority of the protections contained within Article 4. To the extent some aspects may not be directly implemented, Macedonian officials attest that these Article 4 protections would be covered under the general constitutional provisions that give duly ratified treaties full legal force within the domestic system. Nevertheless, the protections in Article 4 have yet to be fully tested, and some local experts contend that additional measures may be required to ensure that Article 4 is respected in practice. The recent development of a "national strategy" on this subject may address this concern, but it is too early to fully assess its impact.

IMPLEMENTATION ANALYSIS

The Constitution of the Republic of Macedonia addresses the issue of national emergencies and the derogation of rights. Article 54 provides that individual rights may be "restricted during states of war or emergency, in accordance with the provisions of the Constitution." CONSTITUTION OF THE REPUBLIC OF MACEDONIA, at art. 54, O.G.R.M. 52/91, 1/92, 31/98, 91/01, 84/03. However, Article 54 explicitly excludes certain freedoms as non-derogable and forbids discrimination in the

application of restrictions based on "sex, race, color of skin, language, religion, national or social origin, property or social status." *Id.* The rights and freedoms identified as non-derogable correspond with ICCPR Articles 6, 7, 15, and 18. *See id.* There is no specific mention of the other rights and freedoms described in Article 4, paragraph 2, of the ICCPR.

The definitions for states of "war" or "emergency" are defined in Articles 124 and 125, respectively. Article 124 states, "A state of war exists when direct danger of military attack on the Republic is impending, or when the Republic is attacked, or war is declared on it." *Id.* at Art. 124. Article 125 provides, "A state of emergency exists when major natural disasters or epidemics take place." *Id.* at Art. 125. In both cases, the declaration of such a state is a function of the parliament and the president.

In the *1998 Initial Report,* the Republic of Macedonia stressed that the placement of these protections in the Constitution prevents the legislature and the executive from taking actions that abridge their protection. Furthermore, the *1998 Initial Report* cites Article 118 of the Constitution, which establishes that the Republic of Macedonia has a monist treaty system, rendering international treaties directly enforceable and superior to ordinary legislation. Accordingly, Article 98, which stipulates that judges are to enforce international agreements, should be understood to make the ICCPR provisions directly applicable in any case where it is necessary. *See* CCPR/C/74/Add. 4, 18 May 1998, paragraphs 31-39. As was clarified in a later colloquy, this observation was intended to imply that, to the extent Article 4 of the ICCPR is not directly mirrored in the text of the Constitution, there should nevertheless remain the option of pursuing the enforcement of the ICCPR directly and fulfilling the Republic of Macedonia's obligations under international law.

Regarding these particulars, members of the U.N. Human Rights Committee (HRC) questioned whether these constitutional provisions actually achieved full implementation. One member asked whether the language should be read to protect the right to a fair trial, as described in Articles 14 and 15 of the ICPPR, establishing these protections as non-derogable. CCPR/C/79/ADD. 6, 18 AUGUST 1998, PARAGRAPH 51 (REMARKS OF MR. POCAR). Another member inquired as to whether the wording of Article 118 is understood to allow an individual to pursue enforcement of an ICCPR right directly in the Constitutional Court, as opposed to only ordinary courts. CCPR/C/79/ADD. 6, 18 AUGUST 1998, PARAGRAPH 54 (REMARKS OF MR. KLEIN). In terms of the former, a member of the Macedonian delegation conceded that the language of the Constitution was not sufficient to cover all the circumstances contemplated in Article 4 of the ICCPR. However, he did clarify that, wherever the Constitutional protection fell short, the ICCPR should be directly enforceable. Furthermore, he noted that direct enforcement in the Constitutional Court is available. CCPR/C/SR.1686, 1 DECEMBER 1998, PARAGRAPHS 20 & 25 (REMARKS OF MR. TODOROVSKI).

The interviewees did not generally seem to regard Article 4 protections as a significant concern. During the 2001 crisis, no one recalled any public discussion of its invocation, or the necessity to consider it. At least one interviewee suggested that government officials simply lacked knowledge and training, and this knowledge deficit probably limited the impact of Article 4 under the circumstances. Another academic interviewee commented that there is debate about what constitutes a state of emergency, and no legislation has been passed to address the mechanics of a state of emergency. Without further legislation, the interviewee expressed doubts about whether the relevant constitutional and ICCPR provisions would ever be readily enforceable. Some concerns were expressed that the broad amnesty that emerged from the 2001 conflict in effect amounted to an unauthorized derogation.

Recently, the government has sought to clarify proper procedures in cases of national crisis through the development of a "national strategy." This approach was immediately challenged in the Constitutional Court as an *ultra vires* act, seeking to establish a new body outside the purview

of the constitutionally mandated Council of Security. The Court ruled in 2004 that this move did not violate the Constitution because it is only a political strategy, not a law.

ARTICLE 14: DUE PROCESS RIGHTS IN CIVIL AND CRIMINAL TRIALS

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

> *(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;*
>
> *(b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;*
>
> *(c) To be tried without undue delay;*
>
> *(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;*
>
> *(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
>
> *(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;*
>
> *(g) Not to be compelled to testify against himself or to confess guilt.*

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offense and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offense for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

GENERAL COMMENTARY

Article 14 is a foundation ICCPR article that is necessary for the proper implementation of all basic substantive rights. The protections therein have a rich history that can be traced back to the Anglo-Saxon concept of "due process of law" and its origins in the *Magna Charta Libertatum* of 1215. Article 14's modern application of this concept draws heavily upon the U.S. experience, reflecting the substantial U.S. role in the drafting of this article. Consequently, Article 14 is imbued with the principles of separation of powers and an independent judiciary, and these positive state obligations have often proved challenging to implement. Nevertheless, the framework established in Article 14 provides one of the most sophisticated (and accepted) blueprints of what is now commonly understood as the "rule of law."

In accordance with Article 4, Article 14 is a derogable right subject to restrictions during a period of public emergency. However, the HRC has been explicit in cautioning against unnecessary restrictions during times of emergency. ICCPR GENERAL COMMENT 29 (SEVENTY-SECOND

SESSION, 2001): DEROGATIONS FROM PROVISIONS OF THE COVENANT DURING A STATE OF EMERGENCY, A/56/40 VOL. I (2001) 202. Thus, all restrictions should be tailored to the particulars of an actual situation. Broad restrictions risk unduly compromising the full enjoyment of ICCPR rights, and public emergencies have historically been used as a pretext to pursue unrelated political goals of the parties in power.

CONCLUSIONS

The Constitution of the Republic of Macedonia and core structural and procedural laws directly incorporate the majority of the rights and freedoms required under Article 14. However, there appear to be significant problems with the practical implementation of some of these provisions. While minorities may be particularly disadvantaged in certain respects, the nature of the problems identified suggest that problems are relatively commonplace and general in nature, and all citizens face difficulties in realizing the rights to a fair and public hearing by a competent, independent and impartial tribunal. To render the requisite protections useful and accessible to the average citizen will require further reforms and refinements of existing structures.

Anticipated reforms in the Penal Procedure Code may contribute significantly to the amelioration of the situation. However, changes in the core legislation will likely have limited effect on more intangible concerns about deficits in the prevailing legal culture. Complaints about unprofessional administration of the justice system highlight pervasive management shortcomings. Some common issues raised involved simple processes such as the dissemination of legal information or the registration of defendants in police custody. These types of issues will require a more systematic commitment to basic aspects of sound office management. To the extent further legal definition is required, the most suitable form would be in the form of binding government regulations and internal rules.

Even with more precise guidance, the proper administration of the system of justice will ultimately rest on whether those charged with executing these duties are held accountable. In this regard, there appears to be serious lack of checks and balances in various aspects of day-to-day administration. For instance, the police were often identified as the source of problems when proper trial procedures are not followed, but relatively few local legal professionals identified a role for prosecutors or judges in sanctioning police misconduct. While it may be correct to assert that the Ministry of Interior is ultimately responsible for police discipline, it does not necessarily follow that there is no role for prosecutors and judges. If accountability at the local level is to be realized, all involved must share responsibility for securing adherence to proper procedures.

IMPLEMENTATION ANALYSIS

Given the great detail, and diversity of issues, imbedded in Article 14, an analysis of its implementation requires that each component be addressed separately. The subsections that follow examine these components in the order they are found in Article 14.

Article 14(1)-Fair and Impartial Tribunals

The Constitution of the Republic of Macedonia states, "Courts are autonomous and independent. Courts judge on the basis of the Constitution and laws and international agreements ratified in accordance with the Constitution." CONSTITUTION OF THE REPUBLIC OF MACEDONIA, at Art. 98, O.G.R.M. 52/91, 1/92, 31/98, 91/01, 84/03. The Constitution also forbids temporary courts, guarantees life tenure, and provides judicial immunity. *Id.* at 98, 99, & 100.

An independent body, the Republic Judicial Council, is charged with the selection and discipline of judges in the ordinary court, and the Council's members are selected from the legal profession for a term of six years, during which they enjoy official immunity. Membership on the Council "is incompatible with the performance of other public offices, professions, or membership in political parties." *Id.* at 104 and 105.

Article 102 of the Constitution provides the public with a general right of access to the proceedings and verdicts. However, this article permits, "The public [to be] excluded in cases determined by law." *Id.* at art. 102. Article 279 of the Penal Procedure Code allows the public to be excluded to protect confidentiality, the personal lives of persons involved, morals and public order, and juveniles. PENAL PROCEDURE CODE, at art. 279, O.G.R.M. 15/97, 44/02, 4/04.

The Law on Courts provides, "Everyone has a right to a legal, fair and impartial trial within a reasonable time limit." LAW ON COURTS, at art. 7, O.G.R.M. 36/95. Furthermore, this same article guarantees "a right of equal access" to the courts. *Id.* To facilitate the realization of these rights, the Law on Court prohibits unjust discrimination in hiring judicial personnel and seeks to instill diversity within its ranks. *Id.* at art. 40. In addition, the law specifically forbids judges from engaging in conduct that might be prejudicial to their impartiality in a particular case. *Id.* at art. 54.

According to a 2003 survey of public opinion, the Macedonian citizenry generally believes the judicial system to be ineffective. Approximately forty percent of the population expressed the view that the Macedonian judicial system is "not effective at all," and approximately twenty percent concluded the judiciary to be "ineffective to some extent." From the perspective of the two major ethnic groups, Macedonians and Albanians, their assessment of court effectiveness appeared to be the same. Interestingly, according to public opinion polls, only the Roma expressed significant belief in the judiciary's effectiveness. MACEDONIAN CITIZEN'S ATTITUDES AND PRACTICES REGARDING DEMOCRACY AND CIVIC PARTICIPATION AND THEIR PERCEPTIONS ABOUT POLITICAL, CIVIL, AND GOVERNMENTAL INSTITUTIONS 20 (2003)(BRIMA, MACEDONIAN MEMBER OF GALLUP INTERNATIONAL). However, interviews conducted for this report suggested that NGOs working on behalf of Roma rights are, indeed, skeptical of the court's effectiveness. The relative uniformity of opinion among those surveyed points out that the lack of professionalism is an issue that cuts across local ethnic divisions.

The lack of professionalism as a theme was confirmed in the interviews on ICCPR implementation. Despite the considerable array of proper legal safeguards, many interviewees expressed serious concerns about the lack of real judicial independence and the failure to follow proper trial procedures. Some interviewees went so far as to state that rule of law is simply not respected in the private or public sector. Interviewees cited several general categories where problems originate, including corruption, poor management, structural deficits, and the police.

In 2003, the *ABA/CEELI Judicial Reform Index* was completed in Macedonia for the second time in as many years. According to the comparison between 2002 and 2003 results, many crucial aspects in need of reform remained stagnant. Particularly concerning were those involving ethics and improper influence. However, there is at least some cause for optimism because critical aspects of office management such as case assignment appear to be trending upward. JUDICIAL REFORM INDEX FOR MACEDONIA (NOVEMBER 2003, ABA/CEELI).

As one academic noted, corruption in the judicial system is an obvious temptation when personnel receive relatively low salaries as they do in the Republic of Macedonia. However, this individual also stressed that corruption is not simply a function of compensation. Education also plays a role. Advocates, even when formally educated, tend to develop relationships with judges that are inappropriately close. One judge inadvertently confirmed this point when describing the pressure advocates place on judges as "friendly." Another judge observed that it is commonplace

for judges to share office space and lunches with their prosecutorial colleagues, and not surprisingly, prosecutors get preferential treatment in terms of evidence and free documentation. Defendants on the other hand must pay for all their documents. For this judge, these types of relationships clearly compromised the integrity of the judiciary and undermined the principle of equality of arms.

Another academic posited that, in the years directly following Macedonian independence, the judiciary was originally given a pass from serious criticism, and it was noted for its relatively high level of transparency. During the last few years, reports about corruption have been on the rise. One judge suggested that the perception of corruption in the courts is higher than the reality. This judge contended that the larger problem is the absence of creative leadership in the judicial administration. However, the judge expressed optimism that this could change soon because of the growing political will to address the problem, stressing that the proper use of technical standards and procedures could isolate corruption.

One institution that may play a role in addressing this problem is the Ombudsman. However, at this juncture, Ombudsman involvement in the judiciary is very limited—primarily to cases of unreasonable delay. According to the Ombudsman, the responses have been promising with approximately 30% of the courts engaging on solutions to issues raised. The Ombudsman has generally found that judicial failures arise from several factors: 1) outdated procedures; 2) lack of administrative capacity; and 3) lack of judicial education about the new systems being introduced (*e.g.*, old law did not permit direct contact with Ombudsman). The Ombudsman considers a more active internal training program to be a pressing need.

Like the Ombudsman, the State Commission for the Prevention of Corruption is an independent oversight institution, appointed by the Assembly, capable of drawing attention to problems with judicial operations. In 2003, the State Commission reported that a "significant" number of citizen complaints were received involving the judiciary. Several categories of complaints were more common than others: delays in proceedings; "inconsistency in the method of their management"; decisions that were not consistent with the substantive provisions of the law. ANNUAL REPORT ON THE WORK OF THE STATE COMMISSION FOR PREVENTION OF CORRUPTION FOR THE PERIOD NOVEMBER 2002—NOVEMBER 2003 10 (2003). However, the State Commission has yet to successfully engage the judicial leadership on the findings from their work. As the Commission noted in their Annual Report, despite "multiple requests," they have been unable to secure a meeting with the Supreme Court of Macedonia. *Id.* at 5.

Echoing these concerns about the responsiveness of judicial leadership, one professor asserted that there is a general problem with the upper judicial management. According to this professor, the Republic Judicial Council has not proven vigilant and objective in the exercise of its duties, and it currently does not do much more than suggest recusals. He pointed to the lack of diversity among judges as an example of their failure to pursue sound policies as defined by law. Moreover, this professor questioned whether the existing inquisitorial judicial model grants too much authority to the judges, undercutting the role of advocates to the point that there is no real "equality of arms."

Some private advocates agree fully with this criticism of existing procedural laws. They assert that the foundation procedural laws are outdated holdovers from the former Yugoslavia, and these laws do not empower the private advocates. These advocates maintain that government attorneys don't readily engage with their private counterparts. In contrast to the professor noted above, they maintain that, while judges are technically in control, it is really the executive that enjoys undue influence. For these attorneys, failure to incorporate minority concerns is not so much the problem as bad procedure overall.

A senior executive branch official conceded that components of the foundational laws need updating. He cited three new laws under development, which he considered necessary to remedy these issues: 1) Penal Procedure; 2) Law on the Public Prosecutor; and 3) Law on the Police. However, one academic cautioned that, though there may be some beneficial amendments in the works, the current legal framework is generally in conformity with international standards. He considered the more intractable problem to be the lack of a proper "legal culture." To remedy this problem, he suggested that more resources will need to be devoted to education, and management will need to improve.

In a similar vein, several interviewees focused on general ignorance of the law as a major limitation on the formation of legal culture. One noted that the dissemination of legal information is generally inadequate, noting that the law library at Sts. Cyril and Methodius University in Skopje is the only functional public law library. This interviewee stressed that access to public legal resources is essential because the cost of purchasing the necessary materials is prohibitively expensive for the individual. Another interviewee relayed that in a recent judicial seminar not a single judge raised a hand when they were asked how many judges had access to full sets of relevant international legal instruments.

In terms of basic court administration, several concerns were noted. Some private attorneys noted that the records of court proceedings are supposed to be dictated to a secretary and signed by the judge and the parties, but in practice, it does not generally happen in this way. They maintained that generally only the judge signs it, and in some cases, judges have been known to unilaterally change the record. As insurance against this possibility, these attorneys made it standard practice to take a copy immediately for their own records. Once documents are filed, it is not always easy to retrieve them. One civil society representative observed that court administrative systems are not geared towards servicing public needs generally. Court scheduling is opaque, and there are some instances where the general public is excluded without a clear and permissible justification.

The European Union has raised similar concerns about Macedonian court administration in its 2004 Stabilization Report. The authors commented on the "continuing lack of management tools," its lack of transparency, and "unjustified delays." Furthermore, they emphasized that these problems are evident within even the most basic operations, such as the "delivery of court decisions." While they acknowledged that the Supreme Court had taken note of some of these problems, they pointed to problems with follow through. COMMISSION OF THE EUROPEAN COMMUNITIES, STABILIZATION AND ASSOCIATION REPORT 2004: FORMER YUGOSLAV REPUBLIC OF MACEDONIA 8-9 (2004)(COM(2004) 204 FINAL).

Aside from the courts, many interviewees pointed to the lack of professionalism and widespread corruption in the police force as an impediment to the right to a fair trial. One high level government legal officer asked rhetorically, in the case of alleged police abuses, what type of response is typically found among prosecutors and judges? From his experience, the unfortunate answer is that there is rarely any significant reaction. To the contrary, judges and prosecutors do not conceptualize of themselves as protectors of human rights. Furthermore, this external check on police abuse is needed now more so because of the decline in police professionalism. When asked for a concrete example of the decline in professionalism, the legal officer responded that, prior to 1992, police promotions were tied to successful passage of legal exams, but since independence, this type of professional rigor has been absent.

The European Committee for the Prevention of Torture and Inhuman or Degrading Punishment (CPT) has conducted a number of assessments that deal in part with the question of police conduct and compliance with human rights standards. Consistently, it has cited problems with implementation in the Republic of Macedonia. In its most recent report, the committee commented critically on the fact that detainees cannot count on judges and prosecutors to act

when detainees report abuses. The CPT stated unequivocally, "In every case where investigating judges and public prosecutors become aware of information suggesting that a person may have been ill-treated, they have a duty to act." EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING PUNISHMENT, REPORT TO THE GOVERNMENT OF "THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA" ON THE VISIT FROM 15 TO 19 JULY 2002 20, PARA. 28 (16 JANUARY 2003) CPT/INF (2003) 5.

Moreover, a senior government legal officer contended that, because the system consistently fails to adequately address police brutality, the notion that a defendant enjoys equality of arms is always doubtful. Simply stated, he argues that the judge and prosecutor at the very least have an *ex officio* duty to act when there is any evidence of police brutality. Instead, he has more familiar justifications for why they haven't acted, some of which are absurd. For instance, he recounted one case in which inactivity was justified on the grounds that the defendant's bullet wounds were stable, leaving no need to pursue the matter. His ultimate assessment was that in Macedonia pre-trial detention is widely used by the police to collect evidence, and police brutality is accepted as a consequence of placing a defendant in custody. There was a perception, at least, among some NGOs interviewed that the rate of police brutality was highest in dealings with defendants of an ethnic minority.

According to the abovementioned survey, the Macedonian citizenry is sharply divided on the professionalism of the police with a majority concluding that the police do not conduct themselves professionally, and a slightly smaller percentage concluding that the police do conduct themselves professionally. From the perspective of the two major ethnic groups, the divide is larger with more than half of ethnic Macedonians having a positive opinion of police professionalism compared with approximately a third of ethnic Albanians. MACEDONIAN CITIZEN'S ATTITUDES AND PRACTICES REGARDING DEMOCRACY AND CIVIC PARTICIPATION AND THEIR PERCEPTIONS ABOUT POLITICAL, CIVIL, AND GOVERNMENTAL INSTITUTIONS 40 (2003)(BRIMA, MACEDONIAN MEMBER OF GALLUP INTERNATIONAL). The divide in opinion underscores the importance of addressing the concerns identified with police conduct in the court system, and it may well serve as a warning that failure to address this problem can ignite further ethnic conflict.

This concern is shared within the international community. The European Union has noted that "Continued attention must be paid to the specific measures to prevent police ill-treatment and combat impunity from disciplinary action, as identified in the January 2003 Anti-torture Committee Report of the Council of Europe…[CPT]" COMMISSION OF THE EUROPEAN COMMUNITIES, STABILIZATION AND ASSOCIATION REPORT 2004: FORMER YUGOSLAV REPUBLIC OF MACEDONIA 10 (2004)(COM(2004) 204 FINAL). Western analysts caution that, if police impunity is not addressed in a manner that reassures the ethnic Albanian community, the entire Ohrid agreement could be jeopardized. *See* ICG BALKANS REPORT NO. 149: MACEDONIA: NO ROOM FOR COMPLACENCY 6-8 (2003).

Article 14(2)-Presumption of Innocence

Article 13 of the Constitution of the Republic of Macedonia states, "A person indicted for an offense shall be considered innocent until his/her guilt is established by a legally valid court verdict." CONSTITUTION OF THE REPUBLIC OF MACEDONIA, at Art. 13, O.G.R.M. 52/91, 1/92, 31/98, 91/01, 84/03. Article 2 of the Penal Procedure Code confirms this principle and embraces the legal principle of *in dubio pro reo*, which accords a defendant the most favorable interpretation of facts and their analysis under the code, placing the burden of proof on the prosecution. PENAL PROCEDURE CODE, AT ART. 2, O.G.R.M. 15/97, 44/02.

Interviewees did not express strong opinions on this issue generally. The strongest concern raised was that government officials, police in particular, do appear on television and make prejudicial statements that could affect the outcome in some cases.

Article 14(3)-Minimum Standards Guaranteed Defendant

Subsection (a)-Notification of Charges

Article 12 of the Constitution of the Republic of Macedonia provides in pertinent part, "Persons summoned, apprehended or detained shall be immediately informed of the reasons for the summons, apprehension or detention, and of their rights." CONSTITUTION OF THE REPUBLIC OF MACEDONIA, at art. 12, O.G.R.M. 52/91, 1/92, 31/98, 91/01, 84/03. The Penal Procedure Code states, "Anyone who is summoned, apprehended or arrested, must immediately be informed, in the language which he understands, of the reasons for summoning, apprehension or arrest and of any charge against him, as well as about his rights and that he cannot be compelled to make a statement." PENAL PROCEDURE CODE, at art. 3, O.G.R.M. 15/97, 44/02.

Since the 2001 conflict, significant progress has been made towards creating charging information sheets in multiple languages. With sponsorship from the British Government, the Ministry of Interior has developed a sheet that succinctly describes the basics of which a defendant should be apprised immediately upon his or her detention, including the specific charges being brought. While executive personnel provided assurances that it had been widely distributed and was commonly available, this sheet was not in evidence at any of the justice facilities visited. Apparently, NGOs have tried to supplement this effort. The local NGO Coalition for Fair Trials has produced a similar information sheet in several languages and distributed it through its network of affiliated NGOs.

According to one member of the judiciary, problems in this regard start at the moment a defendant is brought into police custody. Police should be obliged to implement registration provisions strictly informing defendants of their rights and presenting them before a judge within 24 hours as required by Article 12 of the Constitution, but processing of defendants has not yet reached this level of professionalism. However, this interviewee did consider improvements within the last couple of years to have been noticeable. For instance, some police are beginning to hand defendants the appropriate materials and obtain signatures demonstrating receipt.

One civil society representative suggested that this type of abuse derives from the old mentality that dominated the communist system, and the criminal justice officers remain reluctant to change and embrace the more adversarial procedures that might serve as a check. For instance, under the old system, it was not uncommon to detain someone to conduct the basic investigation. In keeping with tradition, it should not be surprising to find that the actual charges against a defendant are not clear at the time he or she appears before an investigative judge. Moreover, to the extent there are charges, police may well fail to muster enough evidence to demonstrate probable cause. This fact may lead to picking lesser charges to obtain a conviction. For instance, conspiracy is becoming a catch-all criminal charge.

Some interviewees were less critical and more confident that this segment of the system was functional. One private advocate attested that the charges are generally clear from the outset. Another interviewee concurred generally, but noted that there are still some matters that are only truly clarified when a defendant appears before a judge.

Subsection (b)-Adequate Time and Facilities with Counsel

Article 12 of the Constitution of the Republic of Macedonia provides in pertinent part, "A person has a right to an attorney in police and court procedure." CONSTITUTION OF THE REPUBLIC OF MACEDONIA, at Art. 12, O.G.R.M. 52/91, 1/92, 31/98, 91/01, 84/03. Article 4 of the Penal Procedure Code states that every defendant has the right "to have adequate time and facilities for the preparation of his defense and to communicate with a counsel of his own choosing." PENAL

PROCEDURE CODE, at art. 4, O.G.R.M. 15/97, 44/02. Article 273 of the Penal Procedure Code requires that there be at least eight days between the delivery of charges and the main trial. *Id.* at art. 273.

Most comments in this area pointed to problems in the realization of the rights involved. Some stated that advocate access to clients is generally problematic. While police confessions may not be considered binding, they are still sought and can present obstacles to immediate access. Advocates can wait in front of a police station for hours, and the police staff is not always honest about the defendant's status or location. When they do finally gain access to their client, there may not be adequate time to prepare. Sometimes defendants are rotated among police stations without proper registration. Prosecutors should serve as a check on police abuses, but they do not. There is a lack of proper checks and balances. Most of those commenting agreed that attorney-client communications are frequently not accorded the privacy required. Sometimes they are actively monitored. This practice is sometimes justified on the grounds that advocate and client are possibly co-conspirators.

In 2002, the Republic of Macedonia introduced a standardized register to address administrative problems and abuses in the recording of the whereabouts of detainees. The CPT noted this development as a "positive step," but members also urged the new facility be pursued "in a more diligent and consistent manner." EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING PUNISHMENT, REPORT TO THE GOVERNMENT OF "THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA" ON THE VISIT FROM 15 TO 19 JULY 2002 27, PARA. 45 (16 JANUARY 2003) CPT/INF (2003) 5. Nevertheless, in early 2004, the United Nations human rights specialist reported that non-registration continues and "poses significant problems for human rights lawyers seeking to find a client who is arrested." REPORT OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY GENERAL, PROMOTION OF HUMAN RIGHTS: HUMAN RIGHTS DEFENDERS 17, PARA. 58(15 JANUARY 2004), E/CN.4/2004/94/ADD.2.

Subsection (c)-Trial without Undue Delay

Article 12 of the Constitution of the Republic of Macedonia provides in pertinent part, "Persons detained shall be brought before a court as soon as possible, within a maximum period of 24 hours from the moment of detention, and the legality of their detention shall be decided without delay. Detention may last, by court decision, for a maximum period of 90 days from the day of detention." CONSTITUTION OF THE REPUBLIC OF MACEDONIA, at art. 12, O.G.R.M. 52/91, 1/92, 31/98, 91/01, 84/03. As noted above, the Law on Courts provides, "Everyone has a right to a…trial within a reasonable time limit." LAW ON COURTS, at art. 7, O.G.R.M. 36/95. Article 4 of the Penal Procedure Code contains parallel language. PENAL PROCEDURE CODE, at art. 4, O.G.R.M. 15/97, 44/02.

Some justice personnel interviewed insisted that trials are held in an expeditious manner and that delays are not a major issue. One prosecutor offered as an example the common practice of using Article 145 of the Criminal Procedure Code to expedite trials in less serious cases (crimes with a sentence of less than 3 years). He estimated that with a confession the entire process could be completed within 90 days, and he expressed confidence that judges as a rule verify the particulars of a confession independently, *i.e.*, through questioning the witness.

Others interviewed, including some justice personnel, characterized the Macedonian judiciary as slow. One academic asserted that the concept and reality of case processing within a "reasonable time" is simply non-existent. Opinions about the reasons for delays in case processing varied.

Some concluded that the delays are symptomatic of a system that has a number of procedural flaws. They noted that the procedural laws were holdovers from the old system, and they were

no longer appropriate for the new legal system. They were optimistic that the proposals for reforming the Penal Procedure Code could alleviate the situation. One private advocate asserted that these old procedural laws are being manipulated in unusual ways to achieve desired results. One example is the practice of a party stalling using procedural justifications in order to negotiate a plea bargain that it is not technically permitted, but frequently honored *de facto*.

Others pointed to abuses in pre-trial detention. When asked if this was directed at ethnic minorities, they tended to respond that the problem was really one of poor professionalism in law enforcement generally. Some also posited that reforms in this area may be at odds with pressure to step up anti-corruption efforts. Extensive pre-trial detention may be justified as beginning attempts to prosecute corruption. Despite international donor support, prosecutorial operations suffer from a lack of transparency. One academic commented that the Minister of Police is speaking out against the courts to divert attention away from this problem.

Subsection (d)-Right to be Present and Choose Counsel

The Penal Procedure Code states, "The suspect, *i.e.*, the person charged, must be clearly instructed on…his right…to have counsel of his choosing present at questioning." PENAL PROCEDURE CODE, AT ART. 3, O.G.R.M. 15/97, 44/02. Articles 4 and 362 of the Penal Procedure Code guarantee the right of the defendant to be present at trial and on appeal, respectively. *Id.* at art. 4 & 362. Article 4 states that the defendant has the right "to be tried in his presence and to defend himself in person or by legal assistance of his own choosing and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it." *Id.* at 4; *see also* art. 63.

All interviewees agreed that defendants generally enjoy the right to be present at trial and choose counsel. The major obstacle cited was problems with the registration of detainees. According to several people interviewed, the police commonly fail to register defendants at the police station, which in effect makes it difficult, if not impossible, to access counsel in the pre-trial phase. When asked about this issue, one judge responded that the judge is not involved in this part of the process, and a judge may only remedy the situation once the defendant is presented in court.

Also, there was substantial agreement that free representation should be made available to indigent clients. Only one interviewee disagreed, and even this interviewee considered it appropriate in cases of serious crimes or when the defendant is disabled. However, there seemed to be consensus that, regardless of these views, legal aid is rarely in evidence. One member of civil society who has studied the issue estimates that fewer than 1 in 400 take advantage of legal aid. When asked the reason for this, the interviewee responded that there appears to be a profound lack of knowledge about the right. Another interviewee asserted that legal aid is simply insufficient to meet demand, and to the extent it is realized, it is usually provided late in the trial rather than at the beginning.

One interviewee questioned the effectiveness of defense counsel more broadly. This interviewee asserted that defense counsel are not generally educated on the content of the human rights protections to which their clients are entitled. Moreover, to the extent they are aware of these protections, they may be reluctant to cite them. Defense counsel operating in smaller locales understand that to insist on the enforcement of human rights provisions risks confrontation with justice sector personnel that might get them blacklisted in that particular locale. Consequently, this interviewee maintained most defense lawyers spend the bulk of their time negotiating what is in effect a plea bargain with the judge, as opposed to making legal arguments.

Subsection (e)-Right to Question Witnesses

The Constitution of the Republic of Macedonia does not address the confrontation of witnesses. However, Article 4 of the Penal Procedure Code guarantees the right of a defendant to be present during the questioning of a witness and ask questions. PENAL PROCEDURE CODE, AT ART. 4, O.G.R.M. 15/97, 44/02.

During the review of the *1998 Initial Report*, one member of the ICCPR Human Rights Committee took special note of the fact that the Constitution does not explicitly secure the right to confront witnesses. Citing a Helsinki Committee report, he questioned whether Article 14(e) was fully respected in the Republic of Macedonia. CCPR/C/SR.1687, PARA. 82 (29 JULY 1998)(REMARKS OF MR. SCHEININ). The Macedonian delegation gave assurances that the right to confront witnesses is adequately covered by the Penal Procedure Code, stating that instances where defendants have been denied the opportunity to call and question witnesses are "rare." CCPR/C/SR.1686, PARA. 17 (1 DECEMBER 1998)(REMARKS OF MR. TODOROVSKI).

In general, interviewees agreed that some difficulties exist in securing prompt participation of witnesses at trial. One judge stated that a variety of factors are involved, including lack of proper notice and lack of understanding as to the duty to appear. While justice system personnel maintained that police assistance is available to secure participation, compulsory techniques are apparently not generally employed. Another judge observed that, in cases where attendance is problematic, judges can always call a witness on the phone. One civil society interviewee asserted that the right of defendants to confront witnesses is honored sporadically at best.

When asked whether fear was a significant factor in poor witness participation, there appeared to be a split of opinion. One judge cited the lack of an effective witness protection program as a significant problem. Another justice sector employee stated that fear has not been a major factor in most cases.

Subsection (f)-Right to Linguistic Assistance

The Penal Procedure Code states, "Anyone who is summoned, apprehended or arrested, must immediately be informed, in the language which he understands, of the reasons for summoning, apprehension or arrest and of any charge against him, as well as about his rights and that he cannot be compelled to make a statement." PENAL PROCEDURE CODE, AT ARTS. 3, O.G.R.M. 15/97, 44/02. Article 7 provides that linguistic assistance is to be provided for minority participants, including "written materials that are important to the procedure or the defense of the accused," and these services are to be provided by a "legal interpreter." *Id.* at art. 7. The 2001 Ohrid Framework Agreement reiterates these protections and makes clear they are to be extended to civil proceedings as well. OHRID FRAMEWORK AGREEMENT, AUGUST 13, 2001, at Appendix A, para. 6.7.

Interviewees from the civil society sector expressed concerns that the justice sector lacks capacity to provide adequate linguistic assistance. One interviewee stated that this aspect of the justice sector simply has not benefited from post-Framework reform. At a minimum, screening and certification of language skills is needed. This interviewee went on to add that, even when interpreters are provided, they are frequently not proficient enough to be effective, leading minority defendants to attempt to proceed in Macedonian regardless of their level of mastery. Another interviewee said there is a pronounced tendency to coerce Albanians into using Macedonian, noting that pre-trial detention may be used as a threat.

Justice sector employees generally asserted that adequate linguistic assistance is provided. One interviewee asserted that the Ministry of Justice maintains an adequate list of available language consultants. Another stated that interpreters are generally available, but he poignantly

added, "The official language is Macedonian," implying that defendants would be advised to pursue their Macedonian language skills.

Subsection (g)-Freedom from Compulsion to Confess

Article 12 of the Constitution of the Republic of Macedonia provides in pertinent part, "[Persons in custody] shall not be forced to make a statement." CONSTITUTION OF THE REPUBLIC OF MACEDONIA, at art. 12, O.G.R.M. 52/91, 1/92, 31/98, 91/01, 84/03. The Penal Procedure Code states, "Anyone who is summoned, apprehended or arrested…cannot be compelled to make a statement." PENAL PROCEDURE CODE, at art. 3, O.G.R.M. 15/97, 44/02. Article 4 clarifies that a person cannot be compelled to give incriminating testimony, and Article 10 makes it illegal to coerce a confession. *Id.* at arts. 4 & 10. Moreover, Article 211 forbids the use of deception to obtain a confession. *Id.* at art. 211.

Interviewees were divided on the extent to which forced confessions present a problem. Interviewees holding government positions characteristically stressed the fact that confessions given to the police have no probative value at trial. Some even suggested that defense counsel may encourage police confessions to help ensure clients are not subject to abuse. There seemed to be unity among this group that forced confessions don't represent a substantial problem. Interviewees from the civil society sector disagreed, asserting that, while initial pre-trial confessions are not supposed to carry legal weight, they in fact do—particularly if they conflict with later statements in court. Moreover, they expressed the concern that the prosecutors and police function practically as one body, and prosecutors do not exercise oversight over police abuses. One interviewee asserted that defendants who have been subjected to torture have been brought before a judge to get the information into the record.

United Nations human rights specialists have noted that there is evidence that the police use intimidation to dissuade individuals from exercising their procedural rights. Further complicating matters is the lack of adequate disciplinary mechanisms: "The absence of a transparent complaint procedure encourages impunity." REPORT OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY GENERAL, PROMOTION OF HUMAN RIGHTS: HUMAN RIGHTS DEFENDERS 17, PARA. 58-59 (15 JANUARY 2004), E/CN.4/2004/94/ADD.2.

One interviewee noted that there have been efforts to engage the Ombudsman on police abuse issues. Initial attempts to engage the Ombudsman did not prove satisfactory, but reports are that responsiveness is improving. The Ombudsman is now apparently cataloguing complaint letters and giving appropriate initial responses. However, this interviewee maintained that Ombudsman staffers have yet to demonstrate the persistence and thoroughness necessary to investigate complaints. In one particular case of alleged police abuse, the Ombudsman politely asked the Ministry of Interior for a key document and took "no" for an answer. The interviewee expressed hope that the establishment of regional Ombudsman offices may improve performance by reducing the workload of the central office and creating greater ties to the communities served.

Article 14(4)-Juvenile Protections

Both the Penal Code and the Penal Procedure Code contain a host of special provisions that establish procedures and protections for criminal cases involving juveniles. *See* PENAL CODE, at arts. 70-96, O.G.R.M. 37/96, 80/99, 43/03,19/04; and PENAL PROCEDURE CODE, at arts. 437-70 192, O.G.R.M. 15/97, 44/02. Standard provisions of the two Codes apply to juveniles so long as there is no conflict with a special juvenile provisions. PENAL CODE*,* at art. 70, and PENAL PROCEDURE CODE, at art. 437. These special provisions include a prohibition on the prosecution of children under 14, the involvement of social services representatives, separate detention facilities for juveniles, and educational reform measures as punishment. PENAL PROCEDURE CODE, at arts. 438, 439, 460, & 470.

Interviewees were divided on the extent to which existing juvenile protections are respected in practice. Those holding law enforcement positions generally appeared confident that juveniles were receiving the appropriate special protections. They emphasized the use of special judges, the involvement of social services, and privacy protection. Where they appeared less confident was in terms of the adequacy of juvenile detention facilities. Interviewees drawn from outside of the enforcement community expressed doubts as to whether these special protections were realized in most cases. One interviewee from the non-profit sector stated that there is confusion within professional ranks on the distinction between adults and juveniles, and during the 2001 crisis, this misunderstanding led to a failure to respect these special provisions. This interviewee asserted that additional training among government personnel will be necessary to fully realize these juvenile protections.

Article 14(5)-Appellate Review

Article 15 of the Constitution of the Republic of Macedonia states, "The right to appeal against individual legal acts issued in first instance proceedings by a court, administrative body, organization or other institution carrying out public mandates is guaranteed." CONSTITUTION OF THE REPUBLIC OF MACEDONIA, at art. 15, O.G.R.M. 52/91, 1/92, 31/98, 91/01, 84/03.

There was widespread agreement among those interviewed that the appellate system of review functions properly. No cases were reported in which an initial judgment was reviewed or revised outside of the system of appellate review.

Article 14(6)-Compensation for Miscarriage of Justice

Article 530 of the Penal Procedure Code provides compensation for persons who have been subject to a miscarriage of justice, provided that this person did not cause his own deprivation by "unacceptable behavior." PENAL PROCEDURE CODE, at art. 530, O.G.R.M. 15/97, 44/02.

Interviewees generally agreed that the system for compensation for miscarriages of justice is functional, but a significant number of the interviewees expressed doubts about its adequacy. The fact that the compensation had to be sought through a separate legal action was viewed as an obstacle—particularly in light of the modest sums that the Ministry of Justice characteristically has awarded. One interviewee suggested that an effective system should incorporate a mechanism for cataloguing the mistakes and employing this information in such a way as to deter future abuses. The overall lack of training on the subject of compensation was cited as an ongoing concern.

Article 14(7)-Double Jeopardy

Article 14 of the Constitution of the Republic of Macedonia provides in pertinent part, "No person may be tried in a court of law for an offense for which he/she has already been tried and for which a legally valid court verdict has been brought." CONSTITUTION OF THE REPUBLIC OF MACEDONIA, at Art. 14, O.G.R.M. 52/91, 1/92, 31/98, 91/01, 84/03.

There was general agreement that double jeopardy protections are respected in practice. No interviewee expressed concerns that this provision has been violated.

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Promoting the Rule of Law

ARTICLE 15: PROHIBITION AGAINST RETROACTIVE CRIMINAL LAWS

> *1. No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offense was committed. If, subsequent to the commission of the offense, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.*
>
> *2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.*

GENERAL COMMENTARY

Article 15(1) enshrines a basic principle of due process of law, stating that no person should be held criminally liable for any action that was not a crime at the time of its commission. In addition, where penalties are specified at the time a crime was committed, this provision of the Covenant forbids states imposing heavier penalties for criminal activities than those that existed at the time the crime was committed. In distinct contrast, when laws are amended to reduce penalties, they are required to have retroactive effect.

With regard to the application of these rules, the lack of national legislation enumerating crimes "according to the general principles of law recognized by the community of nations" shall not be a bar to prosecution. Thus, Article 15(2) affirms universal jurisdiction and accountability for war crimes and similar international crimes, securing the ongoing growth and application of this dynamic area of law regardless of national legislation.

CONCLUSIONS

The Constitution of the Republic of Macedonia and core structural and procedural laws directly incorporate the majority of the rights and freedoms required under Article 15. Furthermore, there do not appear to be significant problems with the practical implementation of these provisions. The only concern that arose in the course of this assessment involved the mechanism for calculating the appropriate statute of limitations under the Penal Procedure Code. There exists a possibility that these provisions might be used in a manner that challenges the spirit, if not the letter, of Article 15. Further monitoring of its precise application appears warranted.

IMPLEMENTATION ANALYSIS

Article 14 of the Constitution of the Republic of Macedonia provides, "No person may be punished for an offense, which had not been declared an offense punishable by law, or by other acts, prior to its being committed, and for which no punishment had been prescribed." CONSTITUTION OF THE REPUBLIC OF MACEDONIA, at art. 14, O.G.R.M. 52/91, 1/92, 31/98, 91/01, 84/03. Article 52 of the Constitution limits the retroactive application of laws "except in cases where this is more favorable for the citizen." *Id.* at 52. Similarly, Article 3 of the Penal Code calls for the application of law in place at the time an offense is committed, unless lighter penalties would apply. PENAL PROCEDURE CODE, at art. 3 O.G.R.M. 37/96, 80/99, 43/03,19/04. Article 112 provides that genocide and war crimes are not subject to a statute of limitations. Collectively, these protections appear to incorporate the legal protections of Article 15 of the ICCPR into the domestic legal framework. The interviewees agreed that these domestic protections are generally respected in practice.

However, an interesting discussion arose concerning the role of the statute of limitations. Article 107 of Penal Procedure Code provides a sliding scale of limitation periods that begins with two years and increases incrementally with the severity of the penalty. PENAL PROCEDURE CODE, at art. 107 O.G.R.M. 15/97, 44/02. Furthermore, Article 107 provides that, "If several punishments are prescribed for a crime, the time frame is determined according to the most severe prescribed punishment." *Id.* Some expressed the opinion that, if a law penalized a particular act at the time it was committed, but afterwards, parliament increased penalties for that crime, then the statute of limitations should increase for all potential defendants. They argued that the retroactive imposition of an extended statute of limitations did not amount to the imposition of a "heavier penalty" in violation of Article 15 of the ICCPR. Others disagreed.

Moreover, in the *1998 Initial Report,* the Republic of Macedonia stressed that the protections in Article 3 of the Penal Code may well be broader than Article 15 of the ICCPR. The government noted in its report:

> Even though the Covenant conditions the retroactive application of the Criminal Code with circumstances that are linked only to the graveness of the pronounced sentence, in contrast to the wider approach of [Article 3], in essence both formulations express a single principle: with the application of a law which is passed after the perpetration of a criminal offense, the offender may not be placed in a more unfavourable position than the one in which he would be placed with application of the law that was valid at the time the crime was perpetrated. In the court practice, the position dominates that the new or the old law must be applied in full and that no combination of provisions of the new and from the old law is allowed, because this would mean creating and applying a law that never existed. (sic)

CCPR/C/74/ADD. 4, 18 MAY 1998, PARAGRAPHS 346. If the affirmation on court practice continues to reflect the reality within the Macedonian judicial system, the statute of limitations concern would appear unfounded.

However, because the issue arose in discussions about the March 2004 increase in criminal defamation penalties, it may continue to be a particularly sensitive matter. In accordance with Article 107 of the Penal Procedure Code, this adjustment of the defamation penalty should have the corollary effect of extending the applicable statute of limitations. Some queried whether this extended statute of limitations could be employed to prosecute someone when the prosecution would otherwise have been time barred due to an expiration of the limitations period? They argued that the prosecution could assert that defamation was previously subject to a range of penalties and that he or she would not be seeking a prohibited, "heavier" punishment, but rather, the prosecution would simply be taking advantage of a procedural modification. Some considered that this argument was at least a plausible litigation position.

Further complicating the situation is the fact that criminal prosecution for defamation is becoming an increasingly controversial issue internationally. In late 2003, the OSCE organized a meeting in Paris in conjunction with Reporters Without Borders to discuss "What more can be done to decriminalize libel and repeal insult laws?" Conference participants approved a list of recommendations, including a call for repeal of these laws and, to the extent they are enforced, they "should be interpreted narrowly." PRESS RELEASE OF THE OSCE REPRESENTATIVE ON FREEDOM OF THE MEDIA, 25 NOVEMBER 2003 (AND ASSOCIATED CONFERENCE RECOMMENDATIONS). The following year the European Union presented a very similar recommendation to the government of the Republic of Macedonia: "The legal definition of defamation should also be reviewed so that it is decriminalized." COMMISSION OF THE EUROPEAN COMMUNITIES, STABILIZATION AND ASSOCIATION REPORT 2004: FORMER YUGOSLAV REPUBLIC OF MACEDONIA 11 (2004)(COM(2004) 204 final). Given the scrutiny focused on this legal issue, further monitoring of its application, including terms of the statute of limitations, is warranted.

ARTICLE 18: FREEDOM OF THOUGHT, CONSCIENCE, AND RELIGION

1. *Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of one's choice, and freedom, either individually or in community with others and in public, to manifest his religion or belief in worship, observance, practice and teaching.*
2. *No one shall be subject to coercion which would impair his freedom to have or adopt a religion or belief of his choice.*
3. *Freedom to manifest one' s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.*
4. *The States Parties to the present Covenant undertake to have respect for the liberty of parents and, where applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.*

GENERAL COMMENTARY

Article 18 guarantees the basic freedoms to have a religion or belief (including the freedom from coercion to choose a particular religion or belief); to manifest it alone or with others within certain limited restrictions; and to educate one's children in conformity with one's beliefs. These enumerated freedoms demonstrate that each of these basic rights of thought and communication is at once public and private, individual and collective. One thinks in private, but when one communicates one's thoughts, whether to a trade union or in worship, it becomes public. Thought, conscience, worship, etc. are individual actions, but inasmuch as the right to do so is phrased in terms of a "freedom" – that is, defensively – they have a collective character. The overlap of individual and collective interests implies that individuals and/or groups may suffer infringements of their rights that warrant a remedy.

The freedom of thought, conscience, and religion is one of the most private of rights, and as such, it is one of the most difficult to regulate because what constitutes an infringement for one person or group may be irrelevant to another. Given this fact, all government institutions must take precautions to avoid explicitly or implicitly advantaging or disadvantaging the beliefs of an individual or group. If a government is not vigilant, it may infringe upon this freedom unintentionally. Where a majority of the population shares a particular religion or belief, the HRC has demonstrated special concern about measures that may be perceived as placing minority religions at a disadvantage, such as government registration requirements.

CONCLUSIONS

The protection of religious freedom has progressed dramatically in the Republic of Macedonia, and the experience with the implementation of Article 18 freedoms serves as an example of how sustained advocacy efforts can achieve real results. Religious groups, human rights activists, political leaders, and a responsive Constitutional Court have all contributed to the refinement of the legal environment in ways that have enhanced the practical enjoyment of religious freedoms. While the historical propensity to pursue government regulation in this area may again create difficulties, the overall trend is clearly progressive and positive at this time.

IMPLEMENTATION ANALYSIS

The Constitution of the Republic of Macedonia addresses the freedom of thought, conscience, and belief and the freedom of religion separately, and the latter has been the subject of controversy and amendment. Article 16, paragraph 1, states in pertinent part, "The freedom of personal conviction, conscience, thought and public expression of thought is guaranteed." Prior to its amendment in 2001, Article 19 provided:

> The freedom of religious confession is guaranteed. The right to express one's faith freely and publicly, individually or with others is guaranteed. The Macedonian Orthodox Church and other religious communities and groups are separate from the state and equal before the law. The Macedonian Orthodox Church and other religious communities and groups are free to establish schools and other social and charitable institutions, by way of a procedure regulated by law.

CONSTITUTION OF THE REPUBLIC OF MACEDONIA, at arts. 16 & 54, O.G.R.M. 52/91, 1/92, 31/98. During the negotiations to end the 2001 conflict, the peace process almost broke down over the reference in Article 19 to the Macedonian Orthodox Church. The minority communities were convinced that the reference in Article 19 conveyed a privileged status to the Macedonian Orthodox Church, which they considered unacceptable. In turn, the Macedonian Orthodox Church protested any dilution of this reference. Macedonian Orthodox Church leaders even threatened to "blacklist" any politicians that supported a change to Article 19. Eventually, EU Foreign Minister Javier Solana had to intervene to broker a compromise. GORDANA STOJANOVSKA ICEVSKA, MACEDONIA: CHURCH RAGE OVER POLITICAL REFORMS, I.W.P.R. (BCR NO. 292, 31-OCTOBER-01). This compromise consisted in pertinent part of the insertion of the phrase "the Macedonian Orthodox Church, the Islamic Religious Community of Macedonia, the Catholic Church" where previously there had only been "the Macedonian Orthodox Church." OHRID FRAMEWORK AGREEMENT, AUGUST 13, 2001, at Appendix A.

Several years earlier, the *1998 Initial Report,* made no reference to any concerns of this nature. In fact, the report asserted the contrary, "In the Republic of Macedonia fair relations and cooperation have been established between the religious communities. This is due to the fact that they have a long tradition of mutual respect and freedom." CCPR/C/74/ADD. 4, 18 MAY 1998, PARAGRAPH 392. However, the 1998 Initial Report did make extensive reference to the Law on Religious Communities and Religious Groups, O.G.R.M. 35/97, which generated considerable discussion between members of the U.N. Human Rights Committee (HRC) and the Macedonian delegation.

HRC member Thomas Buergenthal, a famous Holocaust survivor, questioned why this law placed so many requirements on those seeking to establish a place of worship and pursue their faith. Specifically, he sought clarification on why the law required a religion to have a "seat" in Macedonia to be registered, the rationale for forbidding private religious schools, and the role of the Ministry of Internal Affairs in the enforcement of this law. Furthermore, he expressed concern about the refusal to register the Serbian Orthodox Church on the basis of their non-recognition of the Macedonian Orthodox Church. CCPR/C/SR.1687, PARA. 49, (29 JULY 1998)(REMARKS OF MR. BUERGENTHAL). The Chairperson of the HRC added her concerns, raising the possibility that these registration requirements may "constitute a violation of the right to religious freedom." CCPR/C/SR.1687, PARA. 78, (29 JULY 1998)(REMARKS OF MS. CHANET, CHAIRPERSON).

In response, a member of the Macedonian delegation asserted that these restrictions had been put in place "for the purposes of public security and public order or the protection of health and property," and she specifically maintained that these restrictions were in conformity with Article 18. Moreover, she noted that religions with established roots in Macedonia, such as the Macedonian Orthodox Church, the Muslim Religious Community, and the Catholic Church were exempt from the registration requirements. Regarding the Serbian Orthodox Church, she claimed that Macedonian citizens had not sought registration due to its improper claims of authority in Macedonia. CCPR/C/SR.1686, PARA. 43 & 46 (1 DECEMBER 1998)(REMARKS OF MRS. CVETANOVSKA).

Contemporaneously with this debate, several protestant churches filed suit in the Constitutional Court claiming that the provisions of the Law on Religious Communities and Religious Groups, O.G.R.M. 35/97, violated their religious freedom. On December 24, 1998, the Constitutional Court ruled in favor of the protestant churches holding that the state's involvement in the free

practice of their religious beliefs violated the separation of church and state. Among the issues of concern were the registration requirements. CONSTITUTIONAL COURT DECISION OF 23 AND 24.12.1998, U.BR. 223/97, O.G.R.M. 64/98. Interestingly, while the Constitutional Court made reference to the Universal Declaration of Human Rights and the European Convention for Protection of Human Rights and Fundamental Freedoms, there was no reference to Article 18 of the ICCPR. *Id.*

Less than a year later, the controversial Law on Religious Communities and Religious Groups was in court again. The Helsinki Committee for Human Rights of the Republic of Macedonia challenged the constitutionality of articles that required pre-approval by the Ministry of Interior for offsite religious services. Again, the Constitutional Court concluded that these provisions violated the constitution and struck them down. CONSTITUTIONAL COURT DECISION OF 20.10 AND 10.11.1999, U.BR. 114/99, O.G.R.M. 76/99.

The interviewees broadly agreed on the fact that religious diversity is accepted and that religious freedom is enjoyed. One example cited is the fact that all the major religions are entitled to their holidays. However, a minority expressed the view that the government has been seen as a sponsor of the Macedonian Orthodox religion. To a significant extent, there appeared to be agreement that the constitutional amendments in the Framework Agreement would adequately address this issue in the future. Tempering these generally positive assessments was the observation that inter-marriage between religions is very rare and both Christians and Muslims have some noted extremists.

Two senior government legal professionals offered some contrasting insights on the potential for future legal developments involving freedom of religion. One of the officials, affiliated with the executive branch, posited that the abovementioned Constitutional Court decisions had eviscerated the legal framework for religions and necessitated new legislation. Mindful of the human rights considerations, this official suggested that all such proposals would need to be vetted with the Council of Europe. Another official, affiliated with the judiciary, lamented: “Unfortunately, we have a law on this subject. There should be less government intrusion.” This interviewee predicted that the Constitutional Court would remain active in policing and securing religious freedom, citing the 2003 Constitutional Court decision prohibiting the Ministry of Education from interfering with the religious freedom of children. *See* No. 42/04 OGRM 73/03.

ARTICLE 25: RIGHTS TO VOTE, PETITION, AND PARTICIPATE IN GOVERNMENT

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

GENERAL COMMENTARY

Article 25 guarantees rights of political participation to all citizens of a State party – including the right to be involved in the conduct of public affairs, the right to vote and be elected to public office, and the right to seek public service positions on an equal basis. These protections are considered derogable under Article 4(2). Unlike civil rights, whose purpose is to protect against undue state interference, political rights protect an individual's role in the political decision-making process and require positive enforcement measures by the State party.

Article 25 does more than delineate State party obligations, for it also outlines subjective individual rights. The drafters used the article's opening phrase to emphasize these individual rights over the State party obligations: "Every citizen shall have the right and the opportunity…" Although the article limits the rights to citizens, the Covenant does not stipulate how a State party determines citizenship. The criteria for citizenship are left to the discretion of States parties, but this issue should be included in their reports to the U.N. Human Rights Committee (HRC).

The text found in the ICCPR allows for different electoral systems and recognizes the importance of participation in public life for all peoples. Although Article 25 allows for different systems of government, the HRC has written that Article 25 "lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant." Still, a number of political systems seem compatible with Article 25, including Westminster systems, presidential systems, bicameral systems, unicameral systems, unitary systems, and federal systems.

CONCLUSIONS

The Constitution of the Republic of Macedonia and the various electoral laws directly incorporate the majority of the electoral freedoms required under Article 25. Moreover, the constitutional amendments that arose from the 2001 Ohrid Framework Agreement introduced groundbreaking changes in the voting procedures for high-level parliamentary appointments and select legislation, and these special guarantees of minority political participation may even serve as a model for other countries. However, the laws necessary to fully implement civic participation in government affairs and the civil service have not evolved at the same pace. Initiatives to stimulate progress in the latter areas continue, albeit relatively slowly. Despite the impressive constitutional developments, significant political rights await full realization. The major challenges remaining in the implementation of the Ohrid Framework Agreement are the devolution of power to the local government and the equitable integration of minorities into the civil service.

IMPLEMENTATION ANALYSIS

Given the diversity of issues addressed in the three separate paragraphs of Article 25, an analysis of the article's implementation requires that each component part be addressed separately. The subsections that follow examine these components parts in the order they are found in Article 25.

Article 25(a)-Right to Participate in Conduct of Public Affairs

The Constitution of the Republic of Macedonia establishes a democratic system of government, which provides for both direct and indirect forms of participation. Article 2 states, "Sovereignty in the Republic of Macedonia derives from the citizens and belongs to the citizens. The citizens of the Republic of Macedonia exercise their authority through democratically elected Representatives, through referendum and through other forms of direct expression." CONSTITUTION OF THE REPUBLIC OF MACEDONIA, at art. 2, O.G.R.M. 52/91, 1/92, 31/98, 91/01, 84/03. Chapter V of the Constitution extends similar rights of participation to the institutions of local government. *Id.* at arts. 114-17. Furthermore, Article 24 makes clear: "Every citizen has the right to petition state and other public bodies as well as to receive an answer. A citizen cannot be called to account or suffer adverse consequences for attitudes expressed in petitions, unless they entail the committing of an offense." *Id.* at art. 24.

This general democratic foundation has been supplemented with certain special provisions, which offer innovative protections for minority representation in government decision-making. The Constitutional Amendments that arose out of the Ohrid Framework Agreement have introduced special parliamentary voting procedures that guarantee minority input on high-level executive appointments and legislation that affects local self-government, culture, use of language and symbols, personal documentation, and education. OHRID FRAMEWORK AGREEMENT, AUGUST 13, 2001, at Appendix A.

The electoral legislative framework establishes the possibility for citizens to participate through political party structures or as individuals. In terms of the former, Article 7 of the Law on Political Parties provides, "At least 500 adult citizens - citizens of the Republic of Macedonia, with permanent residence in the Republic of Macedonia, may found a political party." LAW ON POLITICAL PARTIES, at art. 7 O.G.R.M. 41/94. The only restrictions placed on political parties is that they may not be founded or conducted in a way to promote "violent destruction of the constitutional order; instigation or calling on war aggression; and stirring up of national, religious or race hatred or intolerance." *Id.* at art. 4. If individuals do not wish to pursue politics through a party structure, the law also guarantees them the right to pursue election directly. The Law on the Election of Members of Parliament states, "Each citizen of the Republic of Macedonia shall have the right to be elected for Member of Parliament, if he: has turned 18 years of age; has working capacity; [and] is not serving a sentence of imprisonment for a committed criminal offense." LAW ON THE ELECTION OF MEMBERS OF PARLIAMENT, at art. 5 O.G.R.M. 42/02, 50/02. The only exception to this general right to serve in parliament is that a citizen may not serve as a member of parliament while simultaneously holding a parliamentary appointed office. *Id.* at art. 6.

According to a 2003 survey of public opinion, the Macedonian citizenry is gaining confidence in the responsiveness of their political system, with increased confidence most notable in younger citizens. MACEDONIAN CITIZEN'S ATTITUDES AND PRACTICES REGARDING DEMOCRACY AND CIVIC PARTICIPATION AND THEIR PERCEPTIONS ABOUT POLITICAL, CIVIL, AND GOVERNMENTAL INSTITUTIONS 32 (2003)(BRIMA, Macedonian Member of Gallup International). However, this optimism does not necessarily translate into confidence in political parties. Between 2000 and 2003, participation in national party activity appears to have declined with the citizenry turning to other forms of community involvement. *Id.* at art. 6.

The Ohrid Framework Agreement proclaims, "The development of local self-government is essential for encouraging the participation of citizens in democratic life, and for promoting the respect and identity of communities." OHRID FRAMEWORK AGREEMENT, AUGUST 13, 2001, at para. 1.5 (of the Basic Principles section). Pursuant to this general mandate, the Framework Agreement put forth several constitutional amendments designed to bolster minority participation in local government. *Id.* at Appendix A. Utilizing these amendments, on January 24, 2002, the Parliament of the Republic of Macedonia passed a new law on Local Self-Government, which devolved substantial additional authority to the local level. Some ethnic Macedonians were concerned that too much authority had been ceded. They were particularly concerned about provisions that granted local authorities the right to merge contiguous local administrative units. CONSTITUTIONAL WATCH, MACEDONIA, 1/2 E. EUR. CONST. REV. (WINTER 2002).

While these initial decentralization efforts were completed expeditiously, progress has since slowed considerably. The 2002 Law on Local Self-Government provides an adequate general framework, but it left a considerable number of details to subsequent legislation and regulation. Government officials have justified the slow pace of continued reform on the grounds that there are so many details that each step must be taken carefully after much study. The development and passage of the Law on Municipal Boundaries is perhaps the most controversial such step on the 2004 agenda. *See* ICG BALKANS REPORT NO. 149, MACEDONIA: NO ROOM FOR COMPLACENCY 17-20 (2003). Its full implementation may serve as a catalyst to reinvigorate the lackluster Ohrid process.

A number of interviewees expressed optimism that the commitment to multi-ethnicity would prevail as contemplated in the Ohrid Agreement. They distinguished Macedonia from Bosnia and Kosovo on the basis of their history of tolerance, and they pointed to the fact that most of the pre-Ohrid violence occurred between uniformed personnel, as opposed to civilians. Furthermore, they drew attention to the fact that Ohrid eschews territorial solutions and emphasizes the integrity of the Macedonian state. However, the fact that the municipal boundaries would be altered did raise concerns about the political leadership and whether they would be able to craft and hold consensus on a proper forward course.

One journalist interviewed posited that the political climate was fragmented and disorganized. According to him, only the chief party in power, the ethnic Macedonian Social Democratic Union of Macedonia (SDC) party, was a relatively effective political organization that might be able to lead on the Ohrid implementation, but he was markedly less sanguine about its coalition partner, the ethnic Albanian Democratic Union for Integration (DUI) party, for he concluded that it had yet to mature fully and develop positions on the issues. That said, he saw little or no prospect for the parties out of power to contribute in a positive way. He observed that the former ethnic Macedonian governing party, Internal Macedonian Revolutionary Organization (VMRO), has been involved in an internal power struggle, and he concluded that their former ethnic Albanian coalition partner, the Democratic Party of Albanians (DPA), was equally hampered by corruption within its ranks. Though these considerations might not alter the course of the Ohrid implementation process, the interviewee maintained that effective political representation would still be lacking, and citizens would not really be able to appeal to their parties for guidance and leadership.

On the positive side, NGO interviewees pointed to progress towards open civic participation in the lawmaking process. In general, they considered that Parliament has begun to show meaningful signs of increased capacity and sophistication. With their assistance, parliamentarians had begun to engage in outreach to their constituents. In some cases, members of parliament even held public hearings on issues relevant to the population. Specifically, they highlighted the fact

that the Law on Tobacco and the Law on Tourism were amended after a series of consultations between citizen groups and members of parliament.

Other mechanisms to increase citizen participation in government appear to be moving slowly. One interviewee commented that transparent governance is simply not well understood. For average citizens to enjoy real transparency, the lower levels of the administration must be educated and instructed to fulfill their roles. According to this interviewee, a culture of secrecy prevails. So, even the notion of a "public" library can be given a very restrictive interpretation. There are potential developments that might begin to change this mentality, such as the Freedom of Information Law that is being drafted. However, at least one insider expressed the concern that the current draft is based on a Scandinavian model that is too complex for Macedonia. Ironically, he cautioned that it may limit existing duties to publish information, and its complex procedures will be a "present from heaven" for government bureaucrats.

Article 25(b)-Right to Participate in Elections

Article 8 of the Constitution of the Republic of Macedonia establishes that a "fundamental value" of the state is "political pluralism and free, direct and democratic elections." CONSTITUTION OF THE REPUBLIC OF MACEDONIA, at art. 8, O.G.R.M. 52/91, 1/92, 31/98, 91/01, 84/03. Article 22 defines the scope of electoral suffrage: "Every citizen on reaching 18 years of age acquires the right to vote. The right to vote is equal, universal and direct, and is exercised at free elections by secret ballot. Persons deprived of the right to practice their profession by a court verdict do not have the right to vote." *Id.* at art. 22. To facilitate the implementation of these principles, there is an array of electoral legislation, including: Law on the Election of the President, O.G.R.M. 20/94, 48/99; Law on the Election of MPs, O.G.R.M. 42/02, 50/02; Law of Local Elections, O.G.R.M. 46/96, 48/96, 56/96, 12/03; Law on Polling Stations, O.G.R.M. 50/97; Law on Voter's Lists and Voter's Identification, O.G.R.M. 42/02. Moreover, the Penal Code makes it a crime to interfere with various aspects of the electoral process. *See* PENAL CODE, at arts. 158-165 O.G.R.M. 37/96, 80/99, 43/03,19/04.

Since the 2001 conflict, international monitors of the electoral process in Macedonia have found elections pursuant to these laws to be generally acceptable under relevant international standards. However, they have also identified shortcomings in each of the major elections. In 2002 parliamentary elections, the OSCE concluded that the elections "were conducted largely in conformity with OSCE commitments and international standards," but, "actions by the Ministry of Interior and the outgoing principal governing party…raised serious concerns." OSCE/ODIHR FINAL REPORT ON THE PARLIAMENTARY ELECTIONS, 15 SEPTEMBER 2002, FORMER YUGOSLAV REPUBLIC OF MACEDONIA 1 (2002). In the 2004 early presidential elections, the OSCE concluded that the elections "were generally consistent with OSCE election-related commitments," but "election day irregularities…cast a shadow over the process as a whole." OSCE/ODIHR ELECTION OBSERVATION FINAL REPORT, PRESIDENTIAL ELECTION, 14 & 18 APRIL 2004, FORMER YUGOSLAV REPUBLIC OF MACEDONIA 1 (2002).

These official reports are consistent with interviewee observations. There was a significant degree of agreement that Macedonian elections have never been 100% free and fair. According to one NGO interviewee, elections are manipulated as a standard matter of course. The impulse to manipulate is a holdover from the communist period, and it will take some time to eradicate it. Also, the interviewees generally considered abuses to come from all sides. One interviewee described knowledge of entire villages being excluded. Others asserted that instances of intimidation and ballot stuffing arise on both sides.

According to one local activist group, elections continue to suffer from several technical deficiencies. First, the voter lists are deficient. While the MOJ is legally obligated to update these

twice yearly, the fact remains that substantial inaccuracies persist, such as the retention of dead people. NGO intervention on these matters was rejected in 2002. Although the situation improved significantly in 2004, the MOJ field offices still need to reform their administrative operations. For instance, there needs to be established a functional link with the Ministry of the Interior so that age of majority and death information is transferred and incorporated systematically. Second, campaigning has been conducted in an abusive manner. Rhetoric is not focused on issues, but rather harsh, sometimes violent, personal assaults. As in the previous regime, children have been shipped in for campaign rallies. Third, the State Election Commission has not been fully cooperative with NGO observers, making it difficult, or impossible, in a number of cases to serve as monitors through the denial of certification.

Another interviewee commented that the Election Commission continues to be a source of difficulty. According to him, critically important office equipment has been sitting in a warehouse for six months. This fact has led him to conclude that "part-time Commissioners have yielded part-time results." However, he also acknowledged that the regional commissions that were composed of judges seemed to function adequately.

Another member of civil society pointed out that polling stations do have five member boards drawn from diverse political spectrum. However, in remote villages, the closeness of the community allows for intimidation to be conducted through subtle, informal means. Furthermore, he asserted more broadly that voter education is not very developed. There is some government involvement in the production of basics such as posters. However, because turnout has been historically solid (*e.g.*, 70+%), the government has not seen a great need to devote resources to this area. Consequently, substantial issues of language and appropriate documentation remain problematic. Even the national government center in Skopje lacks proper Albanian language facilities. Furthermore, the government does not make any real effort to facilitate NGO preparation.

Article 25(c)-Right to Participate in Civil Service

Article 23 of the Constitution of the Republic of Macedonia establishes that "Every citizen has the right to take part in the performance of public office." CONSTITUTION OF THE REPUBLIC OF MACEDONIA, at art. 23, O.G.R.M. 52/91, 1/92, 31/98, 91/01, 84/03. Article 9 is also relevant because it prohibits invidious discrimination, *e.g.*, on the basis of ethnicity, and guarantees equal access to the civil service. *Id.* at art. 9; *see also* 1998 INITIAL REPORT*,* CCPR/C/74/Add. 4, 18 May 1998, paragraph 549.

The Ohrid Framework Agreement sets out as a general principle that "The multi-ethnic character of Macedonia's society must be preserved and reflected in public life." OHRID FRAMEWORK AGREEMENT, AUGUST 13, 2001, at para. 1.3 This principle implies that "Laws regulating employment in public administration will include measures to assure equitable representation of communities in all central and local public bodies…" *Id.* at para. 4.2.

One local NGO, the Association for Democratic Initiatives (ADI), has dedicated substantial resources to monitoring the implementation of the Framework Agreement, and in particular, the aspects of the agreement involved in the integration of minorities into the state administration. According to its 2003 analysis, the integration process is proceeding slowly. The organization concluded that the government program to develop an open and impartial competition for the civil service "has shown particular weaknesses." MONITORING THE IMPLEMENTATION OF THE OHRID FRAMEWORK AGREEMENT: 2003 ANNUAL REPORT 137 (2003, ADI).

Interviewees support this study with their anecdotal analyses. According to some, politicization is everywhere and starts early on in high school. Simply stated, segregation according to ethnicity and politics is commonplace. One international interviewee noted that one only has to go to a

professional football game to note that fans self-organize seating to make sure they sit as political units. Another civil society representative emphasized that a general lack of professionalism in the public sector contributes to the problem. For instance, he asserted that ministries generally do not engage in strategic planning, for there is a reluctance to acknowledge that one has not thought through a situation. Moreover, civil servants are not protected adequately in law, and they are not rewarded for professionalism. Consequently, most significant decisions require approval of the minister, diluting the effectiveness of state administration. One private sector interviewee posited that the politicization of key executive posts is facially obvious because a number of significant positions are populated with professionally inexperienced people, and according to him, this practice has historical roots. Nevertheless, a sizeable number of interviewees agreed that the Framework Agreement has brought peace in many respects. To quote one, “There is progress.” When asked for examples, most pointed to the police and the army.

ARTICLE 26: RIGHT TO EQUALITY BEFORE THE LAW AND EQUAL PROTECTION

> *All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

GENERAL COMMENTARY

Article 26 provides an independent basis for securing "equality" in the enjoyment of human rights. Though this article is typically cited in conjunction with the more accessory provisions found in Articles 2 and 3, it does not depend on them, nor is it wholly subsumed within them. In accordance with Article 4(1), protection against discrimination on the basis of race, color, sex, language, religion or social origin is a non-derogable right, and therefore, discrimination on these bases is not permitted even in the event of an emergency threatening the life of the nation. However, because Article 4(1) does not precisely track the language of Article 26, the status of all Article 26 protections may not be non-derogable, *e.g.*, political or other opinion. Nevertheless, where the Article 26 protected classes do apply, it is clear that a state is obligated to refrain from discrimination in the design of laws ("equal protection"), as well as their enforcement ("equality before the law").

CONCLUSIONS

The Constitution of the Republic of Macedonia and core legislation guarantee "equal protection of the law" generally. However, enforcement of these provisions is more problematic. The general public identifies "equality of the law" as a significant concern, and ignorance of anti-discrimination provisions is cited frequently. Additional resources will need to be committed to educate the public on their rights and restore credibility in the system of enforcement. The Ombudsman appears willing to take a lead on these issues, and with the opening of regional offices, a coordinated national enforcement campaign is a realistic goal for the future. Absent such a national campaign to promote "equality of the law," it appears unlikely that Article 26 protections will be fully realized.

IMPLEMENTATION ANALYSIS

Article 9 of the Constitution of the Republic of Macedonia states, "Citizens of the Republic of Macedonia are equal in their freedoms and rights, regardless of sex, race, color of skin, national and social origin, political and religious beliefs, property and social status. All citizens are equal before the Constitution and law." CONSTITUTION OF THE REPUBLIC OF MACEDONIA, at art. 9, O.G.R.M. 52/91, 1/92, 31/98, 91/01, 84/03. Article 50 provides in pertinent part:

> Every citizen may invoke the protection of freedoms and rights determined by the Constitution before the regular courts, as well as before the Constitutional Court of Macedonia, through a procedure based upon the principles of priority and urgency. Judicial protection of the legality of individual acts of state administration, as well as of other institutions carrying out public mandates, is guaranteed.

Id. at 50. In addition, Article 7 of the Law on Courts specifies that citizens enjoy "a right of equal access" to the courts, LAW ON COURTS, at art. 7, O.G.R.M. 36/95; and Article 8 of the Law on Administrative Organs guarantees equal protection in administrative proceedings. LAW ON ADMINISTRATIVE ORGANS, OGRM 58/00, 44/02. Moreover, the Penal Code of the Republic of Macedonia makes it a crime to discriminate against anyone on the basis of the constitutionally

proscribed factors or others included in a "ratified international covenant." PENAL CODE, at art. 137 O.G.R.M. 37/96, 80/99, 43/03,19/04; *see also id.* at arts. 319 & 417.

This considerable array of formal legal protections makes a strong case for implementation of the required "equal protection" guarantees. Several interviewees affirmed that "equal protection of the law" is generally respected across the board. One law professor even asserted that women in Macedonia enjoy more protection than women in neighboring countries. Another professor echoed this position and asserted that discrimination more commonly comes in the form of "patriarchal cultural constraints."

In contrast, many interviewees were markedly more pessimistic about "equality before the law." Some contended that Albanians are subjected to substantial, sometimes systemic, discrimination. One civil society representative stated that equality before the law is simply not taken seriously at the entry level, and minority members will be highly unlikely to raise a discrimination claim because they don't believe judges have the capacity or inclination to address the issue. Accordingly, this interviewee maintained that minorities tend to rely on political solutions instead. Other interviewees stressed that the low levels of professionalism in the judiciary make it hard to discern the real causes underlying suspect behavior.

Similarly, the Macedonian population does not apparently consider the judicial system to be effective in enforcing equal protection guarantees. In a recent survey of Macedonian citizens, "equality before the law" was ranked as the second most often violated human right, and it was ranked the least respected in practice. MACEDONIAN CITIZEN'S ATTITUDES AND PRACTICES REGARDING DEMOCRACY AND CIVIC PARTICIPATION AND THEIR PERCEPTIONS ABOUT POLITICAL, CIVIL, AND GOVERNMENTAL INSTITUTIONS 20 (2003)(BRIMA, MACEDONIAN MEMBER OF GALLUP INTERNATIONAL).

A significant number of interviewees agreed that Macedonia is only beginning to possess the necessary awareness and capacity to pursue discrimination claims. While no major examples were cited, there seemed to be a belief that claims are beginning to be heard from both sides. However, the discrimination claims that appear to be arising are interestingly not based on ethnicity, but rather, they seem to stem from charges that someone has not enjoyed "equality before the law" due to their political affiliation. One highly placed government official suggested that a new law on anti-discrimination could be useful to empower the citizens further.

In the same vein, the Ombudsman expressed optimism that he and his staff are poised to serve as a catalyst for progress towards real legal capacity to enforce these anti-discrimination protections. Currently, the Ombudsman has broad jurisdiction to review actions of all government agencies, and he has a specific mandate to investigate claims of discrimination. Moreover, the new law expands the administrative capacity of the office, providing for regional offices that will be established in Kumanova, Shtip, Kicevo, Strumica, and Skopje in the near future. LAW ON OMBUDSMAN, OGRM 60/03. While ethnic representation is still short of its target, there are plans to eventually have 10 deputies, including three Albanians and one other minority. Also, the support staff is to more than double. Once the enlargement is complete, the Ombudsman's office plans to embark on a national publicity campaign emphasizing non-discrimination.

The Ombudsman is placing particular reliance on the capacity of branch offices to be more effective in understanding and engaging on local problems. As he explained, the new structure will generally operate on the principle of "subsidiarity" with regional offices working independently to solve regional problems. Thus, they will possess discretion as to how to deal with matters within their jurisdiction. However, the Ombudsman also assured that, in those cases where the issue involved is a national one, the national office will assume jurisdiction.

ARTICLE 27: PROTECTIONS FOR MINORITIES

> *In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.*

GENERAL COMMENTARY

Article 27 specifies distinct rights owed by States party to specific types of individuals that may be present on the territory of any State party. The U.N. Human Rights Committee (HRC) has endeavored to ensure that the rights guaranteed by Article 27, which are dealt with elsewhere in the Covenant both explicitly and implicitly, are not subsumed. The HRC has emphasized that Article 27 supplements other rights that members of minorities, as individuals, are already entitled to enjoy and, further, that these rights should be protected as collective, cultural rights and not be subsumed under other, personal rights.

The HRC has made clear that Article 27 is designed to foster minority cultural, religious and social identity, thereby enriching all of the society. However, the HRC has also indicated that the enjoyment of Article 27 rights should not prejudice either the sovereignty or the territorial integrity of the State party. Interestingly, no fixed definition of minority exists, but the HRC has disfavored attempts to formulate particularly restrictive definitions of who may constitute a minority. Conversely, the HRC has rejected minority status claims of a majority population simply because they reside in a minority enclave.

CONCLUSIONS

As in the case of ICCPR Article 1, the Republic of Macedonia has been slow to create the conditions necessary to ensure that members of a minority living within its territory may fully exercise their rights to pursue their own minority identity. Again, as in Article 1, the failure to fully implement Article 27 appears due in substantial part to the fact that the majority population has been reluctant to recognize the relative importance of these issues to the minority populations. While Article 27 shares the Article 1 goal of minorities being able to express a collective identity, Article 27 also seeks to empower the individual to take part in that process. With recent modifications to the legislative framework, largely as a result of the Ohrid Framework Agreement, there now exists a substantial body of law for minorities to employ in pursuit of their rights.

However, the state will need to expend additional resources to make sure that all segments of the population are aware of the law and their obligation to respect it, and members of the minority community need to be more active in their efforts to empower individuals to identify and seek vindication for a violation of their rights. Full and complete realization of minority rights is not only a matter of collective, political will as expressed through the passage of laws, but it also requires individuals to actually demand and assert the rights and freedoms that the laws provide. Though recent signs of progress are encouraging, members of both the majority and minority communities will need to remain vigilant to both protect current gains and expand upon them in the future.

IMPLEMENTATION ANALYSIS

As noted previously, Article 9 of the Constitution of the Republic of Macedonia states, “Citizens of the Republic of Macedonia are equal in their freedoms and rights, regardless of sex, race, color of skin, national and social origin, political and religious beliefs, property and social status. All citizens are equal before the Constitution and law.” CONSTITUTION OF THE REPUBLIC OF MACEDONIA,

at art. 9, O.G.R.M. 52/91, 1/92, 31/98, 91/01, 84/03. Article 48, as amended by the Ohrid Framework Agreement, provides:

> Members of communities have a right to freely express, foster and develop their identity and community attributes, and to use their community symbols.
>
> The Republic guarantees the protection of ethnic, cultural, and linguistic and religious identity of all communities.
>
> Members of communities have the right to establish institutions for culture, art, science and education, as well as scholarly and other associations for the expression, fostering and development of their identity.
>
> Members of communities have the right to instruction in their language in primary and secondary education, as determined by law. In schools, where education is carried out in another language, the Macedonian language is also studied.

Id. at 48. Again, as noted previously, the Ohrid Agreement also resulted in changes to other constitutional provisions, increasing protections for minority languages and religion as well, OHRID FRAMEWORK AGREEMENT, AUGUST 13, 2001, at Appendix A.; and the Penal Code of the Republic of Macedonia makes it a crime to discriminate against anyone on the basis of the constitutionally proscribed factors or others included in a "ratified international covenant." PENAL CODE, at art. 137 O.G.R.M. 37/96, 80/99, 43/03,19/04; *see also id.* at arts. 319 & 417.

One interviewee from the international community declared that if the Ohrid Framework Agreement does not work in Macedonia then this type of endeavor in the Balkans will simply not succeed. He went on to note critically that international aid is expected to drop precipitously very soon (by approximately 50%), at a time when it is needed most. This same theme was echoed by other interviewees, who observed that, while progress may be slow, it is nevertheless demonstrable. For example, educational opportunities in minority languages are on the rise, identity documents are being issued in minority languages, and media broadcasts in minority languages are becoming more widespread. These interviewees concluded that these new developments are a justifiable cause for optimism and continued support. Moreover, one local civil society activist commented that the progress is not only in official matters, but also in the overall social atmosphere, citing instances of majority Macedonians beginning to study the Albanian language.

However, one Serb minority interviewee pointed out that this progress is ongoing, and much remains to be done at the level of the individual. According to him, local reformers on the frontline routinely risk their safety and lives. Even in the capital city, working with international organizations can invoke an ugly nationalist backlash. The backlash can be in the form of a direct attack, or it can be as subtle as delays in processing paperwork due to fraternizing with the "wrong people."

One academic stated that it is simply difficult to find concrete cases where the legal system has been employed to secure redress for these abuses. This individual hypothesized that this complacency may be due in part to confusion as to what constitutes a minority. The failure to comprehend what constitutes a minority may in turn cause authorities to overlook racist acts and mask the extent of ongoing problems. To avoid this problem, the European Commission against Racism and Intolerance recommended that Macedonian authorities establish "a system of data collection by which the ethnic origin of victims of crimes may be voluntarily given and recorded: this may allow the scope of any problems to be more clearly identified." EUROPEAN COMMISSION AGAINST RACISM AND INTOLERANCE, SECOND REPORT ON "THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA" ADOPTED ON 16 JUNE 2000 8, para. C.13 (3 April 2001) CRI(2001)S. In any case, there appears to be significant agreement that additional work is necessary for individuals to feel empowered to seek redress.

Some minorities may have a disproportionately greater need for these types of structural enhancements such as the data collection initiative noted above because they may be more disadvantaged than others. One interviewee commented about the Roma community, "Roma are not even on the radar screen." This conclusion is especially troubling because the Roma have been disproportionately affected by one of the more protracted minority rights problems, that of citizenship.

According to estimates, there are now approximately 2,000 Roma who are long-term residents of the Republic of Macedonia, but who lack citizenship, as well as other documents needed to obtain social services and attend school. Prior to the dissolution of the Socialist Federal Republic of Yugoslavia, residents held citizenship on both the republic and federal level. Those with Macedonian citizenship internally within Yugoslavia were automatically granted Macedonian citizenship after the split. However, those with Yugoslav citizenship, but not Macedonian citizenship, had to apply to become citizens of the Republic of Macedonia.

A 1992 law on citizenship provided a one-year period for regulating citizenship. There was no information campaign on the part of the government, and with civil society being relatively underdeveloped at that time, it was up to citizens to navigate the system themselves. In that year, the administrative fee for obtaining citizenship was $50—the following year it jumped to $500. It continued to drop, and as of the most recent amendment, it is now 100 Euro. The latest amendments came into force April 1, 2004, and the current law eases the filing requirements for long-term residents to a two-year period. According to the latest amendment, every person who had residence status before September 8, 1991, can submit an application if he or she stayed in Macedonia and does not have a criminal record.

For those who have not stayed in the Republic of Macedonia continually since 1991, the process can be very complicated. It can take 18 months to get documents from Bosnia or Serbia, for example. The court is required to issue documents stating that the person has not been convicted in the past 6 months, but if it takes more than 6 months to get the papers, which is often the case, the applicant must begin the process again. Furthermore, Macedonia does not recognize UNMIK documents, complicating the situation for applicants from Kosovo.

Though these provisions have had an adverse impact on other minorities, such as the Albanians, several interviewees indicated that the problem of regularizing citizenship has disproportionately affected the Roma community. The administrative fees were too high for many Roma to afford, given the high level of unemployment among the community. Discrimination in access to employment and social services exacerbates the situation. There is also a substantial number of Roma living in unregistered residences, which bars them from applying for citizenship. Many of the Roma currently without citizenship have long-term ties to Macedonia. While the Macedonian government considers these Roma foreign citizens, many do not hold citizenship with another state and have therefore been rendered stateless. PROFILE OF ONE COMMUNITY: A PERSONAL DOCUMENT SURVEY AMONG THE ROMANI POPULATION OF KUMANOVO, MACEDONIA, EUROPEAN ROMA RIGHTS CENTER (2003) (WWW.ERRC.ORG).

Appendices

Appendix I

International Covenant on Civil and Political Rights

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966

Entry into force 23 March 1976, in accordance with Article 49

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the

right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1 . In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3\.

(a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9

1\. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2\. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3\. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

4\. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5\. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1\. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2\.

(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offense and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offense for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1 . No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offense was committed. If, subsequent to the commission of the offense, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

> (a) For respect of the rights or reputations of others;
>
> (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for re-nomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if re-nominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The

election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Twelve members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present
Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph I of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1.

(a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on tie basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;

(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

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Appendix II

OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966

Entry into force 23 March 1976, in accordance with Article 9

The States Parties to the present Protocol,

Considering that in order further to achieve the purposes of the International Covenant on Civil and Political Rights (hereinafter referred to as the Covenant) and the implementation of its provisions it would be appropriate to enable the Human Rights Committee set up in part IV of the Covenant (hereinafter referred to as the Committee) to receive and consider, as provided in the present Protocol, communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant.

Have agreed as follows:

Article 1

A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

Article 2

Subject to the provisions of article 1, individuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

Article 3

The Committee shall consider inadmissible any communication under the present Protocol which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of the Covenant.

Article 4

1. Subject to the provisions of article 3, the Committee shall bring any communications submitted to it under the present Protocol to the attention of the State Party to the present Protocol alleged to be violating any provision of the Covenant.

2. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

Article 5

1. The Committee shall consider communications received under the present Protocol in the light of all written information made available to it by the individual and by the State Party concerned.

2. The Committee shall not consider any communication from an individual unless it has ascertained that:

(a) The same matter is not being examined under another procedure of international investigation or settlement;

(b) The individual has exhausted all available domestic remedies. This shall not be the rule where the application of the remedies is unreasonably prolonged.

3. The Committee shall hold closed meetings when examining communications under the present Protocol.

4. The Committee shall forward its views to the State Party concerned and to the individual.

Article 6

The Committee shall include in its annual report under article 45 of the Covenant a summary of its activities under the present Protocol.

Article 7

Pending the achievement of the objectives of resolution 1514(XV) adopted by the General Assembly of the United Nations on 14 December 1960 concerning the Declaration on the Granting of Independence to Colonial Countries and Peoples, the provisions of the present Protocol shall in no way limit the right of petition granted to these peoples by the Charter of the United Nations and other international conventions and instruments under the United Nations and its specialized agencies.

Article 8

1. The present Protocol is open for signature by any State which has signed the Covenant.

2. The present Protocol is subject to ratification by any State which has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State which has ratified or acceded to the Covenant.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 9

1. Subject to the entry into force of the Covenant, the present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or instrument of accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 10

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 11

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment which they have accepted.

Article 12

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect three months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 before the effective date of denunciation.

Article 13

Irrespective of the notifications made under article 8, paragraph 5, of the present Protocol, the Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph I, of the Covenant of the following particulars:

(a) Signatures, ratifications and accessions under article 8;

(b) The date of the entry into force of the present Protocol under article 9 and the date of the entry into force of any amendments under article 11;
(c) Denunciations under article 12.

Article 14

1. The present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

Appendix III

SECOND OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, AIMING AT THE ABOLITION OF THE DEATH PENALTY

Adopted and proclaimed by General Assembly resolution 44/128 of 15 December 1989

The States Parties to the present Protocol,

Believing that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights,

Recalling article 3 of the Universal Declaration of Human Rights, adopted on 10 December 1948, and article 6 of the International Covenant on Civil and Political Rights, adopted on 16 December 1966,

Noting that article 6 of the International Covenant on Civil and Political Rights refers to abolition of the death penalty in terms that strongly suggest that abolition is desirable,

Convinced that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life,

Desirous to undertake hereby an international commitment to abolish the death penalty,

Have agreed as follows:

Article 1

1. No one within the jurisdiction of a State Party to the present Protocol shall be executed.

2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

Article 2

1. No reservation is admissible to the present Protocol, except for a reservation made at the time of ratification or accession that provides for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.

2. The State Party making such a reservation shall at the time of ratification or accession communicate to the Secretary-General of the United Nations the relevant provisions of its national legislation applicable during wartime.

3. The State Party having made such a reservation shall notify the Secretary-General of the United Nations of any beginning or ending of a state of war applicable to its territory.

Article 3

The States Parties to the present Protocol shall include in the reports they submit to the Human Rights Committee, in accordance with article 40 of the Covenant, information on the measures that they have adopted to give effect to the present Protocol.

Article 4

With respect to the States Parties to the Covenant that have made a declaration under article 41, the competence of the Human Rights Committee to receive and consider communications when a State Party claims that another State Party is not fulfilling its obligations shall extend to the provisions of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

Article 5

With respect to the States Parties to the first Optional Protocol to the International Covenant on Civil and Political Rights adopted on 16 December 1966, the competence of the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction shall extend to the provisions of the present Protocol, unless the State Party concerned has made a statement to the contrary at the moment of ratification or accession.

Article 6

1. The provisions of the present Protocol shall apply as additional provisions to the Covenant.

2. Without prejudice to the possibility of a reservation under article 2 of the present Protocol, the right guaranteed in article 1, paragraph 1, of the present Protocol shall not be subject to any derogation under article 4 of the Covenant.

Article 7

1. The present Protocol is open for signature by any State that has signed the Covenant.

2. The present Protocol is subject to ratification by any State that has ratified the Covenant or acceded to it. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State that has ratified the Covenant or acceded to it.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 8

1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

Article 9

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 10

The Secretary-General of the United Nations shall inform all States referred to in article 48, paragraph 1, of the Covenant of the following particulars:

(a) Reservations, communications and notifications under article 2 of the present Protocol;

(b) Statements made under articles 4 or 5 of the present Protocol;

(c) Signatures, ratifications and accessions under article 7 of the present Protocol:

(d) The date of the entry into force of the present Protocol under article 8 thereof.

Article 11

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 48 of the Covenant.

Appendix IV

Timeline for Macedonia's Relationship with ICCPR

1944 - Establishment of Socialist Federal Republic of Yugoslavia, comprising six republics, including Macedonia.

1971 - Socialist Federal Republic of Yugoslavia signed and ratified on 8 August 1967 and 2 June 1971, respectively. (source: http://www.unhchr.ch/html/menu3/b/treaty5_asp.htm)

1991 - Majority of voters support Macedonian independence in referendum and the Macedonian government declares independence. Macedonia assumes ICCPR obligations. New constitution enacted in the face of opposition by ethnic Albanian deputies.

1992 – Dissolution of Socialist Federal Republic of Yugoslavia along ethnic lines. Slovenia, Croatia, The Former Yugoslav Republic of Macedonia, and Bosnia and Herzegovina were recognized as independent states in 1992. The remaining republics of Serbia and Montenegro declared a new "Federal Republic of Yugoslavia" (FRY). Unofficial referendum in Macedonia among ethnic Albanians shows overwhelming support for their own territorial autonomy. UN approves dispatch of troops to monitor inter-ethnic tension.

1993 - Gains UN membership under the name Former Yugoslav Republic of Macedonia.

1993 - By decision of the Government on 20 September 1993, the Republic of Macedonia acceded to the International Covenant on Civil and Political Rights, (Source: http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.74.Add.4.En? Opendocument)

1995: Macedonia accedes to Optional Protocol: 12 Mar 95 (Source: http://www.unhchr.ch/pdf/report.pdf)

1996 - Sporadic ethnic Albanian protests over curbs on Tetovo's Albanian-language university, Universiteti i Tetovës.

1997 - Constitutional court forbids use of Albanian flag, sparking protests. Parliament adopts law on restricted use of the Albanian flag. Elections bring into power a coalition government which is led by Ljubco Georgievski and includes ethnic Albanian representatives.

1998 - Macedonia submits its first State report under Article 40 of the ICCPR.

1999 March - NATO begins bombing campaign against Former Republic of Yugoslavia over its treatment of Kosovo Albanians. Serbian mass expulsion and killings of Kosovo Albanians leads to exodus into neighboring countries, including Macedonia.

1999 June - Yugoslavia signs Kumanovo Agreement. Kosovo refugees start leaving Macedonia.

2001 February/March - Tension rises amid sporadic violence. National Liberation Army emerges demanding equal rights for ethnic Albanians in Macedonia.

2001 August - Government and rebels sign EU and US brokered Ohrid Agreement awarding greater recognition of ethnic Albanian rights in exchange for rebel pledge to hand over weapons to NATO peace force.

2001 October - Government announces amnesty for former members of the National Liberation Army days after it disbands. Macedonian police begin entering villages formerly controlled by ethnic Albanian guerrillas.

2001 November - Parliament approves new constitution incorporating reforms required by Ohrid Agreement recognizing Albanian as an official language and increasing access for ethnic Albanians to public-sector jobs, including the police.

2002 January - Parliament cedes more power to local government to improve status of ethnic Albanians.

2002 March - Parliament amnesties former ethnic Albanian rebels who handed in their arms during NATO-supervised weapons collection.

2002 June - Parliament adopts new laws making Albanian an official language.

2004 February - President Boris Trajkovski is killed in a plane crash in Bosnia and succeeded by Branko Crvenkovski, elected in emergency election in April.

2004 July-August -- Parliament discusses decentralization plan as required by the Framework Agreement; civic unrest by ethnic Macedonians in those areas most likely to lose local control to ethnic Albanians.

Sources: http://news.bbc.co.uk/1/hi/world/europe/1410364.stm

ENDNOTES

Introduction

[1] International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, (March 23, 1976).
[2] JOHN P. HUMPHREY, Human Rights and the United Nations: A Great Adventure 10 (Transnational Publishers, 1984).
[3] ICCPR, *supra* note 1, art. 40(1).
[4] http://www.unhchr.ch/html/menu2/8/stat2.htm; last viewed on August 20, 2004.
[5] Statement by Elizabeth Evat, a former member of the HRC. SARAH JOSEPH, JENNY SCHULTZ, AND MELISSA CASTAN, The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary (Oxford University Press, 2000) at *ix* [hereinafter JOSEPH, SCHULTZ, AND CASTAN].
[6] Convention On The Elimination Of All Forms Of Discrimination Against Women (CEDAW) G.A. Res. 34/180, 34 U.N. GAOR Supp. No. 46, at 193, U.N. Doc. A/34/46 (September 3, 1981).
[7] The official name of this instrument is "Convention for the Protection of Human Rights and Fundamental Freedoms", September 3, 1952, 213 U.N.T.S. 222.