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Kosovo (Serbia)

The UN in Kosovo – a Legacy of Impunity

Introduction

Action must be taken to secure the human rights of the people of Kosovo before the UN body that has governed it for more than six years leaves. Failure to deliver justice for victims of some of the most grave human rights violations in Europe in the last decade has left a legacy of impunity. As European Union (EU) prepares to take over aspects of the UN's role it must ensure that it does not repeat the UN's failures. There is a pressing need to ensure that all persons in Kosovo and, particularly minority communities, are able to enjoy all their human rights, including their rights to justice and to return to their former homes in security.

Most of the perpetrators of war crimes and crimes against humanity during the conflict in Kosovo in 1998 and 1999 have escaped prosecution. People in all communities whose loved ones were killed, "disappeared" or abducted have not received justice. Survivors have not received reparation for acts of torture and rape. Lives are blighted in countless ways. Most members of minority communities have been unable to return to their homes or recover their property. Many still live in enclaves, unable to access jobs, education, hospital treatment and justice without risking their lives and security.

Failures by the UN Interim Administration Mission in Kosovo (UNMIK) to ensure human rights for all have been compounded by the impunity afforded to the UN and some other international organizations in Kosovo. In scant few cases has immunity from prosecution granted to UN personnel and members of the NATO-led Kosovo Force (KFOR) been lifted to allow criminal investigations into human rights violations, including the trafficking of women and girls for the purposes of forced prostitution.

UNMIK was established by the UN Security Council in July 1999 after the Kosovo conflict to administer the territory, with a key part of its mandate to protect and promote human rights and to uphold international human rights law. In June 2006 the then Special Representative in Kosovo of the UN Secretary General said that UNMIK was preparing to leave Kosovo after the final status of the province was determined. UNMIK, or any other international administration that replaces it - including the proposed EU mission - and the Provisional Institutions for Self-Government (PISG) including the Kosova Assembly, remain responsible for ensuring that Kosovo fulfils its obligations under international human rights law.

In July 2006, the UN Human Rights Committee (HRC) considered UNMIK's report on its implementation of the International Covenant of Civil and Political Rights (ICCPR). Amnesty International's briefing to the HRC – of which this report is a summary – highlighted its grave concerns about certain violations of human rights in Kosovo since 1999.

The organization highlighted the continuing impunity enjoyed by those responsible for grave human rights violations which occurred during the conflict in Kosovo.

Amnesty International noted that UNMIK was mandated by the UN to protect and promote human rights, and considered that they had failed to protect the rights of all persons in Kosovo and had failed to abide by and uphold international human rights law including the ICCPR.

On 27 July 2006 the HRC issued its concluding observations and recommendations. It acknowledged the difficulties encountered by UNMIK in operating as both a governing and a UN body, in progressively transferring powers to a provisional governing body, and in relating to parallel Serbian government structures. However, it stressed that the protection and promotion of human rights was one of the main responsibilities conferred on UNMIK, and reiterated the responsibilities of both UNMIK and the PISG to uphold human rights.

Amnesty International's concerns in Kosovo, documented in numerous reports and in this briefing, were reflected in the Committee's recommendations. The organization is renewing its appeals to the international community to fulfil its responsibilities to safeguard the protection of human rights in Kosovo. UNMIK must implement the legal and other reforms recommended by the Human Rights Committee to strengthen human rights protections in Kosovo, and to ensure that people whose rights have been violated by UNMIK receive prompt and adequate reparation, including redress.

This report summarizes the main areas in which UNMIK and the PISG have failed to uphold international human rights standards in issues of justice relating to the conflict and to the period of UNMIK rule.

This report summarizes and updates a 50-page document, *Kosovo (Serbia and Montenegro): United Nations Interim Administration Mission in Kosovo (UNMIK) – Conclusions of the Human Rights Committee, 86th Session, July 2006*, 1 August 2006, AI Index: EUR 70/011/2006, at www.amnesty.org

1. The constitutional and legal framework

Since 1999 the major international human rights treaties have been incorporated into Kosovo's UNMIK regulations, the interim constitution and domestic laws. Despite these commitments, UNMIK said in its 2006 report to the UN Human Rights Committee that a 1999 UNMIK Regulation requiring UNMIK and the PISG to observe internationally recognized human rights standards "does not imply that these treaties and conventions are in any way binding on UNMIK".

New laws and regulations introduced by UNMIK and the PISG have sometimes failed to specify which provisions of formerly applicable laws were being replaced. Officials and

police officers have lacked knowledge of current laws and procedures, resulting in a lack of legal certainty about the rights of both victims and suspected criminals.

Two gay men, G.P. and L.B, assaulted on 31 December 2005 in a village outside Pristina, were taken to hospital by members of the Kosovo police and were asked to file a complaint. However, after discovering the men's sexual orientation, police officers later subjected them to insulting and degrading abuse and told them that homosexuality was unlawful in Kosovo. Following a complaint, one officer was reportedly removed from his post and others given training in the law in early 2006.

The law criminalizing homosexuality, although repealed in Serbia in 1994, appeared to remain in force, despite the prohibition of discrimination on any grounds under the 2001 Constitutional Framework and on the grounds of sexual orientation under a 2004 Kosovo Assembly law.

Legal uncertainty and an absence of human rights protection has also resulted from the failure to establish UNMIK or PISG rule in the north of Kosovo – the municipalities of north Mitrovicë /Kosovska Mitrovica (hereafter Mitrovica/ë), Zubin Potok and Zvečan – and its continued control by the Serbian authorities. The Kosova Police Service (KPS) police, introduced in the north only in 2005, have remained ineffective and subject to intimidation, including from a parallel Serbian police force that reportedly handles around 50 per cent of criminal complaints.

Although an UNMIK court operates in north Mitrovica/ë in the continuing absence of a Serbian judiciary, it is mainly used by ethnic Albanians from south Mitrovica/ë brought in by coach. North of the river Ibar dividing Mitrovica/ë, Serbian authorities and parallel courts provide services to ethnic Serbian residents. The ethnic Albanian minority rely on the courts in the south. Travellers from south of the Ibar have to remove their Kosovo number plates or else be turned back, intimidated or harassed. Ethnic Albanians displaced from their homes in the north are unable to reclaim property lost during the conflict, as the KPS have been unwilling to enforce decisions by Kosovo officials and courts.

2. No effective redress

People in Kosovo have been unable to obtain a remedy or redress for offences committed by personnel of UNMIK or KFOR, including civilian police and contractors. This is a consequence of the immunity from prosecution enjoyed by UNMIK personnel, and their consequent lack of accountability before the Kosovo courts. Such immunity is routinely afforded to UN mission personnel for acts carried out in the course of the mission. However, the requirement on the UN Secretary General to waive such immunity if it impedes the interests of justice has rarely been met in the case of UNMIK officials, and only once in the case of KFOR officials.

There is also no impartial or independent human rights oversight institution which can examine complaints against UNMIK, or any international successor authority, or can guarantee access to a remedy. The jurisdiction of the Ombudsperson over UNMIK personnel was revoked in February 2006.

The office of the international Ombudsperson, established by UNMIK in 2000, had in its final report in 2005 remarked positively on increased cooperation from the UNMIK police and usually prompt and thorough investigations into allegations of human rights violations. However, it also noted continued delays in responses from UNMIK and PISG. The retention of an international Ombudsperson was recommended by the outgoing post-holder, by the Parliamentary Assembly of the Council of Europe, and by the Special Envoy of the UN Secretary-General for the Comprehensive Review of Kosovo.

The new Ombudsperson to be appointed by the Kosovo Assembly will have jurisdiction over Kosovo institutions, but only over UNMIK with the agreement of the head of UNMIK, the Special Representative of the UN Secretary-General (SRSG). No provisions have yet been made regarding mechanisms to ensure the accountability the planned EU mission, its organs and personnel.

In March 2006, UNMIK established a Human Rights Advisory Panel of international jurists nominated by the President of the European Court of Human Rights, which could hear complaints against UNMIK personnel. However, the SRSG can take the UN's interests into account when deciding the extent of cooperation with requests for the appearance of personnel or for UNMIK documentation and can also ignore its findings. To date, the panel has not been convened.

3. Violence against women

The UNMIK authorities have failed to take sufficient action to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, including the trafficking of women and girls for the purposes of forced prostitution (see section 7, below).

In 2005, UNMIK assisted some 52 individuals in rape or attempted rape cases, and some 592 others in cases of domestic violence. However, despite a daily average of between one and three reports to the police of domestic or other violence within the family, no statistics appear to be available on the incidence, investigation, prosecution or punishment of domestic violence. Provisions for the protection of women from violence in the home are not always enforced or available to all.

An ethnic Albanian woman seeking international protection was returned to Kosovo from Finland in October 2004. Fearing that she would be deported with her husband, who allegedly beat her repeatedly, she first tried and failed to go into hiding, then applied for and was refused asylum on the grounds that she would not be safe in

Kosovo because of her husband's violence. Back in Kosovo, she was turned away at a "safe house" for women because it was full and because she had not previously reported the violence to the Kosovo police, a precondition for access to a shelter. She went into hiding. Her family reported death threats from her husband and the police arrested him, but he was released without charge the following day. A court application for a restraint order was adjourned. After an attempted kidnap, the woman gained access to a shelter, for one week only, but the police took no action.

Impunity for war crimes involving rape or other forms of gender-based violence continues. No prosecutions have been brought in the Kosovo courts against either Serbian or ethnic Albanian perpetrators.

The case of an ethnic Serb woman who said she had been abducted, beaten and repeatedly raped was not prosecuted, despite a medical certificate testifying to her injuries and identification of some of her attackers. The woman said that four uniformed men wearing the insignia of the Kosovo Liberation Army (KLA) abducted her on 16 June 1999, tied her to a radiator, and asked her the whereabouts of a Serb paramilitary leader and to identify photographs of Serbian police officers. When she did not reply, she was reportedly beaten and punched all over her head and body, forced to witness a woman friend being sexually abused, and was herself repeatedly raped. She said she was released after four days and was threatened with death if she told the police. In July 1999 the Gjilan/Gnjilanë police opened an investigation but no further action was taken.

4. War crimes

By April 2006 only 23 prosecutions for war crimes had taken place in the Kosovo courts since 1999, according to the UNMIK Department of Justice. For most of the thousands of war crimes committed during the conflict, including killings and rapes, enforced disappearances and abductions, the UNMIK authorities have failed to open prompt, thorough and impartial investigations, to bring those responsible to justice, or to provide adequate reparation to the victims.

The trials of more than 17 Serbs accused of war crimes against the ethnic Albanian population were eventually tried by international panels of judges after courts headed by ethnic Albanian judges were deemed insufficiently impartial. However, the Supreme Court still overturned eight out of 10 verdicts passed by these courts for insufficient evidence and failure to call defence witnesses. Retrials resulted in acquittals or convictions for lesser offences. Very few of the war crimes trials involved non-Albanian victims.

In one case, three ethnic Albanian defendants were convicted of abducting some 14 ethnic Albanian civilians and detaining them in inhumane conditions in a detention centre under the control of the KLA. In another, four KLA members were released in

July 2005 after the Supreme Court annulled their conviction and ordered a retrial. They had been convicted of detaining and torturing ethnic Albanians and one Serb suspected of collaborating with the Serb authorities.

Further war crimes prosecutions are not expected. Despite this lack of progress, in 2006 the SRSG reportedly challenged the jurisdiction of the Belgrade War Crimes Chamber over proceedings against a former KLA member, Anton Lekaj.

Anton Lekaj, arrested in August 2004 in Montenegro (until 2006 part of the state of Serbia and Montenegro), was brought to trial in Serbia in November 2005 on charges of war crimes in June 1999. He was allegedly responsible for the detention and killing of three men, the torture or ill-treatment of three others, and the rape of a Roma girl. In September 2006 he was convicted and sentenced to 13 years' imprisonment after a trial that was reportedly conducted in accordance with international standards.

Amnesty International considers that, irrespective of whether UNMIK recognizes some of Serbia's courts (the indictment was by a court removed when the Serbian authorities withdrew from Kosovo in July 1999 and recreated in Serbia proper), Serbia is obliged under international law to exercise universal jurisdiction when a war crimes suspect is in its territory.

“Disappearances” and abductions

The investigation of enforced disappearances and abductions – which are a flagrant violation of fundamental human rights - has been given low priority by the UNMIK police, who along with international prosecutors have not conducted thorough, impartial and independent investigations into abductions of members of minority communities or brought those responsible to justice. There have been no prosecutions of members of the KLA or other ethnic Albanian armed groups believed to have abducted members of Serb, Roma and other minority communities, with the exception of proceedings involving the abduction of one Serb. No information on their fate or whereabouts has been provided to relatives of the “disappeared” or the abducted, who have also received no reparation or compensation.

Some 2,464 persons (1,774 ethnic Albanians and 690 non-Albanians) were still reported missing in December 2005 by UNMIK's Office of Missing Persons and Forensics. About 2,700 cases were reported to have been closed, including over 1,500 cases in which the mortal remains of ethnic Albanians had been found (including some 679 from Serbia). No prosecutions of perpetrators were known to have been opened in any of the closed cases.

5. Ethnically motivated abuses

Despite marked improvements in security for minorities since 2000, and the decline in the intensity and frequency of violent attacks, UNMIK's failure to bring perpetrators of ethnically motivated killings to justice fuels the pervasive climate of impunity for inter-ethnic crimes.

The office of the international Ombudsperson in Kosovo has concluded that the authorities have not exercised proper diligence in their investigations. UNMIK has consistently been unable to provide adequate and timely information on the numbers of arrests, trials, convictions and appeals in cases of ethnically motivated killings and other crimes.

As a result of the remote-controlled bombing of the lead bus in a convoy travelling from Niš in Serbia to Gračanica in Kosovo on 16 February 2001, 12 Serbs died and over 40 were injured. Suspect Florim Ejupi, who escaped from custody in May 2001, was later arrested in Albania in 2005. He was charged in April 2005 in connection with the bombing and a separate incident in which UNMIK and police officers were murdered. As of May 2006 he had yet to be tried. UNMIK reportedly had insufficient resources for the investigation, which was obstructed by KFOR's failure to provide evidence. No outcome has yet been reported in the victims' compensation claim, which has alleged that KFOR soldiers negligently failed to search the road.

In inter-communal violence across Kosovo in March 2004, UNMIK and KFOR took no action to protect the lives and property of minority communities. UNMIK's subsequent failures in conducting investigations and protecting witnesses resulted in most of the perpetrators escaping justice.

Inter-ethnic violence in March 2004 – in which 19 persons were killed, over 900 seriously injured and over 4,100 persons forcibly displaced – erupted following reports that an 18-year-old Serb was seriously injured in a drive-by shooting near Pristina and that three ethnic Albanian children had drowned near Mitrovica/ë while fleeing Serbs. Albanians attacked Serb enclaves and other minority communities in Kosovo. Of the thousands involved, only 426 individuals were charged and only a handful of those convicted. Investigations were not thorough and witnesses were not protected. Of the 56 most serious cases, handled by international prosecutors and judges, only 13 trials had concluded by May 2006. Most had not reached pre-trial investigations or had been closed.

Some KFOR national contingents, for example those under French and German command, interpreted their mandates as solely the protection of people not property.

On 18 March 2004, despite two hours' warning, a small group of UNMIK police and Moroccan KFOR forces under French command reportedly did nothing to prevent some 500 Albanians from systematically burning the Serb Orthodox Church in South Mitrovica/ë and homes in the Serbian village of Svinjare/Frashër. When French

KFOR personnel arrived on the scene, they merely evacuated the villagers to the KFOR camp overlooking the village.

UNMIK and PISG have perpetuated discriminatory treatment of members of minority groups, failing to protect the lives and health of a community of displaced people in at least one notable instance.

Displaced people of Romani, Ashkali and Egyptian origin, living in camps in lead-polluted areas in north Mitrovica/ë from 1999, were only moved to alternative sites in January 2006. Sick KFOR and UNMIK personnel were repatriated at an early stage. However, even after the World Health Organization in 2004 suggested that children be removed from the area within weeks, no urgent action was taken. The site to which the community was eventually relocated was still 100 metres from a contaminated site. The people affected received inadequate medical follow-up care and children continued to have unacceptably high blood lead levels.

6. Torture and excessive use of force

Both the UNMIK and Kosovo police are reported to have contravened international standards on the use of force and firearms. Kosovo police regulations specifically prohibit the use of firearms against a moving vehicle.

On 19 April 2005 a Kosovo police officer in Prizren used his service pistol weapon in an apparent attempt to stop a suspect from driving away in his vehicle. On 23 May 2005 an off-duty officer in Pristina used his official pistol when he was assaulted, wounding one man. The weapon was subsequently confiscated. An officer at Peć/Peja police station who shot and killed a male suspect in custody on 2 January 2006 was arrested and charged with murder.

However, disciplinary measures or criminal proceedings are rare in such cases.

Credible allegations were made that Kosovo police officers acted in conjunction with ethnic Albanians in attacks on minority communities, in particular in violence against the Ashkali community in Vuçitër/Vushtrri in March 2004. One eyewitness reported police complicity in an attack on his home:

“The crowd of 300-400...started to smash the windows of the cars in the yard and break the house windows. They then tried to get inside the house using a small axe, metal bars and pieces of wood, and hit [my son] on the forehead with a hoe... After 20-25 minutes the police came. Some of the crowd had dispersed but when they saw the police arrive they came back again. I saw the KPS [Kosovo Police Service] officers talking with the crowd and how they brought the demonstrators back... When the police came in they immediately started to arrest my family.”

His son said that police had assaulted him and his wife as he was led away in handcuffs. Police officers were also alleged to have thrown petrol bombs into Ashkali homes.

Nearly 70 criminal investigations were opened against an unspecified number of police officers in connection with the March 2004 violence, but no prosecutions followed because of inconsistent witness statements or the apparent failure of witnesses to appear. After disciplinary investigations by the UNMIK police, 12 officers were initially suspended and seven reinstated in September 2005.

There have also been few disciplinary or criminal proceedings against UNMIK, KFOR or Kosovo police officers alleged to have used excessive force against protesters or criminal suspects, even in cases in which individual officers were identified.

During a demonstration in Peja/Peć in August 2005, in which a rock was thrown at a police officer by a resident unconnected with the protest, the police allegedly used pepper spray against non-violent demonstrators who had offered no resistance. Five people taken for medical treatment were subsequently arrested at the hospital.

UNMIK police allegedly beat and tear gassed women and children in the village of Krusha e Vogël/Mala Kruša on 25 May 2006. At 9.15 that morning a convoy of 12 armoured UNMIK police vehicles arrived, unannounced, at the village. They were escorting defence lawyers from the Tribunal acting for Dragoljub Ojdanić, accused of responsibility for the murder of over 100 men and boys in the village in 1999, and two witnesses - Serb women believed to be former residents of the village. As the women gathered around the vehicles, a community leader asked UNMIK police if they could speak with their former Serb neighbours, and ask what had happened to the bodies of their husbands and children. The UNMIK police refused their request, and the women sat in the middle of the road - preventing the UNMIK armoured vehicles from moving forward. UNMIK police officers tried to move them by grabbing the women by the shoulders and arms, forcibly moving them from the road. When the women struggled, the police officers reportedly began to use riot batons. The women then reportedly responded by throwing stones at the UNMIK police officers and vehicles. Reportedly UNMIK police officers continued to hit them with riot batons and gun butts, and then left the village throwing tear gas from the moving vehicles as they drove off. Some 33 women and three men required hospital treatment, and some 20 children treatment for exposure to tear gas. Although the SRSG admitted that “the operational planning was made on the basis of inadequate information on the sensitivity of the visit and the history of the village,” no investigations are known to have taken place into the use of force.

Investigations into the fatal shooting of a rioter by an UNMIK police officer during the violence of March 2004 found that the officer had acted in self-defence. However, the results of inquiries into three deaths during a KFOR operation in the same period have not been made public. Only in one state that has contributed KFOR troops has such a case come before the

national judiciary, and it illustrates the defects in the NATO system of investigating human rights abuses by its troops.

On 7 April 2004 the UK High Court ruled in civil proceedings that the UK government should pay compensation to Mohamet and Skender Bici. In 1999 UK KFOR troops opened fire on their car, killing Fahri Bici and Avni Dudi. The UK Royal Military Police had cleared the three soldiers responsible, but the court found they had deliberately and unjustifiably caused the injuries.

7. Trafficking into forced prostitution

The presence of KFOR and UNMIK personnel since July 1999 has been a major factor in Kosovo's development into a destination for women and girls trafficked into forced prostitution. Women and girls have been subjected to torture, including rape, beatings, degrading sexual acts and threats. If detained by the authorities, some were denied information about their rights and access to lawyers and interpreters, and effectively the presumption of innocence. In addition to women trafficked into Kosovo, predominantly from Moldova, Bulgaria and Ukraine, an increasing number of ethnic Albanians – the majority of them believed to be minors – have been internally trafficked.

Despite special legal provisions and the formation of a dedicated UNMIK police unit, trafficking and the use of trafficked women have reportedly remained widespread. Premises designated "off limits" to members of the international community have more often been closed under health and employment legislation than as a result of criminal prosecutions. Allegations of official complicity have continued and few convictions have been reported.

In October 2005 immunity from prosecution was lifted and a senior UN official was sentenced to three years' imprisonment for the sexual abuse of a minor and falsifying official documents. Trafficking charges were dropped. Charges were not brought following the arrest of three UN police officers and four foreign citizens in August 2005 in connection with trafficking. In 2005, three Albanian nationals were convicted of trafficking in persons, rape, falsification of documents and facilitating prostitution, and were sentenced to prison terms of between 10 and 12 years.

An UNMIK and PISG Action Plan to Combat Trafficking was agreed in May 2005, but little has been implemented. It remains dependent on donor funding to provide, for example, effective witness protection and enhanced court security for legal professionals and witnesses. The plan also fails to ensure that trafficked women and girls have an automatic right to protection and assistance, legal counsel, victim friendly forensic interview rooms, and sexual and reproductive health care. Until September 2006 there was no specific Standard Operating Procedure for internally trafficked children.

8. Detention

Detentions by KFOR, UNMIK and the PISG have all contravened detainees' human rights to freedom from arbitrary detention.

Detentions authorized by the Commander of KFOR under Detention Directive 42 have been arbitrary. The detention procedures have not been prescribed by law; the detentions are without judicial oversight; and detainees do not have recourse to a court to challenge their detention.

Following a wave of violence in Mitrovica/ë in February 2000, some 46 people were unlawfully detained by French KFOR troops in a gymnasium for up to five days. Between 2000 and 2003, over 3,500 people were detained at the KFOR-run Bondsteel Detention Facility in connection with internal conflict in Macedonia and inter-ethnic violence in southern Serbia in 2001. They were held without judicial authority or legal recourse.

Three foreign staff of two Islamic humanitarian organizations were arrested on 12 December 2001 by Italian KFOR forces and allegedly ill-treated. They were not informed of the reasons for their arrest or their legal rights to challenge their detention. Nor were they provided with an interpreter or lawyer. They were released without charge on 21 January 2002.

KFOR's detention powers derive from its responsibility, under a 1999 UN Security Council resolution, for "ensuring public safety and order until the international civilian presence can take responsibility for this task". However, there is no procedure allowing legal challenge of KFOR detentions or enforcement of rights of reparation for those unlawfully detained.

Similar failings apply to detentions by executive order of the SRSG. None are known to have been authorized since December 2001.

Where detainees are charged with criminal offences before the courts, release on bail is rare. Courts do not provide full reasons for decisions to keep suspects in pre-trial detention, often simply citing the wording of the relevant law. In some cases, the excessive length of pre-trial custody may violate the right of defendants to trial within a reasonable time.

On 23 February 2006 a woman and her husband were detained with three others on suspicion of smuggling immigrants and organized crime. Their two young children were placed in a children's home. The woman had initially given a statement on 23 February 2006, but was not interviewed by the prosecutor until 15 June 2006. No

attempts have been made by the prosecution to secure more evidence. They remain in detention at the time of writing.

In 2004 UNMIK guaranteed access to its detention facilities by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). However, the CPT had been unable to reach similar agreement with NATO in respect of KFOR detention facilities until July 2006.

9. Discrimination against minority communities

Displaced people have not received the security and support needed to recover their former homes and land, and their rate of return to Kosovo remains slow. Restrictions on the freedom of movement of minority communities continue to prevent their access to employment, justice and services such as education and health care. Discrimination against minorities denies them meaningful involvement in public affairs.

The failure of UNMIK and KFOR to ensure a safe and secure environment so that displaced people can return to their former homes in safety and dignity has had the most widespread impact on minority communities. Although most of the 850,000 displaced ethnic Albanians have returned to their homes, their return to areas where they are in a minority has also remained slow. Following the return of Albanian refugees and displaced persons after July 1999, an estimated 240,000 ethnic Serbs, Roma and other minorities were either displaced or fled, the majority to Serb enclaves within Kosovo, the northern municipalities of Kosovo or into Serbia and Montenegro. A further 4,000 were forced from their homes after the inter-communal violence of March 2004, most of them ethnic Serbs. Over 12,000 members of minority communities have returned to Kosovo since 2000, but not all to their former homes.

From 2005, UNMIK has provided returnees with the option of returning to another town or municipality if they are unable to return to their place of origin, often resulting in the overcrowding of mono-ethnic enclaves.

However, many have not returned to their homes because of continuing widespread discrimination against minority communities. Many returnees or would-be returnees have been unable to secure legal rights to their property or receive compensation for damage, often because of case backlogs, the absence of affordable legal aid and difficulties in obtaining the documentation to re-establish rights of residence.

It took a year for one Roma returnee to prove her date of birth and place of residence, enabling her to return to her home in Ferizaj/Urosevac municipality. Over 40 years of age, her birth had not been registered, she had never attended school, and her marriage had not been registered.

Access to the courts in some areas is only possible under police escort, or through written requests carried by the police or court clerks. The threat of ethnically motivated attacks persists.

In late 2005, while Randel Nojkić, a community rights leader, was driving home in a car with Serbian number plates, an object was thrown from a vehicle bearing Kosovo number plates that caused him to swerve into the ditch. He reported the incident to the Kosovo police but, although his three passengers were later interviewed, he himself was not contacted by the prosecutor or informed by the court of his right to request an international prosecutor on the grounds that it was a suspected racist attack. No further action was taken by the authorities.

Minority communities are excluded from meaningful participation in public life. UNMIK and the PISG have failed to encourage the participation of representatives of minority communities in the negotiations on the future status of Kosovo, either as delegates or on working groups. Instead, one senior ethnic Albanian politician has been appointed to represent all minorities. A coalition of minority groups reported to the Council of Europe the dissatisfaction and disconnection from the talks felt by their communities.

The Anti-Discrimination Law adopted in Kosovo in 2004 provides guarantees against direct and indirect discrimination by public and private bodies and individuals, and gives rights of adjudication before administrative bodies, competent courts and the Office of the Ombudsperson. However, the PISG has been slow to implement the law, and both UNMIK and the PISG have failed to publicize the law as a means of redress against discrimination. It has rarely been invoked in complaints to the Ombudsperson or the courts.

Discrimination is also faced by forcible returnees to Kosovo, who are not provided with assistance by UN High Commissioner for Refugees (UNHCR) or any of their implementing partners. People forcibly returned to Kosovo, who include people with medical conditions that cannot be appropriately treated there, do not receive assistance from the UNHCR because the UNHCR opposes forcible return. They receive only limited assistance from a local non-governmental organization (NGO). As talks proceed on the final status of Kosovo, an increasing number of European Union (EU) and Council of Europe states have indicated intentions to forcibly return members of both minority and majority communities to Kosovo. To date such forcible returns have been limited through official Memoranda of Understanding between some EU states and UNMIK. However, unless these are renewed by the PISG, which has taken over responsibility for returns from UNMIK, large numbers of returnees forcibly sent back to Kosovo will leave local institutions unable to cope.

10. Right to fair trial

Violations of the right to a fair trial have been extensively documented by the OSCE Legal Systems Monitoring Service in a series of reports from 1999 to 2006. In this context

Amnesty International notes that the right to fair trial was threatened by failures to ensure the independence and impartiality of the judiciary.

Neither the international nor the local judiciary may be considered fully independent from the executive, in particular due to the lack of separation of powers between the executive and the judiciary, which Amnesty International considers unacceptable in terms of judicial independence.

Recruited on short-term contracts subject to renewal by UNMIK, international judges are not independent of the executive, a key safeguard of judicial independence.¹ Individual judges have alleged that their independence has been further undermined by UNMIK interference in the allocation and progress of cases. Despite denials by UNMIK of allegations of interference in the allocation and progress of cases, international judges also informed Amnesty International of cases where pressure had been placed on them by the Department of Justice to adopt a specific course of action.

International judges and prosecutors in Kosovo remain unaccountable to any regulatory body which might investigate allegations of misconduct.

In December 2005 measures introduced to appoint, regulate and discipline members of the local judiciary were not made applicable to international judges or prosecutors; while the UNMIK Office of Legal Affairs reportedly considered the Kosovo Judicial Council to be an appropriate regulatory body, the UNMIK Department of Justice did not consider it appropriate. However, measures to ensure the impartiality of the domestic judiciary have not been put in place either. One member of the Kosovo Judicial Council is the PISG Minister of Justice.

The ethnic Serb community continues to question the impartiality of the predominantly ethnic Albanian judiciary in cases involving Serb defendants. On the other hand Albanian judges have reportedly requested Serb judges to take on cases including trafficking and organized crimes involving Albanian perpetrators, fearing threats of violence and corruption. Low pay and irregular payment of salaries leaves local judges vulnerable to such pressures.

Neither has UNMIK taken measures to address structural problems within the judiciary – including the lack of legal aid and a backlog of cases in the courts – or to build confidence in the judicial system by members of minority communities.

Recommendations

¹ For Amnesty International's concerns, including on judicial independence and on the recruitment and appointment of international judges and prosecutors, see the forthcoming report, *Kosovo (Serbia): The United Nations' failure to deliver justice_ The International Judges and Prosecutors Programme*.

In their concluding recommendations,² many of which reflected concerns expressed by Amnesty International, the UN Human Rights Committee called on UNMIK and the PISG to:

Constitutional and legal framework

- Ensure that
 - any new law or regulations specifies which formerly applicable laws or provisions are being replaced.
 - laws and regulations are made accessible to the public in all official languages of Kosovo through the Official Gazette and the internet.
 - former Yugoslav laws that continue to be applicable can be consulted easily.
- Designate a competent body to determine which of the former Yugoslav laws and provisions continue to be applicable.
- Address the issue of parallel Serbian court and administrative structures in parts of Kosovo.

No effective redress

- Retain the post of international Ombudsperson with jurisdiction over international authorities for so long as they remain in Kosovo, and cooperate fully with the new Ombudsperson to be appointed by the Kosovo Assembly.

Violence against women

- Take steps to
 - achieve equal representation of women in public offices, and intensify training for judges, prosecutors and police.
 - implement existing laws against gender discrimination and domestic violence.
 - facilitate the reporting of gender-related crimes and the obtaining of protection orders against perpetrators.
 - enhance victim assistance programmes and ensure effective remedies.

War crimes

- Investigate all outstanding cases of war crimes, crimes against humanity and ethnically motivated crimes committed before and after 1999, including where the perpetrators may have been Kosovo Albanians.

² See *Human Rights Committee, Eighty-seventh session, Geneva, 10-28 July 2006, Concluding observations of the Human Rights Committee, Advanced non edited version, Kosovo (Republic of Serbia)*, CCPR/C/UNK/CO/1.

- Ensure that the perpetrators of such crimes are brought to justice and that victims are adequately compensated.
- Ensure that the relatives of “disappeared” and abducted persons have access to information about the fate of the victims, as well as to adequate compensation.
- Provide effective witness protection programmes, including by means of witness relocation.
- Extend full cooperation to prosecutors of the International Criminal Tribunal for the former Yugoslavia.

Ethnically motivated abuses

- Ensure that the inhabitants of lead-contaminated camps for the displaced and those who have been relocated nearby are relocated to environmentally safe areas, following their consultation in accordance with the UN Guiding Principles on Internal Displacement.
- Provide the victims of lead contamination with adequate medical treatment and access to effective remedies to seek and obtain compensation for any damage caused to their health.

Torture and excessive use of force

- Ensure, in cooperation with the PISG and KFOR, that complaints about excessive use of force by police or military personnel in Kosovo are investigated by a competent body and that victims receive adequate compensation.
- UNMIK and KFOR should seek the cooperation of the countries of origin of those personnel to ensure that perpetrators are brought to justice.

Trafficking into forced prostitution

- Ensure the effective investigation and prosecution of people involved in trafficking, including UNMIK and KFOR personnel.
- Ensure protection as well as adequate access by victims to lawyers and interpreters, health care and counselling, and to other forms of assistance and support.
- Review the Action Plan to Combat Trafficking to ensure it meets international human rights standards.

Detention

- UNMIK and KFOR should revoke the detention powers of the SRSG and KFOR Commander.
- Ensure that all people arrested by the UNMIK police or under a court order are informed of the reasons for their arrest and of any charges against them, brought promptly before a judicial authority, granted access to a lawyer and to proceedings before a court to determine the lawfulness of their detention, and are tried without undue delay.

Discrimination against minority communities

- Intensify efforts to ensure safe conditions for the sustainable return of displaced people, in particular those belonging to minorities.
- Ensure that displaced people recover their property and receive compensation for damage done.
- Ensure freedom of movement and access to essential services to minority communities, including those living in enclaves.
- Ensure the effective participation of all minorities in the conduct of public affairs, including in the negotiations on the future status of Kosovo.

Right to fair trial

- Establish independent procedures for the recruitment, appointment and discipline of international judges and prosecutors.
- Ensure adequate terms and conditions for local judges and prosecutors to shield them from corruption.
- Increase the representation of ethnic minorities in the judiciary and assign additional judges to courts with case backlogs.