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Serbia and Montenegro (Kosovo/Kosova)

Minority communities: fundamental rights denied

Introduction

“We are prisoners in our own home.”

Two Serb women, unable to leave their fortified home in Prizren without protection

“This is the third year of living from day to day. Our lives have shrunk to survival, with no plans for the future or for our children.”

MN, a Serb driven out of his home in Žegra

Almost four years after the end of the war in Kosovo, minority communities are still at risk of killings and assaults, mostly at the hands of the majority community in their area. On a daily basis, they are denied effective redress for acts of violence and other threats to their physical and mental integrity.

Although violent attacks on minorities have measurably declined since the end of the conflict in July 1999, these attacks still continue. Such attacks, coupled with discrimination have effectively denied some minorities freedom of movement and other basic social and economic rights – in particular, their rights to employment, health care and education.

Fear is pervasive in many areas where communities are in the minority. It is exacerbated by the failure to bring to justice the officials and private individuals responsible for abuses under international human rights and humanitarian law. These include systematic violations against ethnic Albanians throughout the 1990s, primarily by the Serbian police, and abuses by both sides during the armed conflict of 1998 to 1999. Those responsible for abuses committed since the war – most by the Albanian majority – have also enjoyed impunity.

Unless the rights to freedom of movement and freedom from discrimination, the rights to work, health care and education can be guaranteed, minority refugees and internally displaced people in other parts of Serbia and Montenegro¹ will be unable to exercise their right to return to their homes.

This report is a summary of a 70-page document, *Serbia and Montenegro (Kosovo/Kosova): “Prisoners in our own home”: Amnesty International’s Concerns for Minorities in Kosovo/Kosova*, AI Index: EUR 70/010/2003, in which Amnesty International

¹ In November 2002, an agreement was reached on a new Constitutional Charter which changed the name of the country from the Federal Republic of Yugoslavia (FRY) to ‘Serbia and Montenegro’. The new name came into force on 4 February 2003 after acceptance by the respective parliaments. Under the new Constitutional Charter, Kosovo and Metohija officially remains a province of the state of Serbia.

details the findings of its research into the denial of the rights of minority communities in Kosovo. It examines how the abuse of civil and political rights affects the ability of minorities to access their social and economic rights. It includes recommendations to the international community and to the authorities in Kosovo on ending the cycle of impunity and strengthening minority rights.

Revenge and retribution

Following the July 1999 Military Technical Agreement (Kumanovo Agreement) between the North Atlantic Treaty Organization (NATO) and the governments of Serbia and the FRY, Federal and Serbian security forces were withdrawn from the province of Kosovo. Most ethnic Albanian refugees returned, many to find family members missing or dead and their homes destroyed.

After July 1999 hundreds of murders, abductions and attacks on property were carried out in a wave of reprisals. Minorities and ethnic Albanians were targeted because of their ethnic identity or on suspicion of “collaborating” with the Serb authorities. More than half the pre-war minority population fled to Serbia or Montenegro or took refuge in mono-ethnic enclaves in Kosovo guarded by the NATO-led Kosovo Force (KFOR) and the UN Civilian Police (UNMIK Police).

Minority communities in Kosovo

Serbia exercised political control over Kosovo after its autonomy was revoked in 1990, and subsequently Serbs dominated urban centres and state employment while constituting less than five per cent of the population. An estimated 230,000 Serbs and Roma fled after July 1999. Of the remaining 100,000, a third live in three predominantly Serbian municipalities in the north of Kosovo. Others live in mono-ethnic villages or under KFOR protection in majority Albanian urban areas.

The Slavic Muslim community define themselves variously as Bosniaks, Bosnians, *Torbeshi*, Muslims or *Gorani*. Out of an estimated pre-war population of up to 67,000, some 35,000 Bosniaks fled in 1999. Now about three per cent of the population, they are mainly concentrated in and around Prizren town. Around 12,000 *Gorani* make up a third of the inhabitants in the Gora region of Dragaš/Dragash municipality.²

Many Roma, *Ashkali* and *Egyptiani* (“Egyptians”) were internally displaced elsewhere in the then-FRY or fled to third countries during the war. They are now estimated at 1.8 per cent of the population, living in Serb areas or in mono-ethnic enclaves protected by KFOR. Targeted after the war by members of the *Ushtria Çlirimtarë e Kosovës*, Kosovo Liberation Army (KLA), for alleged “collaboration” with the Serbs, they continue to suffer physical attacks, compounded by long-standing discrimination. The Albanian-speaking *Ashkali* and the *Egyptiani*, mainly Albanian-speaking and nominally Muslim, regard themselves as distinct from the Roma.

² Place names are given in both Serbian and Albanian.

Ethnic Albanians, living in areas of Kosovo where they are in the minority, suffer the same security concerns and restrictions on their freedom of movement as other minorities. An estimated 12,000 ethnic Turks in Prizren municipality and about 400 remaining ethnic Croats face relatively few security problems.

The legal framework

In June 1999 the United Nations (UN) Security Council established the UN Interim Mission in Kosovo (UNMIK) pending a political settlement. Military authority was vested in the NATO-led multi-national Kosovo Force (KFOR). Executive, legislative and judicial authority was vested in UNMIK, led by the Special Representative of the UN Secretary-General (SRSG).

UNMIK was charged with re-establishing the rule of law in Kosovo and maintaining order through the deployment of an international police force (UNMIK Police) and the recruitment and training of a multi-ethnic domestic police force, *Shërbimi Policor ë Kosovës* (Kosovo Police Service, KPS). Included in UNMIK's responsibilities are the protection and promotion of human rights and the establishment of conditions for a safe and unimpeded return for refugees and internally displaced people.

UNMIK's authority in Kosovo was, from its inception and according to the UN Secretary-General, to "be guided by internationally recognized standards of human rights". These standards – including the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR); the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention on the Elimination of All Forms of Racial Discrimination (CERD) – were subsequently incorporated into applicable law in Kosovo in December 1999.

On 15 May 2001 the SRSG promulgated a Constitutional Framework for Provisional Self-Government (Constitutional Framework), which provided for the administration of limited government functions by a Provisional Institution of Self-Government (PISG). The Special Representative of the UN Secretary General (SRSG) retains executive powers over the international judiciary, law enforcement, defence and security (in cooperation with KFOR), and external relations. The Constitutional Framework provides for representation of minority communities in an elected Assembly and for economic, social and cultural rights for all, without discrimination. It specifically requires the PISG, which was formed in March 2002, to ensure the protection of minority rights in accordance with international human rights standards, and to guarantee refugees and displaced persons the right of return.

Impunity

Despite their responsibilities to protect and promote human rights, the international authorities in Kosovo were unprepared for the massive abuses of human rights against minorities that accompanied the rapid return of the Albanian community.

Impunity for both current abuses and war crimes is a highly politicized issue for all communities, who fear that perpetrators from other communities remain free to commit

further attacks. The authorities in both Kosovo and in Serbia and Montenegro have failed to investigate and bring to justice the perpetrators of abuses committed before, during and after the conflict. UNMIK and KFOR have also sometimes failed to respect international and national human rights standards in the discharge of public functions.

Attacks on minority communities

The number of murders and abductions of members of minorities has sharply declined since 1999. Of 414 murders in the second half of 1999, 47 per cent of the victims were ethnic Albanians, 33 per cent Serbs and 20 per cent of unknown ethnicity. UNMIK reported a total of 68 murders in 2002, in which 60 of the victims were Albanian,³ six were Serbs and two were from other minority groups.

Ashkalis murdered for returning home

In November 2000, three *Ashkali* men and a boy aged 16 were killed when they tried to return to the village of Dašovac/Dashevc near Srbica/Skënderaj, central Kosovo. Intending to rebuild war-damaged homes, they had made repeated visits beforehand. The Organization for Security and Co-operation in Europe (OSCE), the Office of the UN High Commissioner for Refugees (UNHCR) and KFOR had reportedly received assurances about their security from local ethnic Albanian community leaders. On 6 November, without warning the international agencies, the four returned to Dašovac/Dashevc to stay. They reportedly refused a KFOR guard, fearing that it would make them more conspicuous and vulnerable. On 9 November their bodies were found outside tents provided as temporary accommodation. No one has been indicted or arrested for their murder.

Although security has since improved, these killings highlight the vulnerability of returnees without KFOR protection. The lack of police progress in investigating such cases – or even in monitoring other ethnically motivated crimes – fuels minorities' fears. Deliberate attacks on lives and property continue, most of them thought to have been by members of the ethnic Albanian community.

Attacks on minorities

Following attacks on KFOR-escorted convoys in which two people were killed and several wounded, on 16 February 2001 a remote-controlled bomb destroyed a bus in a KFOR-escorted convoy travelling from Niš in Serbia, killing 11 passengers and injuring more than 40. KFOR and UNMIK police arrested four suspects in March, but the perpetrators have not yet been brought to justice (see below).

Throughout 2001 and 2002 individual Serbs were beaten or stabbed to death, or killed in drive-by shootings or with hand grenades. On 27 February 2001 Branka and Savita Jović, an elderly couple, were found beaten to death in Kamenica/Kamenicë. In April and May at least three Serbs were killed in drive-by shootings in Vitina/Viti municipality. On 4 September a farmer was stabbed to death in Vrbovac, near Vitina/Viti.

On 20 February 2002 Serbs Savka Tajić and 13-year-old Sanja Denkić were injured when a hand grenade was thrown into the yard of a house in Vitina/ Viti. On 28 August Dobrivoje

³ These are believed to be inter-ethnic Albanian killings.

Marković, from the Serb village of Svinjare/Frashër near Mitrovica/Mitrovicë, was shot and wounded as he tried to stop his cattle being stolen.

Roma and Bosniaks were also attacked. On 14 June 2002 unidentified men reportedly assaulted and blinded a Romani woman, threatening to kill her if she did not leave her home.

Retaliation frequently follows such attacks. After the bombing of the Niš bus on 16 February 2001 local Serbs attacked two Albanian vehicles and set fire to a café, injuring at least eight people. On 17 and 18 February, Serbian protesters in the northern town of Zubin Potok set UNMIK vehicles on fire and clashed with KFOR and UNMIK police officers.

Investigations and prosecutions

Following two years of virtual impunity for the perpetrators of such attacks, 2002 saw some investigations and prosecutions of those suspected of ethnically motivated attacks.

Following the withdrawal of FRY forces from Kosovo, KFOR assumed responsibility for policing functions and UNMIK Police did not have full operational and investigational primacy in all areas until February 2002. Within CIVPOL, the Central Criminal Investigative Unit (CCIU) investigates serious crimes, including war crimes committed in Kosovo between 1998 and 1999 that fall outside the jurisdiction of the International Criminal Tribunal for the former Yugoslavia (Tribunal). UNMIK Police has insufficient resources to deploy the number of officers originally envisaged. Hardly any KPS officers are trained in investigating serious crimes. However, minority communities are increasingly represented in the force and the KPS is progressively more involved in monitoring threats to minority communities.

However, the vast majority of ethnically motivated crimes remain unsolved, as do ordinary crimes. Of the 823 ordinary criminal cases opened in 2001, only 120 resulted in prosecutions, although improvements were seen in 2002. Witnesses are particularly reluctant to testify in cases attributed by the police to “terrorist and other organized groups” in the absence of effective witness protection schemes.

A telephone “crime-line” set up in 2002 has reportedly assisted police investigations, including into alleged war crimes by UÇK/KLA members. However, insufficient progress has been made to include witnesses of ethnically motivated crimes within a witness protection program established in April 2001 for investigations into organized crime.

Failure to investigate

Some investigations of abuses against ethnic minorities may have failed to meet international standards for investigations into deaths resulting from the use of force. The Ombudsperson’s Institution in Kosovo examined failures in UNMIK’s investigation of the killings of six minority Albanians in riots in Mitrovica/Mitrovicë in February 2000. It found that the authorities “took no investigative actions between 11 September 2000 and 3 December 2001” in two of the cases, and that “[t]he inadequacy of the investigation, therefore, constituted a violation of the right to life guaranteed under Article 2 of the ECHR (European Convention for the Protection of Human Rights and Fundamental Freedoms).”

In a significant number of cases, impunity was allegedly afforded to Albanians detained on suspicion of committing serious crimes, on the basis of their ethnicity.

Investigation into the Niš bus bombing

On 28 March 2001 international judges sitting in Priština/Prishtinë District Court ordered the investigative detention for a month of one detainee and the release of three others, all Albanian suspects in the 16 February Niš bus bombing. In violation of the court order, all four were subsequently detained by Executive Order of the SRSG, although one escaped. The continued detention of the three others was confirmed by a specially appointed Detention Review Commission, until they were finally released without charge on 18 December 2001. It has been alleged that insufficient resources were deployed to the investigation, and that KFOR officers reportedly obstructed it by assisting one detainee to escape in May 2001 and failing to reveal evidence to the court.

UNMIK has attempted to create an independent, impartial and multi-ethnic judiciary, including by the appointment of international judges and prosecutors. However, minority communities continue to fear attending courts, most of which are outside minority enclaves. They perceive the largely Albanian judiciary as biased, and see this confirmed when judgments made by Albanian panels in war crimes cases have been overturned in retrials by international judges.

Seeking justice

"[W]hen the bombing started... my mother and father stayed in Dečani/Deçan... even though my brother went with KFOR to fetch him... Albanians that we knew...told my father to leave the town, and they hit him with a rifle butt... [M]y brother went to Dečani/Deçan to fetch him on 18 June [1999 and]...found my mother sitting in front of the house crying. The house was still smouldering. My mother said that the house had been set on fire, and [that my] father had gone to seek help, but that he had been stopped by a group of around 50 Albanians... I don't want to talk about it any more."

M.F., a member of the *Gorani* minority, has tried repeatedly to find out what happened to his father but without success. He reported the crime at the police station in Dragaš/Dragash but no action was taken.

Impunity for war crimes

Progress has been made at the international level in bringing to trial those suspected of war crimes in Kosovo. Former President Slobodan Milošević is currently on trial before the International Criminal Tribunal for the former Yugoslavia (Tribunal) on charges of crimes against humanity and violations of the laws and customs of war in Kosovo as well as in Bosnia-Herzegovina and Croatia. In early 2003, three former UÇK/KLA members were indicted, arrested and transferred to the custody of the Tribunal.

Within the Kosovo judicial system, a number of proceedings against Serbs accused of war crimes had been completed by the end of 2001. Some cases, heard initially before Albanian judges and subsequently before international panels, were later sent for re-trial for not meeting international standards for fair trial. Such trials continue.

However, few Albanians have been tried for war crimes. There were public protests at the arrests in January 2002 of three former KLA members suspected of war crimes against unarmed Albanian civilians. Further demonstrations accompanied the arrests and subsequent conviction in December 2002 of five former KLA members. They were sentenced to between three and 15 years' imprisonment for the unlawful detention of rival paramilitaries and murder.

“Disappearances” and abductions

The Kosovo authorities have failed to investigate the abductions of about 1,200 members of minority communities believed to have been abducted by the KLA or other armed ethnic Albanians between 1998-9. Similarly the authorities in Serbia and Montenegro have failed to bring to justice those responsible for the “disappearance” of an estimated 3,000 ethnic Albanians believed to have been arrested by Serb forces, some 900 of whom have subsequently been exhumed from mass graves in Serbia. In all communities, family associations of the missing have organized demonstrations and hunger strikes in support of their demands for the exhumation of possible gravesites and the identification of bodies for family reburial.

Abduction of Romani men

Three Romani men in their 20s – Ramadan Halilaj and his cousin Xhevdet Çufaj, day-labourers, and Vehbi Maliqi, a herdsman – from the village of Brekovc/Brekovac, southwest of Djakovica/Gjakovë were abducted in June 1999. Six armed men in KLA uniforms took Ramadan Halilaj away. Two days later, more uniformed men accused the family of being armed by the Serbs, gave them half an hour to leave their home, and beat Xhevdet Çufaj, breaking his arm. Armed men in civilian clothes later accosted the 20 men, women and children as they walked to Montenegro through the mountains, and took away four men, including Xhevdet Çufaj and Vehbi Maliqi. Soon after, shots were heard. No investigation has been opened into this case.

After much delay, some progress was made in 2002 towards a comprehensive program of both exhumations, and the identification of exhumed remains; some 141 mortal remains were identified in 2002. Of 4,392 bodies exhumed in 1999 and 2000 by order of the Tribunal, 2,099 had already identified and returned to their families, and approximately 1,500 were reburied for later identification. However, few bodies have been exhumed and returned to relatives in minority communities, and low priority has been given to the investigation of individual cases of “disappearances” and abductions, and in bringing the perpetrators to justice.

A Serb woman abducted and killed

In June 1999 three men in KLA uniforms abducted Petrija Piljević, a 57-year-old Serb woman from Priština/Prishtinë. In August 2001 her son identified clothing recovered from her exhumed body. She had been shot twice in the chest at close range. No investigation is known to have been initiated into her abduction.

The right to freedom of movement

Daily intimidation of minority communities restricts their freedom of movement. The fear of travelling outside guarded enclaves contributes to feelings of imprisonment and exclusion. Such restriction results in indirect discrimination, preventing their access to basic rights and services such as housing, education and medical treatment. Even in communities that have not suffered attack or had to live within protective boundaries, returnees have expressed fear, frustration and isolation.

Living under guard

Continuing fear is felt by Serbs who were among 120 families forcibly evicted from the village of Žegra/Zhegër, south of Gjilan/Gnjilanë, by ethnic Albanian paramilitaries in July 1999. Unable to return to their homes, now occupied by ethnic Albanians, 40 families live a few kilometres away, under high levels of security, in the villages of Donja Budriga/Budrigë e Poshtë and Parteš/Partesh. KFOR escorts children to school, shoppers to the market and patients to hospital in Serbia. In January 2000, 14 members of the community conducted a Christmas mass in Žegra/Zhegër under escort, and were stoned by hundreds of Albanians as they left.

Loss of freedom of movement for members of minority communities is the direct consequence of the continuing impunity enjoyed by perpetrators of ethnically motivated attacks. Although many have not been physically attacked themselves, they experience harassment and constant fear of attack.

Verbal abuse and threats

In Gjilan/Gnjilanë and Orahovac/Rahovec, Roma and *Ashkali* women reported being threatened if they ventured into Albanian areas. They were spat at. Men mimed cutting their throats. Youths subjected them to sexual threats.

In Prizren, two Serb sisters and their grandmother live surrounded by barbed wire and sandbags. For two years, their grandmother did not go out. KFOR soldiers lived in the house and shopped for them after an intruder broke in. The sisters were later able to work, but only under escort, one being driven to and from her office by an Albanian driver, the other taken 25 kilometres each Monday to teach in a village school and returned every Friday by KFOR.

Practical and legal remedies

The rise in mobility has been achieved primarily through KFOR security posts and escorts for individuals and public transport. Yet the right to freedom of movement has not fundamentally improved. Security incidents, mostly stone-throwing at buses and trains, have risen in some areas.

The right to freedom of movement is guaranteed under international and regional human rights laws incorporated into applicable law in Kosovo. The Constitutional Framework provides for all communities the right to “[e]njoy unhindered contacts among themselves and with members of their respective communities within and outside of Kosovo”.

In Kosovo private individuals and groups, not states or governments, are responsible for the attacks, abuse and harassment. However, it is the state's duty of "due diligence" to guarantee minority groups their right to freedom of movement. UNMIK and the PISG need to counter the climate of fear. Those who contravene UNMIK Regulation 2000/4 – On the Prohibition against Inciting to National, Racial, Religious or Ethnic Hatred, Discord or Intolerance – can be imprisoned for up to five years (eight years for officials). Only one person is known to have been arrested under this law. Legislation on minorities, envisaged in the Constitutional Framework, has yet to be introduced.

However, the Ombudsperson's Institution and sections of Albanian civil society – including youth groups *Bol Ma!* (Enough!) and Urban FM - have taken initiatives to establish inter-ethnic cooperation and dialogue. These include the creation of the Committee for Understanding, Tolerance and Co-existence (CUTC) by the Council for the Defence of Human Rights and Freedoms (CDHRF) and the strengthening of minority representation in Local Women's Councils and organizations such as the Kosova Women's Network.

Social and economic rights

No future prospects

Serbs forcibly displaced from Žegra/Zhegër now face eviction from the villages of Parteš/Partesh and Donja Budriga/Budrigë e Poshtë as Serb landlords, displaced to Serbia, wish to sell their Kosovo properties. Previously employed at factories that are now destroyed or employ only ethnic Albanians, most subsist on humanitarian aid or social assistance. Agricultural land they owned in Žegra is not covered by UNMIK provisions for the restitution of pre-war property.

Abuses of the civil and political rights of minorities in Kosovo have resulted in the effective denial of social, economic and cultural rights. Minority communities face direct discrimination, based on their ethnicity, in obtaining employment and accessing health and education services, even if they are able to travel.

The right to work

Access to employment is a critical factor for minorities in deciding whether to remain in Kosovo. It has been estimated that up to 90 per cent of the Serb and Roma population are officially unemployed, as opposed to some 50 per cent of the overall population. They were universally dismissed in June 1999 from jobs in state-owned industries or public service. As a result of restrictions on their movements, Serbs in rural communities are denied access to pre-war markets and contact with other agricultural communities.

[**PHOTO CAPTION:** Plemetina/Plemetin camp for the internally displaced, in the shadow of the KEK electricity power station. © AI

H.B., a 58-year-old *Ashkali*, lives at the camp after being forcibly evicted from his home in Obilić/q in June 1999. The KEK workforce was predominantly Serb and Roma until June

1999 when minority workers were sacked by the new Albanian management. H.B. and other former employees have been unable to find other employment.

On 21 December 2001 the Priština/Prishtinë Municipal Court ordered the reinstatement of Gani Bajrami, a Roma and former security guard, and ruled illegal KEK's refusal to do so on the grounds that he had not applied for reinstatement by a July 2000 deadline. KEK's appeal against the ruling had not been heard by March 2003.

Discrimination in health care

Minority communities suffer discrimination in the provision of and access to health care. Patients from minorities are refused treatment at Gjilan/Gnjilanë hospital or unreasonably kept waiting for hours. A Roma woman said that doctors there had spoken to her only in Albanian, which she did not understand, and failed to treat her daughter. "Even the doctors are afraid to treat you... The best way to get treatment is to go the hospital with a member of the international community," said a young Serb woman in Prizren.

Kosovo has a three-tier system of *ambulanti* (local clinics), health centres and hospitals. Clinics are located in or near to minority communities, but their service is under-resourced and medicines are prohibitively expensive for all communities. A parallel health system for minorities has developed as Serb medical staff, forced out of their hospital posts, have taken over health facilities in the enclaves and the hospital in northern Mitrovica/Mitrovicë. Standards of treatment, and access to medicines and sanitary equipment, have reportedly deteriorated.

Given the prevalence of long-term physical and mental illness associated with trauma within the enclaves, the failure to ensure adequate health care violates minorities' rights. Serbs displaced from Žegra/Zhegër reported increased deaths and bad health, and had no access to basic medicines at the *ambulanta*, even aspirin.

Minority communities have to travel long distances for secondary and tertiary health care. Serbs and Roma in Gjilan/Gnjilanë travel to Bujanovac in Serbia rather than attend the local hospital, though both cars and KFOR-escorted buses are subject to attacks. In emergencies, patients have to telephone KFOR or go to a KFOR check-point to await an escort to a health centre, sometimes with fatal delays.

Inaccessible education

PHOTOGRAPH: Serb children in Priština/Prishtinë being escorted home from school by KFOR, February 2002. © AI.

Minorities are denied the right to education on an equal basis through discrimination in access to schools, and by lower standards - in the absence of trained minority teachers - and in the failure to provide teaching in minority languages.

In the enclaves, some minorities have set up parallel education systems. Minority schools outside enclaves have problems in recruiting qualified teachers because of security concerns. In one small Serb community in Priština/Prishtinë, 20 children are escorted daily to

an elementary school in Llapje Selo/Llapiasellë, eight kilometres away. Four older children are driven even further to a secondary school in Gračanica/Ulpiana.

In Dragaš/Drageash, a *Gorani* father reported that there was now only one regional elementary school for local children. For the Romani, *Ashkali* and *Egyptiani* community, access to education is often denied through direct discrimination.

The University of Priština/Prishtinë is now wholly Albanian where once Serbs were predominant. In September 2001 a Serb “University of Priština” was opened in northern Mitrovica/Mitrovicë, administered by the Serbian Ministry of Education and teaching the Serbian curriculum. For minority communities outside Mitrovica/Mitrovicë, the costs of transport to, and accommodation in the town make access to higher education impossible.

Anti-discrimination legislation

The rights to work, health care and education for minorities are guaranteed under international human rights laws incorporated by UNMIK into applicable law in Kosovo, although the International Covenant on Economic and Social Rights is not incorporated into the Constitutional Framework. However, it does guarantee that: “Communities and their members shall have the right to...receive education in their own language; enjoy equal opportunity with respect to employment in public bodies... and... access to public services.”

UNMIK, however, has violated its own regulations prohibiting discrimination. Although it has repealed property legislation perceived to discriminate against Albanians, it has promulgated other property regulations judged by the Ombudperson’s Institution to discriminate against Serbs. Introduced in March 2000, further regulations prohibited discrimination in government services and employment practices. However, a survey in 2001 of 20 government departments in Kosovo found minorities, particularly Serbs, substantially under-represented.

There are also no specific mechanisms for seeking redress. Discrimination in employment, determined by a labour inspector, is punishable by a fine. Yet individual complainants cannot seek redress through any mechanism, such as an employment tribunal, except by initiating civil legal proceedings. A proposed Omnibus Anti-Discrimination Law, if enforced, may address some of these concerns. It aims to bring the law in line with international human rights standards, by promoting uniformity in the adjudication of complaints and providing effective legal remedies.

The right to return

Without guarantees for the safety, freedom of movement and access to social and economic rights of minorities in Kosovo, the prospect of a safe and sustainable return for minority refugees and the internally displaced remains bleak.

The international community and the PISG have so far failed to ensure the conditions that would allow the return in significant numbers of Kosovo Serbs and Roma displaced in Serbia and Montenegro or those granted temporary protection outside Serbia and Montenegro. An

estimated 111,000 members of minority communities remain displaced or at risk within Kosovo. Out of more than 230,000 Serbs, Roma and other minorities who fled Kosovo, only 5,800 had returned to Kosovo by the end of 2002. This is despite discrimination against Roma and *Ashkali* in Serbia, and an increase in forcible returns from countries outside Serbia and Montenegro.

The UN Security Council gave KFOR and UNMIK responsibility to “[e]stablish a secure environment in which refugees and displaced persons can return home in safety”. The Constitutional Framework guarantees the right to return in line with international refugee law. In April a new cabinet level post of Inter-Ministerial Coordinator for Returns was created. In 2002, 24 out of 30 municipalities established Working Groups on Returns.

UNMIK identified requirements for minority returns including enforcement of the rule of law and freedom of movement in Kosovo. In principle, returns were to be based on individual and informed decisions, not political or strategic conditionalities, and priority should be given to returning people to their place of origin, not relocating them to new settlements. Yet UNMIK’s plans in May 2002 for returns to 25 locations, and the provision of increased assistance for returnees, few such returns had taken place by the end of the year.

Spontaneous returns

Spontaneous returns, without the assistance of the authorities, have been mainly of Serbs to rural areas and of Roma, *Ashkali* and *Egyptiani* to semi-urban areas. Most returnees have been of pensionable age, although they also include middle-aged people whose children have completed their education. Their decisions to return have been influenced by the presence of others of the same ethnic group, perceived improvements in the security situation and the probability of access to housing, land and education.

There have been a number of successes, but many spontaneous returns have been frustrated by the backlog of property claims submitted to the Housing and Property Directorate, or by continuing attacks. L.M., a Romani woman in her 50s, who had returned to Gjilan/Gnjilanë in late 2001, reported that Albanians had demolished her property to reuse the materials. She said that she was threatened by local Albanians, one of them allegedly wielding an axe, during a “go and see visit” in the presence of 15 international and municipal officials. Unable to regain her job as a nurse, L.M. was resigned to leaving again.

PHOTO CAPTION: In a Roma district in Gjilan/Gnjilanë, a man salvages what he can, March 2002. The house was burned down within weeks of his brother announcing his intention to return. © AI.

“Organized” returns

Returns coordinated by the authorities have not been successful where they were insufficiently prepared.

The Osojan/Osojanë valley, a rural settlement of predominantly Serb villages in the Peć/Pejë region, was identified as a location for return in the Serb *Framework for Return 2001*, although reconstruction of buildings - including a local factory - the restoration of water

and electricity supplies and investment in agriculture were still required. Local Albanians protested at a “go and see” visit in July 2001, but a second visit provoked little reaction. In August 2001, despite serious reservations on the part of UNHCR, more than 170 Serbs returned, amid enormous publicity in Serbia. By March 2002, 101 returnees remained, protected by about 160 KFOR troops. A large number of houses, the *ambulanta* and school were still under construction. Little agricultural work had taken place and returnees continued to depend on humanitarian aid.

In the months before the return, UNHCR had been unable to identify the prospective returnees. Some had made their decision to return at extremely short notice – including a 93-year-old woman who had “just got on the bus”. No dialogue between the communities had been established, nor measures taken subsequently to foster reintegration. The Serbs practically never left the valley. In October 2002 a bus carrying 41 Serb pensioners from Osojan/Osojanë to Peć/Peja was attacked with stones and petrol bombs by local Albanians. The viability of the return continues to depend on KFOR’s presence.

By contrast, the return to Vučitrn/Vushtrri of 59 *Ashkali* in May 2002 was facilitated by the ethnic Albanian non-governmental organization, the Council for the Defence of Human Rights and Freedoms (CDHRF), in conjunction with the UNMIK Office for Returns and UNHCR. A CDHRF committee met representatives of the local Albanian community and travelled to Serbia to meet the *Ashkali* families. The local municipal assembly passed a resolution in favour of the return. Efforts were made to seek the cooperation of the people occupying the former homes of the *Ashkali* families and to identify individuals who might try to frustrate the return. Yet, despite these preparations, returnees have subsequently been attacked.

Internal displacement and forcible returns

Serbia and Montenegro currently host more than 230,000 internally displaced people from Kosovo, in addition to almost 390,000 refugees from Bosnia-Herzegovina and Croatia. Assistance for displaced Kosovo Serbs improved in 2002, although many remain in collective centres or in overcrowded private accommodation. Displaced Roma and *Ashkali* suffer ill-treatment and harassment by the Serbian police, racist attacks by private individuals, and discrimination when trying to register as internally displaced persons, acquire identity cards, or access public services.

At least 53 members of minority communities were among 3,740 mainly Albanian refugees who were forcibly returned to Kosovo in the first half of 2002 after having been granted temporary protection in 1999, mainly in the European Union (EU). They were not able to exercise their right to seek asylum under the 1951 Convention relating to the Status of Refugees.

Minorities, and other categories of people who have fled Kosovo, should have access to asylum procedures. Their forcible return – without individual and fair consideration of asylum claims and consideration of the possibility of a safe and sustainable return – risks lives.

Amnesty International and UNHCR have repeatedly opposed the return of minorities to Kosovo, and several governments have rescinded threats of forcible return. However, Roma continue to be forcibly returned. Of 33,000 minority refugees currently in Germany, some 1,000 Turks, Bosniaks and Gorani (but not Serbs or Roma) are expected to be “repatriated” during 2003. UNHCR has concluded that internal relocation in Serbia or Montenegro for minorities from Kosovo, in the conditions currently available, does not offer “an adequate or reasonable alternative to international protection”.

Recommendations

Amnesty International calls on the international community and authorities in Kosovo to undertake the following measures:

Measures to end impunity

- The UN Secretary-General should ensure that the UNMIK police, KPS and CIVPOL are given the necessary leadership and resources to ensure the prompt, impartial and thorough investigation of ethnically motivated human rights abuses;
- UNMIK should take action to ensure that the perpetrators of “disappearances” and abductions are brought to justice before the competent civil authorities;
- UNMIK should take all measures necessary to ensure the identification and return for reburial of the bodies of those abducted, and to guarantee appropriate redress for the relatives of the “disappeared”;
- UNMIK should establish an independent inquiry into the failure of the UNMIK police investigation into the attack on the Niš bus on 16 February 2001, and into alleged obstruction of the investigation by KFOR, with a view to bringing the perpetrators of the attack to justice;
- The UNMIK police should establish a unit dedicated to the investigation of ethnically motivated killings and other grave abuses, and should ensure that multi-ethnic members of the KPS are trained and involved in the investigation of such abuses;
- The UNMIK police should extend witness protection to the witnesses of ethnically motivated human rights abuses, and create a dedicated protection unit for them.

Freedom of movement and freedom from discrimination

- KFOR and UNMIK should renew and strengthen efforts to enable members of minority communities to enjoy freedom of movement, until such time as a security presence is no longer required to guarantee this right;
- UNMIK should seek to establish confidence-building measures and a constructive dialogue between majority and minority communities at both political and grass-roots level;
- UNMIK Police should enforce the law on racially motivated abuse (UNMIK Regulation 2000/4) and investigate allegations of racist harassment and threats promptly, thoroughly and impartially. Those responsible should be brought to justice

or, where minors, subject to appropriate measures in accordance with international human rights standards;

- The Kosovo Assembly should adopt laws and enforcement mechanisms to prevent defamation and hate speech, as required under the Constitutional Framework (Article 5.4), and develop initiatives to encourage tolerance between communities and eliminate racism.

Enjoyment of social and economic rights

- UNMIK and the Kosovo Assembly should amend the Constitutional Framework to incorporate the International Covenant on Social and Economic Rights;
- The Kosovo Assembly should urgently pass the Draft Omnibus Anti-Discrimination Law and ensure access to effective legal remedies for all those alleging discrimination;
- UNMIK and the PISG should guarantee the rights set out in the Council of Europe's Framework Convention for the Protection of National Minorities;
- The Kosovo Assembly should pass legislation and implement measures to ensure that all communities enjoy the rights to employment, health care and education guaranteed in the Constitutional Framework.

The right to a safe and sustainable return

- The international community should ensure that all minority refugees from Kosovo have access to an individual asylum procedure, and should not end international protection for members of minority communities;
- The international community should delay the return of a rejected asylum-seeker if it cannot be effected in safety and with full respect for their human rights. If the same conditions persist, the claim should be reconsidered or a new claim allowed;
- The international community should ensure the continued funding of the return and reconstruction process;
- The international community should provide troops to KFOR and police officers to UNMIK until they are no longer needed, to ensure the safety of minority communities, and should continue contributing funds to the return and reconstruction process;
- UNMIK should ensure, before any repatriation: security, freedom of movement, access to illegally occupied property and cultivated lands, the reconstruction of property, and access to public services including health care and education;
- The Kosovo Assembly should encourage Albanian-controlled municipalities and Albanian civil society to facilitate the successful return and integration of minority returnees;
- UNMIK police should document return-related attacks and prosecutions, and investigate all such attacks with a view to bringing those responsible to justice.