
Kosovo

The U.N. Security Council's decision in October 2005 to approve the start of negotiations over Kosovo's final status is arguably the most significant development since the United Nations placed Kosovo under international administration in 1999. In the field of human rights, however, the picture remains bleak. Insecurity and lack of free movement for minorities, justice system failures, and widespread discrimination remain serious problems. The return of internally displaced and refugees from Kosovo to their homes continues to be stalled.

Protection of Minorities

Despite improvements in the security situation in Kosovo, members of ethnic minorities, particularly Serbs and Roma, still cannot move about freely. Minorities generally travel with specially provided transport or under military or police escort—and typically from one minority enclave to another. Due to security incidents and generalized fear, previously disbanded escorts have had to be reinstated in some locations, particularly for transport of children to schools.

While rates of reported inter-ethnic crime fell in 2005, many organizations working with minorities suspect that the decrease simply reflects greater physical separation and lack of interaction between communities since major clashes between majority Albanians and Serbs and widespread rioting in March 2004.

While most minority homes destroyed in March 2004 have been reconstructed, displaced persons trying to visit them have reported continuing threats and intimidation. Ethnic Albanians living in Serb-majority areas or who travel to such areas report similar concerns.

The fragile nature of the security situation was reinforced by a series of incidents in the second half of 2005, including the killing of two young Serbs on the road to Strpce in August; the subsequent destruction of a nearby Albanian war memorial and shooting of an ethnic Serb police officer on duty near the memorial; the shooting of the highest ranking Serb police officer in Gjilan in late September; and confirmed reports of armed masked men (calling themselves “The Army for Kosovo’s Independence”) operating in the western part of the province in October.

Minorities continue to face persistent discrimination in employment and in the provision of education, social welfare, and health services, and have limited access to administrative offices and courts. The anti-discrimination law remains little more than words on paper.

Among minorities, the situation for Roma is perhaps the grimmest. Their often precarious plight is illustrated by the displaced Roma who have been living adjacent to the Trepca mine in North Mitrovica since 1999. In 2004, the high level of lead contamination in the area led the World Health Organization to recommend an immediate evacuation of children and pregnant women and temporary relocation of all others. At this writing, the Roma remained at the site.

Return of Refugees and Internally Displaced Persons

Fewer than 5 percent of the more than 200,000 displaced Kosovar minorities who fled their homes in the second half of 1999 have returned home. Many are living under makeshift arrangements elsewhere in Kosovo; many others are living as refugees outside Kosovo. The trend of decreasing voluntary minority returns continues. As of September, there had been approximately 1,500 such returns during 2005. By comparison, there were approximately 2,300 returns during 2004 (itself a 37 percent decrease from the previous year).

As in previous years, returns that did take place in 2005 were often incomplete or partial returns, predominately to rural and mono-ethnic areas. The first Serb return to an urban area where there was not already an established Serb presence did not take place until March 2005, with sixteen families returning to Klina.

Progress on the return of the 4,100 persons displaced by the March 2004 riots has been patchy. As of September 2005, more than 1,300 persons remained officially displaced. Among the two-third no longer considered officially displaced, few have returned to reconstructed homes in their former communities, preferring instead to remain in metal containers in Gracanica, in settlements on the outskirts of towns, in unaffected minority enclaves, or outside Kosovo.

In March 2005, UNHCR revised its findings on protection needs of minorities in Kosovo, and concluded that while individual cases should continue to be assessed, there was no longer a security basis for blocking forcible returns of Ashkaelia, Egyptian, Bosniak and Gorani minorities. On that basis, UNMIK relaxed its forced returns policy, which has resulted in an increase in forced returns from western Europe, especially of the first three groups, despite concerns from NGOs in Kosovo about the sustainability of such returns.

Impunity and Access to Justice

While the challenges in establishing a new justice system in Kosovo are considerable, progress to date has been disappointing. The failure to bring to justice many of those responsible for serious crimes has created a climate of impunity that recent efforts have done little to change.

The shortcomings in the justice system, previously identified by Human Rights Watch, include a growing backlog of cases; a shortage of qualified judges; virtually nonexistent mechanisms for witness protection and relocation; poorly-trained and inadequately supported investigators and prosecutors; inadequate

defense counsel; perceptions of bias by local judges; and problematic sentencing practices. The problems affect all communities (particularly minorities), undermining confidence in the criminal justice system and the rule of law.

The poor record on prosecuting war crimes and post-war inter-ethnic and political violence continues, especially for offences carried out between 1998 and 2000. The second major trial of former Kosovo Liberation Army (KLA) members only began in October 2004. At writing, the proceedings had been completed and the three accused were awaiting judgment. In September 2005, four Kosovo Serb suspects were arrested on charges of war crimes. Despite some progress on the resolution of outstanding cases of missing persons from Kosovo, more than 2,500 cases remain.

In March 2005, the International Criminal Tribunal for the Former Yugoslavia indicted then-Prime Minister of Kosovo Ramush Haradinaj and two others (Idriz Balaj and Lahi Brahimaj) for their involvement in the “intimidation, abduction, imprisonment, beating, torture and murder” of Serb, Albanian, and Roma civilians while Haradinaj was a KLA commander and the others his subordinates in 1998 and 1999. Haradinaj resigned and surrendered to the Tribunal the same month and was granted conditional release in June 2005.

While the criminal justice response to the March 2004 violence might appear a dramatic improvement in comparison to the dismal rate of prosecutions for offences prior to that date, the reality is more sobering. While 424 people were charged with criminal acts relating to the violence, most were charged only with misdemeanors; by November 2005, only about one-half of the cases had been decided; and the majority of decisions imposed no more than minor penalties or fines, often below those stipulated in Kosovo’s minimum sentencing guidelines.

Of fifty-six cases from March 2004 relating to more serious offences—including charges for murder; the incitement of violence or organization of riots; and arson—fewer than one-third had been resolved at this writing. Less than half of the cases had even reached the courts. The vast majority of those that were decided resulted in suspended sentences. The sixteen- and eleven- year sentences imposed on two of the men who murdered a Serb man in Gjilan and brutally attacked his mother were a notable exception.

The problems with the criminal justice system are mirrored in Kosovo’s civil courts. An extreme case backlog (up to 60,000 according to some estimates), limited access to the courts for ethnic minorities, and failure to implement court decisions, are among the chief continuing obstacles.

Key International Actors

UNMIK has not recovered from the damage to its already tarnished reputation caused by the March 2004 violence. Neither the appointment of a new special representative and other senior personnel in 2004 nor the ongoing transfer of powers to the Provisional Institutions of Self-Government (set to

become Kosovo's interim government),has managed to stem the diminishing credibility of UNMIK among all communities in Kosovo.

In October 2005, the U.N. Secretary-General's Special Envoy to Kosovo Kai Ede submitted a report on Kosovo's progress toward meeting the conditions established by the international community for the start of negotiations on the province's final status. While concluding that talks should commence, the report contained a frank assessment of the international community's human rights failures in Kosovo, including the "climate of impunity" in which "far too few perpetrators of serious crimes are ever brought to justice." The report also made plain that "the overall return process has virtually come to a halt."

Following the Eide Report and the recommendation of the U.N. secretary-general, the Security Council approved the start of status talks, expected at this writing to commence by the end of 2005, emphasizing that "particular and time-conscious attention should be given to protecting minorities...[and] creating the necessary conditions to allow sustainable returns."

The expected transformation of the Ombudsperson office from an international to a local institution at the end of 2005 raised concerns about whether the office would be able to effectively monitor the activities of UNMIK and other international and national bodies, threatening an important mechanism of accountability in Kosovo.

A change of leadership at the E.U. mission helped repair a rift between the mission and the provisional government resulting from the E.U.-led privatization process. E.U. negotiators are likely to play an important role in the status talks.