



Kosovo

Not on the Agenda

The Continuing Failure to Address Accountability
in Kosovo Post-March 2004

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WATCH



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Glossary

DJA	Department of Judicial Administration (within the Kosovo provisional government)
DOJ	Department of Justice (within UNMIK)
E.U.	European Union
ICTY	International Criminal Tribunal for the former Yugoslavia
KCS	Kosovo Correctional Service
KFOR	Kosovo Force, the NATO-led international peacekeeping force
KJC	Kosovo Judicial Council
KJI	Kosovo Judicial Institute
KPS	Kosovo Police Service
LSMS	Legal Systems Monitoring Section (within OSCE)
OLA	Office of the Legal Adviser (within UNMIK)
“Operation Thor”	Special international police operation to investigate the March violence
OSCE	Organization for Security and Co-operation in Europe
Pillar I	One of originally four “pillars” of UNMIK. After May 2001 Pillar I became responsible for Justice and Police.
PISG	Provisional Institutions of Self-Government
Quint	The governments of the United States, France, Germany, the United Kingdom and Italy
SRSB	Special Representative of the United Nations Secretary-General
UNHCR	United Nations High Commissioner for Refugees
UNMIK	United Nations Mission in Kosovo

A note on place names

For the sake of clarity and consistency, in this report Human Rights Watch provides both the Serbian and Albanian name at first mention of location. Subsequent references are in the Serbian language only, since this is the English language practice (for example, Pristina rather than Prishtine).

Executive Summary

The March 2004 violence across Kosovo was the most serious setback since 1999 in the international community's efforts to create a multi-ethnic Kosovo in which both the government and society respect human rights. Widespread riots involving an estimated 51,000 people across Kosovo left nineteen people dead, almost a thousand wounded, more than four thousand people displaced and hundreds of properties destroyed. But the tragedy also offered an opportunity to demonstrate that those responsible would be brought to justice. In the aftermath, the international community repeatedly stated that justice would be done.

The criminal justice response to March 2004 provides a useful yardstick with which to measure progress on accountability efforts in the province generally. After almost seven years of international administration, it can no longer be argued that the international community has had insufficient time to address the shortcomings in the legal framework, the police, the prosecuting authorities and the courts.

Human Rights Watch research indicates that despite the rhetoric of the international community and the local leadership that accountability for the March violence would be achieved—that justice would this time be done—the reality is that accountability remains a distant goal in Kosovo.

Assessing progress on accountability for March 2004 is made complicated by the fact that there is no consensus among the international agencies tasked with overseeing the criminal justice system about the total number of prosecutions. Statistics from the Organization for Security and Co-operation in Europe (OSCE) indicate that 426 individuals have been charged for March-related offences, mostly minor offences such as theft, with just over half resulting in final decisions. Figures from the United Nations Mission in Kosovo (UNMIK) Department of Justice suggest 348 cases have been filed, with a clear-up rate that appears to match the OSCE's figure, but it is unclear whether "cases" relate to individual or multiple defendants. But whichever figures one relies upon, it is clear that progress has been limited.

Among the fifty-six "serious" cases (the number of defendants is unclear), which are being prosecuted by and before international prosecutors and judges, progress has been equally limited. By March 2006, only thirteen cases—less than one-quarter—had resulted in final decisions, with another twelve dismissed or terminated. A further two appeared

likely to reach trial. The remaining twenty-nine cases have not even reached the pre-trial investigation stage.

It is also clear that those prosecutions that have resulted in convictions have often attracted lenient sentences, including in cases in which international judges were involved. In some cases sentencing was so lenient that it fell below minimum sentencing guidelines.

There are complex reasons for the failure to bring to justice many of those responsible for the March 2004 violence. A key factor was the entry into force of a new criminal procedure code just weeks after the riots, which fundamentally restructured the criminal justice system in Kosovo, giving prosecutors, rather than investigative judges, primary responsibility for the conduct of investigations, and creating a new branch of the police to support their efforts. Despite the profound importance of that change, insufficient attention was given to operationalizing the new responsibilities of prosecutors and the police.

Also important was the establishment of a special international police operation to investigate the March violence. The operation failed to achieve its goals and was eventually disbanded due to its ineffectiveness. As the operation was not integrated into the criminal justice system, its failure impacted not only efforts in relation to March 2004, but also undermined the introduction of the reforms to the criminal justice system by disenfranchising national police officers, and by masking the importance of operationalizing the new branch of the police intended to support prosecutors in their investigative role.

The failure of the special operation underscores general shortcomings in policing in Kosovo, among international and national police alike. The police were largely passive in the conduct of their investigations and prosecutions into the March cases, in many cases failing to contact or follow up with victims and witnesses from minority communities. A lack of coordination between international and national police also hampered investigations. And few efforts were made to investigate, and where appropriate, to prosecute allegations of police misconduct during the riots.

Prosecutors contributed to these deficiencies by failing to take on their new responsibilities as investigative prosecutors, preferring instead to blame the police for the poor quality and protracted nature of their investigations. Case management problems and lenient sentencing practices undermined the success of the courts in delivering justice for March, including in cases handled by international judges.

These problems were compounded by a lack of effective oversight by the various institutions in the United Nations administration tasked with developing the rule of law in Kosovo.

Moreover, little or no effort has been made to conduct outreach in order to inform affected communities about the outcome of investigations and prosecutions arising from the March 2004 violence.

The inadequate criminal justice response to violence in March 2004 symbolizes one of the greatest problems faced by Kosovo today—rampant impunity for crime, particularly where it has a political or ethnic dimension. The track record on investigating and prosecuting war and inter-ethnic crimes prior to March 2004 is extremely poor, despite these cases also having been given priority within the criminal justice system.

The failure to deliver justice for March 2004 has reinforced the belief among Serbs and other minority communities that there is no will to create accountability for violence against minorities in Kosovo. While the international community likes to point to progress in reconstructing damaged houses, the failure to ensure accountability undermines efforts to promote return of displaced minorities to their homes and bolsters the belief within minority communities that the violence of March is likely to happen again.

The gap between the promise that those responsible for March would be held to account, and the reality, should be a warning sign to the international community that criminal justice in Kosovo is in crisis. To address that crisis, accountability for crimes, including war crimes and attacks on minorities prior to March, must be put at the heart of the political agenda, including in the status negotiations now underway.

Establishing the rule of law is a fundamental objective of the international administration in Kosovo. That cannot be achieved in a climate of impunity. It is imperative that the international community make good on its obligation to protect those within its jurisdiction and to ensure that the perpetrators of all crimes in Kosovo—including war crimes and crimes against minorities—are indeed brought to justice, as part of its strategy to establish law and order. Urgent and meaningful steps are required to tackle this culture of impunity before status is determined. Otherwise, Kosovo—regardless of its future shape—will inherit a legacy of broken judicial institutions incapable of ensuring fair and transparent justice in the territory.

Key Recommendations

Human Rights Watch urges all stakeholders in the status negotiations process to firmly place accountability issues, including for political violence, attacks on minorities, and war crimes, at the top of their agenda. (For a full list of recommendations by institution see section “Recommendations,” below.) Key recommendations include:

To the Institutions of the United Nations Mission in Kosovo (UNMIK), including the OSCE Mission in Kosovo

- Take immediate steps to put into place procedures that will ensure genuine oversight of the judiciary. Clarify publicly the role of each institution—international and national—involved in achieving this goal. Oversight should include the mandated use of a computerized database and case management tools in all courts.
- Develop an action plan with a timeframe, in consultation with the international and national police and prosecutors, to establish a judicial police branch to work directly with investigative prosecutors in the investigation of criminal cases, as required under the law. The action plan should include intensive theoretical and field-based training components for police and prosecutors.
- Develop concrete programs for collaboration between national and international prosecutors and judges, aimed at ending their segregated functioning, and improving professional standards among national prosecutors and judges.
- Conduct an outreach and public information campaign, in collaboration with the Provisional Institutions of Self-Government and justice system, to ensure that the public is aware of the outcome of important cases, may access overall statistics on conviction rates, and understands whom to approach with information about investigations or prosecutions, and that members of the public are able to obtain information on the status of cases in which they are a party or witness.
- Take immediate steps to reinvigorate and prioritize Kosovo’s witness protection programs, including legislative amendments and the adoption of new protocols where necessary.

To the Provisional Institutions of Self-Government (PISG) and National Criminal Justice System Actors in Kosovo

- High-level government officials should publicly support police and prosecutorial efforts to achieve success in solving serious, political, and inter-ethnic crime,

including by emphasizing the duty of members of the public to cooperate with such investigations and prosecutions as part of their civic responsibilities.

- Establish a central computerized caseload management system for all courts in Kosovo, in consultation with judges, prosecutors, the PISG Department of Judicial Administration, the Kosovo Judicial Council, and the UNMIK Department of Justice.
- Carry out an evaluation to determine whether consolidation of the number of courts in Kosovo would deliver a more efficient justice system and facilitate monitoring of its operation.

To the Contact Group and the European Union (E.U.)

- Ensure that a functioning criminal justice system, including accountability for violence against minorities and war crimes, is accepted by all parties as integral to the successful resolution of status for Kosovo.
- The European Union should condition ongoing financial support to the criminal justice system to observable improvements in policing, prosecutions, and the work of the courts. Regular progress reports from the U.N. and PISG should be supplemented by E.U. auditing and evaluation.
- Provide the material support necessary to enable the creation of an effective system for witness relocation and protection, including by making a public commitment to relocate witnesses from Kosovo.

Background

The Promise of Accountability for the March 2004 Violence in Kosovo

The international community is] totally determined to find the perpetrators, to find those people who are behind those kind of things, because they have tried to destroy the whole future of Kosovo. They are responsible for severe crimes against humanity.¹

—Harri Holkeri, UNMIK SRSG, March 24, 2004

Forty-eight hours of rioting by Kosovo Albanians between March 17 and 18, 2004, involving an estimated 51,000 participants throughout Kosovo, left nineteen persons dead, 954 wounded, and 4,100 displaced. At least 730 minority-owned homes, twenty-seven Orthodox churches and monasteries, and ten public buildings providing services to minorities (including a hospital, two schools, and a post office) were burned and looted. The violence mainly affected Serb, Roma, Ashkaeli, and other non-Albanian minority communities living in Kosovo, including people who had recently returned to the province, but also had an impact on the Albanian community,² nine of whom died during the riots.³

(The riots are discussed in detail in a Human Rights Watch report of mid-2004, derived from research conducted in Kosovo in the immediate aftermath of the March events. See Human Rights Watch, “Failure to Protect: Anti-Minority Violence in Kosovo, March 2004.”⁴)

¹ Nebi Qena, “UN accuses Kosovo violence instigators of ‘crimes against humanity,’” Agence France-Presse, March 24, 2004.

² It should be noted that although March 2004 did predominately affect minorities, several hundred Albanians living in a minority position in the northern part of the province were also displaced as a result of the riots.

³ The figure of nine Albanian dead (of a total nineteen) is as reported by the Organization for Security and Co-operation in Europe (OSCE); these figures are used throughout this report. The Department of Justice told Human Rights Watch that there had been twenty deaths related to the March riots, with twelve ethnic Albanians among them. Human Rights Watch interview with Department of Justice staff, Pristina/Prishtine, February 23, 2006 (for the sake of clarity and consistency, Human Rights Watch provides both the Serbian and Albanian name at first mention of location. Subsequent references are in the Serbian language only, since this is the English language practice—for example, Pristina and not Prishtine).

⁴ Human Rights Watch, “Failure to Protect: Anti-Minority Violence in Kosovo, March 2004,” *A Human Rights Watch Report*, Vol. 16 No. 6 (D), July 2004, [online] <http://hrw.org/reports/2004/kosovo0704/>. See also International Crisis Group, “Collapse in Kosovo,” Europe Report No. 155, April 22, 2004, [online] <http://www.crisisgroup.org/home/index.cfm?id=2627&l=1> (retrieved May 2, 2006).

The criminal justice response to March 2004 provides a useful yardstick with which to measure progress on accountability efforts in the province generally. First, after more than six years of international administration, it can no longer be argued that the international community has had insufficient time to address the shortcomings in the legal framework, the police, the prosecuting authorities, and the courts.⁵ Second, the international community has itself emphasized that March marked a genuine turning point in its efforts to create accountability for ethnic and political violence in Kosovo.

The resounding message from the international community and from the Kosovo Albanian political leadership at the time was that the March violence was unacceptable and that it would be “fixed.” Specifically, it was claimed that houses would be rebuilt to their original state;⁶ displaced persons would be cared for until return was possible; deficiencies in security structures and lines of communication that had led to the failure to protect would be remedied; and that those responsible would be brought to justice.

On March 17, 2004, a joint statement was issued on behalf of U.N. Mission in Kosovo (UNMIK) Special Representative of the Secretary-General (SRSG) Harri Holkeri, the Provisional Institutions of Self-Government (PISG, the interim local government in Kosovo), the E.U. Presidency, and the governments of the United States, France, Germany, the United Kingdom and Italy (the so-called Quint). It contained a clear commitment to create accountability: “The events of today and the last days will be investigated, and those responsible for deaths and acts of violence will be prosecuted.”⁷

The following day, the U.N. Security Council made clear the importance of accountability, “reiterat[ing] the urgent need for the authorities in Kosovo to take effective steps to enforce the rule of law, ensure proper security for all ethnic communities and bring to justice all the perpetrators of criminal acts.”⁸ The Council of the European Union issued a similar call at its March 25-26, 2004 summit: “The

⁵ In September 2002, the OSCE Mission in Kosovo asserted that “a regular and functional court system with regard to criminal cases had been put in place throughout Kosovo.” OSCE Mission in Kosovo, Legal Systems Monitoring Section, “Kosovo’s War Crimes Trials: A Review,” September 2002, p. 10 [hereinafter “OSCE 2002 War Crimes Report”].

⁶ The issues related to the reconstruction effort post-March 2004 fall outside the scope of this report, though they are an important aspect of the comprehensive accountability effort to be undertaken in Kosovo post March-2004.

⁷ Joint Statement of PISG, Political Leaders, the QUINT, E.U. Presidency and SRSG Harri Holkeri, UNMIK/PR/1141, March 17, 2004, [online] <http://www.unmikonline.org/press/2004/pressr/pr1141.pdf> (retrieved April 15, 2006).

⁸ United Nations, “Security Council, in Presidential Statement, Strongly Condemns Inter-Ethnic Violence in Kosovo, Insists on Immediate Halt,” U.N. Press Release, SC/8030, March 18, 2004, [online] <http://www.un.org/News/Press/docs/2004/sc8030.doc.htm> (retrieved April 15, 2006).

European Council strongly condemned the recent ethnically-motivated violence in Kosovo... Those responsible for the violence must be brought to justice.”⁹

The Kosovo Standards Implementation Plan—“standards” being the political criteria tied to negotiations on Kosovo’s future status—dated March 31, 2004, also makes reference to the need for accountability for the March violence. The first item on the list of priority actions for the rule of law under the plan is: “As soon as possible, bringing to justice those responsible for crimes of violence during the events of 17-20 March 2004 and ensuring they are punished appropriately.”¹⁰

In May 2004, European Union External Relations Commissioner Chris Patten, echoed the call for accountability: “The violent events of last March constitute a serious setback for Kosovo. It is essential that those responsible are brought to justice.”¹¹

At the request of the U.N. Secretary-General Kofi Annan, Special Envoy Kai Eide conducted a political assessment of Kosovo during the summer of 2004. In his report to the Secretary-General, Eide emphasized the need for the international leadership in Kosovo to show “demonstrable progress in the area of security, reconstruction, prosecution of those responsible for March events, and reform of local government.”¹²

By late 2004, there was a widely held belief that real progress was being made in these areas. There had been a flurry of highly publicized arrests for March-related crimes immediately after the riots, as well as prompt allocation of funds from the central Kosovo budget for reconstruction efforts.

The Structure of the Criminal Justice System in Kosovo

Police

The Kosovo police is a hybrid force of national and international police officers. Upon arrival in Kosovo in 1999, and as part of its policing responsibilities, UNMIK established an international U.N. civilian police force, responsible for interim law

⁹ Council of the European Union, Presidency Conclusions, 9048/04, POLGEN 20, CONCL 1, March 25-26, 2004, [online] http://europa.eu.int/comm/environment/climat/pdf/spring_2004.pdf (retrieved April 15, 2006).

¹⁰ Kosovo Standards Implementation Plan, March 31, 2004, [online] http://www.unmikonline.org/pub/misc/ksip_eng.pdf (retrieved April 15, 2006).

¹¹ “Patten visits Belgrade and Pristina, 10th and 11th May,” E.U. Pillar, UNMIK, Press Release, Pristina, May 7, 2004, [online] <http://www.euinkosovo.org/press/2004/pr07052004.html> (retrieved December 15, 2005).

¹² Kai Eide, “The Situation in Kosovo—Report to the Secretary-General of the United Nations, Summary and Recommendations,” August 2004, page iv, paragraph 15.

enforcement functions until the creation of a “credible, professional, and impartial” Kosovo Police Service (KPS).¹³

UNMIK was also tasked with the establishment of the KPS, with support from the Organization for Security and Co-operation in Europe (which is responsible for “institution building” in Kosovo). UNMIK and the OSCE have worked together to train recruits to become KPS officers, a process that began in September 1999 with the training of the first group of 176 aspiring police officers.¹⁴ By March 2006—six-and-a-half years later—some 6,846 KPS officers had been trained and deployed throughout Kosovo.¹⁵ (At the time of the riots, there were 5,700 KPS officers.¹⁶)

While in March 2004 most of the KPS officers were working under the supervision and direction of the international UNMIK Police, since then much of the policing responsibilities in Kosovo have been transferred to the operational control of the national KPS police.¹⁷ UNMIK international police officers function primarily in a monitoring and advisory role, and their numbers are steadily decreasing as the mission comes to a close. From approximately 4,450 officers in early 2003,¹⁸ by March 2006 there were 2,200 international officers working in Kosovo.¹⁹

¹³ UNMIK, “Police and Justice (Pillar I)—Police, Mandate,” undated, [online] <http://www.unmikonline.org/justice/police.htm> (retrieved March 6, 2006).

¹⁴ Ibid.

¹⁵ Another 411 were attending the school and expected to be deployed by June 2006. KPS ultimately aims to train and deploy approximately 7,200 KPS officers in Kosovo—a goal largely achieved, but expected to be supported by the ongoing recruitment and training of small groups of officers to respond to the normal turnover within the service. Human Rights Watch interview with KPS training department, Pristina, March 1, 2006.

¹⁶ Figure from UNMIK, cited in Human Rights Watch, “Failure to Protect.”

¹⁷ All thirty-three (33) police stations and five of the six regional headquarters (all but Mitrovica/Mitrovce) have been transferred to KPS control, with international officers sitting primarily in a monitoring and advisory role. In addition, by late 2005 the following units had been transferred to KPS control: the Canine (K-9) Unit; gender affairs units; regional crime squads; regional traffic units; the KPS Appeals Board; weapons licensing; community policing; professional standards; and forensics. “Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo to the Security Council,” S/2006/45, January 25, 2006, Annex I “Technical assessment of progress in implementation of the standards for Kosovo,” prepared by the Special Representative of the Secretary-General for Kosovo on December 20, 2005, pp. 12-13, para. 29.

¹⁸ UNMIK website at <http://www.unmikonline.org/justice/police.htm> (retrieved March 6, 2006). In comparison, by the end of 2003 there were 3,752 international police officers in the mission. In March 2004, the number of international UNMIK civilian police had reduced to 3,248. U.N. Security Council, “Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo,” U.N. Doc. S/2004/348, April 30, 2004, Annex 1.

¹⁹ This includes 1,718 civilian police (CIVPOL), two officers working in the correctional facilities, and five hundred members of Special Police Units (SPUs). Human Rights Watch telephone interview with UNMIK Police representative, Pristina, March 1, 2006. UNMIK Police officers come from some forty-six contributing nations, from Argentina to Zimbabwe, and vary widely in terms of their policing experience and human rights awareness.

In April 2004—just a few weeks after the March riots—a new criminal procedure code and criminal code came into effect that fundamentally altered the structure of the criminal justice system, shifting primary responsibility for bringing cases to trial from investigating judges to prosecutors. The new law introduced the concept of a “judicial police,” a specialized police branch tasked with supporting the investigative efforts of prosecutors.²⁰ (See section on “Impact of the April 2004 Restructuring of the Criminal Justice System,” below.)

Prosecutorial Service

The prosecution service in Kosovo is also hybrid, with nationals and internationals working separately within the same court system. At the time of writing there were ten international prosecutors working for the criminal division of the Department of Justice (DOJ).²¹ Since late 2005, the work of the international prosecutors has been centralized, with all international prosecutors working from the DOJ building in Pristina, supervised by the deputy director of the department.²² Though working under the same domestic law as national prosecutors, international prosecutors have the authority to remove cases from national prosecutors’ jurisdiction or to retain them for themselves. Cases are generally taken over or retained where they are deemed sensitive because they include an inter-ethnic, political or organized crime dimension.

The eighty-nine national prosecutors working in Kosovo’s courts are divided between thirteen prosecutors’ offices throughout the province. These offices mirror the structure of the courts. The service has three tiers, headed by the Pristina-based Office of the Public Prosecutor for Kosovo, followed by five district prosecutors’ offices, and seven municipal prosecutors’ offices. The offices are generally located in court buildings.²³

²⁰ Provisional Criminal Procedure Code of Kosovo, UNMIK/REG/2003/26, July 6, 2003, entered into force April 6, 2004, [online] http://www.unmikonline.org/regulations/2003/RE2003_26_PCPC.pdf (retrieved April 14, 2006).

²¹ In the fall of 2005 and early 2006 there were thirteen international prosecutors. Human Rights Watch telephone interview with criminal division staff member, Department of Justice, May 8, 2006.

²² Human Rights Watch interview with international prosecutor, Department of Justice, Pristina, February 20, 2006. Previously, there was an international prosecutor designated to work in the Supreme Court and one or two prosecutors based in each region (district courts). For an in-depth discussion of the history of international judges and prosecutors in Kosovo see Michael E. Hartmann, “International Judges and Prosecutors in Kosovo: A new Model for Post-Conflict Peacekeeping,” United States Institute of Peace, Special Report no. 112, October 2003, [online] <http://www.usip.org/pubs/specialreports/sr112.html> (retrieved March 14, 2006).

²³ For further discussion of the locations and mandate of these offices, see Rubotham, Sejr, Tunheim, Wiggins, and Zimmer, “Kosovo Judicial System: Assessment and Proposed Options 2003-2004,” prepared pursuant to a request of the SRSG and KJPC, July 2005, pp.34-36 [hereinafter Rubotham and others, “Kosovo Judicial System Assessment”].

The Office of the Public Prosecutor for Kosovo has a mandate to oversee and standardize the work of all of the prosecutors in the province. In practice, however, this does not happen. Although the Office does submit reports on national prosecutors' work to the Department of Justice, the head public prosecutor made clear to Human Rights Watch that he understands the mandate of the Office for the Public Prosecutor to relate to appeals to the Supreme Court rather than supervising the work of national prosecutors.²⁴

One national prosecutor described the current interaction between national and international prosecutors as "a parallel system."²⁵ International prosecutors confirmed the separation of the two prosecutorial systems, suggesting that this was largely due to the nature of their work on different cases and the logistical set-up of their office space.

In practice, then, each national prosecutorial office works autonomously from the national system and from the international prosecutors working in the province. The lack of coordination between prosecutors' offices exacerbates the difficulties that prosecutors already face with a large caseload and insufficient numbers of staff.²⁶

In the words of the Head Public Prosecutor:

We have an international prosecutor assigned [to this jurisdiction]. I never see him. He officially works for this office, but I never see him. It would be different if he was here and we ran into each other and could organize our work together. . . It is obvious. They do not even try to hide the fact that we are completely separate.²⁷

Lack of coordination limits experience-sharing between national prosecutors or between national and international prosecutors, and inhibits the development of best practices.

²⁴ Human Rights Watch interview with staff of the Office for the Public Prosecutor for Kosovo, Pristina, February 1, 2006. When specifically asked if this office has hierarchy over the other prosecutor offices in Kosovo, the head of this office replied, "only sometimes in some individual cases." He further explained that for example if a case from the district court were appealed, his office would have hierarchy over the district court-level prosecutors and thus conduct the appeal.

²⁵ Ibid.

²⁶ The Department of Justice told Human Rights Watch that it has been difficult to find additional qualified people to fill these spots. Human Rights Watch interview with senior official, Department of Justice, Pristina, February 3, 2006.

²⁷ Human Rights Watch interview with national prosecutor, Office for the Public Prosecutor for Kosovo, Pristina, February 1, 2006.

Following major changes to the criminal justice system in April 2004, all prosecutors, national and international, are now expected not only to prosecute cases but to also work in an investigative capacity with the police on investigations, “directing and supervising the work of the judicial police in the pretrial stage of criminal proceedings.”²⁸ This new role, previously performed by judges, significantly increased demands on the prosecutorial service, and underscores the need for effective coordination of the work of prosecutors both horizontally and vertically. (For more details, see section on “Impact of the April 2004 Restructuring of Criminal Justice System,” below.)

Courts

Kosovo is a civil law system. The present court structure is largely that of the pre-conflict system, with one important change. That change arises from the reforms of April 2004, which removed investigative responsibilities from judges and gave them to prosecutors. At the top there is a Supreme Court with appellate and original jurisdiction. The Supreme Court has a broad mandate to supervise the work of the lower courts, but it has not exercised this function since 1999.²⁹

Below the Supreme Court there are five regional district courts, also with original and appellate jurisdiction.³⁰ Original jurisdiction for criminal cases in the district courts is generally for crimes that carry a penalty of five years of imprisonment or more. Below the district courts are twenty-four municipal courts across Kosovo with first-instance jurisdiction over criminal cases with a penalty of up to five years of imprisonment.³¹

Also, twenty-five minor offenses courts have jurisdiction over all cases that hold a maximum penalty of two months of imprisonment. These cases are primarily of the “disturbance to public order” type, including a large percentage of traffic violations. They do not require and rarely include the appearance of prosecutors or defense attorneys as part of the proceedings. Appeals from the minor offenses courts may be heard by the High Court for Minor Offenses.

²⁸ See Rubotham and others, “Kosovo Judicial System Assessment,” pp.70-76, for an analysis of the impact of transferring investigative responsibilities to the prosecution under the new code.

²⁹ See Rubotham and others, “Kosovo Judicial System Assessment,” p.26.

³⁰ The districts are: Pristina, Prizren/Prizren, Gnjilane/Gjilan, Pec/Peje, and Mitrovica.

³¹ For a detailed description of the jurisdiction of these courts see discussion in Rubotham and others, “Kosovo Judicial System Assessment,” pp.15-22. Note that in addition to the twenty-four municipal courts there are additional departments in two majority Kosovo Serb areas: Gracanica/Gracanice, which is a department of the municipal court of Pristina; and, Strpce/Shterpce, which is a department of the municipal court in Urosevac/Ferizaj.

By the end of January 2006 there were a total of 306 national and thirteen international judges working in the Kosovo courts. The international judges only operate in the Supreme and district courts, sometimes as members of mixed international-national panels and sometimes on exclusively international panels (e.g. for war crimes trials). They hear cases tried by international prosecutors.

Kosovo's fifty-nine courts are located in thirty-six buildings across the province.³² The geographic spread of court locations has been regarded in some quarters as an impediment to effective monitoring of proceedings by the Department of Justice, the OSCE, the Department of Judicial Administration, and nongovernmental organizations.

Political Oversight of the Criminal Justice System

The international United Nations civilian administration in Kosovo is a complex system in which responsibility is shared among the United Nations, the OSCE and the European Union.³³ The head of mission is a Special Representative of the United Nations Secretary-General (SRSG) and ultimately wields all legislative and executive authority in Kosovo, including the administration of the criminal justice system.³⁴

In 2001, as envisioned by the U.N. Security Council when the United Nations assumed responsibility for Kosovo two years previously, UNMIK began transferring some of its powers to local institutions. These institutions include a directly elected Assembly, which in turn elects the President and appoints the Kosovo Government. Kosovo has seen an accelerated transfer of powers to the Provisional Institutions of Self-Government (PISG) in the last couple of years. In addition to a previous and broad transfer of powers across

³² This number includes the two departments in Gracanica and Strpce as well as the commercial court in Pristina. The non-functioning commercial court in Djakovica is excluded from this total.

³³ The original structure of the U.N. Mission in Kosovo (UNMIK), established by U.N. Security Council Resolution 1244, divided responsibility among four "pillars." Pillar I, headed by UNHCR, was responsible for humanitarian assistance; Pillar II, under the control of UNMIK, was responsible for civil administration; Pillar III, led by the OSCE, had responsibility for institution building; and Pillar IV, managed by the E.U., was tasked with economic reconstruction. The humanitarian pillar was phased out in June 2000 and replaced by a new Pillar I for Justice and Police in May 2001. Policing and justice issues under the civil administration pillar's authority were transferred at that time to the new Pillar. Pillar II was dissolved in the fall of 2005, and its functions transferred to local institutions or redistributed among Pillar actors. For a more detailed discussion of the establishment of UNMIK and developments in Kosovo, see Security Council Report, Update Report: Kosovo, February 10, 2006, [online] http://www.securitycouncilreport.org/site/c.gKWLeMTIsG/b.1416071/k.D974/update_report_no3BRKosovoBR10_February_2006.htm (retrieved March 14, 2006).

³⁴ The civilian administration is augmented by an international peacekeeping force (the NATO-led Kosovo Force, KFOR) tasked with maintaining peace and security and guarding Kosovo's borders.

the municipal level, a number of ministries have been transferred from international to national control.³⁵

UNMIK Police and Justice

UNMIK Pillar I—Police and Justice is the primary rule of law and justice player in Kosovo.³⁶ The Pillar not only holds reserved powers over the functioning of the various aspects of the system, but also dictates policy to the institutions that answer directly to it. Pillar I also retains financial control of the national judiciary and control of overall policy decisions.³⁷ Pillar I has both a police department headed by an international police commissioner and a Department of Justice, and is “the focal point for UNMIK’s efforts to establish the rule of law in Kosovo.”³⁸

Pillar I oversight over the national judiciary is supported by a local Department of Judicial Administration (DJA) within the transferred Ministry of Public Services in the PISG. This Department has technical responsibility for the administration of the national judiciary, but is primarily engaged with managing material and staffing resource requests from the national judges and prosecutors to the UNMIK Department of Justice and Pillar I.

The Department of Justice

To date, the UNMIK Department of Justice, acting for the international administration, has exercised responsibility for the courts in Kosovo, performing the functions of a

³⁵ These ministries include the Ministry of Local Government Administration; the Ministry of Public Services; the Ministry of Culture, Youth and Sports; the Ministry of Education; the Ministry of Health; the Ministry of Labour and Social Welfare; the Ministry of Communities and Returns; the Ministry of Environment and Spatial Planning; the Ministry of Finance and Economy; the Ministry of Trade and Industry; the Ministry of Energy and Mining; the Ministry of Transport and Communications; the Ministry of Science and Technology; and the Ministry of Agriculture, Forestry and Rural Development. The process of transferring powers to the newly established ministries of Justice and Internal Affairs was in progress at the time of writing. (See discussion in subsection “The Establishment of New PISG ministries of Justice and Internal Affairs,” below.)

³⁶ On May 1, 2006, as this report was going to press, Pillar I was abolished. Its functions are now being carried out by a new policy office within the Office of the SRSG (Policy Office for Rule of Law). The Department of Justice and the Office of the Police Commissioner now report directly to the principal deputy SRSG, rather than to the head of Pillar I. These changes came too late for inclusion in the report. The analysis contained in this report is largely unaffected by the restructuring since UNMIK retains oversight of police and justice matters. All references in the report to Pillar I should be understood to refer to the Office of the SRSG. For more information see Office of the SRSG, PDSRSG, Guidance Circular on Restructuring of Pillar I, May 10, 2006, on file with Human Rights Watch.

³⁷ Human Rights Watch interview with Department of Judicial Administration official, Pristina, February 15, 2006.

³⁸ UNMIK, Pillar I—Police and Justice, Introduction, undated, [online] http://www.unmikonline.org/justice/index_pillar1.htm (retrieved April 17, 2006).

ministry of justice. The department is tasked with prosecution and adjudication of the most serious cases through international prosecutors and judges as well as responsibility for overall justice concerns. There are specific sections within the DOJ tasked with prosecution of crimes and with general judicial development, including the overall functioning of the national judiciary.³⁹ The Department also maintains responsibility for substantive legal and policy decisions.⁴⁰

While theoretically much of the responsibility for oversight of the judiciary at the ground level in courts and prosecutorial offices falls to the PISG, in practice this has not happened. Instead, as noted above, the local Department of Judicial Administration (DJA) has primarily acted as a conduit between the courts and the Department of Justice with regard to material and personnel needs. The DJA maintains some statistics on the work of the courts, but does not carry out management or administrative functions over them.⁴¹ These functions are performed by individual court administrators and/or presidents. In the words of a senior DJA official:

Although this Department has been transferred to the Ministry of Public Services, it is not really in charge of the judiciary, beginning with the budget. If you have no budget you cannot make any decisions. So we coordinate with the DOJ.... Whatever lies with the work of the courts, with professional issues, is the DOJ. Court staff and resources—that is DJA. The DOJ has acted as a Ministry of Justice with reserved powers until now—even still now....⁴²

Given UNMIK's continued control over the budget and its reserved powers in the areas of justice and policing, including responsibility for the police, prosecutors, and courts, as

³⁹ Human Rights Watch interviews with Department of Justice staff, Kosovo, October and November 2005; Human Rights Watch interview with staff of the Legal Policy Division, Department of Justice, Pristina, January 2006; Human Rights Watch interview with staff of the Judicial Development Division, Department of Justice, Pristina, February 2006. See also the UNMIK website description of the Department of Justice's mandate at http://www.unmikonline.org/justice/index_pillar1.htm. For a detailed analysis of the justice system in Kosovo, see Rubotham and others, "Kosovo Judicial System Assessment."

⁴⁰ UNMIK, Pillar I—Police and Justice, Introduction, undated, [online] http://www.unmikonline.org/justice/index_pillar1.htm (retrieved April 17, 2006); See also United Nations, Human Rights Committee, "Report Submitted by the United Nations Interim Administration Mission in Kosovo to the Human Rights Committee on the Human Rights Situation since June 1999," February 15, 2006, CCPR/C/UNK/1, para. 34.

⁴¹ Human Rights Watch interview with senior management of the Department of Judicial Administration, Pristina, February 15, 2006.

⁴² Ibid.

well as agenda setting, and in the assessment of DJA official above, it is apparent that Pillar I remains the central actor in the criminal justice system in Kosovo.⁴³

The Establishment of New PISG Ministries of Justice and Internal Affairs

Some of the Department of Justice's powers are in the process of being transferred to a new Ministry of Justice within the PISG. The bulk of the Ministry of Justice's new responsibilities will initially be administrative in nature. It is expected that UNMIK will continue to exercise responsibility for sensitive cases (such as those involving inter-ethnic conflict or organized crime) for the near and mid-term future. The Special Representative of the Secretary-General and head of UNMIK (currently Soren Jessen-Petersen) will also retain reserved powers over highly sensitive or political issues.⁴⁴

In mid-March 2006, a first minister of justice was elected and approved by the SRSG. His main priorities for his first three months in office, as reported in the press, include further staffing, the creation of an inter-ministerial working group, and negotiating terms for the ministry with UNMIK Pillar I.⁴⁵ After the establishment of the Ministry, the DJA was officially divided. The department's responsibilities for prosecution matters have been transferred to the jurisdiction of the Ministry of Justice. Its court administration responsibilities have been formally transferred to the Kosovo Judicial Council (established pursuant to UNMIK regulation No. 52/2005).⁴⁶ At the time of writing, discussions over the transfer of the court administration budget were ongoing.⁴⁷

⁴³ UNMIK appears to come to the same conclusion, making the following observation: "Despite the reorganization of the Department [DJA] to correspond with the constitutional framework, difficulties continue to persist. Essentially, the framework leaves substantive legal and policy decisions as reserved functions, yet transfers the administration of many of these policies to the Department of Judicial Administration of the Ministry of Public Services." UNMIK, Police and Justice, Effects of Constitutional Framework, undated, [online] <http://www.unmikonline.org/justice/justice.htm> (retrieved April 17, 2006).

⁴⁴ Human Rights Watch interview with senior management, Department of Justice, Pristina, February 3, 2006; Human Rights Watch interview with senior officials, Office of the Legal Advisor (OLA), Pristina, March 8, 2006. The Office of the Legal Advisor (OLA) is engaged in legislative drafting and review; it reports to and directly advises the SRSG on legal matters pertaining to the mission. See also, U.N. Security Council, "Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo to the Security Council," S/2006/45, January 25, 2006. For a discussion of the transfer of competencies to the PISG-led ministries of Justice and Internal Affairs see Edina Halapi, "New Ministries: PISG Assumes New Responsibilities," UNMIK, *Focus Kosovo*, January 2006, [online] <http://www.unmikonline.org/pub/focuskos/jan06/focusklaw1.htm> (retrieved April 17, 2006).

⁴⁵ "Kosovo Ministry of Justice and of Interior Get Competencies," *Balkan Update*, March 22, 2006, [online] <http://balkanupdate.blogspot.com/2006/03/kosovo-ministry-of-justice-and-of.html> (retrieved April 17, 2006); "Salihaj: I will serve justice," *Epoka e Re* (Pristina), as reported by UNMIK, Division of Public Information, Media Monitoring, March 20, 2006, on file with Human Rights Watch.

⁴⁶ Human Rights Watch interview with official, Department of Justice, Kosovo, May 5, 2006. The DJA explained that the transfer would affect its reporting line (to the KJC instead of the DOJ) more than the actual day-to-day nature of its work. Human Rights Watch interview with official, Department of Judicial Administration, Pristina, February 15, 2006.

On December 20, 2005, UNMIK also passed a regulation on the establishment of a Ministry of Internal Affairs. The implementation plan for the new ministry, as with the Ministry of Justice, first involves the appointment of a minister and deputy minister. Following these appointments, the ministry will begin to assume legal, technical, financial, and administrative responsibility for policing. Transfer of the more important responsibilities such as full operational control of the KPS and the Kosovo Correctional Service (KCS, which administers detention facilities) will only take place after a three-month performance evaluation by the Special Representative of the Secretary-General.

Following a positive evaluation, the next step would be the appointment of a KPS deputy police commissioner who would work directly under the guidance of the minister of internal affairs, but still be subject to the overall authority of the Special Representative and the international UNMIK Police commissioner.⁴⁸ At the time of writing, a minister for the post of the Ministry of Internal Affairs had just been appointed, and two departments (of Emergency and of Civil Documents) had been transferred to the new Ministry.⁴⁹

The Kosovo Judicial Council will serve as an independent, administrative arm of the judicial branch. The Council members were sworn in during a ceremony in early April 2006. UNMIK "Members of Newly Established Kosovo Judicial Council Sworn-in," Press Release, UNMIK/PR/1523, April 3, 2006, [online] <http://www.reliefweb.int/rw/RWB.NSF/db900SID/EK0I-6NJ4PU?OpenDocument> (retrieved April 17, 2006). For discussion of the role of the newly constructed KJC see Arianna Lepore, "A Recipe for Judicial Independence," UNMIK, *Focus Kosovo*, January 2006, [online] <http://www.unmikonline.org/pub/focuskos/jan06/focusklaw2.htm> (retrieved March 6, 2006).

⁴⁷ Human Rights Watch email correspondence with the Department of Judicial Administration, March 21, 2006.

⁴⁸ See U.N. Security Council, "Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo to the Security Council," S/2006/45, p. 6, para. 13,

⁴⁹ "Ministry of Justice and of Interior Get Competencies," as reported by UNMIK, Division of Public Information, Media Monitoring, March 21, 2006, on file with Human Rights Watch. After the first meeting between the new minister of interior and the SRSG, the SRSG publicly stated: "[w]e are aware that the two newly established ministries have some logistic deficiencies in the beginning, but UNMIK believes in the responsibility of the locals. Based on what we heard and based on the commitment we saw, I think that we can start the second phase of the transfer of powers soon." The official UNMIK website does not report on developments relating to the establishment of the ministries.

Accountability in Kosovo Prior to March 2004

The picture of accountability in Kosovo pre-March 2004 was already bleak. Across the spectrum of offences—from war crimes and attacks on minorities at one end to minor criminal matters at the other—those responsible were frequently not brought to justice. The resulting climate of impunity affected all of Kosovo's communities, Albanian and minority alike.

Domestic Prosecution of War Crimes in Kosovo

I want to be able to trust again. I really do. But no matter what my mind tells me, my heart cannot hear it. There is unfinished business.⁵⁰

The impression among many Albanians in Kosovo is that there has been little or no justice for the atrocities of the Milosevic regime.

During the 1999 conflict between NATO and Yugoslavia over Kosovo, Kosovar Albanians were subjected to a systematic campaign of mass murder, rape, forced expulsions, and other war crimes committed by Serb and Yugoslav forces.⁵¹

While the most serious of those crimes are being dealt with by the International Criminal Tribunal for the former Yugoslavia (ICTY),⁵² the lesser offences are the responsibility of courts in Kosovo. To date, there have only been twenty-three cases of war crimes brought in Kosovo's courts. The vast majority of these cases (involving Serb defendants), were first tried by panels of national judges. The war crimes cases tried by national judges have been characterized by serious errors, such as failing to call crucial

⁵⁰ Human Rights Watch interview with staff member, nongovernmental agency, Kosovo, November 2, 2005.

⁵¹ For a detailed history of the war crimes committed by Serb and Yugoslav forces during the Kosovo conflict, see Human Rights Watch, *Under Orders: War Crimes in Kosovo* (New York: Human Rights Watch, 2001).

⁵² The perception among many Albanians that justice has not been done extends to the work of the ICTY. Two of the five cases brought before the Tribunal relating to atrocities committed in Kosovo have been against ethnic Albanian former KLA defendants for crimes against both Serb and Albanian civilians. The other three indictments (against nine of the highest ranking Yugoslav and Serbian leaders) are for atrocities committed against the ethnic Albanian population during the conflict. One of these indictments, the case against former Yugoslav President Slobodan Milosevic, was withdrawn after Milosevic's death in March 2006. The first decision relating to the Kosovo conflict was rendered on November 30, 2005. The fact that two of the three accused in the case ("Fatmir Limaj et al") were acquitted may have helped shift perceptions of the ICTY among ethnic Albanians in Kosovo. For more on the work of the ICTY in Kosovo see <http://www.un.org/icty> (retrieved April 15, 2006).

witnesses during the trial, and convictions that frequently lacked well-reasoned arguments to support the finding of guilt.⁵³

On appeal and retrial before majority international panels almost all of the cases have resulted either in acquittals or a conviction for lesser charges. Several cases were suspended or dismissed because the defendant remains at large after escaping from detention facilities in Kosovo. Only a handful of cases have resulted in final criminal convictions, including one case heard *in absentia*. Often those found guilty were convicted of ordinary criminal offences rather than war crimes.⁵⁴

At present, ongoing war crimes investigations and prosecutions are dealt with exclusively by international lawyers and judges working for the Department of Justice.⁵⁵ Efforts to establish a domestic court or chamber with special jurisdiction over wartime and ethnically-motivated crimes—an approach adopted in Bosnia, Serbia proper, and Croatia—were abandoned early on for financial and other reasons.⁵⁶ A department of

⁵³ An OSCE report from 2002 on war crimes cases documents the serious problems with the trials up to that point. Problems identified include: concerns over the clarity and specificity of indictments; the unprofessional and incomplete nature of verdicts, including poorly formulated legal reasoning and citation to relevant case law; the failure of the Supreme Court to “help to establish the basis for a dynamic, critical, independent jurisprudence of Kosovo courts;” insufficient allocation of resources for prosecutors and judges trying war crimes cases; concerns as to witness credibility; discussions that served to impair rather than enhance the adjudicatory process, thus demonstrating a need for verbatim recording of testimony in courts; and an apparent unwillingness to duly locate and bring forward Serbian defense witnesses. See OSCE Mission in Kosovo, Legal Systems Monitoring Section (LSMS), “Kosovo’s War Crimes Trials: A Review,” September 2002. See also International Crisis Group, “Finding the Balance: The Scales of Justice in Kosovo.” Europe Report No. 134, September 12, 2002, [online] <http://www.crisisgroup.org/home/index.cfm?id=1609&l=1> (retrieved November 18, 2006).

⁵⁴ Human Rights Watch telephone interview with International Committee of the Red Cross representative, Pristina, November 11, 2005; Human Rights Watch telephone interview with official, OSCE LSMS, November 14, 2005; Human Rights Watch interview with international prosecutor, Department of Justice, Pristina, November 16, 2005; Human Rights Watch telephone interview with Humanitarian Law Center, Pristina, December 22, 2005; Human Rights Watch interview with international prosecutorial section of the Department of Justice, Pristina, February 23, 2006. In some cases it appears that ordinary criminal charges were filed instead of war crimes charges, for reasons such as limiting the likelihood of witness intimidation. It may therefore be that some of the crimes from the wartime period have been investigated and prosecuted under ordinary criminal charges and that the public is simply unaware of these efforts. Human Rights Watch interview with UNMIK spokesperson, Pristina, September 2005; Human Rights Watch interview with international prosecutor, Department of Justice, Pristina, November 16, 2005.

⁵⁵ The only exception is where national judges are called to sit on mixed panels to decide on issues—such as detention—that are not considered of a sensitive nature and thus do not require a purely international panel of judges. Human Rights Watch interview with international prosecutorial section of the Department of Justice, Pristina, February 23, 2006; Human Rights Watch interview with Supreme Court judge, Department of Justice, Pristina, February 22, 2006.

⁵⁶ The creation of a domestic court tasked with handling war crimes was proposed in December 1999, but ultimately rejected in August 2000. Although there have been recent proposals made to UNMIK Pillar I regarding the creation of some form of a specialized court for serious crimes, including cases of war crimes or cases involving serious inter-ethnic violence, at the time of writing these proposals were still pending

international prosecutors and judges was instead tasked with addressing these cases, in the hope that early concerns about judicial and prosecutorial bias and competency could be avoided.⁵⁷

While a few war crimes cases are still pending, prospects for achieving real progress on accountability for war crimes appear limited. At present only four cases remain active, despite investigations into hundreds of cases. Furthermore, only six war crimes cases have been filed since May 2002.⁵⁸

Prosecutions have been complicated by the fact that many of the suspected perpetrators are no longer present in Kosovo. It is unclear to what extent the limited success on prosecutions can be attributed to the low priority accorded to accountability for war crimes in Kosovo among key western governments and to what extent it can be understood as a management failure by UNMIK.⁵⁹

Accountability for Violence against Minorities

Prior to March 2004, there was a perception among the international community that the situation for Kosovo's minorities had stabilized. While minorities continued to face periodic violence, harassment, and intimidation, it was far below the scale of violence—including murder, arson, and forced displacement—directed against Serb, Roma and other minorities following the withdrawal of Yugoslav and Serbian forces in June 1999.

But the failure of the international community to protect minorities prior to March 2004, and particularly in 1999 and 2000, mirrors an ongoing failure to bring to justice those responsible for the violence. In a 2002 report, the OSCE noted that “[t]he vast majority of serious inter-ethnic crimes that have taken place over the past two and a half years

consideration and further development. Human Rights Watch interview with senior management, Department of Justice, Pristina, February 3, 2006; Human Rights Watch interview with Supreme Court judge, Department of Justice, Pristina, February 22, 2006.

⁵⁷ International Crisis Group, “Finding the Balance,” p. 25. For further analysis, see Hartmann, “International Judges and Prosecutors in Kosovo.”

⁵⁸ Human Rights Watch telephone interview with official, OSCE LSMS, November 14, 2005; Human Rights Watch interview with staff of the prosecutorial section, Department of Justice, February 23, 2006. The OSCE reported five additional cases, while the Department of Justice has six new cases on record (meaning cases not included in the original seventeen cases reported on in the OSCE LSMS report of 2002).

⁵⁹ Department of Justice staff told Human Rights Watch that there continue to be serious obstacles to investigating and trying war crimes cases, including for example the absence of witness relocation and protection programs, and the absence of diplomatic measures to resolve the issue of alleged perpetrators residing outside of the province.

have resulted neither in identification nor arrest of suspected perpetrators, and most ethnic crimes committed in 1999 and 2000 have not been prosecuted.”⁶⁰

Human Rights Watch’s recent discussions with officials at the OSCE, in the Department of Justice, with the Ombudsperson, and with human rights and humanitarian law organizations suggest that the picture since the publication of the 2002 OSCE report remains largely unchanged.⁶¹

The lack of accountability extends to war crimes prosecutions involving victims from minority communities. By the end of 2005, there had yet to be a single domestic war crimes case filed in which the victims were Serbs or other non-Albanians, despite the fact that Serb, Roma, Ashkaeli, and other non-Albanian communities were also victims during the armed conflict in Kosovo.⁶²

In interviews with Human Rights Watch in the fall of 2005, members of minority communities cited attacks on minorities and their properties, which have never been prosecuted, as proof that the international community does not have the will to address their needs and concerns, much less to protect them.⁶³

⁶⁰ OSCE/UNHCR, “Ninth Assessment of the Situation of Ethnic Minorities in Kosovo, September 2001 – April 2002,” p. 18.

⁶¹ Human Rights Watch interview with the ombudsperson, Ombudsperson Institution, Pristina, October 31, 2005; Human Rights Watch informal discussions with OSCE staff, Pristina, October-November 2005; Human Rights Watch interview with staff of the Office of the High Commissioner for Human Rights (OHCHR), Pristina, November 14, 2005; Human Rights Watch interview with representatives of the Department of Justice, Pristina, November 16; Human Rights Watch interview with Humanitarian Law Center, Pristina, December 22, 2005. Human Rights Watch again verified this information with the international prosecutorial section of the Department of Justice in February 2006.

⁶² Human Rights Watch telephone interview with Humanitarian Law Center, Pristina, December 22, 2005.

⁶³ Human Rights Watch interviews in Kosovo, September 16-25, 2005.

The Criminal Justice Response to March 2004

It has been very badly handled. The current U.N. Police Commissioner is appalled by the work done. Very few cases were brought to court. They were virtually not sentenced. This is what people do not understand. [The violence in] Svinjare—the whole thing—was filmed from helicopters. How is this possible?⁶⁴

Attacks on minorities, and the failure to properly tackle them, are nothing new in Kosovo. What differentiates the crimes of March 2004 is the scale of the violence followed by the international community's public promise that those responsible would be brought to justice. Earlier efforts to address violence against minorities may have been hampered by the nascent state of Kosovo's courts and police. But after almost five years of international administration, the necessary judicial and investigative structures ought to have been in place.

Initially, it did seem that the response to March was going to be different. In the aftermath of the riots, newspapers reported scores of arrests, including of persons implicated in organizing protests and riots across Kosovo.⁶⁵ March-related cases were given priority processing in the justice system. A special policing operation—led by senior international officers—was established to investigate the violence.

More than two years later, however, it is clear that little real accountability has been achieved. In contrast to the numbers who participated in the violence, the magnitude of destruction, and its human cost, few people faced criminal charges. Most who did faced minor charges. Two years on, many of the prosecutions are stalled or have been dropped. The sentences handed down for those convicted have been criticized as excessively lenient.⁶⁶

It is clear that the criminal justice response to March 2004 failed to live up to the international community's promise. The reasons for that failure are complex, but key factors include:

⁶⁴ Human Rights Watch interview with high-level UNMIK official, Pristina, September 16, 2005. The Albanian name for Svinjare is Frasher.

⁶⁵ UNMIK Police confirmed that more than two hundred people were arrested in the period during and just after the riots. Human Rights Watch interview with senior officials, UNMIK Police Headquarters, Pristina, February 27, 2006.

⁶⁶ See OSCE LSMS, "The Response of the Justice System to the March 2004 Riots," December 2005.

- The introduction of major reforms to the criminal justice system three weeks after the March riots, giving police and prosecutors new responsibilities for the conduct of cases, with which they failed to engage.
- The failure of a special international police operation established to investigate March cases, compounded by the fact that the operation was delinked from the rest of the criminal justice system.
- Ineffective policing, including inadequate witness protection measures, lack of follow up, poor coordination between international and national police, and lack of collaboration with prosecutors.
- An insufficient response to allegations of Kosovo Police Service misconduct during the riots. The allegations include a failure to take action in the face of criminal conduct and direct participation in criminal activity.
- Passivity on the part of prosecutors, despite their central new role in the conduct of criminal investigations.
- Poor case management in the courts.
- Lenient sentencing practices.
- Inadequate oversight and prioritization of the criminal justice system by the United Nations administration in Kosovo.

Measuring Progress on Prosecutions

In order to assess the progress made on accountability for the March 2004 violence, one first needs to have basic statistical information about the number of investigations, prosecutions and convictions. Remarkably, there is no clear consensus about this information among the international agencies tasked with overseeing and monitoring the criminal justice system. In particular, the number of people charged with criminal offences and the nature of those offences are matters of dispute.⁶⁷

The OSCE Legal Systems Monitoring Section maintains what are generally considered to be the most complete statistics on prosecutions and court decisions; these are maintained in its own database.⁶⁸ According to their records, as of the end of October

⁶⁷ Human Rights Watch interview with a senior official at the OSCE, Pristina, November 2, 2005. The official also told Human Rights Watch that the number of persons originally arrested and detained in the aftermath of the violence is not known: “[a]ll the police say is ‘we don’t know.’ They say no one kept track.”

⁶⁸ As the primary institution-building and democratization engine within the U.N. system in Kosovo, the OSCE also has a key role to play in justice and police issues within the mission. The OSCE supports UNMIK Pillar I (and DOJ) in its establishment and administration of the judiciary through monitoring of the legal system for compliance with human rights and rule of law standards and through its training and professional development for legal professionals programs. The Kosovo Judicial Institute (KJI)—established by the OSCE—is responsible for judicial and prosecutorial training. The Legal Systems Monitoring Section of the OSCE’s Human Rights and

2005, 424 individuals had been charged with crimes relating to the March events.⁶⁹ A December 2005 OSCE report on the criminal justice system response to March 2004 riots updated the number of defendants to 426. Although the OSCE stopped actively tracking these cases after the release of the December 2005 report, OSCE officials indicated to Human Rights Watch that, as of March 2006, the number of people charged remained the same.⁷⁰

Statistics from the UNMIK Department of Justice (DOJ) from mid-November 2005 indicate that 348 cases had been filed. According to an official at the Department of Justice, cases are defined as having been filed at the point at which a prosecutor becomes involved.⁷¹ According to a DOJ memo provided to Human Rights Watch by Department officials, each case relates to a single individual.⁷² But Human Rights Watch has been told by DOJ officials that cases can refer to multiple defendants, and that the Department does not keep a record of the number of individuals charged.⁷³ Moreover, information from the Judicial Support division of the Department of Justice on cases with international involvement indicates that a “case” can involve the prosecution of more than a single individual.⁷⁴

A senior Department of Justice official, speaking to Human Rights Watch in April 2006, was unable to clarify why it is that officials from the Department had provided contradictory explanations about what the 348 number refers to, and said that they would be meeting with OSCE shortly to clarify the situation.⁷⁵

Rule of Law Department produces periodic thematic analyses of the functioning of the local judiciary through its monitoring of local courts. The OSCE is considered by most to be “the monitoring element” of the mission in Kosovo. For more information on the OSCE’s mandate in Kosovo see <http://www.osce.org/kosovo/13197.html>, and on the Kosovo Judicial Institute see <http://www.osce.org/kosovo/13217.html>.

⁶⁹ Human Rights Watch email correspondence with staff member, OSCE LSMS, October 27, 2005; Human Rights Watch interview with a senior official at the OSCE, Pristina, November 2, 2005.

⁷⁰ Human Rights Watch interview with official, OSCE, Pristina, January 24, 2006. Human Rights Watch email correspondence with staff member, OSCE LSMS, March 15, 2006.

⁷¹ Human Rights Watch interview with official, Department of Justice, Pristina, February 2006.

⁷² Human Rights Watch interview with a senior official and an international prosecutor, Department of Justice, Pristina, November 16, 2005. UNMIK Department of Justice, “Prosecution of Crimes relating to March 2004 Riots,” internal memo, undated, on file with Human Rights Watch.

⁷³ Human Rights Watch interview with criminal division, Department of Justice, Pristina, February 23, 2006.

⁷⁴ The database administered by the international judicial support division suggests that as of March 2006 eight March-related cases involving sixteen defendants had come before international judges in the Kosovo courts. Department of Justice International Judicial Support Division (IJSD), “War Crimes and March Riots,” spreadsheet undated, on file with Human Rights Watch.

⁷⁵ Human Rights Watch telephone interview with senior official, Department of Justice, April 12, 2006.

It is notable that, as of November 2005, the clear-up rate reflected in the OSCE and DOJ statistics appears to be identical. That would suggest that the two numbers (426 and 348) refer to the same caseload. According to the OSCE, as of mid-November 2005, prosecutions had been completed for 221 of the 426 individuals charged, with 209 convictions and 12 acquittals, a clear-up rate of 51 percent.⁷⁶ Individuals against whom charges were dismissed (ninety-five cases) and those awaiting trial (110 cases) make up the remainder. The Department of Justice figures, up to the same period, indicated that 179 cases of 348 cases had been completed (also a clear-up rate of 51 percent).⁷⁷ Of the remaining cases according to DOJ records, ninety-eight cases were under investigation and seventy-one had yet to be tried.

In February 2006, Human Rights Watch attempted to verify the March-related case statistics with the local Department for Judicial Administration (DJA), which maintains some statistics on the work of the national judiciary. The response was that: “the internationals deal with these cases. Our courts [the national judiciary] say we do not deal with these cases, only international prosecutors and judges [do].”⁷⁸ Staff from the statistics department for the DJA confirmed that they too were under the impression that March cases were being handled by internationals and as such would not be included in their reporting on the court cases without international involvement. This is of concern given that the bulk of March cases were actually handled by local prosecutors and judges without international involvement.

When we asked national judges and prosecutors in select municipalities how many March-related cases they had under their jurisdiction, they rarely had that information readily available, needing to look through numerous paper files and tally the cases they could find by hand.⁷⁹ None of the individuals we spoke with had an overall picture of the number of defendants charged in connection to the March 2004 incidents.

Likewise, international judges and prosecutors told Human Rights Watch that they did not know what was happening with March-related cases being dealt with by their national counterparts, as (as noted above) they function in parallel to the nationals, albeit within the same criminal justice system. They were also under the impression that it is the OSCE that maintains statistics on the courts, particularly in regard to nationally-controlled cases.

⁷⁶ OSCE LSMS, “The Response of the Justice System to the March 2004 Riots,” December 2005.

⁷⁷ UNMIK Department of Justice, “Prosecution of Crimes relating to March 2004 Riots.”

⁷⁸ Human Rights Watch interview with senior official, Department of Judicial Administration, Ministry of Public Services, Pristina, February 15, 2006.

⁷⁹ Human Rights Watch interviews with judges and prosecutors in Kosovo, January-March 2006.

When Human Rights Watch raised the difficulty in determining accurate statistics with one international prosecutor, the response we got was that “[n]umbers float around here like confetti.”⁸⁰ When we raised the issue with a top official within the Department of Justice, he responded: “Our control over the locals is to take cases away from them.” He further indicated that he did not know nor was it his job to know the total number of March cases that had been brought to the courts.⁸¹

Prosecutions with International Involvement

The DOJ, through its international prosecutors and judges, has had jurisdiction over fifty-six of the March-related cases, although, as discussed above, the number of defendants involved is unclear.⁸² These cases are handled by international prosecutors and judges because they are considered to be more serious or sensitive cases and thus require international involvement to ensure fairness. The fifty-six cases cover the nineteen deaths that occurred during the violence, the burning of Serb houses, churches, and monasteries, and the organization and incitement of the riots.

The clear-up rate on the fifty-six cases raises questions about the willingness or ability of the international administration in Kosovo to prosecute and achieve justice for the crimes perpetrated on minority communities in March 2004. Two years later, only thirteen cases—less than one-quarter—had resulted in final decisions.⁸³ Another twelve cases had been “dismissed, terminated, or closed.”⁸⁴ Only two other cases appear to have potential for moving forward through the judicial system, with an indictment in one case and another awaiting indictment. The remaining twenty-nine cases have not even reached the pre-trial investigation stage—and it is not clear if, or when, they ever

⁸⁰ Human Rights Watch interview with international prosecutor, Department of Justice, Pristina, February 22, 2006.

⁸¹ Human Rights Watch interview with high-level official, Department of Justice, Pristina, February 3, 2006.

⁸² Both the OSCE and the DOJ report that the DOJ international criminal division initially took on “fifty-six serious cases.” The OSCE figure does not make reference to the number of individuals charged.

⁸³ UNMIK Department of Justice, “Prosecution of Crimes relating to March 2004 Riots.” Human Rights Watch updated this information in interviews with the criminal division staff at the Department of Justice, Pristina, January 31, February 23, and March 10, 2006. It should be noted, however, that the database administered by the international judicial support division suggests that as of March 2006 a total of eight (as opposed to thirteen) March-related cases involving sixteen defendants had come before international judges in the Kosovo courts. Human Rights Watch email correspondence with DOJ judicial division staff, March 6, 2006. Department of Justice IJSD, “War Crimes and March Riots.”

⁸⁴ Human Rights Watch interview with criminal justice staff, Department of Justice, Pristina, March 10, 2006. In November 2005, DOJ indicated that in addition to thirteen verdicts, twelve cases had reached the judicial process, noting that one case had been withdrawn by the prosecutor, six cases had been dismissed in accordance with domestic legislation, and five cases were still in varying phases of the judicial process. UNMIK Department of Justice, “Prosecution of Crimes relating to March 2004 Riots.” Five months later it appears that only two cases are close to the “judicial process,” with one indictment and another case awaiting indictment.

will. According to Department of Justice staff interviewed by Human Rights Watch, seven of those cases were handed over to national prosecutors in early 2006 to see whether they could make progress on them.⁸⁵

Progress has been limited in the prosecutions relating to the deaths of the nineteen persons killed, either directly or indirectly, as a result of the violence and disorder during March 2004. Prosecutions for two of the killings have reached the judicial process, and five other killings remain under police investigation. One other case was dismissed and three cases, though not formally dismissed, are on hold because of immunity issues. Although the investigations into the remaining eight deaths have not officially been closed, at the time of writing, there was little indication that prosecutions would ever be brought.⁸⁶

Local Prosecutions

At the time of writing, it was impossible to accurately determine the number of local prosecutions related to March. None of the international agencies working on the criminal justice system in Kosovo were able to provide Human Rights Watch with a total for the number of defendants charged or cases filed where national prosecutors and courts were involved. The Department of Judicial Administration does not have complete statistics, and national prosecutors and judges interviewed by Human Rights Watch could only provide information about their own caseloads or courts.

The OSCE report on the criminal justice response to March contains the most comprehensive information.⁸⁷ But while the report provides a total for the number of defendants in all March-related cases, it does not provide a breakdown of internationally and nationally-controlled prosecutions and adjudications. The report does contain a breakdown by court and municipality, but that provides insufficient information to determine whether cases had an international involvement.⁸⁸

⁸⁵ Human Rights Watch interview with criminal justice staff, Department of Justice, Pristina, March 10, 2006.

⁸⁶ Human Rights Watch interview with a senior official and an international prosecutor, Department of Justice, Pristina, November 16, 2005. UNMIK Department of Justice, "Prosecution of Crimes relating to March 2004 Riots." Human Rights Watch updated this information with DOJ staff in February 2006.

⁸⁷ It should be noted, however, that the OSCE does not consider its statistics on the March riots to represent official statistics, as its information is based on internal records obtained through trial monitoring and interviews with police investigators and select judges and prosecutors. See OSCE LSMS, "The Response of the Justice System to the March 2004 Riots," December 2005.

⁸⁸ OSCE LSMS, "The Response of the Justice System to the March 2004 Riots."

Nor can one determine the number of cases by deducting the numbers on internationally-controlled cases from the DOJ, because it is unclear whether each case refers to one defendant or multiple defendants. One could deduct the fifty-six serious cases from the DOJ's own reported number of 348 cases, arriving at a figure of 292 nationally-controlled March cases. But again, it is unclear whether that figure refers to individual defendants, or cases that could involve multiple defendants.

What is therefore clear is that the majority of March-related prosecutions have come under the jurisdiction of the national judges. Given that such cases are less complex and involve lesser charges, it would be reasonable to expect greater progress in these cases than with the more complex cases managed by international prosecutors.

But just as it is difficult to determine how many March-related prosecutions have been dealt with by the courts without any international involvement, it is also difficult to determine how much progress there has been. The data provided by the OSCE and UNMIK on clear-up rates does not disaggregate national and internationally-controlled prosecutions. Given that national cases make up the majority of the total, extrapolating from the overall clear-up rate, would suggest a clear-up rate similar to the overall rate for all cases (around half). If correct, that would be a disappointing figure, particularly since March cases were prioritized in the criminal justice system.

Impact of the April 2004 Restructuring of the Criminal Justice System

The entry into force of Kosovo's new criminal procedure code and criminal code in April 2004 fundamentally restructured the criminal justice system. Kosovo moved from a system in which primary responsibility for bringing cases to trial rested with an investigative judge to one in which primary responsibility for bringing cases to trial lies with a prosecutor.⁸⁹ The new rules apply to national and international prosecutors.

The introduction of such fundamental reform of the criminal justice system only weeks after the worst violence experienced in Kosovo since 1999 was bound to challenge efforts to bring those responsible to justice.

Investigative Prosecutors

Under the new arrangements, all prosecutors, international and national, are expected to play a central role in the investigative phase, and their involvement is crucial to ensure

⁸⁹ The former system is common in countries with civil law traditions, while the latter is generally found in countries with a common law tradition.

that necessary evidence is obtained. There is concern, however, among judges, police officers, and international officials, that prosecutors (and particularly national prosecutors) were not adequately trained to perform their new role as “investigative prosecutors,” and do not always understand the nature and conduct of investigations.⁹⁰ A high-level official at the Department of Justice summed up the situation in the following way: “[t]he prosecutor with essentially no training went from being the prosecutor that really had very little to do to being the driving force [of the criminal justice system].”⁹¹

The OSCE-established Kosovo Judicial Institute (KJI) is the institution mandated with “providing judges and prosecutors with quality legal education” and which took responsibility for training prosecutors on the new laws.⁹² The KJI trains all national prosecutors in Kosovo on a regular basis.⁹³ However, although the institution did conduct training sessions with national prosecutors on the new criminal procedure and criminal law, national prosecutors complained that the trainings were largely superficial and of little real use to national prosecutors.⁹⁴ (Department of Justice officials and other actors working on the criminal justice system in Kosovo also told Human Rights Watch that there had been a number of complaints about the Institute’s curriculum and training generally.⁹⁵)

The lead prosecutor in one district where we conducted interviews said that national staff—prosecutors, judges, and support staff—had essentially not been trained on the new laws, and consequently were “really not up for these changes.”⁹⁶ Another supervising prosecutor from a different district came to a similar conclusion, explaining to Human Rights Watch:

We had a lot of criticism. The trainers were not qualified. The prosecutors and judges [conducting the trainings] are not always well-

⁹⁰ Human Rights Watch interviews with national judges, Kosovo, February 2006. Human Rights Watch interviews with Department of Justice staff, Pristina, February 2006; Human Rights Watch telephone interview with senior UNMIK Police officer, February 21, 2006.

⁹¹ Human Rights Watch interview with senior official, Department of Justice, Pristina, February 3, 2006.

⁹² The Kosovo Judicial Institute was established by the OSCE mission in 2000. According to the OSCE, “[t]he KJI’s continuing legal education programme keeps the magistrate’s knowledge of the applicable law and legal skills up to date.” For more information see the OSCE webpage describing the institute, at <http://www.osce.org/kosovo/13217.html> (retrieved April 14, 2006); the institute does not have its own webpage.

⁹³ Human Rights Watch telephone interview with staff of the Kosovo Judicial Institute, April 14, 2006.

⁹⁴ Human Rights Watch interviews with prosecutors in Kosovo, February 2006.

⁹⁵ Human Rights Watch interviews in Kosovo, February 2006.

⁹⁶ Human Rights Watch interview with a national prosecutor, Kosovo, February 2006.

prepared. The lectures lacked thematic discussion and were not interactive. They [the training institute] just call somebody and say this is the topic today and he comes and lectures in an *ad hoc*, unprofessional way.⁹⁷

The same prosecutor further noted that international prosecutors rarely attended these trainings and if they did it was usually as the lecturer: “Everyone starts the lecture with ‘in my country.’ We have sixty countries here [now]. We [Kosovo] had fifty years of tradition here. We are used to a different methodology, and we cannot change it in two years.”⁹⁸

Staff from the Kosovo Judicial Institute told Human Rights Watch that their mandate does not cover the training of international prosecutors and that they did not know who would conduct those trainings. The institute does, however, invite international prosecutors as experts and lecturers for certain training sessions.⁹⁹

Another concern regarding the quality of training that was brought to Human Rights Watch’s attention is that a number of training sessions organized by the Kosovo Judicial Institute have had to rely on national prosecutors and judges as the trainers (because of availability and resource concerns), even where they may themselves be in need of training on the topic discussed.¹⁰⁰

None of the prosecutors we interviewed were taking part in field-related training to help them understand their new role as investigative prosecutors guiding the judicial police in investigations. In fact, it does not appear that such training has been organized. When Human Rights Watch raised the issue of joint police and prosecutor trainings on forensics and investigative procedure with the KJI, we were told that such training had and does take place.¹⁰¹

In contrast, however, when we raised the issue with senior police officials, including persons engaged in organizing continuing education coursework, we were told that such

⁹⁷ Human Rights Watch interview with a national prosecutor, Kosovo, February 2006.

⁹⁸ *Ibid.*

⁹⁹ Human Rights Watch telephone interview with staff of the Kosovo Judicial Institute, April 14, 2006.

¹⁰⁰ Human Rights Watch interviews in Kosovo, January–February 2006.

¹⁰¹ Human Rights Watch telephone interview with staff of the Kosovo Judicial Institute, April 14, 2006.

trainings had not taken place, nor was it being planned at the time of writing.¹⁰² One senior police official explained that combining Kosovo Judicial Institute training with the training at the Vucitrn/Vushtrri Police School would be complicated because of the differing roles of the two institutions. He further noted that “[a] lot of countries are saying Kosovo needs to do something with [the quality of] prosecutors, but those same countries do not provide the funds.”¹⁰³

There were also difficulties with the transition from the old system to the new. During the first three weeks following the March riots, investigative judges retained responsibility for the conduct of cases because the new laws had not yet come into effect.¹⁰⁴ According to a senior official at the Department of Justice: “[a]t midnight on the night of the 3rd [April], a lot of prosecutors were handed files from judges.”¹⁰⁵

Judicial Police

In order to assist prosecutors in their investigations, the new law introduced the concept of a “judicial police” branch within the Kosovo Police Service.¹⁰⁶ These special police officers are supposed to be tasked with working with prosecutors to investigate cases. A memorandum issued several days after the promulgation of the new law named all officers in each police station “the judicial police” and indicated that the Commander of each station should be considered the head of the judicial police at each station.¹⁰⁷

Aside from the circulation of the memorandum, however, no further steps were taken to establish the judicial police. Individual officers were never designated “judicial police

¹⁰² Human Rights Watch telephone interview with senior UNMIK Police officer, Pristina, February 21, 2006; Human Rights Watch interview with senior officials, UNMIK Police headquarters, Pristina, February 27, 2006.

¹⁰³ Human Rights Watch interview with senior official, UNMIK Police headquarters, Pristina, February 27, 2006.

¹⁰⁴ There were also initial concerns as to under which law people should be charged—the new criminal code or the old criminal code—since the acts took place under the old law, but the new law was in effect during the investigation and adjudication stages. Whichever law is more substantively favorable to the accused would apply. Human Rights Watch interview with officials, Department of Justice, Pristina, February 3, 2006.

¹⁰⁵ Human Rights Watch interview with senior official, Department of Justice, Pristina, February 3, 2006.

¹⁰⁶ Provisional Criminal Procedure Code of Kosovo, UNMIK/REG/2003/26, July 6, 2003, entered into force April 6, 2004, [online] http://www.unmikonline.org/regulations/2003/RE2003_26_PCPC.pdf (retrieved April 14, 2006). The code defines the judicial police as “police officers authorized to carry out investigative and related functions under the supervision of the public prosecutor, in addition to their other police functions.” *Ibid.* at Chapter XVIII, article 151, para. 18. In interviews with UNMIK Pillar I and the Department of Justice it was clear that the concept of a judicial police included the creation of a separate, designated group of officers to work as judicial police. Human Rights Watch interviews with senior officials [separate meetings], Department of Justice, Pristina, February 3, 2006; Human Rights Watch interview with senior official, UNMIK Pillar I, March 2006. The law applies to investigations for both international and national prosecutors operating in the Kosovo criminal justice system.

¹⁰⁷ Human Rights Watch interview with senior official, Department of Justice, Pristina, February 3, 2006.

officers.” No training was provided on this new branch within the police service or its relationship with prosecutors. No protocols were established to streamline relations between police and prosecutors, and no further guidance has been provided by UNMIK or the DOJ on the role and functions of the “judicial police.” In the words of one senior UNMIK officer: “the concept [of judicial policing] was a spiritual baptism—hail Marys, some water, and everybody was a judicial police [officer].”¹⁰⁸

In February 2006, senior UNMIK Police officers admitted to Human Rights Watch there were no plans to further operationalize a special unit within the KPS as judicial police. According to one senior officer: “[e]very police officer who came here was a judicial police officer; KPS will all be judicial officers.”¹⁰⁹

National prosecutors interviewed by Human Rights Watch expressed concern about the lack of collaboration from the Kosovo Police Service, despite the force’s new responsibilities to support prosecutors in their investigations. In the words of one prosecutor:

Imagine that I have a case that comes to me after a year. Now I cannot fix anything, any mistakes the police made. I can be [held] responsible if I was involved from the beginning, but now I do not have any arguments. I cannot finish the case.¹¹⁰

In light of the failure properly to establish the judicial police, it is not surprising that there are serious concerns about the lack of engagement by the Kosovo Police Service with prosecutors in investigations, both in relation to March and more generally. Senior level KPS officials told Human Rights Watch that they attributed this to a lack of clarity about the identity and role of the judicial police within each police station, suggesting that at present it is left to prosecutors to identify police officers who can (and are willing to) assist them with their investigations.¹¹¹ Their comments suggest a troubling lack of ownership in the process.

¹⁰⁸ Human Rights Watch telephone interview with senior UNMIK Police officer, February 21, 2006.

¹⁰⁹ Human Rights Watch interview with high-level officials, UNMIK Police Headquarters, Pristina, February 27, 2006.

¹¹⁰ Human Rights Watch interviews with national prosecutor, Kosovo, February 2006.

¹¹¹ Human Rights Watch interview with senior KPS official, UNMIK Police headquarters, Pristina, February 23, 2006. A senior official of the Department of Justice also told Human Rights Watch that “[t]here are still tensions and a lack of clarity in the police with regard to the degree and level of instruction they should take from prosecutors.” Human Rights Watch interview, Pristina, January 27, 2006.

The lack of progress may be partly explained by skepticism among senior international police officers about the value of the entire judicial police initiative. Senior officers expressed concern in interviews with Human Rights Watch that creating a division of labor between “judicial” and “ordinary” officers in a nascent police force runs the risk of stunting initiative and overall force performance.¹¹²

By contrast, national and international prosecutors told Human Rights Watch that they support the creation of a police branch with specialized skills and a clear mandate to work with prosecutors. National prosecutors, in particular, expressed frustration at the current arrangements, noting that when they request information or further forensic work from individual officers, their requests are frequently refused.¹¹³

Officials from the Office of the Legal Advisor to the SRSG expressed surprise that there had been so little progress toward the creation of a judicial police force and effective police collaboration with prosecutors, noting that the inclusion of the concept of a judicial police in the law marked a movement in Kosovo toward what one described as “a modern system” and an important part of the efficient administration of justice.¹¹⁴

The Role of the United Nations Civilian Police Force

Failed Special Policing Operation

In May 2004, the United Nations police in Kosovo established a special internationally-led investigative operation—“Operation Thor”—to carry out criminal investigations into the March events. The rationale for the operation was an apparent lack of confidence on the part of the U.N. police in the ability of national police to gather the evidence necessary to prosecute those responsible for the March 2004 violence. Operational teams were established in police stations in all of the affected municipalities and staffed with special investigators drawn from positions within Kosovo as well as recruited from outside Kosovo. More than one hundred investigators worked on Operation Thor until early January 2005, at which time it was disbanded.¹¹⁵

¹¹² Human Rights Watch interview with senior officers, UNMIK Police headquarters, Pristina, February 27, 2006.

¹¹³ Human Rights Watch interview with national prosecutors in Kosovo, January and February 2006.

¹¹⁴ Human Rights Watch interview with senior officials, Office of the Legal Advisor (OLA), Pristina, March 8, 2006.

¹¹⁵ Human Rights Watch telephone interview with official at UNMIK Police headquarters, Pristina, November 7, 2005; Human Rights Watch interview with senior officials, UNMIK Police headquarters, Pristina, February 27, 2006.

Numerous international police and justice officials suggested in interviews with Human Rights Watch that Operation Thor was disbanded due to its ineffectiveness.¹¹⁶ A senior UNMIK Police official told Human Rights Watch that the operation had been cancelled because of “poor management and the lack of results.”¹¹⁷ According to an official at the U.N. Department of Justice: “[t]he sense is that Thor was set up as a political response, and it did not function particularly well.”¹¹⁸

A high-ranking international police official familiar with the operation told Human Rights Watch that the operation was “a whole lot of work and investigations with little reward.” He indicated that despite the opening of more than one thousand criminal investigations, there were few tangible results, as evidenced by the limited progress on serious and low-level charges for March-related crimes.

The same officer told Human Rights Watch that lack of cooperation of majority and minority communities in large part explains the operation’s failure to secure the necessary evidence to allow prosecutions. He also identified the lack of access to victims and witnesses as an obstacle, particularly lack of access to displaced persons affected by the riots and international military and civilian police officers who have left the mission.¹¹⁹

Senior officials at the Department of Justice interviewed by Human Rights Watch echoed these concerns. They also highlighted the difficulty of gathering evidence in riot-related cases because the initial priority for police had been to quell the riot, rather than preserving evidence and identifying eyewitnesses.¹²⁰ Department of Justice officials also told Human Rights Watch that the frequent rotation of international police hampered continuity in conducting investigations, undermining the effectiveness of Operation Thor.¹²¹

¹¹⁶ Human Rights Watch interviews in Kosovo, September–November 2005.

¹¹⁷ Human Rights Watch interview with senior official, UNMIK Police headquarters, Pristina, February 27, 2006.

¹¹⁸ Human Rights Watch interview with senior official, Department of Justice, Pristina, February 3, 2006.

¹¹⁹ Human Rights Watch telephone interview with official at UNMIK Police headquarters, Pristina, November 7, 2005. The official said that one of the major successes of Operation Thor was securing receipt of forty-five volumes of testimony from displaced persons currently in Serbia proper. But the problem is that these volumes (and the accompanying index) are in Serbian and still being translated. Any follow up on this information will require cross-regional police collaboration.

¹²⁰ Human Rights Watch interview with a senior official and an international prosecutor, Department of Justice, Pristina, November 16, 2005; Human Rights Watch interview with senior UNMIK Police officials, UNMIK Police headquarters, Pristina, February 27, 2006.

¹²¹ Human Rights Watch interview with a senior official and an international prosecutor, Department of Justice, Pristina, November 16, 2005; Human Rights Watch interview with senior officials [separate meetings], Department of Justice, Pristina, February 3, 2006.

An OSCE official noted that the rotation of personnel also affected cases at the trial stage, where officers were witnesses to crimes.¹²² In many cases, officers who witnessed crimes were available to appear at pre-trial hearings, but had left the mission by the time the case came to trial. Since the courts failed to secure their testimony—whether during the pre-trial proceedings or in a separate hearing—in the presence of defense counsel their testimony cannot be used during trial. There is no funding to have witnesses fly back to Kosovo to give testimony (the decision to return is left to the potential witness), nor are there alternatives to live testimony such as video or teleconferencing.

A national prosecutor interviewed by Human Rights Watch was critical of the failure to focus on evidence gathering from the outset:

They could have filmed more during the riots. They did not question the witnesses right away. They did not arrest people right away. After a few days, after going back and watching the tapes of other people, they tried to arrest people. We do not have more than ten cases in the district court [in our region]. I am very ashamed because I am a witness myself. I saw thousands of people, and I have only ten cases out of this. It is so symbolic and fake.¹²³

A national judge expressed similar criticisms: “Investigations were not conducted properly. If they had been then citizens and the people there [on location] should have been interviewed.”¹²⁴

The OSCE in a December 2005 report on the response of the justice system to the March riots attributed the inadequate results of Operation Thor to poor organization and staffing as much as to external investigative issues such as access to witnesses. According to the report:

. . . not all investigators met the professional requirements of their position, as regards English language skills and actual investigation

¹²² Human Rights Watch interview with official in the Department of Human Rights and Rule of Law, OSCE Mission in Kosovo, Pristina, November 2, 2005. The December 2005 OSCE report on the criminal justice response to March 2004 cases further noted that courts have generally not been proactive in securing testimony from potential witnesses (even when they are present in the territory) and at times in acting to ensure the presence of the accused at trial. See OSCE LSMS, “The Response of the Justice System to the March 2004 riots.”

¹²³ Human Rights Watch interview with national prosecutor, Kosovo, February 2006.

¹²⁴ Human Rights Watch interviews with national judges, Kosovo, February 2006.

experience. Furthermore, a number of investigations have been affected by interruptions occurring due to the fact that investigators would complete their contract and depart from the mission. Operation Thor also set up an electronic database in which every action regarding a riot-related case was to be recorded. Apart from receiving input, this database could have also served to retrieve information from one investigation that would be useful to another. However, the OSCE was told by representatives of Operation Thor that this database was actually unused, but also unusable.¹²⁵

These concerns were echoed by high-ranking police officials interviewed by Human Rights Watch. The officials also described the problems with the database. Many of the entries included misspelled words and names of identified persons or locations, thus preventing the possibility of conducting database searches. The officials said that the database is no longer considered a source of information for investigations.¹²⁶ Human Rights Watch was also told by some that the database is no longer accessible or available for consultation.¹²⁷

Delinkage of Operation from the Criminal Justice System

Reflecting on the success of the criminal justice response to March 2004, a high-level official within the Department of Justice admitted that “Thor probably made it worse.”¹²⁸ A senior official within the UNMIK Police acknowledged in an interview with Human Rights Watch that upon reflection “the thinking at the time was to set up a system of central investigation, but we lost local officers and their voices.”¹²⁹

Because it was not integrated into the criminal justice system, the failure of Operation Thor impacted not only efforts in relation to March 2004, but also wider efforts to reform the criminal justice system. Responding to the March violence was a major challenge to the new system for investigating crimes, and the new responsibilities for police and prosecutors under it. But instead of investing in making that system work, UNMIK decided to establish a separate operation, delinked from it. Doing so sidelined

¹²⁵ See OSCE LSMS, “The Response of the Justice System to the March 2004 Riots,” p. 18.

¹²⁶ Human Rights Watch interview with senior UNMIK Police officials, UNMIK Police headquarters, Pristina, February 27, 2006.

¹²⁷ Human Rights Watch interviews, Kosovo, January–March 2006.

¹²⁸ Human Rights Watch interview with senior officials, Department of Justice, Pristina, February 3, 2006.

¹²⁹ Human Rights Watch interview with senior UNMIK Police officials, UNMIK Police headquarters, Pristina, February 27, 2006.

the Kosovo Police Service, and undoubtedly masked the importance of operationalizing the new branch of the police intended to support prosecutors in their investigative role.

It is hard to avoid the conclusion that the effort put into the operation would have been better spent on improving the performance of existing police units and stations, including helping them to operationalize their new responsibilities to assist prosecutors in assembling cases for prosecution.

Witness Protection Concerns

During the course of the research, Human Rights Watch frequently heard UNMIK officials refer to a “wall of silence”—or the refusal on the part of communities in Kosovo to cooperate with the police in criminal investigations. While there may well be some basis to this conclusion, Human Rights Watch is concerned that the international institutions in Kosovo have failed to seriously address the witness protection concerns that might help encourage people to come forward.

According to one political affairs officer in the Office of the SRSG: “[t]here is no wall of silence. People are ready to talk. UNMIK police uses this as an excuse. Of course they won’t go to the UNMIK police and say what they saw without guarantees that it is safe.”¹³⁰ A journalist and the director of a reporting network in the region seconded the sentiment:

I no longer buy this excuse of the wall of silence. I no longer buy that people are a bunch of idiots, that they are just a clan and do not talk to people. I went to families in western Kosovo [for research on a story] and they had not even been interviewed. If the wall of silence is a problem there was never a campaign of the police out there talking to people. Show me you have a strategy and tackle the problem.¹³¹

While witness intimidation has long been recognized in Kosovo as a serious obstacle to the proper functioning of the criminal justice system, witness protection concerns have never been comprehensively addressed by international actors tasked with managing the criminal justice system in Kosovo.

¹³⁰ Human Rights Watch interview with a political affairs officer in the Office of the SRSG, Pristina, August 2005.

¹³¹ Human Rights Watch interview with journalist, Kosovo, August 2005.

International police officials argue that witness protection is difficult in a location the size of Kosovo, where communities are relatively small in size and family and community networks are extensive, making anonymity for witnesses virtually impossible. The OSCE report on the March riots suggested that this was a particular concern for police officers asked to serve as witnesses in court proceedings.¹³²

Some police officials told Human Rights Watch that witness relocation offers a more viable solution than alternative witness protection measures.¹³³ A senior-level UNMIK Police officer argued that at present “witness protection [in Kosovo] is more like detention because it [detention] is the only way to protect them.”¹³⁴

At present, there are virtually no relocation options, because governments in the E.U. and elsewhere are unwilling to host witnesses from Kosovo.¹³⁵ Unless witness protection is recognized as an obstacle to progress on accountability and placed high on the political agenda, the situation is unlikely to change.

Simultaneous to this raised prioritization, however, all agencies responsible for the criminal justice system need to redouble their efforts to ensure the protection of witnesses within Kosovo. Relocation alone cannot solve the problems of witness intimidation, or substitute for a systematic and dependable protection regime in Kosovo to encourage witnesses to come forward.

Concrete progress on witness protection within Kosovo requires better rules and procedures. Specifically, UNMIK, the OSCE, UNMIK Police, the KPS, and the new Ministry of Justice must cooperate to improve witness liaison mechanisms; develop better protective measures that allow witnesses to give evidence without their identities being disclosed, such as voice altering devices and evidence given by video-link; shorten waiting periods before trial that put witnesses at risk; improve cooperation between the prosecution and police; further clarify rules limiting disclosure of the identities of

¹³² For specific discussion of witness intimidation and protection issues in relation to the March cases, see OSCE LSMS, “The Response of the Justice System to the March 2004 Riots.”

¹³³ Human Rights Watch interviews with police officials, Kosovo, February 2006.

¹³⁴ Human Rights Watch interview with a senior UNMIK Police official, UNMIK Police headquarters, Pristina, February 27, 2006.

¹³⁵ Human Rights Watch is aware of only one case of relocation outside of the region.

witnesses; and investigate and prosecute anyone deemed to interfere with a witness and ensure that conviction for witness intimidation carries a long custodial sentences.¹³⁶

Passive Policing and Lack of Follow Up

It is clear that the international police assigned to Operation Thor played far too passive a role in investigations, and often expected potential witnesses or informants to seek them out.¹³⁷ When Human Rights Watch interviewed minorities displaced by the March 2004 riots in September and October 2005 it was clear that while many had been contacted in the weeks following the violence by journalists, humanitarian NGOs and human rights organizations, only a handful had been contacted by the police to find out what they knew. None of those we interviewed had ever been asked to testify in court.

Those who did have contact with the police investigators told Human Rights Watch of their frustration with their passivity and the lack of follow up. A forty-nine-year-old displaced man, N.N.,¹³⁸ described his experience with investigators:

International police were calling us separately for statements, but we never got information after on what happened. My opinion is that nobody was brought to face justice and it is nobody's aim to find those people—because if they wanted to find them, they could have found them by now, especially the Kosovo government and KPS [who were] the best witnesses . . . The police were standing beside them while they [the rioters] were throwing stones and still they were doing it.¹³⁹

An elderly Serb couple displaced by the March violence, sixty-nine-year-old A.A. and his fifty-five-year-old wife, told Human Rights Watch about an even more extreme example of poor coordination and follow up. The couple were beaten during an attack on March 17 which destroyed their entire village. But despite repeated police interviews, justice never came. A.A. summarized his experience:

¹³⁶ For more discussion of witness protection issues in the region, see Human Rights Watch, "Justice at Risk: War Crimes Trials in Croatia, Bosnia and Herzegovina, and Serbia," *A Human Rights Watch Report*, Vol. 16 No. 7(D), October 2004, [online] <http://hrw.org/reports/2004/icty1004/> (retrieved May 3, 2006).

¹³⁷ Human Rights Watch interview with senior UNMIK Police officials, UNMIK Police headquarters, Pristina, February 27, 2006.

¹³⁸ In order to protect victims' identities, names have been replaced with initials (which are not the victims' actual initials) throughout this report.

¹³⁹ Human Rights Watch interview with fifty-nine-year-old displaced man, Kosovo, September 18, 2005.

The gang came and pushed us out and were beating us. It was not at night. It was in the day so everyone could see. . . . The most terrible thing is that I told them [the police and internationals] who did everything and they asked me so many times and every month they were coming and every month the people were changing. There were lots of internationals. . . . I would like to explain the truth but I have lost confidence in the internationals. Everyone who was coming here was writing just like you and never did anything. Nobody called us. They promised to call us.¹⁴⁰

A.A. explained that on the night of the attack he and his wife gave statements to a group of international and national police about what had happened and who had perpetrated the crimes. He told Human Rights Watch that the couple gave further statements to the international police monthly for around ten months. The couple say that they were interviewed by many different police officers during this period, and in some cases shown photographs of alleged perpetrators whom they identified for the police. A.A. said that following each interview, the police told them “to go home and they would do what they could. They even told us (me and my wife) that they would bring those people we named in the statement so that we could confront them, but they never did.”

Finally, after ten visits to the police station in which they gave the same statement to international police officers through translation, A.A. and his wife lost confidence in the process and told the police that they did not recognize anyone or know anything about the crimes. The police asked, “How can you not recognize your closest neighbor?” When A.A. replied that he knew nothing and no longer wished to come to the station, the visits stopped.¹⁴¹

Human Rights Watch was able to confirm in meetings with municipal representatives working in the area from which A.A. and his wife and neighbors were displaced, as well as with police in the regional headquarters, that the investigation had not been taken up by prosecutors, despite the prolonged international involvement.¹⁴² None of the officials interviewed by Human Rights Watch suggested that A.A. was not a credible witness.

¹⁴⁰ Human Rights Watch interview with a displaced man and his wife, Kosovo, September 19, 2005.

¹⁴¹ Ibid.

¹⁴² Human Rights Watch interview with municipal representatives, Kosovo, September 21, 2005; Human Rights Watch telephone interview with regional police investigator, September 26, 2005.

Sixty-five-year-old W.W., still displaced by the riots two years later, told Human Rights Watch that she would have given a statement to the police about the burning of her house and what she saw, but “[w]e didn’t know to whom we should go or how. They [the internationals] just placed us here. . . . We have no details about anything. They told us to stay here and shut up.”¹⁴³

It is possible that in many cases that would otherwise be straightforward the victims have since fled Kosovo or are otherwise difficult to locate within the province. But Human Rights Watch documented passivity and lack of follow up on the part of the UNMIK Police even in cases where the incidents were well documented and witnesses were readily available.¹⁴⁴

The Role of the Kosovo Police Service

While the Kosovo Police Service should have played a central role in investigating the March violence, it was largely sidelined by Operation Thor. Primary responsibility for conducting investigations was transferred to KPS regional crime squads only after Operation Thor was disbanded. The delay undoubtedly contributed to a lack of progress in some instances, as leads went cold or witnesses could not be tracked down.

In at least one case that resulted in successful prosecutions, however, the investigations were carried out solely by the Kosovo Police Service.¹⁴⁵ Nonetheless, there are serious concerns about the effectiveness of the Kosovo Police Service in investigating the March 2004 violence.

Prosecutors complained to Human Rights Watch about passive policing practices and the lack of follow up in relation to the March cases. In the words of one: “[p]assive policing is a big deal. The police bring us many files, asking us to close the case, but they did nothing. . . . We’re pushing these riot cases, and we still do not have the police dedicated to it.”¹⁴⁶ There are also concerns about poor coordination with UNMIK Police that cannot simply be put down to Operation Thor. And as noted above (section on “Impact of the April 2004 restructuring of criminal justice system”), our research

¹⁴³ Human Rights Watch interview with displaced person in Kosovo, September 20, 2005.

¹⁴⁴ Amnesty International researchers told Human Rights Watch that they too had been unable to find evidence of prosecutions in connection with the particular places they had investigated just after the riots. Human Rights Watch telephone interview with Amnesty International, September 22, 2005.

¹⁴⁵ Human Rights Watch interview with a former KPS regional commander (region unnamed), UNMIK Police headquarters, Pristina, February 23, 2006.

¹⁴⁶ Human Rights Watch interview with criminal division staff member, Department of Justice, Pristina, February 23, 2006.

suggests that the KPS failed to fully take on board its new responsibility to assist prosecutors in their investigations of March cases, with damaging consequences for the conduct of those cases.

Poor Coordination with U.N. Police

Human Rights Watch heard a number of complaints about poor coordination between KPS and UNMIK Police. One of the most troubling examples was provided by Z.Z., a fifty-one-year-old disabled man. Z.Z. told Human Rights Watch that he and his mother had been severely beaten in their home during the riots. He said that after the attack he witnessed his neighbors—whom he recognized clearly—steal and break most of his family’s possessions. They then set fire to the house with Z.Z. and his mother inside. KFOR soldiers pulled them out of the flames. Z.Z. reported his case to the KPS just after the events took place, but told Human Rights Watch that “nothing happened.”

When Human Rights Watch asked Z.Z. whether the UNMIK Police had been involved in the investigation, he replied that “[s]ome Czech police officer was here and asked me to again talk about it. I told them to get the statement from the KPS. They never followed up—or if they did, they never told me.” He then hesitated, looked up and asked in earnest, “Was I wrong? I gave all the names.”¹⁴⁷

Human Rights Watch interviewed national police and municipal officials from the man’s home area about the attack on Z.Z. and his mother, but could find no evidence to suggest that any action had been taken in relation to the case.¹⁴⁸

Inadequate Response to Allegations of KPS Misconduct during the Riots

International officials told Human Rights Watch that locally displaced persons, and in some cases, recent returnees from the March events, had questioned them directly during field visits on the lack of progress on criminal prosecutions, and named alleged perpetrators in the community who had not been charged in connection with the March events.¹⁴⁹ The alleged perpetrators include members of the Kosovo Police Service.

This is reflected in testimony obtained by Human Rights Watch during research in the spring of 2004 about the March violence.¹⁵⁰ We received numerous allegations of failure

¹⁴⁷ Human Rights Watch interview with displaced man in Kosovo, September 20, 2005.

¹⁴⁸ Ibid. Human Rights Watch interview with local police and municipal officials, September 25, 2005.

¹⁴⁹ Human Rights Watch interview with senior UNMIK official, Pristina, November 12, 2005.

¹⁵⁰ See Human Rights Watch, “Failure to Protect.”

on the part of Kosovo Police Service officers to take action during the riots to prevent violence and criminal damage directed against minority communities, and specific allegations of instances of actual police participation.

In some locations there were allegations that the police stood by and watched while minority houses were burned and looted, while in one case police were described as mixing cordially with a crowd that had just set fire to a house, and in another it appeared that police themselves set a fire. There were reports that police inaction also allowed for the severe beating of some minorities attacked during the riots, and in one case a minority interviewee whose home community was being targeted by rioters described to us being beaten, verbally abused and wrongfully arrested by police, with an approving crowd of rioters looking on.

These concerns were reiterated in several locations throughout Kosovo during Human Rights Watch interviews in fall 2005 with minorities displaced by the violence.¹⁵¹ The OSCE received similar reports from displaced minorities alleging that KPS officers failed to take measures to prevent attacks during the riots and in some cases actively participated in the violence.¹⁵²

UNMIK Police personnel told Human Rights Watch that there had been sixty-seven criminal investigations opened against KPS officers, but that none of them had resulted in charges being filed. Given the seriousness and specific nature of the allegations of direct violence perpetrated against minorities and their homes made by a number of witnesses interviewed by Human Rights Watch and others it is surprising that no charges were filed.

Forty-one complaints were forwarded to a professional standards unit within UNMIK Police responsible for determining whether there should be administrative charges. Twelve officers were initially suspended pending consideration of their cases, but as of late September 2005 seven of these officers had been reinstated without further

¹⁵¹ Ibid.; Human Rights Watch interviews with displaced minorities, Kosovo, October 2005.

¹⁵² OSCE, "Human Rights Challenges following the March riots," May 25, 2004, [online] http://www.osce.org/documents/mik/2004/05/2939_en.pdf (retrieved April 26, 2006).

consequence.¹⁵³ A senior investigator told Human Rights Watch that in the end only a couple of officers may face sanctions for their part in the March riots.¹⁵⁴

In October 2005, the professional standards unit was transferred to the Kosovo Police Service. In February 2006 interviews with the unit, Human Rights Watch was unable to obtain further information about the status of any investigations into allegations of police misconduct during the March 2004 violence, including into allegations of failures to prevent criminal offences from being committed during the riots or direct participation in criminal conduct during the riots.¹⁵⁵

While the recent transfer and lack of institutional memory may provide part of the explanation for the lack of knowledge, it is troubling that high-ranking officials in headquarters were unaware of the status of investigations into allegations of police complicity in the March riots. The explanation provided by the officials in the standards unit—that there is a lack of internal communication within the KPS—is insufficient given the importance of these investigations to the credibility and integrity of the police and public confidence in their work.¹⁵⁶

KPS officers and administrative staff working in municipal police stations interviewed by Human Rights Watch—including officers serving as the chief of the entire force in that district or region—were unaware of any investigations, disciplinary proceedings, or sanctions related to KPS conduct during the March riots. Instead, the widely-held view was that the police, and the KPS police in particular, had saved the day and should be commended for its performance. When Human Rights Watch asked a local deputy police chief about sanctions for police misconduct during the March events, the person had not heard of any information on poor performance or disciplinary actions and said that “surely there have been acknowledgements for good performance.”¹⁵⁷

When Human Rights Watch interviewed an officer working at the Police Academy about whether there had been changes to the curriculum as a consequence of the March

¹⁵³ Human Rights Watch telephone interview with senior investigator for UNMIK Police, formerly working on Operation Thor, September 25, 2005; Human Rights Watch telephone interview with Amnesty International, September 22, 2005.

¹⁵⁴ Human Rights Watch telephone interview with senior investigator for UNMIK Police, formerly working on Operation Thor, September 25, 2005.

¹⁵⁵ Human Rights Watch interview with staff of the professional standards unit, UNMIK Police headquarters, Pristina, February 23, 2006.

¹⁵⁶ *Ibid.*

¹⁵⁷ Human Rights Watch interview with the deputy chief of a police station in Kosovo, September 21, 2005.

2004 riots, we were informed that there had been no changes and that, looking back, the police had done the best they could have under the circumstances. The officer noted that were similar events to happen again the response would likely be the same, and suggested that any failure arose from the circumstances rather than reflecting on the training, willingness, or ability of the police to act.¹⁵⁸

While there were certainly many examples of good policing and brave efforts on the part of individual officers during the March riots, it is disturbing that officers like the deputy police chief mentioned above—and many others we interviewed—were unwilling to accept that there had been cases in which police had not behaved professionally. The failure to address police misconduct head-on is likely to further dilute respect for the police force, especially among minority communities. It is also likely to undermine the willingness of potential witnesses to come forward with information, and reinforce the perception that there is no accountability available for the victims of human rights abuse in Kosovo.

The Role of Prosecutors

In relation to the March investigations, in particular, it is clear that national and international prosecutors failed to engage properly with their new responsibilities—to take the lead in investigations, and to supervise and direct the work of the police in support of those investigations. While the problems with training may partially explain this failure to engage, it is striking that prosecutors interviewed by Human Rights Watch seemed unwilling to take responsibility for the limited progress on accountability for March, preferring instead to blame the police.

National Prosecutors

National prosecutors uniformly said that they had not been involved by either international or national police in the investigations and only began receiving cases several months after the March events. In one particular region we visited, the bulk of March-related case files had not been handed over to prosecutors until 2005—in at least one case as late as December 2005, more than one-and-a-half-years after the incidents took place.

Prosecutors expressed their view that had they been involved from the start perhaps “this would all be ancient history by now.”¹⁵⁹ But this attitude suggests a lack of initiative

¹⁵⁸ Human Rights Watch interview with police officer, Kosovo, September 21, 2005.

¹⁵⁹ Human Rights Watch interviews with a national prosecutor, Kosovo, February 2006.

on their part. Given their new responsibilities, prosecutors should have been reaching out to police, rather than waiting for case files to be handed to them.

While the general route for investigations under the new law involves police reporting crimes to prosecutors, it is open to prosecutors to initiate investigations themselves. Yet we found no evidence that this had happened in relation to any of the March cases. This is particularly disturbing in the case of national prosecutors who live and work in communities affected by March 2004 violence.

Some of the national judges we spoke with raised concerns that the prosecutors working in their courts “just transfer what police give them. They do not do any investigation, which they are by law required to do.”¹⁶⁰ They further explained that when they addressed their concerns to prosecutors “they [the prosecutors] said they are too few and do not have time to investigate. But this is crucial for the judicial system. We need to verify evidence and then sentence. We are deciding on the fate of a person.”¹⁶¹ An official from the Department of Justice suggested that this situation has likely resulted in national judges still being more involved in investigations than envisioned under the present law, noting that despite the changes in the law in many places in Kosovo it is probably “still business as usual.”¹⁶²

Part of the explanation for the lack of initiative exhibited by prosecutors may lie with insufficient preparation and training for the new law and its impact on their work. One prosecutor openly admitted to Human Rights Watch that “[w]e [prosecutors] are miles away from the duties we should have with the new law. We’re not up to the role. . . . I have 450,000 inhabitants that I represent cases for before the courts with four prosecutors. We have no quality; there is only quantity.”¹⁶³

But other national prosecutors interviewed by Human Rights Watch appeared unwilling to accept responsibility, and sought instead to blame the police. A seasoned national prosecutor commented that “[w]e [Kosovo] need a police that is more vigilant and efficient than the suspects. . . . How can you make a police officer in five months of training?”¹⁶⁴ Another prosecutor, with forty years of experience, came to the same conclusion, telling Human Rights Watch, “I do not know who trains the police. . . . If

¹⁶⁰ Human Rights Watch interviews with national judges, Kosovo, February 2006.

¹⁶¹ *Ibid.*

¹⁶² Human Rights Watch interview with official, Department of Justice, Pristina, February 2006.

¹⁶³ Human Rights Watch interview with national prosecutor, Kosovo, February 2006.

¹⁶⁴ Human Rights Watch interview with national prosecutor, Kosovo, February 2006.

the police are ineffective we are not successful.”¹⁶⁵ A district court prosecutor working in another region explained that in his professional opinion the lack of results on March investigations was caused because “the police did not do a systematic job identifying perpetrators or gathering evidence and contacting witnesses and prosecutors immediately.”¹⁶⁶

International Prosecutors

Staff from the criminal division of the Department of Justice explained that limited progress on March cases was a policing failure that had resulted in insufficient evidence in the files to proceed with most cases. In the words of one staff member: “[h]ow can we draft proceedings against people we do not know?”¹⁶⁷ Another staffer summed up the situation as follows: “[w]e act on what we have. If you have a police force that is incompetent there is not much you can do. This is not only a problem with the March riots.”¹⁶⁸

As with national prosecutors, the willingness to blame the police for shoddy investigations ignores the primary responsibility given to all prosecutors under the new criminal procedure code for the conduct of investigations, and the right of prosecutors to initiate investigations on their own account.

Yet Human Rights Watch encountered little willingness on the part of the Department of Justice staff involved in prosecutions to acknowledge a failure to engage. A senior official from the Department of Justice suggested that inflated expectations and limited resources were to blame:

We raised everybody’s expectations too high that we would do lots of cases and that is why they believe there has been no accountability. . . . With all the hubbub of March cases, they [UNMIK Pillar I] didn’t give us more staff. We were busy before and we’re busier now. . . . Every time there’s a new flavor we get pulled off for that.¹⁶⁹

¹⁶⁵ Human Rights Watch interview with national prosecutor, Kosovo, February 2006.

¹⁶⁶ Human Rights Watch interview with national prosecutor, Kosovo, February 2006.

¹⁶⁷ Human Rights Watch interview with international prosecutor, Department of Justice, Pristina, February 22, 2006. Human Rights Watch interviews, Department of Justice, Pristina, January 31, February 23, and March 10, 2006.

¹⁶⁸ Human Rights Watch interview with criminal division staff, Department of Justice, Pristina, February 23, 2006.

¹⁶⁹ Human Rights Watch interview with senior level management of the Department of Justice, Pristina, February 3, 2006.

Another DOJ lawyer denied that the Department of Justice had failed to achieve genuine progress on prosecutions relating to March 2004 violence:

Convictions are not the measure of our work. We're not in the convictions business, but in the justice and prosecution division. Is the situation perfect? No. Are all relationships between the police and prosecutors perfect? No. But it is not realistic to say it's a failure because things are in the investigative stage. These are complex cases.¹⁷⁰

The concern, though, is that as time passes it becomes increasingly difficult to proceed with these cases. Not only is the material evidence more difficult—or impossible—to locate, but witnesses lose their motivation to support prosecutions.

The Role of the Courts

Poor Case Management

The prosecution of March cases before national and international judges has been hampered by poor case management. The courts lack a functional database for case management purposes, despite several attempts to establish one.¹⁷¹ Cases involving international judges and prosecutors are tracked in separate database systems.

Prosecutors and judges interviewed by Human Rights Watch identified case management and timetabling problems as a significant constraint on the timely adjudication of cases, including the March 2004 cases. Prosecutors in Kosovo serve a number of different court locations (and judges) and are responsible for a large number of cases. Without effective case management, the system cannot function effectively. In

¹⁷⁰ Human Rights Watch interview with criminal division legal staff, Department of Justice, Pristina, January 31, 2006.

¹⁷¹ There is a pilot project operating in the four district courts outside of Pristina that appears to be having some success, but that will require ongoing support. The database system has been in place in the Pristina court for three years, but remains unused. Some of the obstacles identified included electricity outages, preventing the use of the computer; internet access problems; training needs; and the absence of an IT specialist on site to remedy problems and assist with training and input guidance. One official expressed concern, however, that the real obstacle lies with the will of courts to use such systems: "The problem is people have to start using the system. This means a huge change in their work and this means accountability. Once something is entered [they] cannot change it. They are afraid we may find out they do not work [as] much [as] they say." Human Rights Watch interviews with a senior manager, Department of Justice, Pristina, February 3, 2006; Human Rights Watch interview with staff of the National Center for State Courts (NCSC), Pristina, February 2, 2006; Human Rights Watch interview with staff of the Department of Judicial Administration, Ministry of Public Services, Pristina, February 15, 2006. For more detailed information on the Case Management Information System (CMIS) to be used in the courts see Rubotham and others, "Kosovo Judicial System Assessment," pp. 45-46.

the words of a judge operating in one of the municipal courthouses: “Imagine that the prosecutor is here once a week and on that day we should schedule all trials. One prosecutor to three judges, and we all have sessions . . . Then we start fighting.”¹⁷²

There also appears to be little effort invested on the part of the courts or external oversight bodies such as the DJA and the DOJ in assessing whether cases are efficiently proceeding through the courts, and if not, what may be causing the delay. Similarly, Human Rights Watch found no evidence of a strategy or established protocol for determining when cases should come up on docket and how to efficiently dispose of these cases.¹⁷³ This is true both in terms of individual courts, and across the system.

Lenient Sentencing

An OSCE report analyzing the court decisions in March-related cases reveals a tendency toward lenient sentencing, with a majority of riot-related case sentences close to the minimum applicable penalty.¹⁷⁴ The report also notes a general failure by the courts in many cases to properly consider aggravating and mitigating circumstances in the determination of the appropriate sentence for those convicted. The OSCE report concludes that:

[t]he lack of proper justification in court decisions involving cases where a mitigated punishment was applied not only breaches the applicable law but also does not serve the purposes of deterrence in relation to each of the accused involved. Furthermore, this practice may also influence the general public’s perception of how the judicial system responds to crimes against public peace and order.¹⁷⁵

The OSCE further observed in its conclusion to the report that:

[B]y imposing lenient sentences in the majority of riot-related cases, courts failed to send out a clear message of condemnation for such violent behaviour and appear not to have deemed the criminal cases arising from the March 2004 riots as very serious. This relatively weak

¹⁷² Human Rights Watch interview with a national judge, Kosovo, February 2006.

¹⁷³ Human Rights Watch interviews with judges and prosecutors, Kosovo, February–March 2006.

¹⁷⁴ OSCE LSMS, “The Response of the Justice System to the March 2004 riots.”

¹⁷⁵ See OSCE LSMS, “The Response of the Justice System to the March 2004 riots,” p. 33. For an in-depth discussion of the OSCE’s findings on the use of aggravating and mitigating circumstances see *ibid.*, pp. 27-33. Pages 22-27 of the same report address the issue of inadequate charging in relation to the March 2004 cases.

response of the courts . . . not only contributes to the impression of impunity among the population for such kinds of ethnically motivated crimes but may also be considered inadequate to prevent similar acts of public disorder in the future.¹⁷⁶

It is the pattern of leniency in the March cases that is of most concern. The pattern suggests an imbalance in the tension between judicial independence and just sentencing in accordance with the law.

Sentences in cases involving international judges

In the serious March-related cases that have resulted in convictions, sentencing in cases involving international judges has been nominal for the most part. Many cases have resulted in suspended sentences.

In a case involving the arson and looting of a cultural and heritage site dating from the fourteenth century, for example, three defendants were convicted and sentenced to two years of imprisonment. Their sentences were suspended. Likewise, in several cases where defendants were convicted of attacking official persons on duty during the riots (punishable with up to three years of imprisonment) and for their participation in a crowd committing criminal offenses (punishable with up to five years of imprisonment), their sentences, ranging from seven months to one-and-a-half years, were all suspended.¹⁷⁷

The sixteen- and eleven-year sentences received by two perpetrators of the murder of Slobodan Peric, a fifty-one-year-old Serb man in Gnjilane/Gjilan and a brutal attack on his seventy-seven-year-old mother are an exception, rather than the rule.¹⁷⁸ Another noteworthy exception is the sentencing of a Kosovo Serb convicted of throwing a hand grenade at two KFOR soldiers, injuring them. He received a sentence of five years' imprisonment.¹⁷⁹

¹⁷⁶ OSCE LSMS, "The Response of the Justice System to the March 2004 riots," p. 34.

¹⁷⁷ UNMIK, "Data on March 2004 Riots and Follow-up Actions, information updated in March 2005," March 2005, document on file with Human Right Watch. See also OSCE LSMS, "The Response of the Justice System to the March 2004 riots," p. 27.

¹⁷⁸ In this case six Kosovo Albanians were accused of the murder and brutal assault. The panel of two international judges and four local judges sentenced two of the accused to lengthy prison terms, with another defendant receiving three-and-a-half years and the other three defendants each receiving sentences of two-and-a-half-years of imprisonment. See BBC Monitoring European, "Six Kosovo Albanians Sentenced to 38 Years for Killing Two Serbs," May 20, 2005.

¹⁷⁹ UNMIK, "Data on March 2004 Riots and Follow-up Actions, information updated in March 2005," March 2005, document on file with Human Right Watch.

When asked about the short or lenient sentences in some cases, one international prosecutor offered by way of explanation that in many cases the “evidence is just not there” and that judges are required to look at aggravating circumstances and mitigating factors such as whether this was a first-time offense or whether the accused has a large number of family dependents. He argued that when viewed in that light the sentences were not necessarily lenient.¹⁸⁰ The explanation that in general there was insufficient evidence to merit the passing of more severe sentences is problematic, given that any sentence follows a finding of guilt based on evidence beyond a reasonable doubt that the defendant committed the offence with which he or she is charged. Therefore, where the finding of guilt relates to a serious crime, the evidence supporting the conviction should be enough to justify an appropriate custodial sentence as provided for by law unless there are exceptional mitigating factors.

A senior-level official for the Department of Justice suggested that sentencing was affected by the sense that “it seemed unfair to prosecute one or two people that were really no different than the two hundred to three hundred others [rioting].”¹⁸¹ This rationale ignores the fact that unduly light sentences send a signal to the community about the acceptability of resorting to violence, and the ability of the law to protect minority communities from such violence.

Sentences passed by national judges

Among the March cases heard by national judges, sentencing practices have also been problematic. The use of reprimands, minor fines and other penalties, often below minimum sentencing guidelines, suggests a reluctance by national judges to punish those convicted of March-related crimes.¹⁸²

In interviews with Human Rights Watch, OSCE officials sought to provide cultural explanations for the limited success of the courts in hearing March cases. In the words of one official: “[t]here has been some accountability. It has not been just swept under the rug, but there has not been as much accountability as we [the international community] would have liked to see.”¹⁸³ The official suggested to Human Rights Watch that part of the explanation may lie in differing concepts of justice and punishments in

¹⁸⁰ Human Rights Watch interview with international prosecutor, Department of Justice, Pristina, February 22, 2006.

¹⁸¹ Human Rights Watch interview with senior manager at the Department of Justice, Pristina, February 3, 2006.

¹⁸² UNMIK Department of Justice “Prosecution of Crimes relating to March 2004 Riots.” Human Rights Watch interview with officials, OSCE Mission in Kosovo, Department of Human Rights and Rule of Law, Pristina, November 2, 2005. See also OSCE LSMS, “The Response of the Justice System to the March 2004 riots.”

¹⁸³ Human Rights Watch interview with senior official at the OSCE, Kosovo, November 2, 2005.

Kosovo, resulting in judges passing sentences that fall below sentencing guidelines.¹⁸⁴ This explanation suggests at minimum the need for greater training for national judges.

One national prosecutor interviewed by Human Rights Watch concluded that the political nature of the March violence meant that only international prosecutors and judges could deal fairly with them:

Taking into consideration the March events, which were primarily political, I think it was the responsibility of the international judges, prosecutors, and police to quickly and effectively prosecute these cases. . . . This was a huge challenge to the international judges and prosecutors, but they could easily have made the case that this is why they were here [in the first place], but [instead] they completely failed.¹⁸⁵

The prosecutor's conclusion, while understandable, is an abdication of responsibility. Kosovo's criminal justice system cannot hope to function effectively unless its prosecutors and judges are confident that it is capable of delivering justice, and work to ensure that it does.

Another national prosecutor, while acknowledging the problems of objectivity affecting proceedings before national judges, highlighted the consequences of lenient sentencing practices and the limited numbers of prosecutions:

We are in a way stimulating them [rioters/criminals] with these ridiculous verdicts. These are those emotions I mentioned. We still have a lot of emotions from before. We are far away from just trials. We were all affected by the war. These judges are people, and they were probably affected by the war. It is hard for them to make strict decisions against Albanians.¹⁸⁶

¹⁸⁴ Ibid. An international judge working in the Supreme Court whom we interviewed seemed to support this position, describing a case in which he was on a panel with two Albanian judges who, although agreeing that the accused should be convicted, had a starkly different perspective on the appropriate term of imprisonment because the accused "is a KLA war hero." The judge further expressed his opinion that this is not unusual and that "[t]his is the mentality you are dealing with. If it is political or vaguely threatening or there is money involved, they [the local judges] are not stable." Human Rights Watch interview with international judge, Department of Justice, Pristina, February 22, 2006.

¹⁸⁵ Human Rights Watch interview with national prosecutor, Kosovo, February 2006.

¹⁸⁶ Human Rights Watch interview with national prosecutor, Kosovo, February 2006.

The Role of UNMIK

Representatives of UNMIK Pillar I—responsible for police and justice matters—admit that the reaction to the March 2004 events and subsequent criminal prosecutions have been insufficient. In the words of one official: “Obviously the reaction that was done was not sufficient. To be frank, I am not satisfied, but we cannot go back. We need now to build confidence with the [status] negotiations.”¹⁸⁷

Human Rights Watch is concerned that the poor track record on criminal prosecutions related to the March violence has been exacerbated by the low priority given to accountability generally among some senior officials within the United Nations Administration. In discussions with a number of these officials, Human Rights Watch was told that it is inadvisable for accountability for past crimes to remain a priority for the mission, and that instead efforts should focus on looking forward to the future and the status talks as a means for achieving sustainable peace and justice in the province.¹⁸⁸ In the words of one UNMIK official:

Are we going to, out of guilt, maintain the nostalgia of the past? We have to be wise enough to look forward... The danger today is of the international community imposing too radical of an approach. I do not see enough people saying “[w]e are now in 2006 and we must move forward.”¹⁸⁹

There are two problems with this position. First, the international community made a firm promise that those responsible would be brought to justice. They had a clear responsibility to ensure that justice was delivered, particularly after their takeover of all these cases early on in the process. The handful of prosecutions for serious offences since March 2004 is not an adequate response. Witness intimidation and protection concerns, resource dilemmas, and the complex legal and investigative nature of the cases cannot excuse this gap in achieving justice. It is imperative that the international community re-evaluate its strategy and come up with a workable and transparent plan for ensuring that justice can be done.

¹⁸⁷ Human Rights Watch interview with high-level official in UNMIK Pillar I, Pristina, November 2005.

¹⁸⁸ Human Rights Watch interview with high-level officials in UNMIK Pillar I, Pristina, November 2005. Responding to questions on future accountability efforts, one representative told Human Rights Watch: “[w]e must continue to work on the missing and investigations of March 2004, but we all know we cannot maintain this for ten years. We will not permit any inter-ethnic attack from here on.”

¹⁸⁹ Human Rights Watch interview with official from UNMIK Pillar I, Pristina, November 12, 2005.

The second problem with this hands-off approach is that it ignores the widespread understanding that the public needs to see that the criminal justice system works and that those who have committed crimes will be prosecuted in order to move forward in fundamental areas such as the genuine establishment of rule of law, reconciliation and co-existence, and sustainable returns. As Special Envoy Kai Eide notes in his review of Kosovo’s readiness for status talks, “[f]ar too few perpetrators are ever brought to justice. . . . This reinforces the sense that criminals can act with impunity.”¹⁹⁰

A national advisor in the Office of the SRSG expressed similar concerns to Human Rights Watch, explaining that “[u]ntil five years ago all systems, including the courts, were not in the service of people, but for the purpose of suppressing the population. The state was always the enemy here. We need to build a culture of respecting courts and law and of working with them.”¹⁹¹ The failure to succeed in such a visible and crucial area of reckoning seriously hampers any efforts to establish a culture of respect for the rule of law.

Some UNMIK officials privately concede that there is some truth to the Kosovo Serb and Serbian government claim that the international community simply “did not want to deal with March,” and that beneath the strong public pledge to address March violence there was also a desire not to react in such a way as to provoke the ethnic Albanians.¹⁹² For one particular representative interviewed by Human Rights Watch, the failure in March 2004 to protect minorities and their homes from violence—and the subsequently “insufficient” reaction—places clear obligations on the international community to ensure that status in any form requires the prominent protection and sustainable existence of minority communities in Kosovo.¹⁹³ The question for the international community is how protection and sustainable communities for minorities can be delivered in the absence of accountability and the rule of law.

A high-level Department of Justice official argued that at present:

[s]tatus is the most important thing. It is almost predetermined what will happen. It will then be left to others to clamor to see if there are enough

¹⁹⁰ “A Comprehensive Review of the Situation in Kosovo,” report of Special Envoy Kai Eide as submitted by the Secretary General of the United Nations to the President of the Security Council for review on October 7, 2005, p. 7.

¹⁹¹ Human Rights Watch interview with political affairs officer, Office of the SRSG, Pristina, August 2005.

¹⁹² Human Rights Watch interviews with senior UNMIK officials, Kosovo, November–December 2005.

¹⁹³ Human Rights Watch interview with high-level UNMIK official, Pristina, November 2005.

resources to address war crimes, anti-minority violence, and the March cases.¹⁹⁴

He further suggested that there had never been a clear strategy for tackling accountability through criminal prosecutions as part of the mission's work in Kosovo.

[I don't think] the U.N. thinks of it as their mission. It's too late. We're downsizing. . . . There is not accountability particularly. [We have] attempted to build structures so that in the future there is the potential for accountability. . . . We're sitting with our heads under water.¹⁹⁵

From his perspective, the Department of Justice has never been structured, resourced, or directed to take on so broad a mandate—nor has achieving accountability through criminal prosecutions been a central focus of the Department's goals per se.¹⁹⁶ Given that the Department is UNMIK's main conduit for establishing a functioning judiciary, it is troubling that a senior official within that Department does not see delivering accountability as a core objective of its mandate.

Notwithstanding this interpretation of the Department's mandate, it undoubtedly has a central role to play in accountability efforts, and, for as long as its mandate continues, developing an effective criminal justice system in Kosovo. That in turn depends upon effective goal setting, monitoring of progress, and full support from UNMIK and the international community.

¹⁹⁴ Human Rights Watch interview with high-level official, Department of Justice, Pristina, February 3, 2006.

¹⁹⁵ *Ibid.*

¹⁹⁶ *Ibid.*

Lack of Transparency in the Justice System

The principle of open justice requires that justice must not only be done, it must be seen to be done. Unless victims, witnesses, and society at large are aware of the efforts made to bring to justice those responsible for political and ethnic violence in Kosovo, justice will remain an abstract concept. Human Rights Watch research indicated a profound disconnect between efforts to bring about accountability through the criminal justice system and the awareness of victims and the public about those efforts. In particular, the international institutions charged with developing the justice system in Kosovo appear to lack an outreach strategy.

The failure to ensure that justice is seen to be done makes it extremely difficult to break the cycle of witness intimidation and apathy among the public. Until the public understands that perpetrators will be fairly tried and sentenced when guilty, they are less likely to come forward as witnesses.¹⁹⁷

The failure is compounded by a lack of transparency in the operations of international and local institutions charged with managing the criminal justice system. During the course of the research for this report, Human Rights Watch—like many NGOs both inside and outside Kosovo—found it surprisingly difficult to obtain even basic information on the progress achieved for criminal prosecutions of March-related and pre-March 2004 inter-ethnic crimes cases, including war crimes. Compounded by the poor record keeping noted above, the attitude of secrecy that pervades many institutions in Kosovo is incompatible with the principle of open justice.

Lack of Outreach and Public Information on Accountability Efforts

Research in Kosovo has revealed a serious lack of knowledge about March-related criminal investigations and prosecutions. Almost all of the displaced persons as well as representatives of the municipalities and police stations interviewed by Human Rights Watch said they knew little or nothing about what had happened in terms of accountability after March 2004. They could not name or give even basic details about any cases that they knew of that had been taken up by a prosecutor, much less identify active steps being taken with regard to cases that pertained to them, their families, or to other members of their former communities. Some of the people we interviewed suggested that they had no right to know what was happening with criminal

¹⁹⁷ For a discussion of witness intimidation and protection issues relating to the March 2004 cases see OSCE LSMS, “The Response of the Justice System to the March 2004 Riots.”

prosecutions. In the words of one displaced person: “We do not have information on this. This is a reserved power of UNMIK.”¹⁹⁸

Among the dozens of people displaced from six different municipalities interviewed by Human Rights Watch for this report, the only March-related prosecutions of which they were aware were two extremely high-profile cases. The first was the highly-publicized murder of Slobodan Peric and the beating of his mother in Gnjilane, which resulted in the lengthy sentences referred to above. The second was a case against an alleged ringleader in the North Mitrovica region—a site of widespread property destruction during the March violence—that was discontinued for lack of evidence before reaching trial.

Those who were aware of the two cases knew about them through local television and print media. Even those whose communities were affected by these crimes had not been contacted by police, prosecutors, local or municipal or other officials, either about the investigations or the outcome of the cases.

None of the displaced or recently returned minority community members we interviewed had been personally visited by authorities in an effort to inform them of progress on cases relating to the destruction of their own homes—even just to inform them that there was not enough evidence to prosecute so the case had been closed. In fact, it appears that in some March-related cases individuals filed discrimination claims with a special unit within the Department of Justice, claiming that their cases had not been prioritized, only to later learn that their case had long been closed.¹⁹⁹

We also found that in a number of cases local officials had not been informed of pertinent investigations and prosecutions relating to their jurisdiction.

This lack of knowledge reflects the absence of any outreach or other public information effort, making it virtually impossible for justice to be seen to be done. It reinforces the perception among many people that Kosovo is a place of rampant impunity, where those who commit serious crimes will never be brought to justice, and eclipses whatever progress has been made on that score.

¹⁹⁸ Human Rights Watch interview with a displaced person, Kosovo, September 21, 2005.

¹⁹⁹ Human Rights Watch interview with Department of Justice staff, Pristina, November 15, 2005.

Lack of Transparency in the Operation of the Criminal Justice System

It is difficult to obtain accurate and up-to-date information on the investigation and prosecution of war and ethnic crimes, particularly for those predating March 2004. Members of the public, journalists, and representatives of national and international NGOs all face the same difficulty accessing such information. Each of the institutions involved in the criminal justice system has a role to play in ensuring transparent and regular information of the progress on criminal investigations and prosecutions. But at present their work is all too often shrouded in secrecy. The lack of transparency compounds the failure to conduct outreach as described above.

Although the Department of Justice issues weekly updates of cases, this information is an internal document and not publicly available. There is no alternative publication or other communication channel set up to ensure that regular information about March cases, war crime cases, or other cases, is available to people outside UNMIK. Department officials told Human Rights Watch that anybody requiring particular information can contact them. In their view it is not their role to regularly disseminate information about case decisions or progress toward achieving accountability for particular groups of crimes.²⁰⁰

It is highly unlikely that members of ethnic minority communities, many of whom are subject to very restricted freedom of movement, would be aware of the right to request such information from Department of Justice officials in Pristina, much less how to go about doing so.

When asked why the DOJ does not produce regular public reports about progress on the prosecution of ethnic violence, a senior official in the department said that it is tasked solely with the “most serious cases [and is] not a political office.”²⁰¹ She further emphasized:

We are judges and prosecutors. This is our mandate. . . . If you want information on the local courts for us it is a bit different. This is a different mechanism. This is the OSCE; they have the whole picture.²⁰²

²⁰⁰ Human Rights Watch interview with a senior official and an international prosecutor, Department of Justice, Pristina, November 16, 2005.

²⁰¹ Ibid.

²⁰² Ibid. Another high-ranking official within the Department seconded this sentiment, telling Human Rights Watch, “We are a prosecutors’ office, not in the report-writing business. We have a number of cases and when

Mid-level Department of Justice staff told Human Rights Watch that there had been repeated suggestions from the international prosecutors in the Criminal Division to create a DOJ-based website where copies of case documents and other documents relevant to prosecutions could be uploaded for public use, like in Sierra Leone and at the ICTY. When asked why this had not yet happened, a staff member from the Criminal Division said: “it is a management issue. No one has sat down and thought about doing it. Then there are the resourcing and staffing issues.”²⁰³

Obtaining information about municipal court case decisions is even more of a challenge. In the absence of a computerized database of court decisions, the only way to obtain such decisions is to request physical copies of judgments individually from each court.

Only the Legal Systems Monitoring Section of the OSCE routinely monitors municipal court decisions. (The Department of Justice has the right of access to these decisions, but it appears not to collect such information systematically.²⁰⁴ The Department of Judicial Administration, though technically responsible for oversight and administration of the national judiciary, maintains only superficial statistics, and does not collect or analyze case decisions.) The OSCE, however, does not systematically or routinely share information about these cases publicly. Although the organization is tasked with human rights and judicial system monitoring, the reality is that its staff and resources are primarily focused on continued capacity building within local institutions.

The situation surrounding reports on cases stemming from the March 2004 violence illustrates these concerns. Despite the fact that the OSCE maintains statistics on and detailed transcripts of cases, including those relating to March violence, they were reluctant to impart that information until December 2005, when the mission released a public report on the subject. The information provided in that report, while useful, was only presented in aggregate form, and lacked detail on individual cases.

Moreover, although the OSCE did monitor war crimes trials until the fall of 2002, it has since shifted its focus to capacity building and monitoring of municipal courts and district courts where there are national panels. The OSCE does not expect to publish

we have the goods we go to trial.” Human Rights Watch interview, Department of Justice, Pristina, February 3, 2006.

²⁰³ Human Rights Watch interview with criminal division staff member, Department of Justice, February 22, 2006.

²⁰⁴ Human Rights Watch interview with Department of Justice staff, Kosovo, October 25, 2005; Human Rights Watch interviews with OSCE staff, Department of Human Rights and Rule of Law, September–November 2005; and Human Rights Watch interview with senior staff, Department of Justice, Pristina, November 16, 2005.

further updates or reports on the progress of domestic war crimes trials,²⁰⁵ which means that there is no clear alternative information source with access to these cases. Nor is there regular and public monitoring of trials conducted with international judges and prosecutors.²⁰⁶

The reluctance within the OSCE to make its monitoring information public appears to be motivated by a concern within the organization that if it were to regularly publicize information that reflected poorly on the courts, it might jeopardize its work to develop those judicial institutions in Kosovo.²⁰⁷ The result is that the only international institution with both the capacity and mandate to monitor and report on the operation of the criminal justice system appears often reluctant to do so publicly.²⁰⁸

²⁰⁵ Human Rights Watch telephone interview with official in the OSCE LSMS, November 14, 2005.

²⁰⁶ The transformation of the Ombudsperson Institution from an international to a local institution exacerbates the lack of national human rights capacity, and puts under threat an important mechanism of accountability in Kosovo, especially given a recent UNMIK regulation that limits the institution's jurisdiction to the PISG (and not UNMIK). UNMIK Regulation No. 2006/6 "On the Ombudsperson Institution in Kosovo," UNMIK/Reg/2006/6, entered into force February 16, 2006, [online] http://www.unmikonline.org/regulations/unmikgazette/02english/E2006regs/RE2006_06.pdf (retrieved April 14, 2006).

²⁰⁷ Human Rights Watch interviews with staff from the OSCE Mission in Kosovo, and nongovernmental organizations present in Kosovo, November–December 2005.

²⁰⁸ One OSCE staff member commented that "[t]here is an overlap between the OSCE and the DOJ, as with the OSCE and UNMIK at the municipal level. The fragmented way in which the U.N. mission was set up does not allow for sharing and clarity. If an H.R. [human rights] officer would immediately share what he or she gathered maybe that would be wrong, but there needs to be both capacity and transparency." Human Rights Watch interview with OSCE staff member, OSCE headquarters, Pristina, January 24, 2006.

Impact on the Return of Displaced Persons

The riots and attacks on minorities in March 2004 left some 4,100 minority community members displaced in Kosovo. More than one-and-a-half years later approximately 1,300 of these persons are still officially displaced.²⁰⁹ Human Rights Watch research in the field suggests that very few of those displaced by March events have actually returned to reconstructed houses in their original communities, choosing instead to live in temporary collective shelters on the outskirts of their old communities, in mono-ethnic enclaves elsewhere in the province, or outside of Kosovo altogether.²¹⁰

There is a widespread belief on the part of the Serb community in particular that the failure to achieve accountability for March crimes is the result of a “lack of will” on the part of the international presence in Kosovo. The views expressed below—by people displaced by March riots, often by neighbors whom they recognized—reflect widely-shared sentiments among minority communities:

The intelligence that was working in Kosovo, they have photos but they will never give them to you.²¹¹

The police and others know who did this, but they keep those photos of who was burning the houses for themselves.²¹²

No police even are looking for them. So many murders took place around Kosovo and no one was convicted.²¹³

²⁰⁹ Human Rights Watch interview with UNMIK Office of Returns and Communities, Pristina, September 16, 2005; Human Rights Watch interview with UNHCR, Pristina, September 26, 2005. See also U.N. Security Council, “Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo,” S/2006/45.

²¹⁰ Human Rights Watch bases its analysis on field research with displaced persons from six different municipalities. Human Rights Watch interviews, Kosovo, September 16-17, 2005. In subsequent discussions with NGOs and humanitarian aid agencies it is clear that the numbers of returnees from March 2004 is very low. One municipality representative in the North Mitrovica region suggested that if “1 percent has returned that is generous.” Human Rights Watch interview with UNMIK municipal representative, North Mitrovica region, September 21, 2005. It is also notable that the October 2005 Comprehensive Review of the Situation in Kosovo by Ambassador Kai Eide (“the Eide report”) concluded bluntly “the overall return process has virtually come to a halt.”

²¹¹ Human Rights Watch interview with sixty-five-year-old man, September 19, 2005.

²¹² Human Rights Watch interview with thirty-nine-year-old man, September 19, 2005.

²¹³ Human Rights Watch interview with fifty-two-year-old man, September 19, 2005.

Nobody came to apologize. Nothing happened. They were showing us some pictures and telling us like they were involved in March events (and they knew they were involved), but they did nothing. If the Serbians did something like this, they would have caught them a long time ago. There is no justice from KFOR, UNMIK, or others, and I cannot ask for anything of the Albanians.²¹⁴

The promise after March 2004 was that it would be “fixed”: perpetrators would be brought to justice and the houses would be rebuilt. Return of the displaced is contingent on both of these elements; there must be safety enabling return as well as a viable place to return to.²¹⁵

Whatever progress has been made in reconstructing houses, the fact that there has been little or no visible accountability for March crimes—for ordinary perpetrators and law enforcement personnel alike—reinforces the fear within minority communities that events like in March 2004 are likely to happen again. This view is echoed in the conclusion of the recent OSCE analysis of the criminal justice response to March, which states that the “relatively weak response of the courts... may also be considered inadequate to prevent similar acts of public disorder in the future.”²¹⁶

Many of the people Human Rights Watch interviewed told of their deep attachment to their land and their wish to return, but asked how they could return given the lack of security. In the words of one man, who was crying as he spoke: “I would return, but how can I by myself. Who doesn’t want to live in his own house? I live in a container and my house is near.”²¹⁷

²¹⁴ Human Rights Watch interview, September 21, 2005.

²¹⁵ The issues related to the second necessary precondition for return (houses and the reconstruction effort) fall outside the scope of this report. It should be noted, however, that in the December 2005 report on the status of developments in Kosovo of the Special Representative of the Secretary-General (SRSG) to the U.N. Secretary-General, the SRSG concludes that “[t]hese failures [relating to the reconstruction and compensation scheme led by the PISG] undermine returns and the prospect for returns and undercut the government’s message in the immediate aftermath that the violence was unacceptable and would not be repeated.” See U.N. Security Council, “Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo,” S/2006/45, p. 17, para. 69 of Annex I “Technical assessment of progress in implementation of the standards for Kosovo,” prepared by the Special Representative of the Secretary-General for Kosovo, 20 December 2005.

²¹⁶ OSCE LSMS, “The Response of the Justice System to the March 2004 Riots.”

²¹⁷ Human Rights Watch interview with fifty-one-year-old displaced man, Kosovo, September 20, 2005. A seventy-four-year-old displaced man expressed similar sentiments: “I do not want to go from prison to prison. If some other Serb neighbors would go back, I would definitely return. . . . [But] to go back there now to have someone kill me in the night...?” Human Rights Watch interview, Kosovo, September 18, 2005.

One woman summed up her situation as follows:

The people who committed those crimes are walking freely. . . . Nobody has said anything. No one from [city name] has come here to talk to us, not the President or the Serbian community representative or the municipality. They had one meeting in [city name] about six months ago and said if you want you can come back, but we cannot guarantee your safety.²¹⁸

Human Rights Watch found that a number of displaced persons, particularly the elderly or those with children, preferred to live in collective temporary shelters—often in poor conditions or in metal containers only six by two meters in size—rather than risking return. No one we interviewed still living in displacement had plans to return to their rebuilt homes.²¹⁹

The lack of visible prosecutions and accountability for offenders also appears to have sent a message that harassment and intimidation of minorities is permissible. In one municipality visited by Human Rights Watch, several elderly displaced persons said that their neighbors had threatened them with “worse next time” if they seriously contemplated return.²²⁰ Other minorities described how children cursed them, spit at them, and even threw stones, when they returned to their former villages or towns to visit their rebuilt houses.²²¹

For minorities, especially the displaced, the end result is confirmation for them that accountability in the broadest sense has not been achieved. The international community and the local administration have failed in their promise to bring to justice those responsible for the violence and devastation wreaked on their communities. They

²¹⁸ Human Rights Watch interview with sixty-six-year-old displaced woman, Kosovo, September 20, 2005.

²¹⁹ It should be noted that there is a long-standing debate in Kosovo about the advisability of returns to homes of origin versus alternative resettlement options. UNHCR has adopted the position that despite the guiding principles on return, which give displaced persons a choice in the manner and location of return, in the Kosovo context return can only mean to “homes of origin.” Resolution 1244 implies that return can only be to homes of origin and in reality there is little informed or real choice for alternative resettlement options because the areas outside mono-ethnic enclaves are not considered safe and therefore not an option, thus severely limiting the “choice.” In October 2005, Special Envoy Kai Eide suggested that returns to places other than homes of origin should be contemplated. See “A Comprehensive Review of the Situation in Kosovo,” report of Special Envoy Kai Eide as submitted by the Secretary General of the United Nations to the President of the Security Council for review on October 7, 2005, p. 7. It will be critical that this issue be taken on directly in broader discussions about sustainable returns to Kosovo.

²²⁰ Human Rights Watch interview with displaced couple, Kosovo, September 19, 2005.

²²¹ Human Rights Watch interview with displaced woman, Kosovo, September 18, 2005.

proved themselves yet again incapable of delivering on their promise to rebuild an important part of what they had lost—trust and a sense of security or protection. Local leaders and municipal representatives also did not rise to the occasion, failing to actively promote and support returns of those displaced from their communities in March 2004.

Against this backdrop it will be difficult for any future leadership in Kosovo to achieve real progress in the area of increased (and sustainable) returns of minorities and multi-ethnicity, unless the perception of impunity can be dramatically altered.

Conclusion

The aftermath of March 2004 was an opportunity to demonstrate the existence of the rule of law in Kosovo. Instead, it seems to have confirmed the erratic nature of justice in the province. It has highlighted the inability of the police to successfully investigate difficult cases, and raised concern about the ability of the police to investigate allegations of abuse within their own ranks. It has demonstrated an unwillingness or inability of prosecutors to embrace fully their new role as investigative prosecutors, and confirmed accounts of case mismanagement and a lack of oversight within the courts. It has underscored a lack of clarity about responsibilities within UNMIK's many departments. And it has shown a fundamental lack of respect for individual victims. In short, the aftermath of March 2004 was an opportunity lost.

The failure to bring to justice many of those responsible for the violence and destruction of March 2004 compounds an earlier lack of accountability for the war crimes and serious anti-minority violence of 1998-2000. Human Rights Watch research indicates that the lack of progress in delivering justice for these serious crimes has hampered Kosovo's progress toward a functional state. There is a real danger that if the status quo on impunity continues, Kosovo risks becoming a "failed state" in which lawlessness and arbitrariness, not transparent, democratic rule will reign, regardless of the identity of the future leadership of the province.

The gap in justice has further contributed to the diminishing respect majority and minority populations alike have for the international presence in Kosovo. It is vital that the international community seize its last opportunity and address its failings in this important aspect of its administration of the province.

It is not too late to make real progress down the path toward genuine accountability and the hope of future peaceful co-existence. For that to occur, however, the international community and all stakeholders in the status talks on Kosovo must place accountability and the rule of law at the heart of the agenda. The United Nations administration in Kosovo has a legal and moral obligation to deliver justice before any further handover of power and transfer of leadership takes place.

Recommendations

To the United Nations Mission in Kosovo (UNMIK)

Office of the SRSG

- Reaffirm publicly the need to achieve progress on accountability in Kosovo, particularly for political violence, attacks on minorities, and war crimes.
- Conduct a full review of the progress toward accountability through the criminal justice system since 1999, including but not limited to crimes with an ethnic or political dimension, and war crimes. Based on the results of the review, undertake serious reorganization and reform to structures and operational procedures, including consideration of efforts to consolidate the courts and mandate the use of case management systems.
- Determine, in collaboration with the UNMIK Department of Justice and the OSCE, whether a special court or chamber within one of the existing courts is necessary to give priority to serious or sensitive cases—including those involving an ethnic or political dimension and war crimes. Ensure that any proposals take into consideration the resources and personnel required.
- Develop an action plan with a timetable, in collaboration with the international and national police and prosecutors, and Department of Justice, to establish a judicial police branch to work directly with investigative prosecutors in the investigation of criminal cases, as required under the law. The action plan should include intensive theoretical and field-based training components for police and prosecutors.
- Ensure that international and national prosecutors are sufficiently trained in their new role as investigative prosecutors, and on effective collaboration with the new judicial police branch.
- Take immediate steps, in collaboration with the UNMIK Department of Justice, UNMIK Police and KPS, the OSCE, and the PISG Ministry of Justice to reinvigorate and improve upon existing witness protection programs in Kosovo, including legislative amendments and the adoption of new protocols where necessary.
- Continue to work with member states of the European Union and other governments to establish a sustainable mechanism for witness relocation.
- Restore the Ombudsperson Institution's mandate to cover the functioning of international bodies and institutions operating in Kosovo, in recognition of the value of external and independent monitoring and review capacities.

UNMIK Department of Justice

- Immediately reevaluate the Department's strategy for addressing accountability for crimes, including war crimes and ethnic violence, by completing a comprehensive assessment of current efforts to establish a functioning criminal justice system, and communicating to the highest levels of the international administration its resource, staffing, and other needs.
- Work with the Office of the SRSG and the OSCE to determine whether there is a need for a special court or chamber to give priority to serious or sensitive cases—including those involving an ethnic or political dimension and war crimes.
- Prioritize the creation of an effective witness protection system for Kosovo, including updating staff training on the current law and practice and directly addressing with the Office of the SRSG and the police any gaps and/or concerns in the implementation of witness protection measures the Department has observed during the course of its monitoring, investigative, and prosecutorial work.
- Liaise with the Contact Group and E.U. governments and the ICTY for concrete assistance in developing an effective witness protection system.
- Develop, in collaboration with UNMIK Police and KFOR, a practical strategy for securing evidence and testimony from military and civilian personnel who have left Kosovo.
- In cooperation with the Office of the SRSG, the PISG Department of Judicial Administration, the OSCE, and the PISG Ministry of Justice and Kosovo Judicial Council, publicly clarify future arrangements for monitoring and oversight of the national judiciary. The arrangements should take into account the new law on the Ministry of Justice and the creation of the Kosovo Judicial Council and the phasing out of international involvement in the judicial system. A realistic assessment of the capacities currently available within existing institutions to conduct detailed oversight of the courts' work must be undertaken as part of this coordination and review effort.
- Develop concrete programs for collaboration between national and international prosecutors and judges, aimed at ending their segregated functioning, and improving professional standards among national prosecutors and judges.
- Prioritize implementation of the investigative responsibilities for prosecutors and the police under the criminal procedure code.
- Conduct an outreach and public information campaign, in collaboration with the PISG, the OSCE, and national justice system, to ensure that the public is aware of the outcome of important cases, may access overall statistics on conviction rates, and understands whom to approach with information about investigations

or prosecutions, and that members of the public are able to obtain information on the status of cases in which they are a party or witness.

OSCE Mission in Kosovo

- Provide input to the Department of Justice and the Office of the SRSG on the issue of whether a special court or chamber is needed to give priority to serious or sensitive cases—including those involving an ethnic or political dimension and war crimes. If the need for such a court or chamber is identified, advise on its structure and requirements, based on the OSCE's ongoing judicial systems monitoring experience throughout the former Yugoslavia.
- Collaborate with the UNMIK Department of Justice, UNMIK Police and KPS, and the PISG Ministry of Justice, to ensure the development of an effective witness protection system in Kosovo.
- Conduct further training, including field-based training, for prosecutors in their new role as investigative prosecutors. Work with the Kosovo Judicial Institute on developing more effective training, including joint police-prosecutor trainings where feasible. Facilitate the identification and provision of expert trainers and lecturers for the Kosovo Judicial Institute, including from outside Kosovo.
- Ensure that the mission's monitoring mandate is not compromised by its capacity-building activities, by creating a clear division between responsible departments, ensuring autonomy for the OSCE Legal Systems Monitoring Section, and making its findings public in a timely fashion.
- Consider further efforts to support intensive on-the-job training and capacity-building for independent nongovernmental human rights monitors to help ensure effective long-term monitoring of international and national justice initiatives in Kosovo.

To the Kosovo Police Service (KPS), UNMIK Police, and the PISG Ministry of Internal Affairs

- Demonstrate a coordinated and clear commitment to achieving accountability for serious crime in Kosovo, including for abuses committed between 1998 and 2000.
- Establish a public outreach mechanism so that reliable information on the progress of investigations is available. This information should be timely, comprehensive and transparent.

- Develop a joint strategy for further coordination between KPS and UNMIK Police for the conduct of investigations, including regular and transparent reporting channels on cases between municipal stations and with headquarters.
- As a matter of investigative policy, take steps to be more proactive in investigations.
- Take concerted steps toward the creation of a KPS judicial police branch that works directly with prosecutors on the investigations of criminal cases in accordance with the criminal procedure code.
- Carry out training to ensure that officers are properly trained in their new role to support the investigations by prosecutors, and conduct regular assessment in coordination with the UNMIK Department of Justice, the OSCE, Kosovo Judicial Institute, the PISG Ministry of Justice and the national prosecutorial offices, to evaluate progress.
- Evaluate, in collaboration with the OSCE, the UNMIK Department of Justice, and Office of the SRSG, existing witness protection measures in Kosovo with an eye toward addressing witness intimidation obstacles for the long term. Take necessary steps to reinvigorate and/or reform current protocols, including measures to ensure that situations of witness intimidation are taken seriously and dealt with swiftly and publicly.
- Work with the Ministry of Justice and the UNMIK Department of Justice to develop a strategy for ensuring that personnel have handed over necessary evidence or given official testimony prior to their departure from the mission. An additional strategy needs to be developed to address the failure to have secured this evidence or testimony once the departure has taken place.
- The office of the UNMIK Police commissioner should carry out an investigation into the role of the KPS and UNMIK Police in bringing to justice those responsible for crimes committed during March 2004, including where offences were alleged to have been committed by KPS officers.
- The KPS professional standards unit should give regular public updates on the status of investigations into allegations of police misconduct during the March 2004 riots.

To the PISG Ministry of Justice

- Affirm the importance of achieving progress on accountability through criminal prosecutions for all crimes, including war crimes, ethnically-motivated crime, and “ordinary” crime.
- Collaborate with the UNMIK Department of Justice, the Kosovo Judicial Council, the OSCE, UNMIK Police and KPS to ensure the development of an effective witness protection system in Kosovo.
- Establish a central computerized caseload management system for all courts in Kosovo, in consultation with judges, prosecutors, the PISG Department of Judicial Administration, the Kosovo Judicial Council, and the UNMIK Department of Justice.
- Take immediate steps, in association with the UNMIK Department of Justice, the PISG Department of Judicial Administration, the Kosovo Judicial Council, and the court system, toward implementing a centralized database system of final verdicts, accessible to the public in either electronic or bound report format. A standard procedure for the public to request (and receive) information on cases should be established and widely publicized so that it is an accessible public information tool.
- Clarify with the Office of the Prosecutor the arrangements for case management and supervision over prosecutors’ offices.
- Develop, in consultation with the Office of the Prosecutor and the UNMIK Department of Justice, procedures for the regular sharing of information between prosecutors, including between international and national prosecutors, and the development of standard protocol.
- Ensure the provision of ongoing training for judges on sentencing, in cooperation with the Kosovo Judicial Institute and the OSCE, including application of sentencing guidelines. Regularly review sentencing practices for consistency with guidelines, and refresh training as required.
- Ensure that prosecutors receive additional training, in cooperation with the Kosovo Judicial Institute and the OSCE, particularly as regards their role as investigative prosecutors. Regularly review their work and refresh training as required.
- Carry out an evaluation to determine whether consolidation of the number of courts in Kosovo would deliver a more efficient justice system and facilitate monitoring of its operation.

To the Office of the Prosecutor

- Clarify the hierarchy and functioning of the prosecutorial offices in Kosovo and the work of individual prosecutors to facilitate effective case management and oversight.
- Mandate the participation of all prosecutors in training on their role as investigative prosecutors in the new system, ensuring in collaboration with the Kosovo Judicial Institute and the OSCE that the training includes field-based and joint police/prosecutorial aspects.
- Develop in collaboration with the UNMIK Department of Justice opportunities for the sharing of best practices between prosecutors—national to national and national to international.
- Conduct an outreach campaign to attract greater numbers of candidates to train as prosecutors, with support from the Ministry of Justice, universities, and legal aid and reform organizations. Consider for example the creation and implementation of an internship program for law students.

To the Kosovo Judicial Council

- Affirm the importance of achieving progress on accountability through criminal prosecutions for all crimes, including war crimes, ethnically-motivated crime, and “ordinary” crime.
- Collaborate with the UNMIK Department of Justice, the OSCE, UNMIK Police and KPS to ensure the development of an effective witness protection system in Kosovo.
- Establish, and ensure the implementation of, a central computerized case management system for all courts in Kosovo, in consultation with judges, prosecutors, the PISG Department of Judicial Administration, the PISG Ministry of Justice, and the UNMIK Department of Justice.
- Work with the UNMIK Department of Justice, the PISG Department of Judicial Administration, and the courts toward implementing a centralized database system of final verdicts, accessible to the public in either electronic or bound report format. A standard procedure for the public to request (and receive) information on cases should be established and widely publicized so that it is an accessible public information tool.
- Mandate the participation of all judges in continuing education on criminal law topics, including sentencing and developments as regards the new criminal procedure code and criminal code. Regularly review sentencing practices for

consistency with guidelines and appropriate application of the law, and refresh training as required.

- Standardize communication and reporting so that information provided on the caseload and disposal of cases in the courts facilitates the Council's task of overseeing the work of the courts.
- Assess, in collaboration with UNMIK and the PISG Ministry of Justice, whether consolidation of the number of courts in Kosovo would deliver a more efficient justice system and facilitate monitoring of its operation.

To the Provisional Institutions of Self-Government

- Prioritize the achievement of measurable accountability for crime.
- High-level government officials should publicly support police and prosecutorial efforts to achieve success in solving serious, political, and inter-ethnic crime, including by emphasizing the duty of members of the public to cooperate with such investigations and prosecutions as part of their civic responsibilities.
- Cooperate fully with the efforts by the Office of the SRSG, the UNMIK Department of Justice, UNMIK Police, and KPS, to establish an effective witness protection system.
- Support the further development of the judicial system, including through the allocation of necessary funds for a centralized database, judicial and prosecutorial training and recruitment, and outreach.

To the Contact Group and the European Union

- Ensure that a functioning criminal justice system, including accountability for violence against minorities and war crimes, is accepted by all parties as integral to the successful resolution of Kosovo's status.
- Ensure that the E.U. Planning Team for the Rule of Law Mission in Kosovo includes a specific focus on accountability for inter-ethnic violence, including March 2004-related cases, and war crimes as part of its overall focus on the functioning of the criminal justice system.
- Ensure that UNMIK and its implementing partners, including the newly established Ministries of Justice and Internal Affairs, have the necessary material and political support for the mid-to-long-term to achieve their justice and policing goals.
- The European Union should condition ongoing financial support to the criminal justice system to observable improvements in policing, prosecutions, and the

work of the courts. Regular progress reports from the U.N. and PISG should be supplemented by E.U. auditing and evaluation.

- Provide the material support necessary to enable the creation of an effective system for witness relocation and protection, including by making a public commitment to relocate witnesses from Kosovo.
- Provide the necessary financial and political support to ensure that international civilian and military personnel who have left Kosovo are able to give evidence in criminal proceedings in Kosovo either in person or by video-link.

To the International Community at Large

- Take every opportunity to address the concerns described in this report, including by emphasizing, in all bilateral and multilateral dialogues on Kosovo, the importance of a functioning criminal justice system and accountability for political violence, attacks on minorities, and war crimes.

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Not on the Agenda

The Continuing Failure to Address Accountability in Kosovo Post-March 2004

In March 2004, there was widespread rioting across Kosovo, involving more than 50,000 people. Minority communities were the primary target. The violence, which left nineteen dead and more than a thousand wounded, displaced more than four thousand people, many of whose homes were the target of arson attacks. In the wake of the violence, the international community vowed repeatedly that those responsible would be brought to justice.

The criminal justice response to March 2004 provides a useful yardstick by which to measure progress on accountability efforts in the province generally. After almost seven years of international administration, it can no longer be argued that the international community has had insufficient time to address the shortcomings in the legal framework, the police, the prosecuting authorities, and the courts.

Despite the rhetoric that justice would be done for the March violence, the reality is that real accountability remains a distant goal in Kosovo. Progress on March-related cases has been limited, despite being given priority in the justice system. More than two years later, only 426 individuals have been charged in connection with the violence, mostly for minor offenses such as theft, with just over half resulting in final decisions.

Not on the Agenda: The Continuing Failure to Address Accountability in Kosovo Post-March 2004 analyzes the failure to bring to justice many of those responsible for the violence. Key factors include: the introduction of major reforms to the criminal justice system three weeks after the March riots; the failure of a special international police operation established to investigate March cases, coupled with ineffective policing generally; an insufficient response to allegations of Kosovo Police Service misconduct during the riots; passivity on the part of prosecutors; poor case management and lenient sentencing practices in the courts; and inadequate oversight by the United Nations administration in Kosovo.

The report concludes that the international community and provisional government in Kosovo must place accountability for crimes, including war crimes and attacks on minorities prior to March 2004, at the heart of the political agenda. It contains concrete recommendations to address the current shortcomings in the criminal justice system, including: better collaboration between international and national police, prosecutors and judges; centralized case management and tracking; and an effective witness protection system.

Prizren city, Kosovo, March 2004.

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