



Kosovo

Kosovo Criminal Justice Scorecard

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Kosovo Criminal Justice Scorecard

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Glossary

DoJ	UNMIK Department of Justice
EAR	European Agency for Reconstruction
ESDP	European [Union] Security and Defense Policy
EU	European Union
EULEX	European Union Rule of Law Mission in Kosovo
KJC	Kosovo Judicial Council
KJI	Kosovo Judicial Institute
KPS	Kosovo Police Service
KSPO	Kosovo Special Prosecutor's Office
LSMS	OSCE Mission in Kosovo Legal System Monitoring Section
OSCE	Organization for Security and Co-operation in Europe
PIK	Police Inspectorate of Kosovo
SRSJ	Special Representative of the United Nations Secretary-General
UNMIK	United Nations Interim Administration Mission in Kosovo

Note on Place Names

For the sake of clarity, in this report Human Rights Watch provides both the Serbian and Albanian name at the first mention of the location. Subsequent references are to the current standard English-language use (for example, Pristina rather than Prishtine).

Executive Summary

It is now widely accepted that the justice system is the weakest of Kosovo's main institutions. That reality is reflected in the decision of the European Union to focus the efforts of its European Security and Defence Policy mission to Kosovo on police and justice issues.

Kosovo's inadequate justice system has far-reaching consequences. In particular, many of Kosovo's ongoing human rights problems, particularly ethnically- and politically-motivated violence, can be traced back to the failure of the authorities to bring perpetrators to justice.

Human Rights Watch's research indicates that the weakness of Kosovo's criminal justice system has many causes. A major change to the system, introduced in 2004, whereby prosecutors rather than judges take the lead in investigating cases, has yet to be fully implemented. Prosecutors now appear to take a more active role in leading investigations than was the case at the time of our previous report of May 2006, "Not on the Agenda: The Continuing Failure to Address Accountability in Kosovo Post-March 2004." But prosecutors' cooperation with the police remains problematic.

Prosecutors are supposed to be assisted in their new investigative role by a judicial police branch, with dedicated officers. But the branch has yet to be established, largely because of opposition from both international and national police, who fear that a separate branch would create divisions within the police. No formal alternative arrangements have been put in place.

Concerns over lenient sentencing practices and a lack of understanding by judges of the applicable law remain, although training for national judges has improved.

The justice system remains deeply divided between its national and international elements. There has been some progress in improving collaboration between national prosecutors and judges and their international counterparts. But the

continuing lack of confidence among international institutions about the ability of the national officials fairly to investigate, prosecute, and adjudicate sensitive cases means that national police, prosecutors, and judges are frequently cut out of such cases. The lack of integration in the system undermines its efficiency and hampers efforts to build capacity among national prosecutors and judges.

Inadequate witness protection remains a major impediment to justice, especially for organized crime, war crimes, and attacks on minorities. As cases of witness intimidation and harassment are widespread, many witnesses are unwilling to come forward, fearing for their lives. Kosovo lacks a witness protection law, and judges and prosecutors often fail to use existing protective measures available in courtrooms. For witnesses in the most sensitive cases, relocation outside Kosovo is the only effective means of protection. Yet foreign governments have so far been reluctant to accept witnesses at risk.

Despite millions of euro of funding, the electronic case management system is still not operational, exacerbating the backlog in cases and making effective monitoring and resource allocation almost impossible. Outreach to affected communities is inadequate, leaving victims and witnesses in the dark about the outcome of cases, and further undermining confidence in the system.

There is insufficient independent oversight over the work of judges, prosecutors, and the police. The inspectorate body set up to investigate complaints against the Kosovo Police Service lacks experience and authority. And the justice system generally lacks transparency, making it hard for the public to determine whether justice is being done, and to hold to account the national and international institutions that are responsible for justice.

An EU rule of law of mission (known as “EULEX”), with international judges, prosecutors and police officers, is the main element of the new EU-led mission to Kosovo, reflecting international recognition of the scale of the problem. But ending impunity and building the rule of law will depend on the ability to learn from the mistakes of the past, and a willingness on the part of the Kosovo government and

the new international mission to police, prosecute, and punish criminal conduct, wherever and by whomever it is committed.

* * *

Our report “Not on the Agenda,” which examined the Kosovo criminal justice system through the lens of cases related to ethnically-motivated riots in March 2004 and their adjudication, made a series of recommendations to national and international authorities in Kosovo, with the twin aims of reinvigorating the investigation and prosecution of the pending cases, and improving the criminal justice system in general. Human Rights Watch traveled to Kosovo in July and December 2007 to assess the state of the criminal justice sector in Kosovo, using as our benchmarks the recommendations identified in our May 2006 report, as well as to examine new issues of concern. We interviewed more than 30 national and international officials engaged with the criminal justice system, as well as civil society and media representatives.

The result is the criminal justice scorecard summarized below and elaborated in this report. We assess whether the recommendations contained in our May 2006 report have been “fully implemented,” “partially implemented,” or “not implemented.” We make further concrete recommendations to help address the shortcomings identified, and to build on progress already made.

Summary of Progress

RECOMMENDATION: Creation of a judicial police branch and improved cooperation between the police and prosecutors.

STATUS: *NOT IMPLEMENTED*

RECOMMENDATION: Better coordination between the Kosovo Police Service and UNMIK Police.

STATUS: *PARTIALLY IMPLEMENTED*

RECOMMENDATION: Improved investigations into allegations of Kosovo Police Service misconduct.

STATUS: *PARTIALLY IMPLEMENTED*

RECOMMENDATION: Prosecutors to take the lead in investigating and managing cases.

STATUS: *PARTIALLY IMPLEMENTED*

RECOMMENDATION: Improved collaboration between national and international prosecutors.

STATUS: *PARTIALLY IMPLEMENTED*

RECOMMENDATION: Sentencing practices by national and international judges that reflect the gravity of the offense for which a defendant has been convicted.

STATUS: *PARTIALLY IMPLEMENTED*

RECOMMENDATION: Electronic case management system in operation.

STATUS: *NOT IMPLEMENTED*

RECOMMENDATION: Better witness protection.

STATUS: *PARTIALLY IMPLEMENTED*

RECOMMENDATION: Witness relocation arrangements with states outside the region.

STATUS: *NOT IMPLEMENTED*

RECOMMENDATION: Outreach to affected communities.

STATUS: *NOT IMPLEMENTED*

RECOMMENDATION: Greater transparency in the administration of justice.

STATUS: *NOT IMPLEMENTED*

Key Ongoing and New Recommendations

To the EU Police and Justice Mission

- Ensure that the criminal justice system is fully integrated, with effective coordination between international and national judges, prosecutors, and police.
- Prioritize the removal of obstacles to effective witness protection, including witness relocation.
- Ensure effective oversight over international police, prosecutors, and judges, including by the Ombudsperson Institution.

To the Government of Kosovo

- Resolve arrangements for the Kosovo Police Service to provide investigative support to national and international prosecutors.
- Address the obstacles to effective witness protection, including the prompt adoption of a witness protection law.
- Ensure that all court employees use the electronic case management system.

To the European Union, the United States, and other Contact Group members

- Publicly commit to relocate at-risk witnesses from Kosovo, and provide financial support for this relocation.

(Detailed recommendations are given at the end of this report.)

Introduction

In May 2006 Human Rights Watch released “Not on the Agenda: The Continuing Failure to Address Accountability in Kosovo Post-March 2004,” a report examining the Kosovo criminal justice system through the lens of cases related to ethnically-motivated riots in March 2004 and their adjudication.

The report analyzed the failure to bring to justice many of those responsible for the violence in March 2004. Key factors included: the failure of a special international police operation disconnected from the rest of the justice system, and 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.

It is now widely accepted that the justice system is “the weakest of Kosovo’s institutions.”¹ That reality is reflected in the decision of the European Union to focus the efforts of its ESDP mission to Kosovo (EULEX) on police and justice issues. There is also recognition that the response to the March 2004 cases in particular was inadequate. Then-UN Secretary-General Kofi Annan acknowledged in a September 2006 report to the Security Council on Kosovo “insufficient progress has been made in investigating and prosecuting cases related to the violence of March 2004.”²

At the time of publication of the 2006 Human Rights Watch report, international prosecutors and judges had jurisdiction over 56 of the most serious March-related cases (differences between OSCE and UNMIK counting methods made it impossible at the time to clarify the number of defendants involved). As of March 2006, according to UNMIK statistics, 13 of those cases had resulted in convictions, 12 had been dismissed, terminated or closed, and 2 were pending. The remaining 29 cases

¹ This was the conclusion of the UN secretary-general’s special envoy, Kai Eide, who was dispatched to Kosovo in the wake of the March 2004 violence. See Kai Eide, “The Situation in Kosovo—Report to the Secretary-General of the United Nations, Summary and Recommendations,” August 2004.

² Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, September 1, 2006, S/2006/707, para. 25, <http://www.un.org/Docs/sc/sgrepo6.htm> (accessed January 28, 2008).

had yet to reach the pretrial investigation phase. Seven of those 29 cases were handed to national prosecutors in early 2006 to see whether they could progress them.³

By the end of January 2008 the picture appeared to have improved. Thirty-five defendants had been convicted on charges of arson, looting, inciting racial, religious and ethnic hatred, and assault, in cases managed mainly by international prosecutors.⁴ According to UNMIK, 33 of the 35 were defendants in the original 56 serious cases (which involved a total of 63 defendants). Fourteen of those convicted received prison terms ranging from six months to 18 years; the rest received suspended sentences or fines. One defendant was acquitted. Decisions against 19 of those convicted are final (no further appeal being possible).

While comparisons are difficult (because of the variations in the way cases are counted), it is clear that there has been some progress on prosecution of the most serious March-related crimes since the publication of the 2006 Human Rights Watch report. But it is also notable that almost four years after the events, verdicts have yet to be reached in the case of around half of the defendants from the original 56 cases.

Moreover, many of the systemic problems that underlay the problematic treatment of the March cases remain the same, or have seen little improvement. As the EU rule of law mission begins its work, it is a suitable moment to look at the progress on some of the key problems identified in “Not on the Agenda,” in order to assist the domestic and international authorities in Kosovo to correctly identify priorities and effectively tackle systemic weaknesses in the justice system.

³ Human Rights Watch, *Not on the Agenda: The Continuing Failure to Address Accountability in Kosovo Post-March 2004*, vol.18, no. 4 (D), May 2006, <http://hrw.org/backgrounder/eca/kosovo0607>, pp. 26-27.

⁴ Human Rights Watch email correspondence with an official from UNMIK’s Department of Justice, January 31, 2008.

Police

Creation of a Judicial Police Branch and Improved Coordination between Police and Prosecutors

NOT IMPLEMENTED

The creation of a “judicial police” branch within the Kosovo Police Service was mandated by the 2004 Criminal Procedure Code, to ensure that the police are able meaningfully to assist prosecutors, given the latter’s new role of directing investigations and gathering the necessary evidence for prosecution.

To date, no judicial police branch has been created. In February 2006 an internal KPS memorandum declared all officers in each police station “judicial police” and indicated that the commander of each station should be considered the head of the judicial police at each station.⁵ Since then no further action has been taken. No individual officers have ever been designated as “judicial police” and no training has been provided to facilitate the establishment of such a specialized force.

National prosecutors expressed concern to Human Rights Watch in 2006 about the lack of investigative support provided by the KPS.⁶ A national prosecutor echoed this concern in 2008, arguing that “[police] capacities are limited, their professionalism is not yet at the required level, and improvement is needed.”⁷ A high-ranking KPS officer interviewed by Human Rights Watch in January 2008 acknowledged that there is no training in place to develop judicial police capacity within the service.⁸

The explanation for the lack of progress lies in opposition from the police. National and international police representatives interviewed by Human Rights Watch in 2006 and 2007 were firmly against the idea of a judicial police branch, fearing that its

⁵ Human Rights Watch, *Not on the Agenda*, p. 31.

⁶ *Ibid.*, p. 33.

⁷ Human Rights Watch telephone interview with a national prosecutor, January 22, 2008.

⁸ Human Rights Watch telephone interview with a senior KPS official, January 31, 2008.

creation as a separate body would create unnecessary divisions within the police.⁹ They emphasized that training the general police body to handle cooperation with prosecutors would be a better alternative. Nevertheless, they failed to articulate concrete plans to achieve this goal.

An international prosecutor interviewed by Human Rights Watch said there is an urgent need to operationalize the judicial police to increase the quality of cooperation between these two sectors.¹⁰ Officials from UNMIK's Department of Justice (DoJ) suggested that a compromise may lie in prosecutors training designated police officers to fulfill this role, rather than insisting that they be formally constituted as a separate structure.¹¹ A high-ranking KPS officer with whom Human Rights Watch spoke in January 2008 suggested that the KPS is more likely to be sympathetic to the idea of a selected group of police officers receiving judicial police training than the creation of a separate judicial police branch.¹²

At present, a new police law is being drafted without a provision creating a judicial police branch, notwithstanding the requirements of the criminal procedure code.

Better Coordination between the Kosovo Police Service and UNMIK Police

PARTIALLY IMPLEMENTED

Lack of effective coordination between the KPS and UNMIK police was a complaint of victims and witnesses of the March 2004 riots interviewed by Human Rights Watch. One witness described being interviewed by both forces on the same matter, which was then never followed up.¹³ This may partly be explained by the fact that UNMIK established a special international police operation that took sole responsibility for

⁹ Human Rights Watch interviews with Kosovo Police Service representatives, Pristina/Prishtine, July 16, 2007, and with UNMIK Police representative, Pristina, July 13, 2007. See also Human Rights Watch, *Not on the Agenda*, p. 33.

¹⁰ Human Rights Watch interview with an international prosecutor, Pristina, July 18, 2007.

¹¹ Human Rights Watch interviews with UNMIK Department of Justice officials, Pristina, July 17-18, 2007.

¹² Human Rights Watch telephone interview with a senior KPS official, January 31, 2008.

¹³ Human Rights Watch, *Not on the Agenda*, p. 42.

investigating the cases. The operation was disbanded in January 2005 due to ineffectiveness.¹⁴

According to KPS and UNMIK police officials interviewed by Human Rights Watch, there is good cooperation between the two forces.¹⁵ Nevertheless, the great majority of “sensitive” investigations (relating to organized crime, war crimes, serious political violence, etc.) continue to be carried out solely by international investigators, who cite the need for witness and data protection.¹⁶ This is very much in line with earlier practices.

The tension between the need to protect witnesses and data on the one hand and training and empowering the KPS on the other remains a key obstacle to closer collaboration between the KPS and UNMIK police (witness protection issues are discussed in more detail below).

There is recognition within UNMIK and the KPS that the KPS must progressively take over the “international” workload. In order for that to happen, the KPS must demonstrate that it is capable of dealing with sensitive cases. That in turn requires a willingness on the part of international police to work jointly on such cases with the KPS to develop its capacity.

Improved Investigations into Allegations of KPS Misconduct

PARTIALLY IMPLEMENTED

There were allegations of misconduct against KPS officers arising from the March riots. Some KPS officers are alleged to have remained passive or in some cases participated in the violence. Out of 67 criminal investigations opened against KPS officers, none resulted in charges being filed.¹⁷ The professional standards unit

¹⁴ Ibid., pp. 33-36.

¹⁵ Human Rights Watch interview with KPS representatives, Pristina, July 16, 2007; Human Rights Watch interview with UNMIK Police representative, Pristina, July 13, 2007.

¹⁶ Human Rights Watch telephone interview with a national prosecutor, January 22, 2008.

¹⁷ Human Rights Watch, *Not on the Agenda*, p. 43.

within UNMIK (which up until October 2005 was in charge of overseeing KPS conduct) initially suspended 12 officers while the investigations were ongoing. All 12 were subsequently reinstated. No further action was taken against any individual officer in relation to the March allegations once the KPS had taken over the professional standards unit in October 2005.¹⁸

The creation of the Police Inspectorate of Kosovo (PIK) in June 2006 is a step forward. The PIK is intended to provide external oversight of the KPS. It is composed of around 40 civil servants specially trained by the OSCE. The PIK's method of dealing with complaints against the KPS is based on inspection visits, during which the PIK inspectors have access to both KPS officers and electronic and paper files.¹⁹

The inspectorate's ability to conduct effective investigations, however, is compromised by the fact that it is composed of fairly new and junior staff, who are required to manage very high-profile cases and interact with high-ranking officials. According to an international official interviewed by Human Rights Watch, the inspectorate needs additional staff training and more senior staff to allow it to operate with greater authority and confidence.²⁰

In September 2006 the Kosovo Assembly created the parliamentary Committee on Security, to exercise democratic oversight over the KPS, government ministries, and other national agencies responsible for security in Kosovo.²¹ In addition to calling witnesses, it can direct inquiries to relevant Kosovo institutions to solicit actions and responses.²²

The committee was particularly active following the February 2007 Vetevendosje protest, in which two protestors were killed by rubber bullets fired by UNMIK police. The committee summoned and questioned a number of senior KPS and Kosovo

¹⁸ Human Rights Watch telephone interview with a senior KPS official, January 31, 2008.

¹⁹ Human Rights Watch email correspondence with an international official, February 3, 2008.

²⁰ Human Rights Watch interview with an international official, Pristina, July 16, 2007.

²¹ Human Rights Watch email correspondence with an OSCE official, February 5, 2008.

²² Human Rights Watch email correspondence with an international official, February 5, 2008.

government officials.²³ Its investigation determined the sequence of the events, but was unable to establish who should be held responsible.²⁴

In terms of internal oversight mechanisms, the draft police law under consideration reportedly preserves the existing accountability arrangements, which rely on the internal procedures such as the PIK and the disciplinary unit within the KPS. It also reportedly preserves the role of the Ombudsperson as the key external oversight body.²⁵

²³ Human Rights Watch email correspondence with an OSCE official, August 8, 2007.

²⁴ An UNMIK internal investigation, overseen by the PIK, concluded that a Romanian special police unit was responsible for the deaths, and determined the deaths to be unlawful. But the internal investigation was unable to determine individual criminal responsibility and no charges have been brought.

²⁵ Human Rights Watch telephone interview with an international official, January 1, 2008.

Prosecutors

Prosecutors to Take the Lead in Investigating and Managing Cases

PARTIALLY IMPLEMENTED

One of the key criticisms directed toward national and international prosecutors in the post-March 2004 period was that they failed to engage properly with their new responsibilities under the criminal procedure code to take the lead in investigations and to direct the work of the police in support of those investigations.²⁶ Even though this failure could have been partly explained by insufficient preparation and training, judges and officials we interviewed blamed prosecutors—national ones in particular—for being passive and, in the words of one official, “transferring what police give them, [without doing] any investigations.”²⁷

Human Rights Watch’s recent research indicates that national and international prosecutors now appear to take a more active role in investigating and managing cases, and in cooperating with the police.²⁸ This is largely because the Kosovo Judicial Institute (KJI) has trained national and international prosecutors to understand their role under the new procedure code, emphasizing the importance of taking the lead and developing effective cooperation with the KPS.²⁹ A senior KJI official told Human Rights Watch that while the impact of the training has yet to be formally assessed, preliminary observations indicate that training for prosecutors has improved their professionalism and understanding of their own role.³⁰

²⁶ Human Rights Watch, *Not on the Agenda*, p. 45.

²⁷ *Ibid.*, p. 46.

²⁸ Human Rights Watch interview with an UNMIK Department of Justice official, Pristina, July 18, 2007, and Human Rights Watch telephone interview with a national prosecutor, January 22, 2008.

²⁹ Human Rights Watch interview with an international prosecutor, Pristina, July 18, 2007.

³⁰ Human Rights Watch email correspondence with a senior official of the Kosovo Judicial Institute, February 5, 2008.

Improved Collaboration between National and International Prosecutors

PARTIALLY IMPLEMENTED

National and international prosecutors have been criticized for failing to collaborate with one another, with each group dealing with separate portfolios. As the March 2004 cases demonstrate, this can impede effective investigations. Lack of collaborative efforts also makes it harder for national prosecutors to acquire the skills necessary for leading complex cases involving organized crime or political violence.

Collaboration has been hampered by UNMIK's decision in 2003 to locate all international prosecutors (and judges) in Pristina, supposedly in order to reduce costs and streamline communication within UNMIK.³¹

There have been informal efforts to increase the level of consultation between the national and international prosecutors, as well as the police. According to a local prosecutor interviewed by Human Rights Watch, informal cooperation between international and local prosecutors is now commonplace, but international prosecutors "still have the last word in deciding which authority should handle the case and are not really obliged to follow [local prosecutors'] recommendations."³²

International prosecutors can take over a case from a local prosecutor on their own initiative, as well as in response to a request from a local prosecutor.³³ According to a local prosecutor interviewed by Human Rights Watch, it is not unusual for local prosecutors to disagree with decisions by international prosecutors to take over a case.³⁴

At this writing, a pilot training program is underway, aimed at addressing the gap between the national and international prosecutors. A US-funded mentoring scheme

³¹ Human Rights Watch interview with an UNMIK Department of Justice official, Pristina, July 17, 2007.

³² Human Rights Watch telephone interview with a local prosecutor, January 22, 2008.

³³ Ibid.

³⁴ Ibid.

in the Kosovo Special Prosecutor's Office (KSPO) began in the spring of 2007, in which national prosecutors work with the lead international prosecutor. Emphasis is placed on mentoring and co-working schemes with selected national prosecutors in Pristina, although the plan is to replicate the scheme outside Pristina in the future.³⁵ Even though such pilot schemes are welcome and contribute to forging better collaboration between international and national prosecutors, such collaboration must become commonplace for the situation to improve significantly.

As with the police, the fundamental tension between entrusting national prosecutors with sensitive portfolios on the one hand and protecting data and witnesses on the other remains unresolved. The reluctance on the part of international prosecutors to involve national prosecutors in "sensitive" investigations makes it difficult for them to develop the capacity to take on such investigations.

³⁵ Human Rights Watch interview with an international prosecutor, Pristina, July 18, 2007.

Courts

Improved Sentencing Practices by National and International Judges

PARTIALLY IMPLEMENTED

Another heavily criticized aspect of the way March 2004 cases were handled was a tendency toward lenient sentencing by both national and international judges.³⁶ According to the OSCE, a majority of the sentences in riot-related convictions as of late 2005 were close to the minimum applicable penalty.³⁷

International and local officials interviewed by Human Rights Watch suggested that lenient sentences for serious crimes often result from the weak evidence presented at trial, leading judges to convict on lesser charges than those sought by the prosecution, and thereby limiting their ability to impose longer sentences.³⁸ This underscores the need for improved training and cooperation between the police and prosecutors to ensure that all relevant evidence is presented at trial.

The second most frequently quoted reason is intimidation of national judges, who, Human Rights Watch has been told, are threatened and bullied by defendants, their relatives, or their supporters, into giving more lenient sentences than the circumstances of the offense merit.³⁹ At present, strategies to address intimidation of judges are limited to the short-term approach of having international judges hear sensitive cases. Legal experts also give as a reason for lenient sentencing lack of experience, especially among national judges.⁴⁰

³⁶ Human Rights Watch, *Not on the Agenda*, p. 49.

³⁷ OSCE Mission in Kosovo Legal Systems Monitoring Section, "The Response of the Justice System to the March 2004 riots," December 2005.

³⁸ Human Rights Watch interview with an UNMIK Department of Justice official, Pristina, July 17, 2007.

³⁹ *Ibid.*; and Human Rights Watch telephone interviews with a national prosecutor, January 22, 2008, and with a national judge, December 19, 2007.

⁴⁰ Human Rights Watch interview with a local lawyer working for an NGO, July 16, 2007. Human Rights Watch telephone interview with a national judge, December 19, 2007.

According to the Kosovo Ombudsperson, one of the key impediments to applying laws in Kosovo in a coherent way is a lack of familiarity and in-depth understanding on the part of national and international judges of the complicated legal framework applicable. This is particularly true for UNMIK regulations, many of which introduced unfamiliar concepts and structures, especially for judges trained in the Yugoslav era.⁴¹ As the legal academic community is still in the process of being established in Kosovo, there are few experts able to provide commentaries to help judges interpret the most complicated laws. Additionally, the absence of a constitutional court creates legal uncertainty regarding the appropriate interpretation of the law.⁴²

The Kosovo Judicial Institute, for years under the tutelage of the OSCE, is currently the independent institution in charge of training national judges. Its trainings are supposed to strengthen capacity of judges, and make them more aware of applicable law. In order to improve sentencing practices among national judges, various entities (including the OSCE, US Agency for International Development, and European Agency for Reconstruction) have sponsored a variety of ad hoc trainings and projects, such as providing judges with consolidated legal texts with commentaries, to help them understand how the applicable law should be interpreted.⁴³ According to an official in the institute, while it is difficult to assess the impact of its training on sentencing practices, the KJI is one of the few institutions actively seeking to address the problem.⁴⁴ To date, this official stated, no similar systematic training effort has been undertaken for international judges, although they occasionally attend trainings organized by the KJI.⁴⁵

The Kosovo Judicial Council, which began work at the start of 2007, is tasked with overseeing the performance of national judges and prosecutors. It has a mixed

⁴¹ Ombudsperson Institution of Kosovo, "Seventh Annual Report 2006-2007," July 11, 2007, <http://www.ombudspersonkosovo.org/?cid=2,74> (accessed November 21, 2007), p. 13.

⁴² European Commission, "Kosovo 2007 Progress Report," November 6, 2007, http://ec.europa.eu/enlargement/pdf/key_documents/2007/nov/kosovo_progress_reports_en.pdf (accessed November 20, 2007) p. 12.

⁴³ Human Rights Watch interview with a Kosovo Judicial Institute official, Pristina, July 13, 2007.

⁴⁴ Human Rights Watch telephone interview with a senior official from the Kosovo Judicial Institute, February 4, 2008.

⁴⁵ Ibid.

national-international membership. It deals with disciplinary actions and controls the overall quality of training. It is expected to become the key institution responsible for the quality of national judges, able to assess training needs of individual employees and take disciplinary actions where necessary.⁴⁶ Concerns remain about its effectiveness, since its strategy (outlining its target goals) developed in 2006 has yet to be backed by a concrete action plan or budgetary provisions.⁴⁷ The impact of its efforts on the professionalism of judges and prosecutors remains unclear.

The Kosovo Law Centre is a nongovernmental organization that provides national jurists with training, literature, and training materials. It was established in June 2000 with financial support and assistance from the OSCE. Its main goal is to cultivate the professional skills of national jurists in order to establish a well trained group of lawyers, judges, and prosecutors who understand the complexity of the legal framework applicable in Kosovo and adhere to high professional standards.⁴⁸ It has not carried out training in relation to sentencing practices.⁴⁹

Better Coordination between National and International Judges

NOT IMPLEMENTED

Improved coordination between national and international judges is an important element for the long-term development of the justice system in Kosovo. Since 2007 the UNMIK Department of Justice (DoJ) has sought to facilitate consultation between national and international judges, in order to reach common agreement on which cases should be assigned and to whom.⁵⁰ In the view of a national judge and a

⁴⁶ Human Rights Watch interview with a senior Kosovo Judicial Council official, Pristina, July 13, 2007. It is envisioned that a separate body for overseeing prosecutors, the Kosovo Prosecutorial Council, will be established at a later date.

⁴⁷ European Commission, "Kosovo 2007 Progress Report," p. 12.

⁴⁸ Human Rights Watch email correspondence with the director of the Kosovo Law Centre, July 27, 2007.

⁴⁹ Human Rights Watch email correspondence with a senior official from the Kosovo Law Centre, February 1, 2008.

⁵⁰ Human Rights Watch interview with an UNMIK Department of Justice official, Pristina, July 17, 2007.

national prosecutor interviewed by Human Rights Watch, the last word always belongs to UNMIK (international) judges.⁵¹

In fact, international judges take over cases at the request of the chief international public prosecutor, or the parties to the case, according to UNMIK regulation 2000/64.⁵² In either circumstance the decision must be approved by the DoJ, which will assign the case to an international judge. Before the case is reassigned, it is customary for the DoJ to consult the national judge in question. Nevertheless, in cases of disagreements, the decision rests with the DoJ. This procedure appears problematic for the independence of the judiciary (as does a broader issue with the structure of the DoJ, in which a number of staff combine executive and judiciary functions), and arguably violates the UN Basic Principles on the Independence of the Judiciary.⁵³

According to a senior official from the Kosovo Law Center, it appears that most cases involving mixed ethnic parties, organized crime, or cases in which perpetrators are former Kosovo Liberation Army (KLA) members are assigned to international judges.⁵⁴

As is the case with prosecutors, collaboration between national and international judges has been hampered by UNMIK's decision in 2003 to locate all international judges (and prosecutors) in Pristina.⁵⁵

⁵¹ Human Rights Watch telephone interviews with a local judge, December 19, 2007, and with a local prosecutor, January 22, 2008.

⁵² Human Rights Watch email correspondence with a senior official from the Kosovo Law Center, February 1, 2008.

⁵³ Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985, U.N. Doc. A/CONF.121/22/Rev.1 at 59 (1985). Principle 14 states that "the assignment of cases to judges within the court to which they belong is an internal matter of judicial administration."

⁵⁴ Human Rights Watch email correspondence with a senior official from the Kosovo Law Center, February 1, 2008.

⁵⁵ Human Rights Watch interview with an UNMIK Department of Justice official, Pristina, July 17, 2007.

Operational Electronic Case Management System

NOT IMPLEMENTED

The functioning of the criminal justice system in Kosovo, including the prosecution of the March 2004 cases, has been seriously hampered by poor case management. Prosecutors and judges interviewed by Human Rights Watch identified case management and timetabling problems as a significant constraint on the timely adjudication of cases.⁵⁶ The lack of a functional electronic case management system also makes it impossible to effectively monitor or allocate resources across the system.

The inevitable result is a growing backlog of cases, with more than 50,000 civil cases and over 36,000 criminal cases pending.⁵⁷ There are several hundred pending war crimes cases.⁵⁸ At present, there is no legal recourse against excessively long court proceedings.⁵⁹

Despite extensive training, funded by the European Agency for Reconstruction (EAR) and carried out in all regions in Kosovo during the second half of 2007, the electronic case management system is still not in use across Kosovo's courts.⁶⁰ Courtrooms are equipped with computers and the software is functioning, but court staff are said to be reluctant to use it, preferring to keep paper records as before.⁶¹ This failure has been attributed to the overall low level in Kosovo of knowledge and understanding of information technology.⁶²

⁵⁶ Human Rights Watch, *Not on the Agenda*, pp. 48-49.

⁵⁷ European Commission, "Kosovo 2007 Progress Report," p. 12.

⁵⁸ *Ibid.*

⁵⁹ Ombudsperson Institution of Kosovo, "Seventh Annual Report 2006-2007," p. 19.

⁶⁰ Human Rights Watch telephone interview with a European Agency for Reconstruction official, July 27, 2007.

⁶¹ Human Rights Watch telephone interview with a national judge, December 19, 2007.

⁶² Human Rights Watch telephone interview with a European Agency for Reconstruction official, July 19, 2007.

Witness Protection and Relocation

Better Witness Protection

PARTIALLY IMPLEMENTED

The unwillingness of many people in Kosovo to cooperate with the police in criminal investigations remains a critical impediment to the accountability for crimes, including, but not limited to, organized crime and inter-ethnic and political violence. The most important factor is the systemic inability to protect those witnesses who are willing to testify.⁶³

Given Kosovo's size and social structure, witness relocation outside Kosovo may be the only effective way to protect witnesses in the most sensitive cases. But much greater use of witness protection measures short of relocation could bring real benefits in other cases.

It is clear from discussions with representatives from the UNMIK DoJ, the European Union, and donor governments, that improved witness protection has become a priority for donors. Funding from various donors has meant that witness protection equipment ("witness boxes," video links, voice changing devices, etc) is now available in all main courts in each of the regions.⁶⁴ But despite the wide range of measures currently available to conceal witnesses' identity, a November 2007 joint report from the OSCE and the US Office in Pristina concluded that frequently prosecutors do not request and judges do not use such measures⁶⁵ This phenomenon may be explained by an insufficient awareness among police,

⁶³ Human Rights Watch telephone interviews with a national judge, December 19, 2007, and with a national prosecutor, January 22, 2008. See also, Human Rights Watch, *Not on the Agenda*, p. 37.

⁶⁴ Human Rights Watch interviews with officials of all main international institutions and country offices revealed that a wide range of initiatives have been taken to address the insufficient witness protection, and the issue has been prioritized by international donors.

⁶⁵ Organization for Security and Co-operation in Europe and US Office, "Witness Security and Protection in Kosovo: Assessment and Recommendations," November 2007, <http://www.osce.org/item/27753.html> (accessed November 21, 2007).

prosecutors, and judges of the effect that witness protection measures can have on the outcome of the proceedings.⁶⁶

Witness protection continues to suffer from lack of a coherent legal framework. A comprehensive witness protection law is currently being developed, in order to provide clear guidelines, rules of procedure, and to assign responsibilities to all parties involved in witness protection. At this writing, there is no coherent budget for witness-protection-related expenses, with funding channeled through various institutions' budgets (including the KPS and UNMIK), which diminishes its efficiency and causes unnecessary delays.

Human Rights Watch's interlocutors have emphasized the continued importance they attach to appropriate handling of sensitive data. However, one international official noted that occasional disclosure of the identity of protected witnesses to the local press (which often irresponsibly publicizes the identity of witnesses) still results from careless file handling by the courts and other administrative structures.⁶⁷ According to a local prosecutor Human Rights Watch spoke to, existing procedures are "porous" enough to allow for a wide range of persons to deal with files, which increase the risk of inadvertent disclosure of witnesses' identities or other confidential case information.⁶⁸

Witness Relocation Arrangements with States outside the Region

NOT IMPLEMENTED

For some witnesses, relocation outside Kosovo may be the only viable option. Nevertheless, cases of successful witness relocation remain rare. Those arranged to date relied on ad hoc negotiations between the UNMIK Witness Protection Unit and the governments in question.⁶⁹

⁶⁶ Human Rights Watch telephone interview with an OSCE official, November 19, 2007.

⁶⁷ Human Rights Watch interview with an OSCE official, Pristina, July 11, 2007.

⁶⁸ Human Rights Watch telephone interview with a national prosecutor, January 22, 2008.

⁶⁹ Human Rights Watch interview with an UNMIK Department of Justice official, Pristina, July 18, 2007.

Foreign governments have been reluctant to accept witnesses from Kosovo, in part because of wider issues relating to their migration and asylum policies. Kosovo's unusual legal status has also complicated efforts to reach agreement with other governments to accept witnesses.⁷⁰

Another problem is the lack of adequate financial resources to transport and then to support the relocated witnesses, resulting in the hosting states assuming financial responsibility.⁷¹

The greater clarity on Kosovo's status may facilitate better coordination on this issue. But fundamentally, it requires political will on the part of the US, EU, and other governments to accept witnesses in their territory, and to provide adequate financial support to the witness relocation program.

⁷⁰ Ibid.

⁷¹ Organization for Security and Co-operation in Europe, "Review of the Criminal Justice System in Kosovo," December 2006, http://www.osce.org/documents/mik/2006/12/22703_en.pdf (accessed November 19, 2007), p. 11.

Role of International and National Authorities

Outreach to Affected Communities

NOT IMPLEMENTED

The principle of open justice requires that justice must not only be done, it must be seen to be done. That requires an effective outreach program to communicate with the public what is happening in the criminal justice system, including letting victims know the status of investigations into their complaints.

Human Rights Watch's research on the status of the March 2004 investigations revealed a widespread lack of knowledge about the ongoing investigations and prosecutions among the affected minority communities. Almost all the displaced persons and municipal representatives we interviewed for our May 2006 report said they had little or no knowledge of any actions taken to bring to justice those responsible for the March violence.⁷² This lack of information deepened the level of distrust toward both international and Kosovo institutions within the minority communities.

Since then, some attempts have been made by UNMIK, UNMIK police, the KPS, and KFOR to reach out to the communities, especially minorities that are the most vulnerable to violence. Community policing has been strengthened by deploying more police officers to perform monitoring and liaison functions. Local safety councils exist in most municipalities, but the frequency with which they meet and the level of their activity varies greatly.⁷³

The councils were established by UNMIK to provide a platform where police, KFOR, village leaders, and municipal officials could meet to discuss all safety-related concerns.⁷⁴ They are composed of international (UNMIK, KFOR, sometimes also

⁷² Human Rights Watch, *Not on the Agenda*, p. 56.

⁷³ Human Rights Watch email correspondence with an international official, February 3, 2007.

⁷⁴ UNMIK regulation 2006/54.

UNMIK police) and local (KPS, municipal authorities, minority community leaders) representatives, and monitored by the OSCE.⁷⁵

In practice, it appears that neither the local safety councils nor community policing have contributed a great deal to the resolution of security problems at a local level.⁷⁶ According to a Serbian community leader, many within minority communities see the structures as little more than window dressing, designed to create the impression that “things are going well and improving.”⁷⁷

Greater Transparency

NOT IMPLEMENTED

Open justice also requires transparency in the functioning of the criminal justice system. Obtaining accurate and up-to-date information on the investigation and prosecution of war crimes and inter-ethnic violence is a difficult task in Kosovo, especially for non-English-speaking individuals based outside Pristina.⁷⁸ More generally, the criminal justice system lacks transparency.

No significant changes have occurred in this regard since the publication of our May 2006 report.⁷⁹ As noted above, the absence of a functioning electronic case management system hampers access to case information, including statistics. Moreover, the public is not well informed about criminal court decisions, and outreach to victims and complainants frequently fails to take place.

⁷⁵ Human Rights Watch interview with a Serbian community leader, Gracanica/Gracanice, July 14, 2007.

⁷⁶ Human Rights Watch email correspondence with an international official, February 3, 2008.

⁷⁷ Human Rights Watch interview with a Serbian community leader, Gracanica, July 14, 2007.

⁷⁸ Human Rights Watch, *Not on the Agenda*, p. 58.

⁷⁹ Human Rights Watch interview with a Serbian community leader, Gracanica, July 14, 2007. Human Rights Watch interview with a local NGO representative, December 13, 2007.

Members of the public, including affected communities, rely on the Kosovo media for information about the criminal justice system.⁸⁰ The media tend to focus only on the most high-profile trials.

⁸⁰ Human Rights Watch, *Not on the Agenda*, p. 57.

Detailed Ongoing and New Recommendations

To the EU Rule of Law Mission (EULEX)

- Ensure that the criminal justice system is fully integrated between its international and national elements, with effective coordination between international and national judges, prosecutors, and police.
- Resolve arrangements for EU police investigative support to national and international prosecutors, whether through a judicial police branch or otherwise, and support KPS capacity to do the same.
- Foster closer coordination between the EU police and the Kosovo Police Service, including by working jointly on cases.
- Continue international prosecutor mentoring and training programs for national prosecutors, in order to progressively hand over responsibility for sensitive cases to national prosecutors.
- Enhance mentoring and cooperation between national and international judges, in order to progressively hand over responsibility for sensitive cases to national judges.
- Ensure that there is no involvement by the executive (whether national or international) in the allocation of cases to international judges and prosecutors, and give greater weight to the assessment of national judges and prosecutors in determining how to allocate cases.
- Ensure effective oversight over the performance of international police, prosecutors, and judges by establishing effective internal oversight mechanisms and accepting the jurisdiction of the Kosovo Ombudsperson Institution to investigate complaints arising from the exercise of the EULEX mandate.
- Prioritize witness protection and relocation programs, including working with the government of Kosovo on the speedy adoption of a witness protection law; training for the police, prosecutors, and judges on full use of witness protection measures in court; and removal of any administrative or legal obstacles to the relocation of witnesses outside Kosovo.

To the Government of Kosovo

- Demonstrate public commitment to support police and prosecutorial efforts to bring to justice the perpetrators of serious crimes, including organized crime and war crimes.
- Resolve arrangements for Kosovo Police Service investigative support to national and international prosecutors, whether through a judicial police branch or otherwise.
- If there is agreement that an informal arrangement to train designated officers represents an acceptable and effective compromise, amend the criminal procedure code accordingly.
- Ensure that all court employees are familiar with and make use of the electronic case management system, including by providing regular training and staff rotation as required.
- Provide adequate budgetary support to the Kosovo Judicial Council.
- Cooperate fully with the Ombudsperson Institution.
- Make the Police Inspectorate of Kosovo independent of the Ministry of Interior, with a separate budget line.
- Develop a justice system outreach program, including: a public information campaign to inform the public about the outcome of important cases and regular publication of statistics on conviction rates; pay particular attention to reaching out to minority communities.
- Address the obstacles to effective witness protection and relocation programs, including the adoption of a witness protection law, and the conclusion of agreements with the US, EU, and other governments to jointly share responsibility for the relocation and financial support of witnesses at risk.

To the Kosovo Judicial Council

- Develop an action plan to implement the strategy of the KJC in relation to the oversight of national judges and prosecutors.
- Mandate the participation of all judges in continuing education on criminal law topics, including sentencing and laws and procedures regarding witness protection and relocation.
- Streamline and rigorously apply procedures for investigating and disciplining judges and prosecutors, in order to ensure that high professional and ethical criteria apply.

To the Office of the Public Prosecutor of Kosovo

- Mandate the participation of all prosecutors in continuing education on criminal law topics, including coordination with the police, and on laws and procedures regarding witness protection and relocation.
- Encourage cooperation between national and international prosecutors, including through mentoring and training programs.

To the Kosovo Police Service (KPS)

- Resolve arrangements for Kosovo Police Service investigative support to national and international prosecutors, including training, whether through a judicial police branch or otherwise.
- Encourage cooperation between national and international police to build capacity, share information, and avoid the duplication of efforts.
- Ensure that all officers cooperate fully with Police Inspectorate of Kosovo investigations, and with the Ombudsperson Institution, and that senior officers fully implement any resulting recommendations.

To the Organization for Security and Co-operation in Europe (OSCE) Mission in Kosovo

- Continue monitoring and reporting on criminal trials and the overall functioning of the criminal justice system; make any findings public.
- Assist the Kosovo government and EULEX in identifying training gaps to improve professional capacities of national and international police, judges, and prosecutors.

To the European Union, the United States, and other Contact Group members

- Provide political support to reinvigorate efforts to tackle serious crime in Kosovo, including organized crime, war crimes, and inter-ethnic crimes.
- Publicly commit to relocate witnesses from Kosovo, and provide financial support to their relocation.
- Continue financial support to the criminal justice system, carefully monitoring progress and auditing spending.

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Kosovo Criminal Justice Scorecard

It is now widely accepted that the justice system is the weakest of Kosovo's Institutions. Many of Kosovo's ongoing human rights problems, particularly ethnically- and politically-motivated violence, can be traced back to the failure of the authorities to bring perpetrators to justice.

Kosovo Criminal Justice Scorecard assesses the current state of the criminal justice sector, using as benchmarks the recommendations identified in our May 2006 report "Not on the Agenda: The Continuing Failure to Address Accountability in Kosovo Post-March 2004" and newly identified issues of concern.

The report concludes that many of the key problems identified in our May 2006 report have yet to be adequately addressed. The main ongoing shortcomings include: inadequate police cooperation with investigative prosecutors; a lack of understanding of applicable law among judges; a lack of integration between the national and international elements of the justice system; inadequate witness protection, particularly where relocation of witnesses outside Kosovo is required; a largely unused electronic case management system; inadequate outreach to affected communities; a lack of transparency in the functioning of the justice system; and inadequate oversight over the work of judges, prosecutors, and the police.

A recently deployed European Union Rule of Law Mission (known as "EULEX"), with international judges, prosecutors, and police officers, is the main element of the new EU-led mission to Kosovo, reflecting international recognition of the scale of the problem. But ending impunity and building the rule of law will depend on the ability to learn from the mistakes of the past, and a willingness on the part of the Kosovo government and the new international mission to police, prosecute, and punish criminal conduct, wherever and by whomever it is committed.

*Kosovo Albanian and Serb police officers
on patrol together in the village of Strpce.*

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