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A Human Rights Agenda for a New Kosovo

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After nearly nine years of UN administration, Kosovo appears set to become an independent state. The question is no longer if Kosovo will become a country, but what kind of country it will become.

Today, Kosovo is a place where human rights are still frequently violated, where political violence, impunity for common and political crimes, intimidation and discrimination are commonplace. If that is to change, Kosovo's new government, with the help of a new EU-led international mission, must make human rights a top priority.

This document sets out seven of the most pressing human rights issues in Kosovo today, and proposes concrete recommendations to address them. It includes some practical recommendations from human rights groups across Kosovo's communities.¹

Human Rights Watch calls on the new government of Kosovo and the EU-led international mission to commit themselves to tackle the seven priority issues identified below. Without urgent action, Kosovo's human rights crisis will only worsen.

Establish an Independent Judicial System

Kosovo's human rights abuses stem in part from its weak justice system, and previous unwillingness on the part of the UN administration, dating back to 1999, to confront those who use political violence. Most wartime abuses remain unpunished, and organized crime and corruption are largely unchecked. Ordinary crimes frequently go unpunished. The rule of law cannot take root in such an environment.

After the March 2004 riots, in which minorities were targeted leaving hundreds of people injured and thousands displaced from their homes, bringing to justice those responsible was given top priority by the UN. Yet it was not until 2007 that there was meaningful progress in delivering justice for the victims. At the time of this writing, 35 defendants had been convicted on charges of arson, looting, inciting racial, religious and ethnic hatred, and assault, in cases managed mainly by international prosecutors. Fourteen of those convicted received prison terms, ranging from six months to 18 years. One suspect was acquitted.

¹ "Bozur" IDP Association; Council for Defense of Human Rights and Freedoms; Humanitarian Law Center; Kosova Women's Network; Roma and Ashkali Documentation Center; "Srečna Porodica" IDP Association.

The weaknesses in the criminal justice in Kosovo have many causes. Poor coordination between the different parts of the system (police, prosecutors and judges), and a lack of integration between its national and international elements provide part of the explanation. Kosovo still lacks a functioning electronic case management system, making effective monitoring and resource allocation almost impossible. National judges and prosecutors are not always well trained. And there is inadequate oversight by independent bodies.

Inadequate witness protection is 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. For witnesses in the most sensitive cases, relocation outside Kosovo is the only effective means of protection. Yet western governments have so far been reluctant to host witnesses at risk.

An EU police and justice mission will be 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.

Recommendations:

- Ensure that the criminal justice system is fully integrated, with effective collaboration between international and national judges, prosecutors and police.
- Strengthen witness protection, including by enacting a witness protection law and ensuring that prosecutors and judges use existing protective measures.
- The governments of the European Union and the United States should agree to relocate witnesses at risk, and provide adequate funding to a witness relocation program.

Combat Abuse of Women

Domestic violence is a serious and widespread problem in Kosovo. According to Kosovo police statistics, 1,077 cases of domestic violence were recorded in 2007. But a UN study from 2000 indicated that almost quarter of women surveyed said they had experienced physical and/or psychological abuse following the end of war in 1999.

Only a small fraction of cases are reported to the police because of the family and societal pressure on the victims, and their economic dependency on their families. As a result, most cases of domestic violence are never brought to justice, and official data underestimates the scale of the problem, leading to it being virtually ignored in policy debates.

Further, little is done by the state to protect the victims of domestic violence. In the absence of adequate public funding, support to victims of domestic violence and the provision of safe houses depend upon Kosovo's already stretched women's human rights groups. Most regions and many municipalities lack safe houses. Public awareness of domestic violence remains low.

Moreover, trafficking of women remains a serious issue, with Kosovo a location of transit and occasionally origin for trafficking victims. Services for trafficking victims, including shelters and vocational training, depend largely on support from women's organizations.

Tackling violence and abuses against women in Kosovo requires a sustained commitment from the authorities in Kosovo to support and deepen the efforts being carried out by women's human rights organizations, and to ensure that domestic violence is dealt with as a crime. Public education is also critically important.

Recommendations:

- Provide recurring training for police officers, prosecutors, judges, and public health care providers to facilitate access to justice and health services for victims of domestic violence, trafficking in persons, or other types of gender-based violence.
- Launch public awareness campaigns directed at empowering women and girls to demand justice in cases of domestic violence and other types of gender-based violence.
- Provide adequate public funding to ensure that there is a safe house for victims of domestic violence in every municipality.

Protect Minorities from Violence

Violence against minorities has been a persistent feature of Kosovo's post-war history. Minority communities, including Albanian-speaking Ashkali, were the primary target of the March 2004 riots in Kosovo. Today, with much of Kosovo's Albanian and Serb population separated geographically, there are fewer incidents. But security incidents continue in the remaining ethnically mixed areas, including

physical assaults, theft, and violent property-related disputes. Acts of vandalism against Orthodox churches and monasteries continue, damaging confidence and undermining community relations.

The inadequate response by the NATO-led Kosovo peacekeeping Force (KFOR), UN police and Kosovo Police Service to the March 2004 riots, and the failure to bring to justice many of the perpetrators of inter-ethnic violence have left minority communities in Kosovo mistrustful toward national and international institutions. KFOR says it has learned lessons from the events of March 2004, streamlining the chain of command to allow for more rapid deployment to trouble spots.

But ending violence requires more than physical protection. Those responsible must also be brought to justice. Strengthening the justice system is therefore critical to restoring trust among Kosovo minority communities. Improving minority representation in the Kosovo Police Service and outreach are integral to that effort.

Recommendations:

- KFOR, international police and the Kosovo Police Service must respond promptly to attacks on minorities, provide adequate protection, and ensure that evidence is preserved and witnesses identified for future prosecution.
- Ensure that persons who carry out attacks on minorities are brought to justice.
- Improve minority representation in the Kosovo Police Service and engage in proactive outreach efforts to promote trust towards law enforcement among Kosovo's minority communities.

Allow Refugees and Displaced Persons to Return Safely to their Homes

While most Kosovo Albanians displaced in the 1999 fighting have returned to their homes, Kosovo's Serbs, Roma and other minorities displaced after June 1999 have been reluctant to return. Around 250,000 Serbs and other minorities have been displaced from Kosovo since 1999, many to Serbia in the north, others to the former Yugoslav Republic of Macedonia (FYROM), Montenegro, and elsewhere in the region and beyond.

Few have returned voluntarily to their homes. Figures from the UN High Commissioner for Refugees (UNHCR) indicate that as of February 2008, 17,938 displaced persons had returned. In 2007, 1,756 voluntary returns were registered. At

the same time, forced returns from Western Europe are ongoing, with around 2,000 people were forcibly returned in 2007.

For many displaced persons, security fears and concerns about free movement, access to employment, housing, education and other public services impede return. According to UNHCR, Serbs, Roma, and Albanians continue to risk persecution if returned to areas where they would be in a minority. Attacks on those who do return, such as in the town of Klina during 2006, undermine the process. The stalemate over Kosovo's status has created further uncertainty, and the risk of further displacement.

The occupation of land and property belonging to displaced persons is a major impediment to return. Disputes over occupied property often result in violent incidents, while cases brought to court are adjudicated extremely slowly because of the systemic inefficiencies of Kosovo's criminal justice system. Personal documentation (such as Kosovo identity cards) can be difficult for displaced persons to obtain, especially for those who do not speak Albanian. Displaced persons also complain about excessively complicated and lengthy procedures to access support from international organizations, which discourages them from pursuing self-organized returns.

In order to overcome the current stagnation, the Kosovo authorities must work with the EU-led international mission, KFOR and UNHCR to tackle the root causes of displacement, ensure security and improve access to employment, housing and public services. Those who attack returnees or otherwise disrupt returns should be brought to justice. Kosovo's government must reach out to displaced and refugee Serbs and Roma, Ashkali and Egyptians, and cooperate with neighboring governments to promote their sustainable return. The authorities in Serbia also need to play a constructive role in encouraging the returns when the adequate conditions are created.

Recommendations:

- Tackle the root causes of displacement: insecurity, impunity, and discrimination in access to social services.
- Create conditions for safe, dignified, and sustainable voluntary return, including adequate housing and access to health and education services.

Improve the Living Conditions of the Roma, Ashkali and Egyptian Communities

The Roma, Ashkali and Egyptian (RAE) minority communities are vulnerable and marginalized, subject to discrimination and harassment. Their political, economic and social needs were largely ignored during the status negotiations. RAE communities face persistent discrimination, particularly in employment and access to public services, and suffer from the highest unemployment, school dropout and mortality rates. Many live in substandard housing, collective centers or informal settlements.

There was belated progress in assisting internally displaced RAE in 2007, when the largest RAE camp at Plementina was largely dismantled and its inhabitants re-housed. The same year, returns began from a lead contaminated area to reconstructed homes in the Roma quarter in Mitrovica, burned to ground in 1999. Some families remain at the contaminated site.

The forced return of RAE from Western Europe exacerbates the already bleak situation in RAE communities. While RAE made up only ten percent of those forcibly returned to Kosovo in 2007 (with Kosovo Roma mostly sent to Serbia), and UNHCR guidelines indicate that Ashkali and Egyptians are generally not at risk of persecution on return, the impact for those returned and host communities is significant. There is little assistance available to the forced returnees. They frequently end up squatting in informal settlements, or dependent on already burdened relatives. Few have adequate access to health care, school or employment, in part because they lack identity documents, but also due to the widespread discrimination they face.

Tackling the economic, social and political marginalization of RAE communities to secure their basic rights is an urgent challenge for the new Kosovo government and its international partners. It must include an effort to assist RAE forcibly returned to Kosovo, providing them with personal documentation, and improving their access to housing and education.

Recommendations:

- Take effective measures to combat discrimination against RAE in access to housing, employment, and social services.
- The European Union should agree on a moratorium on forced returns of RAE from EU member states until the situation in Kosovo has stabilized. Any

- subsequent returns should be based on an individual risk assessment and take into account the absorption capacity of the host community.
- Effective assistance programs must be put in place before any further forced returns take place.

Ensure that the EU-led Mission is Transparent and Respects Human Rights

If it is to succeed, the EU-led international mission to Kosovo must subject its human rights record to much greater scrutiny and accountability than its United Nations predecessor. There has been little check on the exercise of the UN mission's far reaching powers, undermining its legitimacy in the eyes of the population.

The accountability gap in Kosovo was starkly illustrated in 2007 when UNMIK police responded to a violent protest in February with lethal force, resulting in the deaths of two protestors. The UN mission's much-criticized handling of the aftermath highlighted the lack of independent mechanisms for accountability and oversight of UN police, which necessitated reliance on ad hoc solutions, and the potential for lasting damage to the reputation of international institutions in the absence of effective accountability.

The Ombudsperson Institution, a key mechanism of accountability that enjoys broad confidence among Kosovo's communities, has been undermined by confusion over its mandate, following its transformation from an international into a national body in early 2006. It was not until December 2007 that UNMIK confirmed that it remains subject to oversight by the Institution, a gap of almost two years in which the Ombudsperson had understandably declined to accept complaints against the UN. Its functioning has also been hampered by the failure of the National Assembly (Kosovo's parliament) to agree a suitably qualified candidate for the post.

The international community cannot expect to succeed in building democratic institutions in Kosovo if it is not prepared to subject its own record to independent scrutiny. It is particularly important in the case of the EU police and justice mission, since the nature of its functions is likely to give rise to individual human rights concerns.

Recommendations:

- The EU police and justice mission should subject itself to the scrutiny of the Ombudsperson Institution, and cooperate fully with its investigations.

- The authorities in Kosovo should cooperate fully with the Ombudsperson Institution, and the National Assembly should ensure that candidates for appointment as Ombudsperson possess the necessary experience and demonstrated commitment to human rights.

Promote Reconciliation

In order to move forward as a society, Kosovo must come to terms with its past. To date, little progress has been made, despite reconciliation efforts by outside actors. While the impulse for reconciliation must come from within, international actors can help to create the conditions in which reconciliation is likely to take place.

Establishing individual criminal responsibility for wartime abuses is an important step. Yet progress on domestic war crimes prosecutions has been extremely limited, with only around 24 cases completed since 1999. Poorly adjudicated prosecutions before national courts, absent suspects, witness intimidation and inadequate prioritization form part of the explanation.

Determining the fate of missing persons is also an important element of coming to terms with the past. Despite some progress in determining the fate of missing persons, more than 2000 remained missing as of mid-2007, the majority ethnic Albanian. All known remains exhumed in Serbia have been transferred to Kosovo.

In order to deliver justice for all victims of war crimes in Kosovo, national and international authorities must show renewed political will to prioritize national prosecutions of war crime cases, while the witnesses are still alive. Renewed efforts must also be made to determine the fate of the missing. It is not too late to reach out to victims' families and friends, and to victims' associations to establish the truth about what took place and bring those responsible to justice.

Recommendations:

- The government of Kosovo and EU police and justice mission should review all pending war crimes cases and investigations, and develop a plan to investigate and prosecute and fairly adjudicate them.
- The authorities in Pristina, with international support, should reinvigorate efforts to determine the fate of the missing.
- Prosecutors in Kosovo should initiate collaboration with the Belgrade War Crimes Chamber on the investigation and prosecution of war crimes.