

**Submission from the Internal Displacement Monitoring Centre (IDMC) to the
Human Rights Committee**

**Issues of concern and recommendations in relation to the report submitted by the
United Nations Interim Administration Mission in Kosovo
(CCPR/C/UNK/1, 13 March 2006)**

I. Introduction :

This contribution has been prepared by the Internal Displacement Monitoring Centre (IDMC). The IDMC, established in 1998 by the Norwegian Refugee Council, monitors conflict-induced internal displacement worldwide. The Geneva-based Centre runs an online database providing comprehensive and regularly updated information and analysis on internal displacement in 50 countries. Through its work, the IDMC contributes to improving national and international capacities to protect and assist the millions of people around the globe who have been displaced within their own country as a result of conflicts or human rights violations.

The information below is drawn from the Serbia and Montenegro country profile and report: “IDPs from Kosovo: stuck between uncertain return prospects and denial of local integration” which can be accessed through the following link: www.internal-displacement.org. Other information is sourced.

II. General :

An estimated 250,000 internally displaced people (IDPs) – mainly ethnic Serbs and Roma who fled within and out of Kosovo when Yugoslav forces withdrew in 1999 – are still unable to go back to their pre-war homes in the now UN-administered province. The overwhelming majority of IDPs live in Serbia, but smaller numbers have also found refuge in Montenegro and parts of Kosovo. An outbreak of ethnic violence in March 2004 newly displaced some 4,200 people, most of them Serbs but also Roma and Ashkaeli, and effectively put a halt to the return momentum which had slowly built up in previous years. In this latter case, the overwhelming majority of the displaced remained in Kosovo but moved to Serb-dominated areas. This situation requires measures to ensure adequate living conditions for the displaced population and development of conditions conducive to return.

The 2004 clashes, in which 19 people died and over 900 civilians were injured, marked a step further in the separation of communities and resulted in a serious loss of confidence in the capacity of local authorities and the international community to rebuild a multi-ethnic Kosovo.

In Kosovo, the Provisional Institutions of Self-Government (PISG) have made progress in implementing the “Standards for Kosovo”, established by the UN Mission in Kosovo (UNMIK) to promote the transition towards a democratic and multi-ethnic province where refugees and IDPs wishing to return can do so in safety and dignity. However, crucial challenges remain in areas such as property repossession, security, employment and freedom of movement. Progress on the implementation of the standards is a precondition for the opening of negotiations on the final status of Kosovo. The political uncertainty surrounding the status question has been a significant source of instability, with Kosovo Albanians fearing the possible return of Serb rule and Serb IDPs hesitating to go back before a final decision is made.

Greater efforts are needed to improve the security situation in Kosovo, including through increased inter-ethnic dialogue and the prosecution of perpetrators of ethnic violence. It is also essential to resume systematic monitoring of the human rights situation of returnees as well as populations at risk of displacement, such as minority groups and forcibly returned refugees.

III. Principal subjects of concerns and recommendations:

Right to life (article 6)

Roma IDPs in North Mitrovica

The situation in the camps of Zitkovac, Kablare and Cesmin Lug in North Mitrovica has received international attention because of the acute health risks the IDPs in these camps face due to the proximity of a mountain of toxic waste. The contamination risk is further increased by camp inhabitants melting batteries to extract lead as a means of generating income.

The World Health Organisation found in 2004 that many children in these camps suffer from potentially mortal levels of lead contamination and recommended immediate evacuation of pregnant women and children and temporary relocation of other displaced until a sustainable solution is found. Reconstruction of houses belonging to some of the displaced persons in those camps is ongoing in South Mitrovica. As of early 2006, new facilities have been made available to accommodate the displaced persons from the camps mentioned above. However, the displaced have so far refused to move to the new location for fear that this would delay the finding of durable solutions (for more information see IDMC report attached, p.19).

Concern

- Roma displaced persons in North Mitrovica camps, in particular pregnant women and children face serious health risk if they remain in those camps. The lack of will to move expressed by camp leaders should not allow perpetuating the serious health risks incurred by vulnerable residents in the camp

Recommendation

- UNMIK has the responsibility to relocate vulnerable people to a safer location and close the current camps as a measure of public health, in consultation with the displaced persons concerned.

Freedom of movement (article 12.1)

Restricted freedom of movement

The March 2004 events have had a long lasting impact on the feeling of insecurity for Kosovo Serbs and Roma and on their freedom of movement. The March 2004 violence was the most serious occurrence of ethnically-motivated attacks since 1999. Over a period of three days, 33 major riots took place throughout Kosovo involving an estimated 51,000 mainly ethnic Albanian assailants. The displaced came mainly from Pristina and South Mitrovica regions (42 per cent and 40 per cent respectively). Eighty-two per cent

were Serbs and the rest consisted of Roma and Ashkaeli (Muslim, Albanian-speaking Roma). As of May 2005, over 1,400 of the 4,200 were still displaced within Kosovo and some 170 remained elsewhere in Serbia. The March 2004 events underlined the precarious situation of minority communities in Kosovo and the need to protect them and allow them to live a normal life.

Since then, freedom of movement remains severely restricted by the volatile security situation and perception of insecurity, which are further reinforced by the ongoing status talk negotiations on Kosovo. The security situation in Kosovo remains fragile. The decrease of inter-ethnic crimes in 2005 is a positive trend but also results from reduced interactions between various communities. Minorities still travel with specially provided transport or under military escort. These movements usually take place between one minority area and another. Kosovo Serb children in Obilic and Mitrovica still need military escorts to go to school.

As reported by UNHCR:

“Security incidents have a strong impact on the minorities’ confidence and freedom of movement. In late 2005, UNMIK-CIVPOL began escorting all buses on the Dragash/š-Belgrade line following an incident where a rocket-propelled grenade was fired at a bus in Prizren. The Kosovo Serb community from Čaglavica/Çagllavicë to Graçanicë/Graçanica and Obiliq/Obilić areas has continued to request KFOR and KPS patrols to escort their children to attend classes to avoid stoning, allegedly by members of the Albanian majority population. Stoning incidents in March and May 2006 in the Pejë/Peć region affected buses on their way to Mitrovicë/a in Runik/Rudnik, Skenderaj/Srbica municipality, and in Shipol/Šipolj, one of the southern Mitrovicë/a suburbs.”¹

The fact that ongoing returns are almost exclusively taking place to Serb majority areas and to rural municipalities illustrate the feeling of insecurity of returning minority IDPs.

Notwithstanding the fragile security situation in the province, the international community has abandoned an important monitoring tool, the regular OSCE/UNHCR Minority Assessment report whose last publication dates from 2003.

Concern

- The limited freedom of movement restricts access of members of minority groups and displaced persons to access to basic public services and the judicial system, and has a negative impact on their ability to sustain their livelihoods due to the risks involved in traveling to and from work and the difficulty of accessing their land. This discourages return and increases the risk of further displacement of minorities out of Kosovo or towards mono-ethnic areas within Kosovo. UNHCR estimates that up to 85,000 people are at risk of displacement in Kosovo.

¹ UNHCR’s Position on the Continued International Protection Needs of Individuals from Kosovo, UNHCR, June 2006, par.15. <http://www.unhcr.org/cgi-bin/texis/vtx/home/openssl.pdf?tbl=SUBSITES&id=4492bdaa2>

Recommendations

- Take all necessary measures to facilitate freedom of movement of people belonging to minority groups and displaced persons and ensure their access to public and social services and the judicial system.
- Systematically monitor the human right situation of displaced persons and minority groups to better address their needs and prevent further displacement

Forced returns to Kosovo

The rising number of refugees or people previously under temporary protection being sent back to Kosovo by asylum countries increases the risk of secondary displacement of returnees facing continuing threats of violence at their places of origin.

International organisations such as UNHCR and the Council of Europe have expressed concern that significant returns from abroad could further destabilise the fragile security environment in Kosovo. In addition to the security risk, possibilities of reintegration at this stage are seriously limited, with restricted freedom of movement, poor economic prospects for the returnees and lack of access to public services.

In April 2005, UNMIK agreed with Germany, which hosts the largest number of refugees from Kosovo, to begin returning members of the Ashkaeli and Egyptian communities to Kosovo. Under the agreement, Germany has to notify UNMIK of forced returns 40 days in advance upon which UNMIK will carry out a “thorough screening”. UNMIK claims that this agreement is in line with the UNHCR March 2005 position paper. However, it is not clear whether the screening entails the review of each individual case, which may be necessary to guarantee the safety of the returnees but unrealistic in terms of capacity, or just a general assessment of the overall situation in the municipality of return. According to information received by the IDMC, there have been cases of the forcible return of refugees about which UNMIK was notified too late or not at all.

An UNMIK draft policy document currently in use sets out a mechanism for dealing with forced returns for 18 months from April 2005 to September 2006. The paper includes plans for a thorough security assessment and operational provisions to prepare the reception and accommodation of forced returnees. It envisages to review and adapt the policy to the changes every three months on the assumption that the security situation is likely to improve with the implementation of the Standards for Kosovo (the possibility of deterioration is not envisaged). Consequently, the plan is to shorten the notification period to respond to the increasing number of requests for forced return.

Concern

- There are serious concerns that, in view of UNMIK’s limited screening capacity, some forced returns might occur without adequate security guarantees and increase the risk of secondary displacement.

Recommendation

- Establish standard operating procedures to monitor return conditions of refugees, in particular forced returnees, and assess risks of secondary displacement.
- Increase UNMIK's capacity to perform adequate screening of individual cases to ensure that persons are not forcibly returned to areas where they could be at risk.

Right to fair trial, access to independent and impartial tribunal, undue delay, (article 14)/Right to a remedy (article 2):

Access to justice

Access to the judicial system of Kosovo is restricted by the limited freedom of movement which often prevents members of minority groups and displaced persons from traveling to the courts. Serbia has continued to fund a parallel judicial system in Serb enclaves in Kosovo in violation of UN Security Council resolution 1244. These courts hear civil and minor criminal cases but mainly verify civil documentation and handle inheritance procedures. Since those Courts and decisions are not recognised by UNMIK, they cannot be enforced outside of North Kosovo. The situation has improved since the end of 2004 with the opening of two new court liaison offices in Prizren and Vitina, and a department of the Pristina municipal court in Gracanica (Serb enclave). The court liaison offices arrange for members of minority communities to be accompanied to court and file documents on their behalf.

Concern

- The limited freedom of movement resulting from the volatile security situation still prevents displaced persons belonging to minority groups from accessing Courts.
- The persistence of two justice systems within Kosovo which do not recognize each other's decision seriously hampers the execution of decisions and deprives displaced persons and members of minority groups from effective remedy.

Recommendation

- Facilitate access of displaced persons and members of minority groups to Kosovo Courts through the development of Court liaison offices and transportation to reduce the need of this category of person to use parallel courts.

Independence of justice/ Right to be tried without undue delay

According to a report² published in June 2006 by the Organisation for Security and Cooperation in Europe (OSCE), the civil justice system in Kosovo is characterised by a heavy backlog of nearly 44.000 cases.

² Kosovo first review of the civil justice system, OSCE, June 2006
http://www.osce.org/documents/mik/2006/06/19407_en.pdf

1) In 2004, the Department of Justice (DoJ) sent a letter to civil courts instructing them to suspend claims filed by Kosovo Serbs against KFOR, UNMIK, the Municipalities and individual persons regarding compensation for property damages caused after NATO entered Kosovo in 1999. As a result over 17.000 claims have been put on hold for an indeterminate period. Indeed since 2004, the DoJ has not taken any measure to address this problem. Moreover, the instruction has been interpreted by most judges as being also applicable to the civil claims for compensation filed against KFOR, UNMIK, and the Municipalities as a result of damages to property occurred during the March 2004 events³.

“In four similar claims filed on 23 March 2005 before the Municipal Court in Gjilan/Gnjilane by a number of Kosovo Serb relatives and neighbors from that town against the Municipality, the Provisional Institutions of Self-Government of Kosovo and UNMIK, the claimants requested to be compensated for the damages they suffered during the March riots when their houses were destroyed and they had to flee to Serbia. Following the letters of the DoJ, the court has not dealt with these cases, keeping them on hold indefinitely.”⁴

2). Interference has also taken the form of undue pressure on judges to obstruct investigation or execution of decisions:

“In a case before the Municipal Court in Prizren one claimant filed a lawsuit against the Municipality on 2 April 2005, requesting the enforcement of a judicial agreement.¹¹⁰ During the course of the proceedings the judge in charge of the case was prevented from carrying out the site inspection on three different occasions. This standstill was caused by the refusal of the geodesy expert (an employee of the Municipality) to attend the site inspection and carry out his duties as ordered by the court. During the session held on 20 June 2005, the expert justified his conduct by stating that he had received instructions from the Municipal Directorate for Geodesy and Cadastre not to perform the requested expertise. As a result the proceedings were obstructed for a while, to the benefit of the Municipality who was the defendant in the case.”⁵

“In relation to a number of executions pending before the Vushtrri/Vučitrn Municipal Court, the President of the court told the OSCE about a written notification by the Director of the "KSB" Bank informing the court that on 10 December 2004 he had received instructions by the President of the Municipal Assembly not to execute court decisions against that Municipality or the latter would close all its accounts in that bank. According to the information collected at the Vushtrri/Vučitrn Municipal Court, as of April 2005, there were more than forty cases in which the “KSB” bank had failed to comply with court orders taken in execution proceedings.”⁶

Concern

- There are serious concerns that the current backlog of cases in civil courts does not allow for the respect of the right to be tried without undue delay.

³ Ibid, pp. 39-42

⁴ Ibid, p.42

⁵ Ibid, p.38

⁶ Ibid, pp. 38-39

- There are serious concerns that the independence of justice is compromised by political and external interferences which obstruct or slow down the administration of justice. In the case of claims filed by Kosovo Serbs against KFOR, UNMIK, the Municipalities and individual persons regarding compensation for property damages caused after NATO entered Kosovo in 1999, more than 17.000 cases have been put on hold thereby limiting their access to court and right to be tried without undue delay.

Recommendation

- Measures should be taken to reduce the backlog of cases existing in Kosovo civil courts.
- Measures should be taken to stop political interference and pressure on judges. Such acts should be prosecuted and condemned.
- The Department of Justice should propose a solution to address the 17.000 cases currently put on hold and allow for continuation of proceedings (see also OSCE recommendations, June 2006 report, p.43).

Lack of effective remedy

Criminal courts: Kosovo has a poor record on prosecution for war crimes and anti-minority violence. Only two dozen cases are being prosecuted for war crimes. Out of 450 prosecutions open in relation to the March 2004 violence, most charges were for minor offences and where adjudicated, cases often resulted in the imposition of only minor penalties, at times below minimum sentencing guidelines. Only half of the cases have been completed two years after the facts.⁷

Concern

- Lack of accountability for war crimes and anti-minority violence creates a climate of impunity which increases the feeling of insecurity for members of minority groups, in particular displaced persons and deprives them from access to an effective remedy.

Recommendation

- UNMIK should take measures to ensure that war crimes and anti-minority violence are duly prosecuted and punished.

⁷ Human Rights Watch Memorandum on the Western Balkans, prepared for EU Foreign Ministers' informal meeting, Salzburg, March 10-11, 2006, Human Rights Watch, 7 March 2006, p.2
<http://hrw.org/backgrounder/eca/balkans0306/balkans0306.pdf>

Recognition before the law (article 16)

Description of the situation

Many IDPs lost their personal documents during displacement which prevents them from accessing a whole range of rights and effectively exercising their right to recognition before the law. Procedures to obtain documents are complex and costly and rendered even more difficult by the fact that, in 1999, the Serbian authorities removed most of administrative records from Kosovo. The issuance of documents by Kosovo authorities is particularly difficult under those circumstances. The Serbian authorities created “dislocated” courts, cadastral agency, police stations and registry offices to deal with the displaced from Kosovo. In June 2003, the dislocated offices were integrated into the municipal registry offices in Central and Southern Serbia.

Concern

- The absence of mutual recognition of documents between UNMIK and Serbia prevents many displaced persons to avail themselves of their rights
- Roma displaced persons in Kosovo who often did not have personal documents before their displacement face particular difficulties to obtain documentation since they cannot be found in any registry. The fact that most of them live in informal settlements is an additional obstacle because they cannot produce a proof of residence (such as rental contract or utility bills) which is necessary to obtain certain documents or rights such as the right to vote.

Recommendation:

- UNMIK should negotiate with the authorities in Serbia for exchange of copies/return of registries taken away in 1999 and for mutual recognition of documents.
- IDPs should be exempted from fees when requesting personal documentation in Kosovo.
- A programme of civil registration for Roma should be undertaken.

Non interference with home (article 17): property

After the Yugoslav army left Kosovo in 1999, many of the returning Kosovo Albanians occupied houses and apartments owned by Serb IDPs, often because their own homes had been damaged or destroyed during the conflict which preceded the NATO bombing campaign. Progress in the reconstruction of Albanian homes has not ended the widespread illegal occupation. As the post-conflict period has seen accelerated urbanisation throughout Kosovo, many ethnic Albanians from rural areas now living in larger towns, often in occupied property, find it difficult to return to the countryside in particular since local authorities have done little to end the illegal occupation of properties. The Ombudsperson of Kosovo has repeatedly reported on the difficulties for members of minority groups, local residents or returnees of accessing their land, either due to illegal occupation or limited freedom of movement preventing the cultivation of

land. There are also reports of forced sales of properties belonging to ethnic minorities as a result of intimidation, threats or direct violence.

Overall, as described in a report from the Secretary-General on the United Nations Interim Administration Mission in Kosovo, there is widespread impunity regarding violations of homes and property rights:

“Property rights protection in Kosovo remains extremely weak and in need of urgent strengthening. Illegal construction continues by individuals and companies on land owned by others, as well as non-permitted construction on land by its title owners. Concerns continue over possible illegal expropriation of land by municipalities, including land owned by minority communities. Illegal occupation and use of property remains widespread.”⁸

In 1999, UNMIK established the Housing and Property Directorate (HPD) and the Housing and Property Claims Commission (HPCC) to resolve disputes over residential properties, including socially-owned properties, and temporarily administer properties at the request of their owners. The HPD received a total of 29,000 claims before the deadline for the submission of claims expired in July 2003.

By February 2006, the HPD had adjudicated 99.7 percent of cases and approximately 84 percent had been implemented⁹. The decisions had been implemented through repossession (only four per cent), voluntary settlements or temporary administration of the property by the HPD until the owner expresses his wish to return. Where evictions of the temporary occupants are carried out by the authorities, they are often followed by looting – in an estimated third of all cases – or immediate re-occupation of the properties. In the latter case, the owner cannot turn back to HPD but has to go through local courts to request a new eviction¹⁰.

In view of the backlog of cases in the courts (nearly 7,000 property-related cases as of May 2005), this rarely leads to a swift repossession of properties. This is why HPD advises owners who are not ready to return immediately to hand over their house for HPD administration. The property can then, in the meantime, be used for social housing. With the HPD having terminated its mandate at the end of 2005, there is a need for a mechanism to take over administration of properties managed by the Directorate.

⁸ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo S/2006/45, 25 January 2006, Annex I, p.22, para.115.

<http://www.reliefweb.int/rw/rwb.nsf/db900SID/HMYT-6LKRCV?OpenDocument>

⁹ Property restitution in Kosovo, its final phases, by Francisco Prata, ICHR newsletter March-April 2006

¹⁰ See also, UNHCR, June 2006, op. cit, para.23: “A large number of displaced persons belonging to minorities do not physically repossess restituted property due to the prevailing problematic security situation and other obstacles to return. Following the eviction of illegal occupants, the looting and physical re-occupation of properties are commonplace as the rightful owners are often unable, or, due to security concerns, unwilling, to repossess their homes. In such cases, as a matter of legal procedure, the lawful owners must reinitiate court proceedings to evict the new illegal occupants.”

[http://idmc.nrc.ch/8025708F004CE90B/\(httpDocuments\)/AB33E42A06253573C125715D0035F81A/\\$file/ICHR+Newsletter+no++6.pdf](http://idmc.nrc.ch/8025708F004CE90B/(httpDocuments)/AB33E42A06253573C125715D0035F81A/$file/ICHR+Newsletter+no++6.pdf)

HPD and UNMIK are currently studying a rental scheme which would be administered by a local institution, the Kosovo Housing Fund. The Fund would provide social housing to persons in need and pay the owner of the property for the use of it. This would allow the displaced to gain an income from their property while keeping options open for the future.

Concern

- There are serious concerns that the widespread impunity surrounding violations of the right to home and property rights, i.e. looting, illegal occupation of land and houses, and intimidation leading to forced sales, prevents displaced persons from returning, deprives returnees or domicile minority members from an essential means of self-reliance, and leads to further departures from Kosovo.
- The volatile security situation and the uncertainty over the future status of Kosovo incites many displaced Kosovo Serbs to sell their repossessed property, thereby abandoning any perspective for return

Recommendation

- “Kosovo's legislation, courts and administrative procedures need to be significantly strengthened to identify, correct and punish these crimes. The Government and public sector need to lead by example, enforcing disciplinary procedures against public servants illegally occupying property. Courts, municipal authorities and police need to increase efforts to enforce property-related law faster and more consistently.”¹¹
- The rental scheme proposed by HPD and UNMIK should be adopted and enforced to allow the displaced to gain an income from their property while keeping options open for the future.

IDMC, 30 June 2006

¹¹ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, op.cit, para.115